

GENERATION FACILITIES OF DEFAULT SERVICE PROVIDERS

Be it enacted by the General Assembly of Virginia:

1. That § 56-585 of the Code of Virginia is amended and reenacted as follows:

§ 56-585. Default service.

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

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

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

2. May periodically, as necessary, conduct competitive bidding processes under procedures established by the Commission and, upon a finding that the public interest will be served, designate one or more willing and suitable

providers to provide one or more components of such services, in one or more regions of the Commonwealth, to one or more classes of customers;

3. To the extent that default service is not provided pursuant to a designation under subdivision 2, may require a distributor to provide, in a safe and reliable manner, one or more components of such services, or to form an affiliate to do so, in one or more regions of the Commonwealth, at rates determined pursuant to subsection C and for periods specified by the Commission; however, the Commission may not require a distributor, or affiliate thereof, to provide any such services outside the territory in which such distributor provides service. If the Commission requires a distributor to provide default service pursuant to this subdivision, the Commission is authorized to require the distributor, or an affiliate formed by the distributor, to retain, acquire or build, and thereafter to operate, such electric energy production facilities as the Commission deems will satisfy all or a portion of the distributor's obligation to provide generation services at rates and upon terms and conditions established pursuant to subsection C; and

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

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

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

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

3. Prior to a distributor's provision of default service, and upon request of such distributor, the Commission shall review any plan filed by the distributor to procure electric generation services for default service. The Commission shall approve such plan if the Commission determines that the procurement of electric generation capacity and energy under such plan is adequately based upon prices of capacity and energy in competitive regional electricity markets. If the Commission determines that the plan does not adequately meet such criteria, then the Commission shall modify the plan, with the concurrence of the distributor, or reject the plan.

4. a. For purposes of this subsection, in determining whether regional electricity markets are competitive and rates for default service, the Commission shall consider (i) the liquidity and price transparency of such markets, (ii) whether competition is an effective regulator of prices in such markets, (iii) the wholesale or retail nature of such markets, as appropriate, (iv) the reasonable accessibility of such markets to the regional transmission entity to which the distributor

belongs, and (v) such other factors it finds relevant. As used in this subsection, the term "competitive regional electricity market" means a market in which competition, and not statutory or regulatory price constraints, effectively regulates the price of electricity.

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

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

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

F. A distribution electric cooperative, or one or more affiliates thereof, shall have the obligation and right to be the supplier of default services in its certificated service territory. A distribution electric cooperative's rates for such

default services shall be the capped rate for the duration of the capped rate period and shall be based upon the distribution electric cooperative's prudently incurred cost thereafter. Subsections B and C shall not apply to a distribution electric cooperative or its rates. Such default services, for the purposes of this subsection, shall include the supply of electric energy and all services made competitive pursuant to § 56-581.1. If a distribution electric cooperative, or one or more affiliates thereof, elects or seeks to be a default supplier of another electric utility, then the Commission shall designate the default supplier for that distribution electric cooperative, or any affiliate thereof, pursuant to subsection B.