Old Mill Power Company
Your Renewable Resource Electric Company
2530 Wyngate Road Charlottesville, VA 22901-8927
Office: 434-979-WATT(9288) Web: www.oldmillpower.com

VIA EMAIL

Date: December 12, 2009

To: Commission on Electric Utility Regulation

Subj: An Affordable Renewable Energy Portfolio Standard (RPS) for Virginia and Other Legislative Proposals for Consideration by the Commission

Dear Chairman Norment and distinguished members of the Commission on Electric Utility Regulation:

This letter proposes four legislative initiatives that Old Mill Power Company (Old Mill) believes are important for the Commission to consider as it prepares for the 2010 General Assembly. These four initiatives are:

I. Establishing an affordable Renewable Energy Portfolio Standard (RPS);

II. Eliminating an unreasonable barrier for renewable electricity competitors;

III. Enabling community net metering; and

IV. Establishing an office to generate rate impact statements to accompany proposed legislation potentially affecting electricity rates.

Rationale for these four initiatives is included in the enclosure. Draft legislation for the proposed affordable RPS is at Attachment A and draft legislation for eliminating the unreasonable barrier for renewable electricity competitors is at Attachment B. Old Mill has no draft legislation to offer at this time for enabling community net metering or for establishing an office to generate rate impact statements to accompany proposed legislation potentially affecting electricity rates, but the company looks forward to working with any legislator willing to patron such legislation to develop appropriate legislative language.

Old Mill also looks forward to working with all Commission members during the upcoming General Assembly session to improve Virginia's electricity industry.

Respectfully submitted,

(Original signed by)

Michel A. (Mitch) King
President

1 Encl.: Old Mill Power Company Legislative Proposals

OLD MILL POWER COMPANY LEGISLATIVE PROPOSALS
FOR THE 2010 GENERAL ASSEMBLY

Contents

Rationale

Proposed Legislative Language

I. THE AFFORDABLE RENEWABLE ENERGY PORTFOLIO STANDARD (RPS)

Old Mill first expressed its concern about the unnecessary and potentially expensive renewable energy Performance Incentive associated with Virginia's voluntary RPS (§56-585.2 C) almost immediately after that feature was added to the Electric Utility Reregulation Act of 2007. Attachment A is Old Mill's proposed legislative language that would protect electricity customers from that unnecessary potential expense while retaining Virginia's RPS goals.

The public policy argument against a voluntary RPS, and in favor of a mandatory one, is simple economics: Because of the well-established legal relationship between an investor-owned utility and the government that regulates it, often referred to as "the regulatory compact", mandatory RPSs cost less—and in Virginia's case could cost electricity customers billions of dollars less—than any voluntary RPS seeking to accomplish the same renewable energy goals through financial incentives. This result—which may seem counterintuitive to those not familiar with the concept of the regulatory compact—is due to the fact that a regulated utility must always be fully compensated for the prudently incurred costs associated with its regulated activities. Thus any financial incentive used to induce voluntary compliance by a regulated utility with a regulation is an additional cost to such utility's customers above and beyond what would be required if the same behavior were required of that utility by mandate.

Such is the case with Virginia's voluntary RPS, as described below:

As it applies to Appalachian Power Company (APCo):

In Case No. PUE-2008-00003, the State Corporation Commission (SCC) determined that, for APCo's residential and other small electricity customers, the additional cost of Virginia's renewable energy Performance Incentive *above what would be required if Virginia's currently*

voluntary RPS goals for APCo were mandatory could be as high as $8,065,860 per year for 13 years, or $104,856,180 total [1]. Note, however, that in those 2008 calculations, Staff overlooked the fact that, under §56-585.1.A.1 of the Code, a utility can elect to receive its renewable energy Performance Incentive *in lieu of* a performance penalty of up to 100 basis points that such utility might otherwise be subject to [2]. Using the same value for APCo's common equity that Staff used to prepare its report in that case ("the 2008 Staff Report"), one can determine that the additional cost to APCo's customers should APCo elect to avoid a 100 basis point penalty that it might otherwise be subject to is potentially $16,131,720/year (exactly twice the amount per year as the 50 basis point renewable energy Performance Incentive itself). Thus the annual cost to APCo's customers of the incentives associated with Virginia's voluntary RPS—the renewable energy Performance Incentive plus the loss of the penalty that such customers might otherwise be entitled to should APCo perform poorly--could be as high as $8,065,860/year + $16,131,720/year = $24,197,580/year.

Because the General Assembly elected in 2009 to extend the voluntary RPS by three years without implementing RPS reforms that would have eliminated the renewable energy Performance Incentive, the upper bound on the potential total cost to APCo's customers over the 22-year payout period now associated with the recently-extended renewable energy Performance Incentive is $24,197,580/year * 22 years = $532,346,760 (over a half-billion dollars, assuming no change in APCo's common equity during that 22-year period)[3]. Any change in APCo's common equity during the 22-year payout period would have a directly proportional impact on the upper bound for the potential cost to customers of the renewable energy Performance Incentive and on the upper bound for the potential cost to customers of any avoided penalties.

According to the 2008 Staff Report, APCo proposes to make itself eligible for this extraordinary half-billion dollar potential benefit by spending no more than 56 million ratepayer dollars. No shareholder equity is proposed nor required for APCo's approved RPS Plan.

Note that, under an RPS *requiring* APCo to meet Virginia's existing RPS goals using exactly the same $56,000,000 plan that the SCC has already approved: a) APCo would receive full compensation for its RPS-related outlays; and b) would receive the same opportunity to earn a fair and reasonable return on any common equity used to comply with such a mandate (although the approved RPS Plan doesn't require the expenditure of any such common equity); yet c)

---

[1] Using a discount rate of approximately 8%, Staff reported this value in its Staff Report in Case No. PUE-2008-00003 as a "present worth" (or "present value") of $63.8 million. Note, however, that customers pay their future electricity bills in what economists refer to as "then-year" dollars, not "present worth" dollars, so Old Mill is adopting the use of then-year dollars in this position paper to remind legislators that the potential out-of-pocket expenses for a utility's customers of the renewable energy Performance Incentive is a much higher dollar amount than the present worth amount given in the relevant Staff report.

[2] "Any such [renewable energy] Performance Incentive, if implemented, shall be *in lieu of* any other Performance Incentive *reducing* or increasing such utility's fair combined rate of return on common equity for the same time periods. (§56-585.2 C, in relevant part, emphasis and text in square brackets added.) Note that while the Code exempts a utility's industrial-class customers from bearing the cost of the renewable energy Performance Incentive, there's no such exemption for industrial customers for the cost of any penalties a utility avoids by virtue of electing to receive such renewable energy Performance Incentive.

[3] As a result of §§56-585.1 A.1 and 56-582 C and the SCC's election under §56-585.1 A.1 to defer the first biennial review for a Phase II utility until 2012, the Code provides for a 22-year payout period for a Phase I utility such as APCo and a 20-year payout period for a Phase II utility such as VEPCo.

APCo's customers would avoid the risk of having to pay as much as a half-billion dollars over 22 years for no other discernible reason other than that, under certain circumstances, the current law might require it.

Because: a) it could be dramatically less expensive than the existing voluntary RPS; and b) under no circumstances could it be more expensive than the existing voluntary RPS, Old Mill refers to a mandatory RPS for Virginia as "The Affordable RPS".

Attachment A is Old Mill's version of an acceptable Affordable RPS. It's the same minimalist approach to RPS reform that Old Mill offered to each chamber's respective Commerce and Labor Committee during the 2009 General Assembly. Others might be tempted to improve upon The Affordable RPS by proposing various modifications if such a bill were introduced, but, as currently written, The Affordable RPS serves its most important purpose, which is to potentially save ratepayers hundreds of millions of dollars while still allowing any investor-owned utility the opportunity to earn a fair and reasonable return on any common equity used to meet Virginia's existing RPS goals.

As it applies to Dominion Resources' Virginia subsidiary, Virginia Electric and Power Company (VEPCo):

The mechanics of the calculations for VEPCo are the same as those for APCo, the important distinction being that VEPCo is a much larger company than APCo, so the resulting potential savings to VEPCo's customers of adopting The Affordable RPS is correspondingly larger.

VEPCo's application for approval of its RPS Plan is the subject of an on-going proceeding--Case No. PUE-2009-00082--before the SCC. The relevant Staff Report was filed on November 20, 2009. While Staff reported the potential additional cost to VEPCo's residential and other small electricity customers of the renewable energy Performance Incentive in terms of Net Present Value ($330 million over 16 years), Old Mill expresses such costs here in terms of "then-year" dollars, as that's the way affected customers would have to pay for such costs.

Based on Staff's use of $38,168,000/year as the potential then-year cost of VEPCo's renewable energy Performance Incentive itself--not counting the value to customers of any penalties that the SCC might otherwise be entitled to impose--the potential out-of-pocket expense to VEPCo's residential and other small electricity customers over 20 years is $763,360,000--more than three quarters of a billion dollars[4].

On an annual basis, the potential cost to customers of all rate classes of an election by VEPCo to collect the renewable energy Performance Incentive in lieu of paying a penalty of up to 100 basis points for otherwise poor performance is $76,336,000/year. Thus the annual cost to VEPCo's customers of the incentives associated with the voluntary RPS—the renewable energy Performance Incentive plus the loss of the penalty that such customers might otherwise be

[4]In calculating the values included in its report on VEPCo's RPS Plan ("the 2009 Staff Report"), Staff incorrectly used a 16-year period as the term for the potential Incentive payments, whereas the correct payout period for a Phase II utility such as VEPCo is 20 years. The numbers given here are for that 20-year payout period.

entitled to should VEPCo perform poorly--could be as high as $38,168,000/year + $76,336,000/year = $114,504,000/year.

Thus, the upper bound on the potential total cost to VEPCo's customers over the 20-year payout period associated with the renewable energy Performance Incentive is $114,504,000/year * 20 years = $2,290,080,000 (approximately 2.3 billion dollars), assuming no change in VEPCo's common equity during that 20-year period. Any change in VEPCo's common equity during the payout period would have a directly proportional impact on the upper bound for the potential cost to customers of the renewable energy Performance Incentive and on the upper bound for the potential cost to customers of any avoided penalties.

Note that, according to the 2009 Staff Report, VEPCo estimates that the Net Present Value (NPV) of the cost of qualifying for this extraordinary 2.3 billion dollar potential benefit could be as low as $7.9 million customer dollars. No shareholder equity is proposed nor required for VEPCo's proposed RPS Plan.

Admittedly, the numbers presented here represent the best financial case for a utility's shareholders and the worst financial case for a utility's customers, especially for its residential and other small electricity customers, but the compelling question for legislators is, "Why should the potential for such an extraordinary and wholly unnecessary customer expense remain in the Code?"

The Affordable RPS strengthens Virginia's RPS goals by making them mandatory while: a) fairly compensating utilities for RPS-related expenses borne by shareholders; and b) eliminating the extraordinary downside risk for utility customers associated with the renewable energy Performance Incentive.

II. ENCOURAGING RENEWABLE ELECTRICITY COMPETITORS

The Code of Virginia currently permits individual retail customers of electric energy "to purchase electric energy provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving the exclusive service territory in which such a customer is located", but only "if the incumbent electric utility serving the exclusive service territory does not offer an approved tariff for electric energy provided 100 percent from renewable energy". (Section 56-577 A.5 in relevant part.)

The contingency clause--the word "if" and everything that follows it in that paragraph of the Code--effectively blocks competition because it creates a situation where competitive service providers can compete for customers in an incumbent electric utility's service territory only for as long as their chief competitor, the incumbent electric utility, allows them to, with no more effort required on the part of the incumbent electric utility to eliminate its competitors markets than what's required for such a utility to make a routine tariff filing.

If the General Assembly is serious about wanting Virginians to have renewable energy options, it must create a regulatory environment that assures competitive suppliers that their markets are not subject to unreasonable regulatory risk.

Attachment B is Old Mill's proposed legislation to remedy this situation. It simply removes the contingency in Section 56-577 A.5 that effectively enables an incumbent electric utility to preclude or eliminate renewable energy competitors via a routine tariff filing.

III. ENABLING COMMUNITY NET METERING

Community net metering is an extension of Virginia's existing net energy metering law that would allow multiple electricity customers to have the excess kiloWatt hours generated by a single net-metered renewable energy generator credited to their respective electricity bills. (§56-594 of the Code currently permits only one customer to benefit from any excess kiloWatt hours produced from a single net-metered generator and that benefit can only be applied to the kiloWatt hour consumption of the meter to which that net-metered generator is connected.)

By enabling multiple electricity customers to enjoy the benefits of net energy metering without requiring each participating customer to have a qualifying generator located on their respective premises, community net metering enables participating customers to take advantage of the economies of scale that collective ownership and joint operation can provide.

For example, with community net metering, a farmer with multiple electricity meters serving several buildings on his or her farm could have a single net-metered generator connected to one of those meters whose excess kiloWatt hours generated, if any, could be used to offset the kiloWatt hour consumption at other meters on that farmers' farm.

Similarly, with community net metering, several farmers could decide to pool their resources--including their capital and their agricultural wastes, for example--to own, operate, and supply agricultural waste fuel to a single net-metered biomass-fueled electricity generator on one of the participants' farms that would be more cost-effective for all the participants in that "community" than having several, smaller, net-metered biomass-fueled generators distributed among each of the participants' farms.

Old Mill does not currently have draft legislative language for community net metering, but looks forward to working with any legislator willing to patron such a bill to develop appropriate language.

IV. ESTABLISHING AN OFFICE TO GENERATE RATE IMPACT STATEMENTS

Old Mill believes it likely that many legislators will be surprised at the extraordinary cost potentially associated with Virginia's renewable energy Performance Incentive described in Part I. That it could be possible for the General Assembly to adopt legislation establishing Virginia's renewable energy Performance Incentive without many legislators being aware of the potential multi-billion dollar cost of such an Incentive should be all the justification needed to establish an office to estimate the impact of proposed legislation potentially affecting electricity rates. Such an office should be capable of responding to proposed electricity legislation in the timely manner that legislators have become accustomed to when seeking impact statements for legislation potentially having fiscal impact. Given current budget realities, as well as the existence of a repository of relevant expertise and data in the SCC, Old Mill believes that the SCC is the proper home for preparing such rate impact statements. The General Assembly should adopt whatever

legislation and parliamentary rules necessary to make the preparation and use of rate impact statements an essential part of its deliberations about energy legislation

Old Mill does not currently have draft legislative language to require the preparation and use of rate impact statements, but looks forward to working with any legislator willing to patron such a bill to develop appropriate language.

Attachment A
Proposed Legislative Language for
Establishing an Affordable Renewable Energy Portfolio Standard (RPS)
December 14, 2009
Contact: Mitch King, Old Mill Power Company, Cell: 1-434-249-5934, Email: mitchking@oldmillpower.com

§ 56-585.2. Sale of electricity from renewable sources through a renewable energy portfolio standard program.

A. As used in this section:

"Renewable energy" shall have the same meaning ascribed to it in § 56-576, provided such renewable energy is (i) generated or purchased in the Commonwealth or in the interconnection region of the regional transmission entity of which the participating utility is a member, as it may change from time to time; (ii) generated by a public utility providing electric service in the Commonwealth from a facility in which the public utility owns at least a 49 percent interest and that is located in a control area adjacent to such interconnection region; or (iii) represented by certificates issued by an affiliate of such regional transmission entity, or any successor to such affiliate, and held or acquired by such utility, which validate the generation of renewable energy by eligible sources in such region. "Renewable energy" shall not include electricity generated from pumped storage, but shall include run-of-river generation from a combined pumped-storage and run-of-river facility.

"Total electric energy sold in the base year" means total electric energy sold to Virginia jurisdictional retail customers by a participating utility in calendar year 2007, excluding an amount equivalent to the average of the annual percentages of the electric energy that was supplied to such customers from nuclear generating plants for the calendar years 2004 through 2006.

B. Any investor-owned incumbent electric utility may apply to the Commission for approval to participate in a renewable energy portfolio standard program, as defined in this section. The Commission shall approve such application if the applicant demonstrates that it has a reasonable expectation of achieving 12 percent of its base year electric energy sales from renewable energy sources during calendar year 2022, and 15 percent of its base year electric energy sales from renewable energy sources during calendar year 2025, as provided in subsection D.

C. It is in the public interest for utilities to achieve the goals set forth in subsection D, such goals being referred to herein as "RPS Goals". Accordingly, the Commission~~, in addition to providing~~ *shall provide for* recovery of incremental RPS program costs pursuant to subsection E~~, shall increase the fair combined rate of return on common equity for each utility participating in such program by a single Performance Incentive, as defined in subdivision A 2 of § 56-585.1, of 50 basis points whenever the utility attains an RPS Goal established in subsection D. Such Performance Incentive shall first be used in the calculation of a fair combined rate of return for the purposes of the immediately succeeding biennial review conducted pursuant to § 56-585.1 after any such RPS Goal is attained, and shall remain in effect if the utility continues to meet the RPS Goals established in this section through and including the third succeeding biennial review~~

~~conducted thereafter. Any such Performance Incentive, if implemented, shall be in lieu of any other Performance Incentive reducing or increasing such utility's fair combined rate of return on common equity for the same time periods. However, if the utility receives any other Performance Incentive increasing its fair combined rate of return on common equity by more than 50 basis points, the utility shall be entitled to such other Performance Incentive in lieu of this Performance Incentive during the term of such other Performance Incentive.~~ A utility shall receive double credit toward meeting the renewable energy portfolio standard for energy derived from sunlight or from wind.

D. ~~To qualify for the Performance Incentive established in subsection C, the~~*The* total electric energy sold by a utility to meet the RPS Goals shall be composed of the following amounts of electric energy from renewable energy sources, as adjusted for any sales volumes lost through operation of the customer choice provisions of subdivision A 3 or A 4 of § 56-577:

RPS Goal I: In calendar year 2010, 4 percent of total electric energy sold in the base year.

RPS Goal II: For calendar years 2011 through 2015, inclusive, an average of 4 percent of total electric energy sold in the base year, and in calendar year 2016, 7 percent of total electric energy sold in the base year.

RPS Goal III: For calendar years 2017 through 2021, inclusive, an average of 7 percent of total electric energy sold in the base year, and in calendar year 2022, 12 percent of total electric energy sold in the base year.

RPS Goal IV: For calendar years 2023 and 2024, inclusive, an average of 12 percent of total electric energy sold in the base year, and in calendar year 2025, 15 percent of total electric energy sold in the base year.

A utility may apply renewable energy sales achieved or renewable energy certificates acquired during the periods covered by any such RPS Goal that are in excess of the sales requirement for that RPS Goal to the sales requirements for any future RPS Goal.

E. A utility participating in such program shall have the right to recover all incremental costs incurred for the purpose of such participation in such program, as accrued against income, through rate adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to, administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for funds used during construction until such time as an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected construction work in progress, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1. All incremental costs of the RPS program shall be allocated to and recovered from the utility's customer classes based on the demand created by the class and within the class based on energy used by the individual customer in the class, except that the incremental costs of the RPS program shall not be allocated to or recovered from customers that are served within the large industrial rate classes of the participating utilities and that are served at primary or transmission voltage.

F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable energy from existing renewable energy sources owned by the participating utility or purchased as allowed by contract at no additional cost to customers to the extent feasible. A utility participating in such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007, that is operated by a person that is served within a utility's large industrial rate class and that is served at primary or transmission voltage. A participating utility shall be required to fulfill any remaining deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a prudent manner to be determined by the Commission at the time of approval of any application made pursuant to subsection B. Utilities participating in such program shall collectively, either through the installation of new generating facilities, through retrofit of existing facilities or through purchases of electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting RPS goals, excluding such fuel used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its share of the total electric energy sold in the base year, as defined in subsection A, for all utilities participating in the RPS program. A utility may use in meeting RPS goals, without limitation, the following sustainable biomass and biomass based waste to energy resources: mill residue, except wood chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and construction debris; brush; yard waste; shipping crates; dunnage; non-merchantable waste paper; landscape or right-of-way tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and gas produced from the anaerobic decomposition of animal waste.

G. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section including a requirement that participants verify whether the RPS goals are met in accordance with this section.

H. Each investor-owned incumbent electric utility shall report to the Commission annually by November 1 on (i) its efforts, if any, to meet the RPS Goals, (ii) its overall generation of renewable energy, and (iii) advances in renewable generation technology that affect activities described in clauses (i) and (ii).

Attachment B
Proposed Legislative Language for
Encouraging Competitive Service Providers to Offer Renewable Electricity
December 14, 2009
Contact: Mitch King, Old Mill Power Company, Cell: 1-434-249-5934, Email: mitchking@oldmillpower.com

§ 56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot programs.

A. Retail competition for the purchase and sale of electric energy shall be subject to the following provisions:

1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579.

2. The generation of electric energy shall be subject to regulation as specified in this chapter.

3. From January 1, 2004, until the expiration or termination of capped rates, all retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth. After the expiration or termination of capped rates, and subject to the provisions of subdivisions 4 and 5, only individual retail customers of electric energy within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded five megawatts but did not exceed one percent of the customer's incumbent electric utility's peak load during the most recent calendar year unless such customer had noncoincident peak demand in excess of 90 megawatts in calendar year 2006 or any year thereafter, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving the exclusive service territory in which such a customer is located, subject to the following conditions:

a. If such customer does not purchase electric energy from licensed suppliers after that date, such customer shall purchase electric energy from its incumbent electric utility.

b. Except as provided in subdivision 4, the demands of individual retail customers may not be aggregated or combined for the purpose of meeting the demand limitations of this provision, any other provision of this chapter to the contrary notwithstanding. For the purposes of this section, each noncontiguous site will nevertheless constitute an individual retail customer even though one or more such sites may be under common ownership of a single person.

c. If such customer does purchase electric energy from licensed suppliers after the expiration or termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the incumbent electric utility without giving five years' advance written notice of such intention to such utility, except where such customer demonstrates to the Commission, after notice and opportunity for hearing, through clear and convincing evidence that its supplier has failed to

perform, or has anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of the customer, and that such customer is unable to obtain service at reasonable rates from an alternative supplier. If, as a result of such proceeding, the Commission finds it in the public interest to grant an exemption from the five-year notice requirement, such customer may thereafter purchase electric energy at the costs of such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the remainder of the five-year notice period, after which point the customer may purchase electric energy from the utility under rates, terms and conditions determined pursuant to § 56-585.1. However, such customer shall be allowed to individually purchase electric energy from the utility under rates, terms, and conditions determined pursuant to § 56-585.1 if, upon application by such customer, the Commission finds that neither such customer's incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility. Any customer that returns to purchase electric energy from its incumbent electric utility, before or after expiration of the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the Commission pursuant to subdivision C 1.

d. The costs of serving a customer that has received an exemption from the five-year notice requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as determined pursuant to the provisions of subdivision A 2 of § 56-585.1. The methodology established by the Commission for determining such costs shall ensure that neither utilities nor other retail customers are adversely affected in a manner contrary to the public interest.

4. After the expiration or termination of capped rates, two or more individual nonresidential retail customers of electric energy within the Commonwealth, whose individual demand during the most recent calendar year did not exceed five megawatts, may petition the Commission for permission to aggregate or combine their demands, for the purpose of meeting the demand limitations of subdivision 3, so as to become qualified to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth under the conditions specified in subdivision 3. The Commission may, after notice and opportunity for hearing, approve such petition if it finds that:

a. Neither such customers' incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility; and

b. Approval of such petition is consistent with the public interest.

If such petition is approved, all customers whose load has been aggregated or combined shall thereafter be subject in all respects to the provisions of subdivision 3 and shall be treated as a single, individual customer for the purposes of said subdivision. In addition, the Commission shall impose reasonable periodic monitoring and reporting obligations on such customers to demonstrate that they continue, as a group, to meet the demand limitations of subdivision 3. If the Commission finds, after notice and opportunity for hearing, that such group of customers no longer meets the above demand limitations, the Commission may revoke its previous approval of the petition, or take such other actions as may be consistent with the public interest.

5. After the expiration or termination of capped rates, individual retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted to purchase electric energy provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving the exclusive service territory in which such a customer is located~~, if the incumbent electric utility serving the exclusive service territory does not offer an approved tariff for electric energy provided 100 percent from renewable energy~~.

B. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section.

C. 1. By January 1, 2002, the Commission shall promulgate regulations establishing whether and, if so, for what minimum periods, customers who request service from an incumbent electric utility pursuant to subsection D of § 56-582 or a default service provider, after a period of receiving service from other suppliers of electric energy, shall be required to use such service from such incumbent electric utility or default service provider, as determined to be in the public interest by the Commission.

2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the management and control of an incumbent electric utility's transmission assets to a regional transmission entity after approval of such transfer by the Commission under § 56-579, retail customers of such utility (a) purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such minimum stay obligations by agreeing to purchase electric energy at the market-based costs of such utility or default providers after a period of obtaining electric energy from another supplier. Such costs shall include (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology of ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for hearing and after review of any plan filed by such utility to procure electric energy to serve such customers. The methodology established by the Commission for determining such costs shall be consistent with the goals of (a) promoting the development of effective competition and economic development within the Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585, however, any such customers exempted from any applicable minimum stay periods as provided in subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent electric utilities, or from any distributor required to provide default service under subsection B of § 56-585, at the capped rates established under § 56-582, unless such customers agree to satisfy any minimum stay period then applicable while obtaining retail electric energy at capped rates.

4. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this subsection, which rules and regulations shall include provisions specifying the commencement date of such minimum stay exemption program.