

**DRAFT  
JANUARY 5, 1999**

**MEPAV PROPOSED CHANGES TO 12/26/98 DRAFT (99-0220492)  
IN RESPONSE TO STRUCTURE AND TRANSITION DECISION TREE**

The 12/26/98 draft would adversely affect MEPAV's members in several ways which we believe are inconsistent with the bill's purpose. In particular, unless amended, the draft would discourage municipal electric systems from electing to have the chapter apply to them, a result that would be inconsistent with the Subcommittee's intent and the desires of most, if not all, of MEPAV's members. We propose several limited changes which should not significantly change the bill as currently drafted.

Because definitions have not been included with the current draft, it is unclear how the bill would impact municipal electric systems. If the definitions contained in Senate Bill 688 are to be used, we believe either that the definition of "incumbent electric utility" needs to be clarified or that language has to be added to a number of provisions making clear that existing municipal systems are to be treated as if they are incumbent utilities. We propose as the simplest solution that the following change be made to the definition in S.B. 688:

**Section 56-577:** Change the definition of "incumbent electric utility" to provide:

"Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the Commission or by a municipality.

[Explanation: This proposed change is needed to ensure that all existing municipal electric systems are treated as incumbent electric utilities. Historically, some existing service territories in municipalities served by municipal electric systems were established by the municipality and/or the General Assembly and were not subsequently "established by the Commission." There is no reason why all existing municipal systems should not be treated as incumbent electric utilities.]

**Section 56-579.A.1** requires each incumbent electric utility to join or establish an independent system operator ("ISO"). As drafted, the bill would require incumbent electric utilities that do not own or operate any transmission to join an ISO, which would

be unnecessary and could be relatively expensive (depending on an ISO's dues structure). We propose the following change:

1. On or before January 1, 2001, each incumbent electric utility that owns or operates transmission facilities shall join or establish an independent system operator, or ISO, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of §56-581.

[Explanation: No useful purpose would be served by requiring incumbent electric utilities that do not own or operate transmission to join or establish an ISO, although some such utilities may elect to join an ISO. The cost of joining an ISO could be prohibitive for a small distribution-only utility, however.]

**Section 56-583.F**, which gives municipal electric systems the choice of electing to have the chapter apply to them, is drafted in such a way as to discourage such election because any such election would subject all of the municipal system's operations to Commission jurisdiction, not just the new activities covered by the bill. We propose that subsection F be modified as follows:

F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or operated by a municipality as of July 1, 1999, nor shall any provision of this chapter apply to any such electric utility unless (i) that municipality elects to have this chapter apply to that utility, or (ii) that utility sells, offers to sell or seeks to sell electric energy to retail customers in the Commonwealth outside of its exclusive service territory or to sales to a regional power exchange-a supplier or distributor of electric energy. Notwithstanding any other provision of this chapter, an electric utility owned or operated by a municipality that becomes subject to this chapter shall not be subject to the jurisdiction of the Commission except for the requirements of § 56-585, but such utility shall meet the substantive standards set forth in this chapter.

[Explanation: These provisions are needed so that provisions of the bill providing for Commission jurisdiction over such matters as rates, terms and conditions of distribution service do not apply to municipal electric systems. If the changes are not made, state constitutional issues would be presented, and a burden would be placed on the Commission by greatly expanding its jurisdiction over activities now within the province of local governments. The provisions also limit Commission jurisdiction to retail sales and to sales to a regional power exchange, but would not provide for Commission jurisdiction over wholesale

transactions (which are not now regulated by the Commission). With our proposed changes, municipal governments would be responsible for ensuring that the substantive standards set forth in the bill are met; and municipal electric systems would be subject to Commission licensing requirements in Section 56-585 (and to taxes and fees) with respect to sales outside their service territory.]

Similarly, **Section 56-585.A** should be modified to provide as follows:

A. As a condition of doing business in the Commonwealth, each person seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth, on and after January 1, 2002, shall obtain a license from the Commission to do so. The provisions of this § 56-585 shall apply to an electric utility owned or operated by a municipality only with respect to service provided outside its service territory and shall not apply with respect to service within its service territory.

The license shall authorize that person to act as a supplier until the license is otherwise terminated, suspended or revoked.

[Explanation: This change is to ensure that the licensing of a municipal electric system is limited to service outside its service territory and to recognize that service within its service territory will continue to be regulated by municipal governments.]