

SENATE BILL NO. \_\_\_\_\_ HOUSE BILL NO. \_\_\_\_\_

1 A BILL to amend and reenact §§ 56-582 and 56-585 of the Code of Virginia, relating to the Virginia  
2 Electric Utility Restructuring Act; rate caps and default service.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That §§ 56-582 and 56-585 of the Code of Virginia are amended and reenacted as follows:**

5 § 56-582. Rate caps.

6 A. The Commission shall establish capped rates, effective January 1, 2001, for each service  
7 territory of every incumbent utility as follows:

8 1. Capped rates shall be established for customers purchasing bundled electric transmission,  
9 distribution and generation services from an incumbent electric utility.

10 2. Capped rates for electric generation services, only, shall also be established for the purpose of  
11 effecting customer choice for those retail customers authorized under this chapter to purchase generation  
12 services from a supplier other than the incumbent utility during this period.

13 3. The capped rates established under this section shall be the rates in effect for each incumbent  
14 utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a rate  
15 application filed by an incumbent electric utility with the Commission prior to January 1, 2001, and  
16 subsequently approved by the Commission, and made by an incumbent electric utility that is not  
17 currently bound by a rate case settlement adopted by the Commission that extends in its application  
18 beyond January 1, 2002. If such rate application is filed, the rates proposed therein shall go into effect  
19 on January 1, 2001, but such rates shall be interim in nature and subject to refund until such time as the  
20 Commission has completed its investigation of such application. Any amount of the rates found  
21 excessive by the Commission shall be subject to refund with interest, as may be ordered by the  
22 Commission. The Commission shall act upon such applications prior to commencement of the period of  
23 transition to customer choice. Such rate application and the Commission's approval shall give due  
24 consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for

25 a period of time ending as late as July 1, 2007. The capped rates established under this section, which  
26 include rates, tariffs, electric service contracts, and rate programs (including experimental rates,  
27 regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs  
28 of each incumbent electric utility, provided that experimental rates and rate programs may be closed to  
29 new customers upon application to the Commission. Such capped rates shall also include rates for new  
30 services where, subsequent to January 1, 2001, rate applications for any such rates are filed by  
31 incumbent electric utilities with the Commission and are thereafter approved by the Commission. In  
32 establishing such rates for new services, the Commission may use any rate method that promotes the  
33 public interest and that is fairly compensatory to any utilities requesting such rates.

34 B. The Commission may adjust such capped rates in connection with the following: (i) utilities'  
35 recovery of fuel and purchased power costs pursuant to § 56-249.6, and, if applicable, in accordance  
36 with the terms of any Commission order approving the divestiture of generation assets pursuant to § 56-  
37 590, (ii) any changes in the taxation by the Commonwealth of incumbent electric utility revenues, (iii)  
38 any financial distress of the utility beyond its control, (iv) with respect to cooperatives that were not  
39 members of a power supply cooperative on January 1, 1999, and as long as they do not become  
40 members, their cost of purchased wholesale power and discounts from capped rates to match the cost of  
41 providing distribution services, (v) with respect to cooperatives that were members of a power supply  
42 cooperative on January 1, 1999, their recovery of fuel costs, through the wholesale power cost  
43 adjustment clauses of their tariffs pursuant to § 56-231.33, and (vi) with respect to incumbent electric  
44 utilities that were not, as of the effective date of this chapter, bound by a rate case settlement adopted by  
45 the Commission that extended in its application beyond January 1, 2002, the Commission shall adjust  
46 such utilities' capped rates, not more than once in any 12-month period, for the timely recovery of their  
47 incremental costs for transmission or distribution system reliability and compliance with state or federal  
48 environmental laws or regulations to the extent such costs are prudently incurred on and after July 1,  
49 2004. Any adjustments pursuant to § 56-249.6 and clause (i) of this subsection by an incumbent electric  
50 utility that transferred all of its generation assets to an affiliate with the approval of the Commission  
51 pursuant to § 56-590 prior to January 1, 2002, shall be effective only on and after July 1, 2007.

52 Notwithstanding the provisions of § 56-249.6, the Commission may authorize tariffs that include  
53 incentives designed to encourage an incumbent electric utility to reduce its fuel costs by permitting  
54 retention of a portion of cost savings resulting from fuel cost reductions or by other methods determined  
55 by the Commission to be fair and reasonable to the utility and its customers.

56 C. A utility may petition the Commission to terminate the capped rates to all customers any time  
57 after January 1, 2004, and such capped rates may be terminated upon the Commission finding of an  
58 effectively competitive market for generation services within the service territory of that utility. If its  
59 capped rates, as established and adjusted from time to time pursuant to subsections A and B, are  
60 continued after January 1, 2004, an incumbent electric utility that is not, as of the effective date of this  
61 chapter, bound by a rate case settlement adopted by the Commission that extends in its application  
62 beyond January 1, 2002, may petition the Commission, during the period January 1, 2004, through June  
63 30, 2007, for approval of a one-time change in its rates, and if the capped rates are continued after July  
64 1, 2007, such incumbent electric utility may at any time after July 1, 2007, petition the Commission for  
65 approval of a one-time change in its rates. Any change in rates pursuant to this subsection by an  
66 incumbent electric utility that divested its generation assets with approval of the Commission pursuant to  
67 § 56-590 prior to January 1, 2002, shall be in accordance with the terms of any Commission order  
68 approving such divestiture. Any petition for changes to capped rates filed pursuant to this subsection  
69 shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title.

70 D. Until the expiration or termination of capped rates as provided in this section, the incumbent  
71 electric utility, consistent with the functional separation plan implemented under § 56-590, shall make  
72 electric service available at capped rates established under this section to any customer in the incumbent  
73 electric utility's service territory, including any customer that, until the expiration or termination of  
74 capped rates, requests such service after a period of utilizing service from another supplier.

75 E. During the period when capped rates are in effect for an incumbent electric utility, such utility  
76 may file with the Commission a plan describing the method used by such utility to assure full funding of  
77 its nuclear decommissioning obligation and specifying the amount of the revenues collected under either  
78 the capped rates, as provided in this section, or the wires charges, as provided in § 56-583, that are

79 dedicated to funding such nuclear decommissioning obligation under the plan. The Commission shall  
80 approve the plan upon a finding that the plan is not contrary to the public interest.

81 F. The capped rates established pursuant to this section shall expire on December 31, ~~2010~~ 2007,  
82 unless sooner terminated by the Commission pursuant to the provisions of subsection C.

83 G. Nothing in this chapter shall modify or impair the terms of any Commission order approving  
84 the divestiture of generation assets pursuant to § 56-590.

85 § 56-585. Default service.

86 A. The Commission shall, after notice and opportunity for hearing, (i) determine the components  
87 of default service and (ii) establish one or more programs making such services available to retail  
88 customers requiring them commencing with the availability throughout the Commonwealth of customer  
89 choice for all retail customers as established pursuant to § 56-577. For purposes of this chapter, "default  
90 service" means service made available under this section to retail customers who (i) do not affirmatively  
91 select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted  
92 with an alternative supplier who fails to perform.

93 B. From time to time, the Commission shall designate one or more providers of default service.  
94 In doing so, the Commission:

95 1. Shall take into account the characteristics and qualifications of prospective providers,  
96 including proposed rates, experience, safety, reliability, corporate structure, access to electric energy  
97 resources necessary to serve customers requiring such services, and other factors deemed necessary to  
98 ensure the reliable provision of such services, to prevent the inefficient use of such services, and to  
99 protect the public interest;

100 2. May periodically, as necessary, conduct competitive bidding processes under procedures  
101 established by the Commission and, upon a finding that the public interest will be served, designate one  
102 or more willing and suitable providers to provide one or more components of such services, in one or  
103 more regions of the Commonwealth, to one or more classes of customers;

104 3. To the extent that default service is not provided pursuant to a designation under subdivision  
105 2, may require a distributor to provide, in a safe and reliable manner, one or more components of such

106 services, or to form an affiliate to do so, in one or more regions of the Commonwealth, at rates  
 107 determined pursuant to subsection C and for periods specified by the Commission; however, the  
 108 Commission may not require a distributor, or affiliate thereof, to provide any such services outside the  
 109 territory in which such distributor provides service; and

110 4. Notwithstanding imposition on a distributor by the Commission of the requirement provided  
 111 in subdivision 3, the Commission may thereafter, upon a finding that the public interest will be served,  
 112 designate through the competitive bidding process established in subdivision 2 one or more willing and  
 113 suitable providers to provide one or more components of such services, in one or more regions of the  
 114 Commonwealth, to one or more classes of customers.

115 C. If a distributor is required to provide default services pursuant to subdivision B 3, after notice  
 116 and opportunity for hearing, the Commission shall periodically, for each distributor, determine the rates,  
 117 terms and conditions for default services, taking into account the characteristics and qualifications set  
 118 forth in subdivision B 1, as follows:

119 1. Until the expiration or termination of capped rates, the rates for default service provided by a  
 120 distributor shall equal the capped rates established pursuant to subdivision A 2 of § 56-582. ~~After the~~  
 121 ~~expiration or termination of such capped rates, the rates for default services shall be based upon~~  
 122 ~~competitive market prices for electric generation services.~~

123 2. ~~The~~After the expiration or termination of capped rates, the Commission shall, after notice and  
 124 opportunity for hearing, determine the rates, terms and conditions for default service by such distributor  
 125 on the basis of the provisions of Chapter 10 (§ 56-232 et seq.) of this title, ~~except that the generation-~~  
 126 ~~related components of such rates shall be (i) based upon a plan approved by the Commission as set forth~~  
 127 ~~in subdivision 3 or (ii) in the absence of an approved plan, based upon prices for generation capacity and~~  
 128 ~~energy in competitive regional electricity markets,~~ except as provided in subsection G.

129 3. ~~Prior to a distributor's provision of default service, and upon request of such distributor, the~~  
 130 ~~Commission shall review any plan filed by the distributor to procure electric generation services for~~  
 131 ~~default service. The Commission shall approve such plan if the Commission determines that the~~  
 132 ~~procurement of electric generation capacity and energy under such plan is adequately based upon prices~~

133 ~~of capacity and energy in competitive regional electricity markets. If the Commission determines that~~  
134 ~~the plan does not adequately meet such criteria, then the Commission shall modify the plan, with the~~  
135 ~~concurrence of the distributor, or reject the plan.~~

136 ~~4. a. For purposes of this subsection, in determining whether regional electricity markets are~~  
137 ~~competitive and rates for default service, the Commission shall consider (i) the liquidity and price~~  
138 ~~transparency of such markets, (ii) whether competition is an effective regulator of prices in such~~  
139 ~~markets, (iii) the wholesale or retail nature of such markets, as appropriate, (iv) the reasonable~~  
140 ~~accessibility of such markets to the regional transmission entity to which the distributor belongs, and (v)~~  
141 ~~such other factors it finds relevant. As used in this subsection, the term "competitive regional electricity~~  
142 ~~market" means a market in which competition, and not statutory or regulatory price constraints,~~  
143 ~~effectively regulates the price of electricity.~~

144 ~~b. If, in establishing a distributor's default service generation rates, the Commission is unable to~~  
145 ~~identify regional electricity markets where competition is an effective regulator of rates, then the~~  
146 ~~Commission shall establish such distributor's default service generation rates by setting rates that would~~  
147 ~~approximate those likely to be produced in a competitive regional electricity market. Such proxy~~  
148 ~~generation rates shall take into account: (i) the factors set forth in subdivision C 4 a, and (ii) such~~  
149 ~~additional factors as the Commission deems necessary to produce such proxy generation rates.~~

150 D. In implementing this section, the Commission shall take into consideration the need of default  
151 service customers for rate stability and for protection from unreasonable rate fluctuations.

152 E. On or before July 1, 2004, and annually thereafter, the Commission shall determine, after  
153 notice and opportunity for hearing, whether there is a sufficient degree of competition such that the  
154 elimination of default service for particular customers, particular classes of customers or particular  
155 geographic areas of the Commonwealth will not be contrary to the public interest. The Commission shall  
156 report its findings and recommendations concerning modification or termination of default service to the  
157 General Assembly and to the Commission on Electric Utility Restructuring, not later than December 1,  
158 2004, and annually thereafter.

159 F. A distribution electric cooperative, or one or more affiliates thereof, shall have the obligation  
160 and right to be the supplier of default services in its certificated service territory. A distribution electric  
161 cooperative's rates for such default services shall be the capped rate for the duration of the capped rate  
162 period and shall be based upon the ~~distribution electric cooperative's prudently incurred cost provisions~~  
163 ~~of Chapters 9.1 (§ 56-231.15 et seq.) and 10 (§ 56-232 et seq.) of this title~~ thereafter. Subsections B and  
164 C shall not apply to a distribution electric cooperative or its rates. Such default services, for the purposes  
165 of this subsection, shall include the supply of electric energy and all services made competitive pursuant  
166 to § 56-581.1. If a distribution electric cooperative, or one or more affiliates thereof, elects or seeks to be  
167 a default supplier of another electric utility, then the Commission shall designate the default supplier for  
168 that distribution electric cooperative, or any affiliate thereof, pursuant to subsection B.

169 G. To ensure a reliable and adequate supply of electricity, and to promote economic  
170 development, an investor-owned distributor that has been designated a default service provider under  
171 this section may petition the Commission for approval to construct, or cause to be constructed, a coal-  
172 fired generation facility that utilizes Virginia coal and is located in the coalfield region of the  
173 Commonwealth, as described in § 15.2-6002, to meet its native load and default service obligations,  
174 regardless of whether such facility is located within or without the distributor's service territory. The  
175 Commission shall consider any petition filed under this subsection in accordance with its competitive  
176 bidding rules promulgated pursuant to § 56-234.3, and in accordance with the provisions of this chapter.  
177 ~~Notwithstanding the provisions of subdivision C-3 related to the price of default service, a~~ A distributor  
178 that constructs, or causes to be constructed, such facility shall have the right to recover the costs of the  
179 facility, including allowance for funds used during construction, life-cycle costs, and costs of  
180 infrastructure associated therewith, plus a fair rate of return, through its rates for default service. A  
181 distributor filing a petition for the construction of a facility under the provisions of this subsection shall  
182 file with its application a plan, or a revision to a plan previously filed, ~~as described in subdivision C-3,~~  
183 that proposes default service rates to ensure such cost recovery and fair rate of return. The construction  
184 of such facility that utilizes energy resources located within the Commonwealth is in the public interest,

185 and in determining whether to approve such facility, the Commission shall liberally construe the  
186 provisions of this title.

187 #