REPORT OF THE
JOINT SUBCOMMITTEE STUDYING

RESTRUCTURING OF THE ELECTRIC UTILITY INDUSTRY

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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Report of the
Joint Subcommittee Studying
Restructuring of the Electric Utility Industry
To
The Governor and the
General Assembly of Virginia
Richmond, Virginia
1999

TO: The Honorable James S. Gilmore, III, Governor
and
The General Assembly of Virginia

I. INTRODUCTION

A. OVERVIEW

Senate Joint Resolution 91 of 1998 (*Appendix A*) continued the General Assembly's examination of electric utility industry restructuring. The study was initially begun pursuant to Senate Joint Resolution 118 of 1996 to determine whether restructuring the retail electricity market in Virginia is feasible and in the public interest. Thereafter, the study was continued under Senate Joint Resolution 259 of 1997. Restructuring, as envisioned by its proponents, would permit industrial, commercial and residential electricity customers to purchase electric generation services from the providers of their choosing, leaving regulated transmission and local distribution of electricity.

House Bill 1172, passed by the 1998 General Assembly (*Appendix B*), established a general framework and timetable for restructuring. However, the bill left the development of a detail restructuring plan to future sessions of the General Assembly. Thus, this study proceeded with the mandate to prepare such legislation in anticipation of its consideration in the 1999 General Assembly.

B. MEMBERS APPOINTED

The following General Assembly members who served on the SJR 118 and SJR 259 subcommittees were reappointed to serve on the SJR 91 joint subcommittee: Senators Reasor of Bluefield, Holland of Windsor, Norment of Williamsburg, and Watkins of Midlothian appointed by the Senate Committee on Privileges and Elections; and Delegates Woodrum of Roanoke, Plum of Reston, and

J.C. Jones of Norfolk, appointed by the Speaker of the House. The joint subcommittee's size was increased by SJR 91 to include one additional Senate member and three additional House members. These new members included Senator Stolle of Virginia Beach, appointed by the Senate Committee on Privileges and Elections; and Delegates Cantor of Henrico, Parrish of Manassas and Kilgore of Scott, appointed by the Speaker of the House.

Senator Reasor was elected to serve as the joint subcommittee's chairman for the third consecutive year. Delegate Woodrum was also elected to serve as vice chairman, his third year in that role. Delegate Woodrum chaired the subcommittee following Senator Reasor's resignation from the Senate in November 1998.

C. WORK OF THE SUBCOMMITTEE AND ITS TASK FORCES IN 1998 AND 1999

SJR 91 directed the joint subcommittee to develop a comprehensive restructuring plan for the 1999 Session of the General Assembly. To help meet this objective, the joint subcommittee established the following four task forces to develop and assess significant restructuring policy options in four areas: (i) structure and transition, (ii) stranded costs, (iii) consumer, environment and education, and (iv) electric utility taxation. The task forces met throughout the year, with joint subcommittee meetings interspersed throughout to (i) receive interim and final task force reports and (ii) provide examination and discussion by the full membership of such major issues as incumbent utilities' market power and the development of independent system operators. A list of each task force's membership is attached. (*Appendix C*)

In November, a drafting group was established, consisting of the task force chairmen and the vice chairman. The drafting group worked from decision trees developed from policy option matrices prepared and submitted by the four task forces. By way of illustration, the decision tree incorporating the work of the Structure & Transition task force is attached as *Appendix D*. A sample page from that task force's policy option matrix is attached as *Appendix E*. The drafting group developed a working draft which was submitted to the full joint subcommittee for review and final development. The joint subcommittee held its final meeting on January 18, approving and recommending a restructuring bill that was introduced in the 1999 General Assembly Session as Senate Bill 1269 (patroned by Senator Norment) and House Bill 2615 (patroned by Delegate Plum). A copy of Senate Bill 1269 as passed and signed by the Governor is attached as *Appendix* F.

The restructuring legislation approved and recommended by the joint subcommittee restructures Virginia's electric utility industry through a two-year phase-in of generation customer choice for all electricity customers in combination with a seven-year rate cap. The customer choice phase-in is from 2002-2004 and

the capped rate period begins in 2001 and ends in 2007. Transmission and distribution remain regulated for the foreseeable future, and the Virginia State Corporation Commission is assigned the task of regulatory oversight of this process, working collaboratively with a legislative oversight committee to be established in 1999 and ending its work in 2005.

Critical to joint subcommittee and task force work throughout the year were the development and maintenance of a joint subcommittee website on the Internet. The website served many important functions, including the electronic publication of meeting summaries, posting of stakeholder and interest group submissions and comments, and electronic dissemination of task force and joint subcommittee working papers. The website also made possible electronic distribution of the preliminary and final drafts of the comprehensive restructuring bill assembled by the drafting draft and the joint subcommittee. A view of the SJR 91 home page is attached as *Appendix G*.

At this writing, the SJR 91 home page can be accessed on the Internet at http://dls.state.va.us/sjr91.htm. Working papers of the joint subcommittee, its task forces and the drafting group can be accessed from the site, and it is anticipated that this site or its contents will be accessible for an indefinite period of time.

D. LEGISLATIVE ACTIVITY IN THE 1999 SESSION

Senate Bill 1269 became the principal vehicle for restructuring legislation in the 1999 Session of the General Assembly. As introduced, SB 1269 was virtually identical to the draft legislation adopted and recommended by the joint subcommittee. Following its introduction, the bill was assigned to the Senate Committee on Commerce and Labor, where it was considered at length by that committee's Utilities Subcommittee. A number of amendments were recommended by that subcommittee and adopted by the full committee prior to the bill's passage by the Senate on February 9 (33 ayes, 4 nays and 3 abstentions). However, the bill's principal provisions concerning capped rates, default service and others, remained unchanged in the bill.

Following its passage in the Senate, the bill was communicated to the House of Delegates and referred to the Corporations, Insurance and Banking Committee on February 15. A special CIB subcommittee (which included all House members of the SJR 91 joint subcommittee) examined the bill and recommended several noncontroversial amendments to the bill. However, when the bill was heard before the full committee, the committee adopted the amendments recommended by the subcommittee, together with an amendment that was vigorously opposed by the incumbent electric utilities. That amendment would have permitted the Virginia State Corporation Commission (SCC) to adjust capped rates prior to 2002. This provision was removed from the bill on the House floor prior to the House voting to

pass the bill by a vote of 77 to 23. The Senate concurred with the House amendments and sent the bill on to the Governor, who signed the bill into law on March 25.

Senate Bill 1286 (patroned by Senator Watkins) was introduced to address taxation issues generated by electric utility restructuring (*Appendix H*). The principal problem it addressed was the difficulty in imposing the gross receipts tax on out-of-state electricity suppliers, when such suppliers will (in a restructured market) be unlikely to have sufficient physical presence in this Commonwealth to provide a constitutionally sufficient nexus for taxation purposes. The bill also addressed the likely revenue shortfall generated by switching from gross receipts taxation to corporate net income taxation. Locality utility taxes were also modified by the bill's provisions.

As passed and signed by the Governor, the bill eliminates the state gross receipts tax, the State Corporation Commission special assessment tax, and the local gross receipts tax on electric suppliers. In place of these taxes, consumers of electricity will pay a declining block consumption tax and corporations will be subject to corporate income tax.

The consumption tax, which contains components for a state gross receipts tax, SCC regulatory tax, and local consumption tax, will be levied at rates of (i) $0.00155 for the first 2,500 kWh consumed; (ii) $0.00099 for between 2,500 and 50,000 kWh; and (iii) $0.00075 for power consumed in excess of 50,000 kWh. These combined rates may be reduced to reflect lower SCC regulatory charges and to omit the local tax component in localities served by municipality-owned electric utilities that opt not to assess the local tax. In addition, most electric suppliers will pay a net corporate income tax. Electric cooperatives are not subject to the corporate income tax except to the extent sales are made to nonmember customers. Electric suppliers will report real and personal property to the State Corporation Commission, which will centrally assess their property. These changes are in anticipation of federal deregulation of the electric utility industry. The effective date of the legislation is January 1, 2001.

II. WORK OF THE STRUCTURE AND TRANSITION TASK FORCE

A. OVERVIEW

The Structure and Transition task force was directed by the joint subcommittee to examine issues pivotal to Virginia's transition to a restructured market, and to determine what such a market could look like following that

transition. Before the task force were questions such as (i) when should retail competition begin? (ii) what services should be made competitive? (iii) should incumbent utilities be required to join independent system operators? (iv) should "going in" rate cases be required? (v) should Virginia's incumbent utilities be required to divest themselves of generation assets in the interest of establishing a competitive market? and (vi) who should provide generation services to electric customers who cannot or are unable to choose generation suppliers?

This task force was co-chaired by Delegate Woodrum and Senator Norment, who convened four meetings between May and September. Other task force members included Delegates Cantor and Jones, together with Senator Stolle. The issues before this group comprised the core of the restructuring debate. Consequently, stakeholders and interested parties participated extensively in this task force's activities. The task force first addressed the key issues of competitive services, market power, default suppliers and suppliers of last resort. Then, at the suggestion of several stakeholders, all stakeholders and interested parties were asked to submit narrative restructuring proposals, keyed to an outline prepared by the joint subcommittee's staff.

Based on these submissions, staff prepared a chart, or matrix, summarizing the positions of the stakeholders and interested parties on an issue-by-issue basis. Cumulatively, the matrix showed the range of alternatives available to the joint subcommittee in fashioning the broad structure and transition provisions of a restructuring plan. The task force subsequently approved a final matrix and summary for submission to the joint subcommittee (summary attached as *Appendix I*). The summary presented to the joint subcommittee in September is presented in this report's next section.

B. REPORT OF TASK FORCE TO THE JOINT SUBCOMMITTEE

Services to be Made Competitive

Most of the restructuring stakeholders believed that generation should be made competitive, and that transmission and distribution should remain regulated services. However, the American Association of Retired Persons (AARP) and the Virginia Citizens Consumer Council (VCCC) said that the Virginia State Corporation Commission (SCC) should have the authority to determine which, if any, services should be made competitive once it determines that effective competition exists for these services. Additionally, some stakeholders, including AEP-Virginia, the Apartment and Office Building Association (AOBA), Consolidated Natural gas (CNG), Virginia Power, and Washington Gas, said that metering, billing and other ancillary distribution services could be considered for competition following the transition to retail competition for generation services.

Commencement of Retail Competition

A key issue generating much debate was the kick-off date for retail competition. Some parties, including the Alliance for Lower Electricity Rates Today (ALERT) and the Virginia Committee for Fair Utility Rates, coalitions of large industrial and commercial electricity customers, favored an aggressive approach with ALERT favoring full retail competition by 2001 (with industrial customers going first) and the Committee by 2002. However, representatives of AARP and VCCC said that no service should be made competitive until there exists in the market, effective competition for that service. Virginia's investor-owned electric utilities generally favored transition periods, culminating in full retail competition for generation services by 2004-2006.

Default Providers and Suppliers of Last Resort

One critical restructuring issue was the assignment of electricity customers to generation suppliers in a competitive market when (i) customers fail or neglect to choose a generation supplier or (ii) customers are unable to obtain generation services. Suppliers for each of these categories are called "default providers" and "suppliers of last resort," respectively. A related category of necessary post-restructuring service was emergency service to be provided to customers when their generation supplier fails to deliver on its electrical load commitment.

Nearly all of the parties believed that incumbent utilities should furnish both of these services—and emergency service—in their current distribution service territories. However, others (including the Southern Environmental Law Center and AARP) believed that these services should be bid competitively. The Virginia Center Against Poverty and Washington Gas supported a third position in which default service would be bid competitively following the transition to retail competition.

Transitional Ratemaking

A key issue that sharply divided the stakeholders was the question of "going in" rate cases. Simply put, the issue was whether each incumbent utility's rates should be examined and adjusted by the SCC at the outset of retail competition for generation services. Allegheny, Virginia Power, CNG and the electric cooperatives suggested that rate unbundling would serve the same purpose; thus, baseline rate cases would be unnecessary. AEP-Virginia generally agreed with that position, but also stated that there may be a need to examine costs at the time of transition, including mandated environmental costs. Washington Gas, on the other hand, favored going-in rate cases, and AOBA offered a third approach: the SCC should have discretion to require baseline cases, but rate cases for unbundling purposes should be mandatory.

A related issue was the question of rate caps or rate freezes accompanying the transition to retail competition for generation services. During the restructuring debate, these rate strategies were described by some as devices providing rate stability during the transition to retail competition. Others viewed them as potential barriers to competitor entry at the early stages of retail competition. Broadly stated, capped rates would generally function as ceilings on the rates that could be charged for bundled or unbundled services. A utility with capped rates could also choose to charge less than the capped rates. Frozen or fixed rates, on the other hand, would—for their duration—neither rise nor fall as a general matter.

When the task force submitted its report to the full joint subcommittee in September 1998, all of the investor-owned electric utilities favored or supported rate freezes or rate caps, with AEP-Virginia and Allegheny favoring frozen retail rates during a four to five-year transition period. The cooperatives stated that a preliminary review of stranded costs should precede any such rate freezes. CNG and AOBA, however, opposed rate freezes, with CNG voicing its opinion that such freezes stifle competition.

The Role of the SCC in ISO Development

The parties generally agreed that regional independent system operators (ISOs) or regional transmission entities (RTEs) would be essential to the operation of transmission grids in a restructured market. Currently, all of Virginia's investor-owned utilities are participating in the formation of ISOs under the authority of the Federal Energy Regulatory Commission (FERC). A continuing topic of discussion was the role of the Virginia State Corporation Commission (SCC) in determining whether and when a Virginia utility may participate in an ISO, and what role the SCC should play thereafter.

ALERT and the Virginia Committee for Fair Utility Rates stated that the SCC should have oversight and enforcement authority over utilities' ISO involvement. ALERT, for example, suggested that any change in structure or operation of an ISO should trigger an SCC review to determine whether continued participation by Virginia utilities is appropriate. On the other hand, Virginia Power, Allegheny, and Consolidated Natural Gas (CNG) said that once Virginia's utilities are ISO members, further concerns about ISO participation should be directed by the SCC to the Federal Energy Regulatory Commission (FERC).

Market Power

Incumbent utility market power following restructuring was an issue of continuing discussion and concern. The cooperatives and municipal power suppliers, in particular, voiced strong concerns about potential market power in

some incumbent utilities' former exclusive service territories. This market power was said to stem from west-to-east transmission constraints.

The Alliance for Lower Electricity Rates Today (ALERT) and the investor-owned utilities believed, in general, that market forces (via the construction of merchant plants, in particular) will ultimately resolve market power associated with transmission constraints. Additionally, AEP-Virginia advocated transmission line construction in its service territory as a means of alleviating some existing constraints.

However, the cooperatives believed that all "must-run" generation in transmission-constrained areas (such as that generation needed for voltage stability) should be regulated and priced by the SCC on a cost-of-service basis until any such constraint is eliminated. AEP-Virginia, Allegheny, and CNG concurred. Virginia Power, on the other hand, believed that pricing of must-run units should be addressed by FERC, which can establish rates based on cost and a reasonable return.

Divestiture and Functional Separation

Whether incumbents should be required to divest themselves of their generation assets in connection with restructuring was a source of much debate before the task force. Proponents of divestiture believe that the sale of incumbents' generation will clear the way for new market entrants. They said that market power associated with incumbents' generation ownership could very well thwart the entry of new competitors into the market for generation services. As an alternative to divestiture, some parties proposed that incumbent utilities be directed to establish at least three separate business entities, each with ownership of the utilities' assets corresponding to generation, transmission and distribution operations. This process was characterized as functional separation.

The SCC's energy regulation staff suggested that functional separation and divestiture could help alleviate generation market power concerns. Additionally, the SCC said that divestiture could also be helpful in quantifying stranded costs and benefits. The investor-owned electric utilities and cooperatives told task force members that they opposed mandatory divestiture, while either supporting or not opposing functional separation. The Municipal Electric Power Association of Virginia (MEPAV) said that functional separation may require SCC or FERC oversight to prevent cost-shifting. ALERT, MEPAV, the VCCC and the Virginia Council Against Poverty (VCAP) said that the SCC should have the authority to mandate divestiture if necessary to eliminate market power. Suggesting another approach, CNG and AOBA said that incumbent utilities should be given incentives to divest.

The Virginia Committee for Fair Utility Rates said its members favored (i) permitting the SCC to require divestiture of a utility's generating assets if it determines that the utility may influence unduly the price of electricity, and (ii) permitting the SCC to impose conditions on the sale of such assets in order to promote competition and the public interest (including conditions to ensure that any buyer or group of buyers is not able to influence unduly the price of electricity).

III. WORK OF THE STRANDED COSTS TASK FORCE

A. OVERVIEW

Throughout the past three years, the term "regulatory compact" was used by some utilities appearing before the joint subcommittee. The term characterizes an assumption said to be implicit in the relationship between regulated utilities and their regulators: in exchange for fulfilling their obligation to serve all customers within certificated service territories, costs prudently incurred by regulated utilities in furtherance of providing such service will be recovered in regulated rates. Therefore, any departure from a regulated, cost-of-service environment must make allowance for utility recovery of costs (prudently incurred while fully regulated) rendered uneconomic because of restructuring, utility representatives said.

Thus, if generation is deregulated, then market prices for generation could drop below the rate a given utility is receiving in the current, regulated market. Consequently, that utility's generation assets—constructed and financed at a time when cost-of-service regulation was in place—could lose substantial portions of their pre-restructuring book value. Similarly, power purchased from nonutility generators by investor-owned utilities may be at above-market prices in a deregulated market for generation. Additionally, "regulatory assets" were also identified as costs potentially stranded in connection with generation deregulation. Regulatory assets were described as previously deferred, generation-related costs or obligations incurred by a regulated electric utility in providing electricity prior to generation deregulation.

Utility representatives told the joint subcommittee that utilities should be shielded from all of these potential losses. In some states, stranded costs have been or will be recovered via kWh-based ratepayer surcharges paid over a fixed period. However, some argued, since Virginia's prevailing electricity prices are low to moderate, some utilities may realize measurable increases in generation prices above their current, regulated levels following generation's deregulation. This, in turn, could increase the value of a utility's generation assets above their pre-restructuring book value, resulting in windfall appreciation termed "stranded benefits." Some suggested that if ratepayers are to be surcharged for stranded

costs, then ratepayers should enjoy some benefit from stranded benefits—perhaps, in the form of credits against their electricity bills received from incumbent utilities with stranded benefits.

As most agreed, however, neither stranded costs nor stranded benefits can be calculated in advance of restructuring. The key variable—market prices for generation—is indeterminate until a competitive market for such generation exists in fact. Nevertheless, the task force concluded that the stranded costs issue could not be avoided prior to restructuring and the development of a competitive generation market. Stranded cost recovery, along with transitional ratemaking and default service, was one of the most critical policy hurdles the joint subcommittee had to clear as it developed Virginia's restructuring bill.

The task force, chaired by Senators Watkins and Holland, held five public meetings during the interim. Other task force members included Delegates Parrish, Plum and Kilgore. As part of its process, the task force requested and received from stakeholders, statutory language describing stakeholder positions concerning the definition of and appropriate recovery mechanisms for stranded costs and benefits in a competitive market for generation. The task force's staff prepared a matrix and a summary (summary attached as *Appendix J*) identifying stakeholders' positions, and these two documents were first approved and refined by the task force and then presented as the task force report to the full joint subcommittee in September.

B. TASK FORCE REPORT TO THE JOINT SUBCOMMITTEE

Elements Of Stranded Costs

As discussed above, utility stakeholders identified the primary sources of potential stranded costs as (i) generation asset devaluation, (ii) potential losses associated with above-market, purchased power contracts (including cooperatives' wholesale power purchase contracts), and (iii) regulatory assets. Task force members distinguished stranded costs and its elements from "transition costs," or costs which utilities may incur in transitioning from a regulated to deregulated market for generation. Illustrative of transition costs are utilities' costs in (i) establishing or joining an independent system operator or regional power exchange and (ii) funding mandatory consumer education programs concerning restructuring. While one utility's stranded costs proposal would have included some transition costs in its stranded costs formula, the task force did not adopt this blended approach.

Determining Stranded Costs and Benefits, Generally

The stakeholders agreed that the State Corporation Commission should play a significant role in addressing stranded costs and stranded benefits. Several proposals, including those of the SCC staff, the Office of the Attorney General's Consumer Counsel, ALERT, and the Virginia Committee for Fair Utility Rates, specifically enumerated factors that the SCC would use in calculating and determining stranded costs and stranded benefits.

Virginia Power, AEP-Virginia and Allegheny stated that capping or freezing retail rates during the transition period would provide a fair and balanced treatment of any stranded costs and any stranded benefits. The electric cooperatives stated that because of the cooperatives' structure, any benefits "stranded" by restructuring eventually would accrue to the cooperative member-consumers.

Commencement and Duration of Stranded Costs Recovery Period

Virginia Power, AEP-Virginia, and Allegheny proposed initiating the recovery of stranded costs by a "date certain" and for a specified interval. Transition periods ranged from three to five years. The electric cooperatives suggested that the period for recovery of stranded costs and transition costs be determined for each cooperative by the SCC.

Washington Gas and AARP said that the collection of stranded costs or payment of stranded benefits should not extend beyond 10 years. Virginia Power, AEP-Virginia and Allegheny all proposed that when the transition to competition ends, customers should pay a competitive generation rate and a nonbypassable wires charge for any remaining transition costs over the duration of the programs or service. Virginia Power also proposed collection (via a nonbypassable wires charge) of costs associated with (i) power purchase contracts over the remaining terms of the contract, and (ii) nuclear decommissioning costs over the remaining terms of the Nuclear Regulatory Commission (NRC) licenses.

The Attorney General's Office of Consumer Counsel, ALERT, the Virginia Committee for Fair Utility Rates, and the VCCC suggested that any stranded cost recovery be delayed until an SCC finding of an effective, competitive marketplace. Under ALERT's proposal, however, the SCC would begin monitoring, measuring, and adjusting stranded costs once alternative sellers are authorized to provide competitive generation services in the Virginia market.

Stranded Costs Collection

Frozen or capped rates for nonshopping generation customers were proposed by the SCC staff, Virginia Power, AEP-Virginia, Allegheny, Washington Gas, and

ALERT. Virginia Power, Allegheny, the electric cooperatives, and CNG proposed that retail customers switching to an alternative generation supplier pay a competitive transition charge, or nonbypassable wires charge, during the transition period. AEP-Virginia proposed a competitive transition charge for those retail customers who switched during the transition period, as well as a nonbypassable wires charge which could be extended beyond the transition period. The electric cooperatives proposed that all distribution customers share in stranded cost recovery through a competitive transition charge.

Virginia Power and the electric cooperatives also proposed a disconnection charge payable by retail customers who might otherwise avoid stranded cost payments by switching to on-site generation. Such payments, also called "exit fees," were opposed by Washington Gas and ALERT.

Burdens of Proof, Mitigation, and True-Up Mechanisms

The staff of the SCC, Washington Gas, ALERT, and the Virginia Committee for Fair Utility Rates proposed that the entity seeking to recover stranded costs have the burden of proof to establish such costs. The Attorney General's Office of Consumer Counsel, CNG, and AARP noted that stranded costs should be verifiable and nonmitigable. Virginia Power stated that any potential stranded costs that are being recovered in current regulated rates have already been justified and therefore are recoverable under a competitive structure.

Essentially all of the proposals required the SCC to examine mitigation efforts when determining stranded costs. Virginia Power's proposal submitted to the task force would result in the utility and the ratepayers sharing equally in any reduced costs related to purchase power contracts. Many of the proposals submitted required the SCC to perform periodic reviews and reconciliation of stranded costs. As discussed above, AEP-Virginia had proposed that stranded costs be recovered exclusively through a rate cap or rate freeze. In such a scenario, no front-end calculation would be required, and thus no subsequent true-up or reconciliation procedures would be required either. AEP-Virginia did, however, suggest that any such capped or frozen rates be adjusted to reflect major environmental costs.

Virginia Power did not propose a true-up during any period of frozen or capped rates. However, it did propose an annual true-up of the collection of above-market NUG costs and nuclear decommissioning fees, via nonbypassable wires charges.

IV. WORK OF THE TAXATION TASK FORCE

A. OVERVIEW

Restructuring's potential impact on state and local revenue streams associated with electric utility taxation was examined in 1998 by a special task force of the joint subcommittee chaired by Senator Watkins. The task force continued its work in 1999, co-chaired by Senator Watkins and Delegate Woodrum. Other task force members included Senators Stolle and Holland, and Delegate Cantor.

Under current law, investor-owned electric utilities and the electric cooperatives and electric energy customers pay a variety of taxes to the Commonwealth and its localities. Taxes paid directly by the utilities are "recaptured" from customers through the utility's regulated rates in which such taxes are embedded. Revenue received by the Commonwealth directly from utilities is collected on a gross receipts basis. In 1996, the State Corporation Commission received approximately 90.2 million dollars in gross receipts taxes (Virginia Code § 58.1-2626). Utilities currently benefit from the Virginia Coal Employment and Production Incentive Tax Credit (Virginia Code § 58.1-2626.1), which provides a credit against the state gross receipts tax for the purchase of Virginia coal, a credit of approximately $18.1 million in 1996. Electric utilities also paid approximately $5.4 million in 1996 as a result of the special regulatory revenue tax (§ 58.1-2660). This tax is levied for the specific purpose of raising funds to be expended by the SCC in making independent appraisals and valuations of utilities' property, and for the regulatory oversight of such companies.

Localities also receive significant revenues from the taxation of electric utilities. These sources include local gross receipts taxes, consumer utility taxes, and revenues from property taxes. Local gross receipts (Virginia Code § 58.1-3731) are imposed on utilities' gross receipts and can vary from locality to locality, although most localities impose this tax at a rate of 0.5 percent of the gross receipts of the utility derived from within that locality. The consumer utility tax (Virginia Code § 58.1-3814) is imposed on the utility customer's monthly gross charges and the amount may vary from locality to locality.

Property taxes paid by electric utilities also represent a significant source of revenue for localities. Under current law, the State Corporation Commission assesses the property of public utilities. The assessment includes the value of both the real estate and equipment located at each utility facility. The SCC-certified assessment is forwarded to the locality in which the facility is located, and the real estate tax rate is applied to the total assessed value of the facility. Independent power producers, on the other hand, have their property and equipment assessed by

the locality. The land is taxed at the real estate rate, and the equipment is taxed separately at a "machinery and tools" rate.

The stakeholders and task force members reviewed legislation developed by the task force in 1997. The legislation—introduced in the 1998 Session as Senate Bills 619 and 620—was designed to (i) retain the current level of revenue for the Commonwealth and localities and (ii) maintain the current apportionment of tax burden among residential, commercial, and industrial users.

SB 619 and SB 620 collectively established a new utility taxation regimen, imposing a corporate net income tax on profits derived from generation. A "declining block" consumption tax, which also served as a collection vehicle for the special regulatory revenue tax and the local gross receipts tax, was used to make up a resulting revenue shortfall. Following their introduction in the 1998 General Assembly Session, SB 619 and SB 620 were carried over for further study in 1998 by this joint subcommittee.

B. TASK FORCE REPORT TO THE JOINT SUBCOMMITTEE

Stakeholders and interested parties responded to a questionnaire that examined key taxation issues. These responses formed the basis for the task force's report to the full joint subcommittee. The report is attached as *Appendix K*.

Modifying the Current Taxation System Generally

The SCC, Consumer Counsel, Virginia Power, AEP, Allegheny, and the co-ops all agreed that retail competition will require changes in the current tax scheme. MEPAV suggested that restructuring will require some modification of the state and local tax code, but that a modified gross receipts tax should be collected at the wholesale level from municipal electric systems.

The Virginia Municipal League (VML) and the Virginia Association of Counties (VACO) filed a joint response to the staff questionnaire. VML and VACO indicated that the localities' current utility tax scheme should remain in effect, but that the local consumer utility tax and the local gross receipts tax should be calculated on a per-kWh consumption basis rather than on a gross receipts basis.

Taxation of Investor-Owned Utilities, Electric Cooperatives, and Municipal Electric Power Suppliers in a Restructured Environment

Virtually all stockholders agreed that a corporate income tax should replace the state gross receipts tax. There was, however, disagreement about whether the corporate income tax should be applied to all utility income, or whether it should be limited in its application to income derived solely from generation. The SCC,

Consumer Counsel, AEP, the co-ops and MEPAV proposed a corporate income tax on total business income. Virginia Power and Allegheny, however, supported the application of the corporate income tax to generation-related income only.

Electric cooperatives also pay the gross receipts tax and the special regulatory revenue tax. However, unlike investor-owned utilities, the co-ops pay no federal income tax; they are nonprofit entities owned by their customers. AEP-Virginia stated that a modified gross receipts tax should be imposed on the co-ops, an approach taken in SB 620. However, the co-ops stated that continuing to subject an electric cooperative to a minimum GRT would cause an unfair tax burden and inequitable tax treatment, since a co-op's power transactions in a competitive environment may result in significant gross receipts, but little or no margin ("profit"). Co-ops are now exempt from federal corporate income tax if they meet specific requirements and have no profits. The co-ops were, however, willing to pay a corporate net income tax on federal taxable income.

Municipal electric utilities or their customers are currently subject to some of the utility-related taxes described above. The local consumer utility tax, for example, is collected from municipal utility customers in the same way that this tax is collected from the customers of investor-owned utilities and the cooperatives. Moreover, municipal purchases of electricity from in-state providers include the embedded cost of gross receipts and special regulatory revenue taxes. VML stated that electricity purchases (whether inside or outside the state) should be subject to state taxation at levels comparable to those under the current state gross receipts tax. VML also stated that municipal electric systems should continue to have the authority to set their own electric rates and to be governed by local governing bodies.

"Declining Block" Consumption Tax; Components

Stakeholders supported the implementation of a consumption tax based on kWh usage to make up a substantial revenue shortfall that would likely occur when moving from a gross receipts tax to a corporate net income tax. The SCC, Virginia Power, AEP, and Allegheny Power all endorsed a "declining block" method that would maintain the current tax apportionment among user categories (residential, commercial, and industrial). Such a method assigns lower per-kWh tax rates to higher levels of electricity consumption.

The Attorney General's Office of Consumer Counsel stated that any consumption tax should equitably allocate the tax burden among customer classes and prevent further shifting of the tax burden to smaller customers. MEPAV noted that a consumption tax will substantially increase the tax burden on the customers of a municipal electric utility, and that a state gross receipts tax levied on the wholesale purchase of the municipal utility would be more revenue neutral. MEPAV and VML believed there should be no direct taxation of municipal electric

customers. MEPAV also stated that if a consumption tax is enacted, the measure should allow the municipal electric utility the option of providing the revenue through their transmission and/or purchase power contracts.

Virginia Power, AEP, Allegheny Power, the co-ops, and VML/VACO all agreed that the consumption tax should serve as a replacement method for the revenue currently received from the state gross receipts tax, local gross receipts taxes and the special revenue regulatory tax. The co-ops would allow localities the option of adjusting the minimum consumption tax rates to ensure no loss of revenue. The SCC proposed limiting any consumption tax to the state tax portion only.

MEPAV agreed that it might be appropriate to collect the local gross receipts taxes in the consumption tax, but objected to including the special revenue regulatory tax, stating that it is inappropriate for the municipal electric systems to pay for the regulatory functions of the SCC which do not benefit them; their wholesale power purchases are regulated entirely by FERC. MEPAV and VML/VACO also suggested that any consumption tax should be "unbundled" so that the tax rate for each component included in the consumption tax could be properly identified and remitted to the locality and the Commonwealth.

Administration of Replacement Taxation Program

Who should bear the responsibility for administering any new tax programs designed to replace the current tax scheme? MEPAV, VML, and Allegheny Power favored oversight by the Department of Taxation. VACO preferred that the SCC oversee this function. The co-ops proposed delegating the corporate income tax portion to the Department of Taxation, with the SCC assuming responsibility for any consumption tax, and for determining the allocation between generation and nongeneration business segments.

The SCC's staff said that if new utility taxation schemes are limited to general fund taxes, the Department of Taxation should administer the program. However, if the "declining block" consumption tax as contained in SB 619 were to be implemented, they believed that the SCC should administer the program. Virginia Power indicated no preference as to whether the SCC or the Department of Taxation administers the program, but did encourage an effort to educate consumers concerning any tax changes.

Real Property; Assessment Methodology; Performance of Assessments

The onset of retail competition could have an effect on the property tax revenues localities receive from electric utilities. A decline in the price of electricity could cause a drop in property tax assessments, a prospect potentially painful to localities with generation facilities in their jurisdictional boundaries. AEP felt that

projecting future facility values at this time is a speculative exercise; those values are indeterminate until generation prices in a restructuring market emerge. AEP believed that the SCC should have central assessment authority over *all* generating facilities within Virginia.

Virginia Power, VML/VACO and MEPAV would give localities authority to assess and adjust property tax rates on generation facilities. VACO/VML believed that if localities are charged with assessing generating facilities, the state should provide guidelines and assistance, and that the SCC should continue to assess distribution and transmission lines. The co-ops suggested allowing localities to make up any loss in property tax revenue by increasing the consumption tax. The co-ops also believed that all property owned by electric generators should be subject to uniform central assessment.

Virginia Power and AEP stated that fair market principles in accordance with the Virginia Constitution (Article X, § 2) must be the assessment method used when determining the value of property owned by suppliers of electricity. AEP would require the SCC to continually review the depreciation factors to assure accuracy in the assessments. The co-ops proposed assessment at "book value" (as defined by generally accepted accounting principles), while Allegheny Power would tax all generation property similarly, using a uniform and consistent assessment method.

The SCC's proposed assessment formula for real property was original cost minus depreciation. The SCC also noted that deregulation may require other appraisal techniques. VML/VACO proposed establishing uniform, statutory generation facility assessment formulas, provided that a mechanism for allowing a separate rate classification of this type of property would be provided also. VML/VACO also felt that localities must have the flexibility to adjust their tax rates in the event the assessment method adopted results in a reduction in revenue.

Consumer Utility Tax; Collection

While Allegheny Power stated that ideally a governmental entity imposing a tax should have the duty of collection, all respondents did agree that the local distribution company should serve as the collector of the consumer utility tax. Virginia Power, AEP, VML/VACO and MEPAV would protect the revenue from this source by basing the tax on kWh consumption rather than calculating it as a percentage of customers' bills. Allegheny Power and the co-ops would incorporate the consumer utility tax into any consumption tax. The co-ops and VML/VACO also proposed allowing localities to adjust the rates charged to ensure revenue neutrality.

V. WORK OF THE CONSUMER, ENVIRONMENT AND EDUCATION TASK FORCE

A. OVERVIEW

This task force addressed a broad range of issues, including public benefits programs for low-income households, consumer education, customer aggregation, consumer protection, environmental protection, and energy efficiency. The task force also discussed job-related protections for electric utility workers during the transition to retail competition. The task force was co-chaired by Delegates Plum and Jones. Additional task force members included Senator Norment and Delegates Parrish and Kilgore.

Stakeholders and other interested parties responded to a series of 45 questions prepared by task force staff, covering the seven topics addressed by this task force: (i) public benefits charges for the benefit of low-income households, (ii) consumer education, (iii) customer aggregation, (iv) consumer protection, (v) environmental protection, (vi) energy efficiency, and (vii) electric utility worker protection. These responses formed the basis for the task force's report to the full joint subcommittee. The report is attached as *Appendix L.*

B. REPORT OF THE TASK FORCE TO THE JOINT SUBCOMMITTEE

Public Benefits Charges for the Benefit of Low-Income Households

Virginia currently has no statutory or regulatory programs furnishing energy assistance to low-income households throughout the Commonwealth. The task force learned, however, that a number of *voluntary* programs—such as Virginia Power's EnergyShare and AEP Virginia's Neighbor-to-Neighbor—provide emergency energy assistance to low-income households in need. Additionally, the Weatherization Assistance Program (WAP) provides weatherization assistance to low-income households on a statewide basis through a combination of federal and state funding.

The question put before this task force by consumer group representatives was whether—as part of Virginia's utility restructuring—the Commonwealth should formally adopt legislation establishing energy assistance programs for low-income households. Respondents were asked about eligibility, funding, and administration criteria for such programs.

Consumer groups such as the Southern Environmental Law Center, the VCCC, VCAP and others expressed firm support for programs that would provide rate subsidies, crisis assistance, and weatherization assistance to low-income

households. These programs should be funded through nonbypassable wires charges paid by all consumers of electricity, they said. The VCCC and VCAP proposed a specific eligibility benchmark: households with income at 150 percent of federal poverty guidelines—an eligibility standard currently used for both the Weatherization Assistance Program (WAP) and the Low Income Home Energy Assistance Program (LIHEAP). Other respondents suggested general support for means-tested eligibility criteria.

Virginia's utilities and cooperatives provided wide-ranging opinions about the value and need for such programs. AEP said that mandating such subsidies is not appropriate. Allegheny Power, on the other hand, said that such assistance programs are both necessary and desirable—*if* there are adequate funding mechanisms. Virginia's cooperatives emphasized that policymakers recognize the additional costs of these programs and consider all of the other costs of restructuring in evaluating whether such programs would be appropriate. Allegheny Power suggested that any low-income, energy assistance programs adopted be reviewed periodically to determine their efficiency and impact.

A group styled the "consensus group" (representing a group that included a utility and several consumer, labor and environmental organizations) expressed support for statewide low-income energy assistance programs and for home weatherization and energy conservation programs designed to assist low-income citizens.

Consumer Education

The stakeholders and interested parties agreed that consumers must be prepared for the transition to a restructured electric utility market. During the course of task force meetings, repeated references were made to consumer confusion and uncertainty generated by recent telecommunications market deregulation. There was universal agreement that restructuring could be comparatively even more complex to the average consumer. Virtually all stakeholders and interested parties said that consumer education should be funded through a nonbypassable wires charge paid by all consumers of electricity.

Presentations to the task force on this topic suggested several key questions: (i) the specific focus of such education programs, (ii) who should conduct consumer education programs, (iii) when should they be conducted, and (iv) what level of regulatory oversight is appropriate.

Virtually all respondents agreed that a distinction must be drawn between *marketing* and *public education*. The VCCC's response was representative: consumer education programs must (i) prepare consumers for structural changes,

(ii) assist consumers in shopping for electric service, and (iii) inform consumers of their rights and obligations as customers.

In terms of a consumer education program start date, some, including the Attorney General's Office of Consumer Counsel, suggested that such education programs begin at least six months prior to the availability of retail choice. Virginia Power suggested that it begin July 1, 1999. Many others, including the VCCC, believe that such education should continue through the transition, and for a reasonable period thereafter.

The consensus group recommended that consumer education programs be implemented to inform consumers, in advance of competition and on a continuing basis, about changes in the way they may purchase electric energy and about using electric energy safely, efficiently, and in an environmentally sound manner.

Several respondents believed that *long-term* consumer education programs may be necessary. VCAP, for example, stated that these programs should continue until such time as retail competition is determined to be effective. AARP suggested an SCC investigation to help in this determination five years after the commencement of retail competition.

Funding and Regulatory Oversight

Virtually all parties responding said that consumer education should be funded through a nonbypassable wires charge paid by all consumers of electricity. Allegheny Power, Virginia's cooperatives and American Electric Power envisioned a consumer education program coordinated principally by the Virginia State Corporation Commission. Other respondents suggested administrative participation by state agencies with consumer expertise and contacts, including the Office of Consumer Affairs, the Department of Housing and Community Development, the Department for the Aging and others.

According to the consensus group, effective and unbiased consumer education programs should be conducted, independent of the electric utilities and other electric energy suppliers, under the supervision of the State Corporation Commission and in association with other state governmental agencies. The SCC should contract with appropriate private, nonprofit organizations and other media, educational, and consumer organizations to implement such consumer education programs, the consensus group said.

The VCCC and Virginia Power emphasized that nonprofit, community-based organizations should play a role—particularly in educating hard-to-reach populations.

Customer Aggregation

The aggregation issue concerns the development of customer purchasing groups (aggregates) in a restructured market. Virginia's cooperatives emphasized their years of experience accomplishing just that. The task force discovered that virtually no stakeholder or any other interested party expressed any opposition to customer aggregation, per se. And study participants agreed that aggregators should be licensed—with some subject to more stringent requirements than others.

The task force learned that Massachusetts restructuring legislation permits localities to shop for the electrical power needs of all of their residents and businesses, except for those affirmatively "opting out," or choosing to shop for power on their own. The "opt out" approach (also called community choice) proved to be very controversial when taken up by the task force. The issue pitted incumbent utilities against locality and certain consumer group representatives. VML, VACO, the VCCC and asserted that community choice offers residential customers and small businesses a realistic chance to benefit from utility restructuring. Incumbents took an opposite view, contending that community choice would effectively eliminate competition in locality markets.

Licensing and Regulating Aggregators

All respondents said that aggregators should be licensed by the Virginia State Corporation Commission. VCAP and Virginia's cooperatives cautioned, however, that overly-burdensome licensing requirements could discourage non-profit groups seeking to helping low-income households from obtaining licenses as aggregators. The consensus group said local governments, community action agencies, for-profit entities, and nonprofit organizations should be permitted to aggregate customers for the purpose of purchasing electric generation service.

VML and Virginia Power urged that the regulation of aggregators distinguish between those representing electricity suppliers and those negotiating on behalf of customer aggregates. Virginia Power suggested that the former should be required to provide proof of financial responsibility, reliability, and adequate reserve margins. In the same vein, Allegheny Power stated that aggregators contracting to provide energy should be licensed as generation suppliers and subject to all requirements applicable to that license.

"Opt Out" or Community Choice, and Other Aggregations

The investor-owned electrical utilities, electric cooperatives, and CNG opposed locality aggregation on an opt-out basis. Consumer and locality representatives favored it. Electric cooperatives remarked that allowing localities to take over customers by simply declaring themselves to be aggregators would be

tantamount to "state-supported slamming." VML, on the other hand, said that opt-out aggregation would result in locality-assembled load profiles enabling localities to successfully negotiate competitive electrical rates with generation suppliers.

All parties responding on this issue supported localities aggregating their load with other localities, and with private companies outside their jurisdictions. Virginia Power believed that locality aggregation with private entities, however, should be scrutinized from a tax-equity viewpoint.

Consumer Protection

When this topic was before the task force, the parties agreed that some heightened consumer protection would be necessary during the transition to electric utility restructuring, and in its aftermath. Here are several of the issues raised by the parties, and then incorporated into staff matrix questions: (i) whether all generation suppliers should be required to provide certain information in their marketing materials, (ii) whether billing information should be standardized, and in what form, (iii) consumers' rights to cancel electricity supply contracts within a specified period of time, (iv) protections against "slamming" as well as against certain telemarketing practices, and (v) complaint assistance.

Standardized Marketing Disclosures

While most of the respondents expressed support for certain stipulated disclosures, Allegheny Power said that marketing materials should comply with existing laws, but that standardizing information may have the effect of stifling innovation. CNG also opposes standardization. Consumer groups, including the VCCC, VCAP, and the Southern Environmental Law Center, said that, at a minimum, price, fuel mix, and emissions should be core disclosures. The VCCC also suggested that such mandatory disclosures include a description of cancellation rights, and toll-free information numbers. Virginia's cooperatives recommended that a standardized, generic formula for rate comparisons be established.

Billing Disclosures

AARP's response was representative: billings should be "unbundled," itemizing charges for regulated services (most likely, transmission and distribution) and the charges for competitive generation. The VCCC and others also expressed support for uniform billing formats as well (uniform terms, clear language and visual simplicity). Virginia's cooperatives recommend that all services that are subject to competition be identified.

The consensus group said customer bills should be presented in a clear,, uniform and customer-friendly format. Separate charges for the various unbundled

services should be clearly shown on customer bills and supplier marketing materials. Additionally, bills should provide uniform information regarding the supplier's fuel mix and a meaningful representation of the emissions resulting from the power generation sold to the customer, they said.

Virginia Power's responses also flagged the taxation and nonbypassable wires charges issues. This company suggested that taxation charges be identifiable within bills. The company also stated that bills should break down customers' nonbypassable wires charges by component (e.g., stranded costs, low-income energy subsidies, etc.).

Consumer Cancellation Rights

Virginia's Home Solicitation Sales Act (Va. Code § 59.1-21.1 et seq.) currently gives persons solicited at home (in person, or by telephone) the right to cancel any contract resulting from such solicitations within three business days. CNG believed that this statute should be amended to include the sales of energy products and services. Most respondents felt that similar protections should also be extended to consumers solicited by energy supply companies. AARP suggested a one-week "cooling off" period; Virginia Power would apply such a right to contracts in which an energy service contract covers a specified period of time.

Slamming and Certain Telemarketing Practices

The unauthorized switching of energy providers, or "slamming" should be specifically addressed in restructuring legislation, according to most respondents. VCAP suggested heavy fines for slammers, while Virginia's cooperatives, American Electric Power and VML believed this problem should be addressed through the registration and certification of energy providers, with the potential for loss of certification. The VCCC said that changes in energy suppliers obtained through telemarketing should be confirmed through third-party verification. This would be consistent with current FCC regulations governing slamming in the telecommunications market. The VCCC also believed that slammers should be barred from collecting payments for services from slammed customers—a remedy under consideration by the FCC for the telecommunications market, but not yet adopted.

The consensus group said that consumers should be protected from unfair and deceptive advertising, marketing, and business practices—including misrepresentations of so-called "green power" and intrusive telemarketing tactics. An agreement to obtain service from a supplier should be made in writing, providing a three-day right to cancel. Accordingly, any agreement made by telephone or electronically should be confirmed in writing, the group said.

On the telemarketing issue, most respondents believed that consumers should be protected against deceptive practices and intrusive telemarketing. Some, like Allegheny Power, believed that current law provided sufficient protections. Others, like Virginia's electric cooperatives, believe that applying the Virginia Consumer Protection Act to energy solicitations is appropriate.

Consumer Complaints

Most respondents would hand the SCC the job of mediating conflicts between energy suppliers and customers, although a handful—like the VCCC—would give that duty to the Attorney General's Office as well. However, American Electric Power cautioned that the SCC would undoubtedly require additional resources to carry out this broad tasking.

Other Consumer Protection Issues

Consumer privacy protections concerning billing, payment history and consumption patterns were issues of concern to the Southern Environmental Law Center and the VCCC. The consensus group emphasized that customer privacy must be protected. Customer-specific information, such as personal, billing or credit data, should be divulged only upon consent of the customer, according to the group.

Virginia Power recommended a customer advisory board to review consumer issues and problems associated with the transition to retail competition. The proposed board would report annually to a legislative transition task force.

The consensus group also declared that safe, reliable and affordable electric services should be available for all consumers. State law should include a strong prohibition against electric energy supplier discrimination or supplier or distributor redlining based on gender, race, or income. Additionally, all suppliers of electric energy should be licensed by the State Corporation Commission and be required to meet service quality standards set by the SCC, the group said

Environmental Protection

For several years, the joint subcommittee—and now this task force—was encouraged by the Southern Environmental Law Center and others to support the environment in any restructuring legislation recommended for adoption. The Center fears that retail competition for generation (with intensive price competition) will extend the operation lives of older, less efficient power plants entitled to emit at higher levels than newer power plants with stricter environmental controls and emissions restrictions under federal clean air laws.

The Center and others suggested that the General Assembly counter the effects of this possible development by (i) urging federal amendments to federal clean air laws, eliminating any and all emissions-related exemptions older plants currently enjoy, (ii) requiring all power suppliers in Virginia to disclose fuel mix and emissions, and (iii) adopting a renewable portfolios standard, in which a percentage of generation offered for sale in Virginia by each retail supplier must be generated from renewable resources.

The consensus group said electric utility restructuring should be implemented so that the competitive market for electric generation services operates in a manner that protects consumers, maintains environmental quality, and offers opportunities to enhance the quality of the environment.

Renewable Portfolio Standard

The Southern Environmental Law Center, the VCCC, and the Maryland-D.C.-Virginia Solar Energy Industries Association (MDV-SEIA) supported a statutory renewable portfolio standard. However, Allegheny Power, American Electric Power and CNG opposed statutory renewable portfolio standards; Virginia's cooperatives said it was an issue for the General Assembly to determine, particularly in light of increased costs associated with such standards. Virginia Power said it supported research and development in this area, using funds generated by a nonbypassable wires charge for that purpose.

Air Quality Provisions in Virginia Restructuring Legislation

Allegheny Power, American Electric Power, CNG and Virginia Power opposed coupling new environmental mandates and restructuring legislation. They believed that both the federal Environmental Protection Agency (EPA) and Virginia's Department of Environmental Quality (DEQ) have sufficient authority under current law to address all current and future air quality concerns. Ogden Energy—a waste-to-fuels company—expressed a similar sentiment, while the SCC stated that it does not recommend any new air quality initiatives as part of restructuring. Virginia Power also supported a voluntary approach, stating that it supported restructuring legislation offering the opportunity to improve air quality indirectly by providing programs to encourage conservation and the use of renewables. Additionally, almost all other respondents on this issue emphasized their support for enforcing existing emissions laws.

Generation Fuels Disclosures

The Attorney General's Office of Consumer Counsel, together with all consumer groups and the Southern Environmental Law Center, said that generation suppliers should be required to disclose their generation fuel mixes and

associated emissions. The consensus group supported this view, stating that this information should also be furnished on electricity customers' bills in a clear, uniform and customer-friendly format.

The electric utilities and cooperatives were in disagreement on this issue. American Electric Power and Allegheny Power opposed this requirement, while Virginia Power and Virginia's cooperatives supported it. CNG opposed it. The Ogden Energy Group (a concern with waste-to-fuel facilities) said it supported voluntary programs designed to help consumers identify green, clean electricity products.

Other Issues

MDV-SEIA, a solar energy trade association, proposes that "net metering" be mandated. Net metering allows self-generators—such as those using solar power—to receive credit for electricity they generate in excess of their own usage. In a related vein, the consensus group said that funding for programs encouraging the use of renewable energy resources and promoting energy efficiency and conservation, should be provided by a nonbypassable public benefits charge imposed on all purchasers of electric energy. These funds should be administered by an independent entity, the group said.

Energy Efficiency

Efforts to promote utility energy efficiency fall into two broad categories: *conservation programs* and *load management programs*. Conservation reduces usage, and load management shifts usage to promote efficient generation unit utilization. Collectively these two approaches are called "demand-side management," or DSM. The overarching purpose of DSM is to reduce the need for constructing new generation facilities.

The Southern Environmental Law Center and others have expressed their concern that restructuring will put a premium on short-term profits, making DSM programs (and their lengthy savings payback periods) unappealing. To counter that, the Center proposed implementing a public benefits charge (a usage-based surcharge paid by electricity customers) to ensure that DSM and renewable technology research are encouraged and enabled in a post-restructuring energy market. This proposal prompted two broader policy questions: (i) how energy efficiency programs should be supported during and after restructuring and (ii) whether a public benefits surcharge is an appropriate way to fund energy efficiency and conservation.

Consumer groups (VCCC, VCAP and others), together with the Association of Energy Conservation Professionals (AECP) and the solar consortium MDV-SEIA,

joined the Southern Environmental Law Center in suggesting that the best way to promote energy conservation is through a public benefits charge for energy investments. The consensus group said that funding for programs that encourage the use of renewable energy resources and promote energy efficiency and conservation should be provided by a nonbypassable public benefits charge imposed on all purchasers of electric energy and administered by an independent entity.

The electric utilities fell into three camps on this issue: those who opposed public benefits charges for energy efficiency (Allegheny and the cooperatives); those who supported them (Virginia Power) and those who took no position (AEP). Allegheny Power suggested the use of tax incentives to promote energy efficiency initiatives. MDV-SEIA said that the Commonwealth should exhibit leadership on this issue by directly investing in energy efficiency "seed projects" through its capital outlays for new and renovated public facilities. The SCC indicated that it did not support a public benefits charge for energy efficiency programs.

Electric Utility Worker Protection

The International Brotherhood of Electrical Workers (IBEW) appeared several times before the joint subcommittee and its task forces to emphasize concerns about restructuring's potential impact on electric utility workers—both in terms of job retention, and in terms of easing their transition to new careers in the event of significant restructuring-related downsizing.

The IBEW recommended statutory protections for utility worker, such as (i) minimum staffing levels linked to reliability considerations, (ii) continuing utility worker employment at generation units or stations, and protecting their wages and terms of employment, (iii) worker qualifications for purposes of quality, safety and reliability, (iv) quality, safety and reliability standards applicable to new market entrants, and (v) mandatory training and skill standards for all electrical workers responsible for systems and equipment after restructuring.

The consensus group noted that a well-trained and highly skilled workforce is essential to system reliability in a competitive market for electricity. The group said, however, that programs offering education, retraining and outplacement services should be established to assist electric utility employees directly affected by the implementation of competition in the generation and supply of electric energy.

Statutory Protections, Including Minimum Staffing Levels and Employment Continuation

American Electric Power and Allegheny Power did not support the statutory protections for electric utility workers proposed by the IBEW. However, they joined Virginia's cooperatives and Virginia Power in supporting downsizing-related needs

through a nonbypassable wires charge, e.g., covering such costs as severance pay, outplacement services, and retraining.

Virginia's utilities showed no support for any minimum plant or station staffing level requirement. They suggested that reliability is a responsibility all energy suppliers currently have and will have in the future, and that minimum staffing should not be mandated. The utilities also believed that electric utility workers assigned to any incumbent utilities' generation assets sold in restructuring-related sales, should receive no new statutory protections insofar as job protections or wage and benefits guarantees.

Worker Standards for New Market Entrants Relating to Safety and Reliability, and Training and Skill Standards for All Electrical Workers

The utilities emphasized that new market entrants would and should be subject to current state, federal and industry requirements governing safety and reliability. These include standards imposed by the National Electric Safety Code, the North American Reliability Council and Regional Reliability Council rules, and utility interconnection requirements.

The utilities also emphasized that utility workers—employed by new entrants and incumbents alike—should continue to be trained in accordance with existing utility practices and standards, and in conformity with requirements imposed by applicable state and federal law. Any new standards generated by restructuring, they said, should be applicable to all.

VI. WORK OF THE JOINT SUBCOMMITTEE'S DRAFTING GROUP

When the joint subcommittee met in Manassas on November 10 to receive final reports from the Taxation and the Consumer, Education and Environment task forces, it established a drafting group—composed of all task force chairmen, together with the vice chairman—to begin preparation of a committee restructuring bill for the 1999 Session. This drafting group held it first meeting on December 3, followed by three subsequent meetings. Its final meeting was convened on January 6.

This group used as its working materials the task forces' reports which identified the policy alternatives advanced by stakeholders and interested parties on critical restructuring issues. The drafting group was also assisted by statutory proposals developed by stakeholders and interested parties.

Thus, the drafting group developed and employed a work plan in which stakeholders and interested parties with statutory proposals were requested to submit these proposals to the drafting group for consideration. Some drafts addressed all issues associated with restructuring, and others focused on selected issues. The drafts submitted followed the general framework of Senate Bill 688 of 1998, a structure used explicitly by the Structure and Transition task force, and implicitly by the others. This helped the drafting group compare "apples to apples." Most drafts were accompanied by detailed drafting notes summarizing key aspects of the proposed legislation.

The proposed drafts were submitted to the drafting group's staff in electronic format for consideration at the group's December 8 meeting. This allowed the drafts to be (i) promptly distributed to drafting group members and (ii) immediately posted to the joint subcommittee's web site in advance of that meeting. At the December 8 meeting, the stakeholders and interested parties who submitted draft proposals commented on their legislative proposals and offered their views on Virginia's readiness for restructuring.

As part of its process, the drafting group also directed its staff to prepare overviews of key issues and options. These were broadly outlined in staff-generated "decision trees" developed from the task forces' matrixes. The decision trees served as an informational record of the drafting group's work, and as a key part of the group's report to the full joint subcommittee. Most importantly, it illuminated the drafting group's policy choices—choices also available to the joint subcommittee, acting as a body. As the work progressed, the drafting group chose among the policy options outlined in the decision trees, and directed staff to prepare corresponding statutory drafts, frequently integrating language and ideas submitted by stakeholders and interested parties.

At the drafting group's meeting on January 6, Delegate Woodrum requested that stakeholders and interested parties meet with the joint subcommittee's staff to (i) seek consensus on definitions for key terms and phrases in draft language before the drafting group, and (ii) discuss key issues before the drafting group in which the stakeholders are in disagreement—particularly in the critical areas of default providers, stranded costs and transitional ratemaking. It was hoped that frank discussion would settle some of the issues still in dispute between various parties, and clarify the differences on others in order to present clear policy alternatives to the drafting group. Consequently, two such meetings were held on January 8 and 10, and a number of issues were resolved or clarified—particularly as to default providers.

Following a drafting group meeting on January 11, a consolidated draft (*Appendix M*) incorporating draft legislation developed by the drafting group and staff in all areas except taxation, was prepared and distributed to stakeholders and

interested parties via posting to the joint subcommittee's web site. This draft consolidated separate (i) structure and transition, (ii) stranded costs, and (iii) consumer environment and education drafts developed by the drafting group. The draft incorporated all drafting group work through January 11. While capped rate, stranded costs and nonbypassable wires charge sections were included in this draft, the drafting group had not formally reviewed or modified them. Thus, these sections remained as submitted by staff. It was anticipated that they would be taken up by the full joint subcommittee meeting as a "drafting group of the whole."

On January 18, the joint subcommittee met and reviewed the work of the drafting group to date. At that time, the taxation draft incorporating the work of a core drafting group of stakeholders assisting the legislative drafting group was reviewed, amended and then approved. Additionally, a substitute for the main restructuring bill was offered by a coalition of several stakeholders and interested parties (including Virginia Power, the Attorney General's Office of Consumer Counsel, ALERT and the Virginia Committee for Fair Utility Rates). The proposal focused on resolving disagreements among stakeholders and interested parties concerning stranded costs and transitional ratemaking issues. The substitute (in its proposed form prior to amendments by the drafting group) is attached as *Appendix N.*

Briefly stated, the coalition's proposal established a period of capped rates (spanning the transition to retail competition) in which (and through which) incumbent electric utilities would recover stranded costs. The proposal expressly rejected provision for stranded benefits. Shopping customers choosing to purchase generation from a nonincumbent would be required to pay a nonbypassable wires charge as a surrogate for the stranded cost recovery incumbents would recover from nonshopping customers.

The joint subcommittee adopted the coalition's proposal as well as other amendments to the consolidated draft proposed by other stakeholders and interested parties. Cumulatively, this draft (*Appendix O*), as amended, became the joint subcommittee's report and recommendation to the 1999 General Assembly for comprehensive legislation restructuring the electric utility industry.

VII. ACTION IN THE 1999 GENERAL ASSEMBLY

A. SENATE BILL 1269

The draft endorsed by the joint subcommittee at its January 18 meeting was introduced in both houses of General Assembly during its 1999 Session as Senate

Bill 1269 (Patroned by Senator Norment) and House Bill 2615 (patroned by Delegate Plum).

Senate Bill 1269 (*Appendix F*) became the principal vehicle for restructuring legislation in the 1999 Session of the General Assembly. Patroned by Senator Thomas Norment, a member of the SJR 91 joint subcommittee (and co-chairman of its Structure and Transition task force), SB 1269 was virtually identical to the draft legislation adopted and recommended by the joint subcommittee. Following its introduction, the bill was assigned to the Senate Committee on Commerce and Labor, where it considered at length by that committee's Utilities Subcommittee. A number of amendments were recommended by that subcommittee and adopted by the full committee prior to the bill's passage by the Senate on February 9 (33 ayes, 4 nays and 3 abstentions). However, the bill's principal provisions concerning capped rates, default service and others, remained unchanged in the bill.

Following its passage in the Senate, the bill was communicated to the House of Delegates and referred to the Corporations, Insurance and Banking Committee on February 15. A special CIB subcommittee (which included all House members of the SJR 91 joint subcommittee) examined the bill and recommended several noncontroversial amendments to the bill. However, when the bill was heard before the full committee, the committee adopted the amendments recommended by the subcommittee, together with an amendment that was vigorously opposed by the incumbent electric utilities. That amendment (*Appendix* P) would have permitted the Virginia State Corporation Commission (SCC) to adjust capped rates prior to 2002. This provision was removed from the bill on the House floor prior to the House voting to pass the bill by a vote of 77 to 23. The Senate concurred with the House amendments and sent the bill on to the Governor, who signed the bill into law on March 25.

Overview; Transition Period

Senate Bill 1269 deregulates the generation component of electric service, eventually permitting all Virginia electricity customers to purchase generation service from the provider of their choice. Customer choice of generation suppliers will be phased in beginning in 2002, to be completed by 2004. The Virginia State Corporation Commission (SCC) can delay this schedule's implementation—but not beyond 2005—based on considerations of reliability, safety and market power. Transmission and distribution will remain regulated services, with transmission regulated principally by the Federal Energy Regulatory Commission (FERC) and distribution by the Virginia State Corporation Commission. Electric utilities will retain ownership and control over their current transmission systems and distribution service territories. Additionally, electric utilities are required by 2001 to join or establish regional transmission entities which will manage and control their transmission assets.

Capped Rates

During the transition from fully regulated electricity prices to generation customer choice, capped rates for electricity service will be in effect during the period 2001 through 2007. Capped rates fall into two categories: (i) comprehensive ("bundled") rates for generation, transmission and distribution and (ii) rates for "unbundled" generation services only. The rates will be established on the basis of (i) utilities' rates in effect on July 1, 1999, or (ii) rates established through utility rate cases filed before January 1, 2001, by utilities not currently bound by any rate case settlements with the SCC. During the capped-rate period, the SCC may adjust these rates to reflect changes in fuel costs, taxes, or utilities' financial distress beyond their control. The SCC is also authorized, after 2004, to terminate capped rates in an electric utility's former service territory. Such termination must follow a finding that there is effective competition for generation services within that service territory.

Wires Charges and Stranded Costs

Customers who purchase generation services from alternate generation suppliers (suppliers other than the incumbent electric utilities furnishing electric service to these customers prior to restructuring) during the capped-rate period may be required to pay a usage-based surcharge, or "wires charge." This charge will cover these "shopping customers'" pro rata share of incumbent utilities' potential losses, if any, resulting from market-based generation prices that are lower than the capped generation rates. The wires charge will also cover the shopping customers' pro rata share of any costs incurred by these customers' former electric utilities as part of their transition to a competitive market for generation services (and determined by the SCC to be just and reasonable). However, the combination of wires charges, together with (i) the unbundled charges for transmission and distribution services and (ii) projected market prices for generation, cannot exceed the capped rate for bundled electric service in effect for each utility during the capped-rate period. The bill stipulates that it is through capped rates or wires charges that Virginia's electric utilities will recover their just and reasonable net "stranded costs," if any, that exceed zero value in total.

Default Service and Suppliers

Customers who are either unable or unwilling to shop for alternative generation suppliers are entitled to receive bundled electric service from "default" providers. Default service would be available after customer choice is available for all customers (as early as 2004, but no later than 2005). The bill requires the SCC to designate default service providers in all of the incumbent utilities' former service territories. These providers may be designated from among incumbent utilities or

from among other suppliers willing to provide one or more components of default service. Rates charged for default generation service will be established by the SCC. On and after July 1, 2004, the SCC is required to annually determine whether default service can be eliminated for particular customers, customer classes, or in particular geographic areas of the Commonwealth. The SCC's findings are to be reported annually to the Legislative Transition Task Force.

Licensing of Suppliers and Aggregators

The bill establishes licensing procedures for all persons and entities proposing to furnish competitive generation services in Virginia, either as suppliers or as aggregators. The legislation directs the Virginia State Corporation Commission to establish licensing criteria for both suppliers and aggregators, including requirements concerning (i) technical capabilities, (ii) access to generation and generation reserves, and (iii) adherence to market standards. The bill expressly permits public service companies' affiliates or subsidiaries to be licensed as suppliers or aggregators under this act, even if electrical supply or aggregation is not "related or incidental to" these companies' stated public service company businesses. These affiliates and subsidiaries are also permitted to own, manage or control generation plants or equipment. Additionally, the SCC is directed to establish a reasonable period in which retail customers may cancel, without penalty or cost, any contract for services entered into with licensed suppliers or aggregators. The bill permits local governments and other political subdivisions of the Commonwealth to aggregate (i) the electrical load of governmental installations and facilities and (ii) the energy load of residential, commercial and industrial retail customers within their boundaries on a voluntary, opt-in basis. The Commonwealth is also permitted to aggregate its governmental load.

Divestiture and Functional Separation

The bill states that the SCC may not require any incumbent electric utility to divest itself of any generation, transmission or distribution assets as part of the restructuring process. However, these utilities are directed to functionally separate generation, retail transmission and distribution by January 1, 2002, with plans for that purpose to be submitted to the SCC by January 1, 2001. Additionally, the SCC is directed to develop rules and regulations governing conduct between these functionally separate units to prohibit cost-shifting and cross-subsidies between them, and to prohibit them from engaging in discriminatory behavior toward nonaffiliated units. The SCC is also provided review authority concerning any proposed mergers, acquisitions, consolidations or other transfers of control over providers of noncompetitive electric services. However, such authority does not extend to such transactions involving providers of default service. The bill also provides that its provisions are not to be construed as exempting or immunizing from punishment conduct violative of federal or state antitrust laws.

Consumer Education

A customer education program, preparing consumers for the transition to a restructured market, is addressed by the bill. The SCC is directed to develop a comprehensive program addressing such issues as customers' rights and obligations in the purchase of electricity, and marketing and billing information. The SCC will present its findings and recommendations to the Legislative Transition task force on or before December 1, 1999, with particular emphasis on such a program's scope and on its funding. The SCC is also directed to develop regulations governing marketing practices, with particular emphasis on regulations addressing unauthorized switching of suppliers and improper solicitation activities. Standards for marketing and billing information will also be developed by the SCC through regulations.

Complaint Bureau; Consumers' Private Right of Action

The SCC is directed by this bill to establish or maintain a complaint bureau to receive and investigate complaints by retail customers against public service companies, licensed suppliers and aggregators, and other providers of competitive services. The SCC may enjoin or punish any violations of the provisions of this bill, pursuant to its existing authority. The Attorney General is authorized to participate in any such proceedings. Additional remedies available to electricity customers include a private right of action designed to provide compensation for customer losses resulting from (i) violations of the marketing regulations developed by the SCC pursuant to this bill or (ii) other deceptive or fraudulent practices. Customers can initiate civil actions to recover their actual damages or $500, whichever is greater. In the case of willful violations, customers may recover treble damages.

Legislative Transition Task Force

A Legislative Transition task force is established by the bill to monitor the work of the SCC in implementing the restructuring of Virginia's electricity market. The bill also indicates that the task force will be receiving reports from the Commission concerning restructuring programs implemented in other states. During its tenure (July 1, 1999, through July 1, 2005), the task force (composed of 10 legislators—six from the House of Delegates and four from the Senate) will also examine several specific issues, including the potential discounting of capped generation rates, utility worker protection, energy assistance programs for low-income households, energy efficiency and renewable energy programs, and the reliability of generation, transmission and distribution systems. Significantly, the task force is also directed to monitor stranded cost recovery authorized under this bill after the commencement of customer choice. This oversight will be accomplished with the

assistance of the SCC, the Office of the Attorney General, incumbent electric utilities, suppliers, and retail customers. The purpose of the monitoring is to determine whether the recovery of stranded costs via capped rates and wires charges has resulted or is likely to result in the over-recovery or under-recovery of just and reasonable net stranded costs. The task force will make annual reports to the Governor and General Assembly, and it will be assisted in its efforts by a 17-member Consumer Advisory Board. The bill also indicates that recommendations of the task force will have at their core the policy of maintaining low electricity costs in Virginia, and ensuring that residential and small business customers will benefit from competition.

Other Provisions

Other provisions in the bill (i) authorize the SCC to conduct retail customer choice pilot programs, (ii) exempt municipal power systems from retail competition unless the municipalities operating them (a) elect to permit it or (b) compete for electric customers outside the service territories currently served by such systems, (iii) permit electric cooperatives to furnish default service in their current service territories unless they seek to provide default service in the former service territories of other electric utilities, (iv) permit the SCC to adjust generation rates within transmission-constrained areas to the extent necessary to protect customers from the effects of market power, (v) eliminate the use of eminent domain in conjunction with generation facilities constructed on and after January 1, 2002, (vi) require the SCC to submit annual reports on the potential for future competition in metering, billing and other electric services not made competitive by this bill, and (vii) permit customer-generators who are self-generating with solar, wind or hydroelectric generating systems to employ "net metering" equipment, subject to capacity restrictions and the provisions of regulations to be developed by the SCC.

B. SENATE BILL 1286

As enacted by the General Assembly, Senate Bill 1286, eliminates the state gross receipts tax, the State Corporation Commission special assessment tax, and the local gross receipts tax on electric suppliers. In place of these taxes, consumers of electricity will pay a declining block consumption tax and corporations will be subject to corporate income tax.

The consumption tax, which contains components for a state gross receipts tax, SCC regulatory tax, and local consumption tax, will be levied at rates of (i) $0.00155 for the first 2,500 kWh consumed; (ii) $0.00099 for between 2,500 and 50,000 kWh; and (iii) $0.00075 for power consumed in excess of 50,000 kWh. These combined rates may be reduced to reflect lower SCC regulatory charges and to omit the local tax component in localities served by municipal-owned electric utilities that opt not to assess the local tax. In addition, most electric suppliers will pay a

net corporate income tax. Electric cooperatives are not subject to the corporate income tax except to the extent sales are made to nonmember customers. Electric suppliers will report real and personal property to the State Corporation Commission, which will centrally assess their property. These changes are in anticipation of federal deregulation of the electric utility industry. The effective date of the legislation is January 1, 2001.

Respectfully Submitted,

Jackson E. Reasor, Jr., Chairman
Clifton A. Woodrum, Vice Chairman
Richard J. Holland
Thomas K. Norment, Jr.
Kenneth W. Stolle
John C. Watkins
Eric I. Cantor
Jerrauld C. Jones
Terry G. Kilgore
Harry J. Parrish
Kenneth R. Plum

1998 SESSION

ENROLLED

SENATE JOINT RESOLUTION NO. 91

Continuing the Joint Subcommittee Examining Electric Utility Restructuring in the Commonwealth.

Agreed to by the Senate, March 13, 1998
Agreed to by the House of Delegates, March 12, 1998

WHEREAS, the Joint Subcommittee Examining Electric Utility Restructuring in the Commonwealth was first established pursuant to Senate Joint Resolution No. 118 (1996), and thereafter continued by Senate Joint Resolution No. 259 (1997); and

WHEREAS, the joint subcommittee has focused its activities on the anticipated introduction of retail competition in the sale of electricity which, if authorized, would allow independent power producers, power marketers, and other utilities, from within Virginia and across the country, to compete with Virginia's electric utilities in the sale of electricity to Virginia's residential, business, and industrial electricity customers; and

WHEREAS, over a dozen states (including California, Pennsylvania, New Hampshire, Montana, and Illinois) have, either through legislation or regulation, authorized various forms of retail competition, and the remainder, like Virginia, have undertaken legislative or regulatory studies of the issue; and

WHEREAS, California is slated to begin retail competition in 1998, and other states authorizing retail competition have undertaken pilot projects, with some poised to move beyond completed pilots to the first phases of multiple-phase competition plans; and

WHEREAS, during the past two years the joint subcommittee has examined the potential for competition in the retail sale of electrical power within the Commonwealth, and has received extensive testimony from investor-owned utilities, electric cooperatives, independent power producers; representatives of large industrial and commercial electricity customers; representatives of elderly, low-income, and other residential electricity customers, as well as from environmental groups and many other parties and organizations with a stake or strong interest in the outcome of this debate; and

WHEREAS, a task force appointed by the joint subcommittee in 1997 has conducted a broad study of the state and local taxation implications of electrical restructuring, including an examination of such critical issues as taxation of out-of-state electricity providers and retaining revenue neutrality in the event of restructuring; and

WHEREAS, the joint subcommittee has benefited from the extensive and continuing study of this issue by the staff of the Virginia State Corporation Commission (SCC), receiving in 1996 a detailed overview of this issue, and, in November 1997, a report on a potential model for retail competition within the Commonwealth; and

WHEREAS, representatives of commercial and industrial customers, independent power producers, and others advocate an expedited route to retail customer choice, urging the joint subcommittee to endorse a retail competition proposal which would phase in retail competition by 2001, with the beginning phase in 1998; and

WHEREAS, representatives of elderly, low-income, and other residential consumers, together with representatives of municipal power systems and others, have stressed that their support for electric utility restructuring in Virginia is, first and foremost, contingent upon a restructuring plan providing across-the-board benefits to all electricity customer classes; and

WHEREAS, the hours of testimony heard by the joint subcommittee, combined with the voluminous materials presented for its review, suggest that Virginia as a low-cost state for electrical power is not under the same pressure to adopt retail competition as its high-cost sister states to the North, such as New Hampshire and Pennsylvania; and

WHEREAS, nevertheless, the evolution of a nationwide electricity market prompted by current and proposed federal law and the action of other states, including a number of low-cost states such as Oklahoma, in adopting restructuring legislation or regulations suggest that Virginia should take affirmative steps to ensure that the Commonwealth's structure for the generation, transmission, distribution, and retail delivery of electricity creates no undue disadvantages for its electric utilities or their customers; and

WHEREAS, the SCC has currently pending before it rate cases by two major Virginia utilities, the

disposition of which may have a significant impact on Virginia's readiness for transition to retail competition due to (i) the likely necessity of baseline rate cases at the outset of transition to retail competition, (ii) the necessity of deciding current rate cases, without regard to electric utilities' potential entitlement to stranded costs recovery, and (iii) the possibility of significant electricity cost fluctuations occurring as a consequence in the interval between the present and Virginia's implementation of retail competition; and

WHEREAS, contemporaneous with the SCC staff's presentation of its proposal for retail competition within the Commonwealth, the joint subcommittee received several conceptual proposals for restructuring within the Commonwealth, many containing suggestions for target dates, phase-in periods, stranded cost calculations, and consumer education and protection provisions; and

WHEREAS, a thorough examination and appraisal of restructuring proposals before the joint subcommittee, including comprehensive analyses of their potential impact on (i) all classes of electricity customers within the Commonwealth, (ii) state and local tax revenues tied to electric utility property and sales, (iii) the environment, and (iv) the overall reliability of Virginia's electricity generation and distribution system should precede any enactment of legislation having such substantial and long-term consequences; now, therefore, be it

RESOLVED by the Senate of Virginia, the House of Delegates concurring, That the Joint Subcommittee Examining Electric Utility Restructuring in the Commonwealth be continued. The joint subcommittee shall (i) review, in detail, the restructuring proposals it has received to date, as well as such other proposals as it may receive; (ii) obtain such technical assistance as it may require in reviewing the potential impact of such proposals or any components thereof; and (iii) develop a comprehensive legislative proposal for restructuring Virginia's electricity market appropriate for the Commonwealth and beneficial to all of its citizens; and, be it

RESOLVED FURTHER, That the Virginia State Corporation Commission (SCC) and its staff be commended for its study of this complex issue and its invaluable assistance to the joint subcommittee to date; and, be it

RESOLVED FURTHER, That the SCC also be encouraged to continue its examination of retail restructuring and to furnish reports to the joint subcommittee concerning the results thereof, and to direct, in futherance thereof, such SCC-coordinated electricity restructuring pilot programs and studies conducted by Virginia's electric and gas utilities and electric cooperatives as it may deem feasible that will (i) produce useful information, supplementing available and relevant reports of pilot programs and studies conducted in other states and (ii) expedite Virginia's readiness for transition to retail competition in the electricity market by all energy providers; and, be it

RESOLVED FURTHER, That the SCC be requested to proceed with due dispatch to advance Virginia's readiness for transition to a restructured electricity market by facilitating, to the fullest extent of its authority, the development of independent system operators and regional power exchanges to aid in the future dispatch and sale of electric power generation within the Commonwealth; and, be it

RESOLVED FURTHER, That it is in the public interest and essential to the economic future of the Commonwealth that electric utilities within the Commonwealth be financially sound, and that it is the sense of the General Assembly that electric utilities in the Commonwealth should have the opportunity to recover legitimate stranded costs, as may be defined by the General Assembly, in the event of electric utility restructuring within the Commonwealth; and, be it

RESOLVED FURTHER, That the SCC, or its staff, be requested to report to the joint subcommittee in 1998, at such times as may be requested by the joint subcommittee chairman, as to the status or disposition of pending electric utility rate cases; and, be it

RESOLVED FINALLY, That the joint subcommittee shall continue its oversight of the impact that restructuring in the electric utility industry may have on small businesses, residential consumers, and utility industry employees.

The joint subcommittee shall be composed of a total of 11 members. Members appointed pursuant to SJR No. 259 (1997) shall continue to serve, with the addition of 4 members to be appointed as follows: 2 members of the Senate to be appointed by the Senate Committee on Privileges and Elections; and 2 members of the House of Delegates to be appointed by the Speaker of the House in accordance with Rule 16 of the House Rules. Vacancies shall be filled pursuant to Senate Joint

Resolution No. 118 (1996) and this resolution.

The direct costs of this study shall not exceed $8,250.

An estimated $5,000 is allocated for such independent economic or technical analyses as the joint subcommittee may require in its review of restructuring proposals. Such expenses shall be funded by a separate appropriation of the General Assembly.

The Division of Legislative Services shall provide staff support for the study. All agencies of the Commonwealth shall provide assistance to the joint subcommittee, upon request.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1999 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

CHAPTER 633

An Act to establish a schedule for Virginia's transition to retail competition in the electric utility industry.

[H 1172]

Approved April 15, 1998

Whereas, other states have begun making modifications to their electric utility industries for the ultimate purpose of permitting competition in the retail sale of electricity, and these regional changes are likely to impact Virginia's electric utilities and their customers irrespective of whether a transition to retail competition is begun in this Commonwealth; and

Whereas, it is in the best interest of the citizens of this Commonwealth that preparations begin for Virginia's transition to a competitive retail electricity market to ensure that (i) all Virginians have access to electricity at reasonable prices and (ii) Virginia's electric utilities are sufficiently prepared to enter and thrive in this new market; and

Whereas, the State Corporation Commission may, pursuant to the provisions of Title 56 of the Code of Virginia, approve and impose requirements on electric utilities doing business in the Commonwealth to implement electric energy programs that are intended to benefit the public health, safety and welfare, including programs the purpose of which are to (i) educate consumers; (ii) ensure that each distributor in the Commonwealth provides access to its retail distribution system to each retail customer in its service territory; (iii) promote electric energy efficiency and conservation, protection of the environment, and research and development; (iv) provide minimum standards of training for employees who operate and maintain the facilities of an independent system operator or a regional power exchange; or (v) educate, retrain, or provide outplacement services for employees of electric utilities whose employment will be directly affected by the implementation of competition for the purchase and sale of electric energy pursuant to this act; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. The State Corporation Commission and those parties involved in electric generating and transmission facilities and the sale of electricity in Virginia shall work together to strive to establish one or more independent system operators and one or more regional power exchanges that serve the public interest in the Commonwealth by January 1, 2001.*

§ 2. The transition to retail competition and the deregulation of generation facilities, as defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission, shall commence in Virginia on January 1, 2002.

§ 3. Retail competition, as defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission, shall commence in Virginia on January 1, 2004.

§ 4. Just and reasonable net stranded costs shall be recoverable and appropriate consumer safeguards related to stranded costs and considering stranded benefits shall be implemented, as defined and determined by the General Assembly and, thereafter, by regulation of the State Corporation Commission.

§ 5. In the implementation of any of the previous sections, the General Assembly and the State Corporation Commission shall ensure reliable electric service at reasonable and just rates to all classes of consumers with due regard to the protection of the environment.

§ 6. In implementing the provisions hereof, the General Assembly shall give due regard to the unique regulatory and taxation structures of all electric utilities and power supply cooperatives in Virginia.

§ 7. The enactment shall have no effect on any pending litigation at the State Corporation Commission or in any court in the Commonwealth, or on any power or duty of the Commission granted by law or the Constitution of Virginia.

Senate Joint Resolution 91
RESTRUCTURING THE ELECTRICAL UTILITY INDUSTRY
Task Force Membership

Structure & Transition

Del. Clifton A. Woodrum, Co-Chair *Sen. Thomas K. Norment, Jr. Co-Chair.*

Delegate Jerrauld C. Jones
Delegate Eric I. Cantor
Senator Kenneth W. Stolle

Stranded Costs and Related Issues

Sen. John C. Watkins, Co-Chair *Sen. Richard J. Holland, Co-Chair*

Delegate Kenneth R. Plum
Delegate Harry J. Parrish
Delegate Terry G. Kilgore

Consumer, Environment and Education

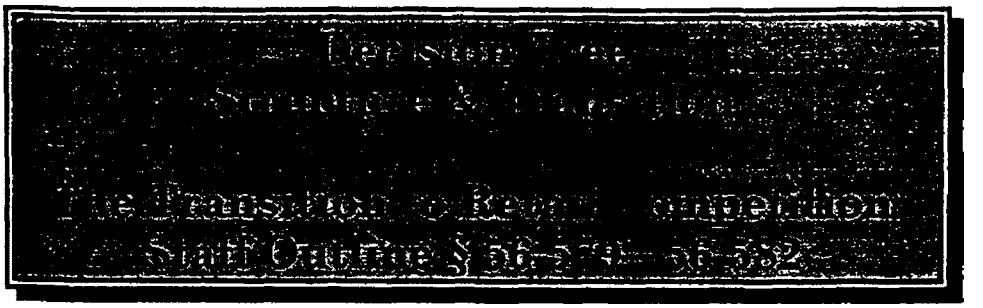
Del. Kenneth R. Plum, Co-Chair *Del. Jerrauld C. Jones, Co-Chair*

Senator Thomas K. Norment, Jr.
Delegate Harry J. Parrish
Delegate Terry G. Kilgore

State and Local Taxation

Sen. John C. Watkins, Co-Chair *Del. Clifton A. Woodrum, Co-Chair*

Sen. Richard J. Holland
Senator Kenneth W. Stolle
Delegate Eric I. Cantor



§ 56-579. Schedule for transition to retail competition; Commission Authority.

Should the transition to retail competition be phased in? [S & T. staff matrix, pp. 1, 2.]	⇒	IF YES, then specify transition time period. [staff matrix, pp. 2,3 • **1/1/2000**: ISO/RPX formation complete; **7/1/2000:** commence competition; **7/1/2001**, full competition in place. • As per HB-1172: (i) ISO/RPXs established by 2001, (ii) transition begins in 2002, and (iii) transition completed in 2004. • When transmission constraints	⇒	IF YES, then which customer classes go first? [staff matrix, pp. 3,4] • Start retail competition for *all* customer classes at the same time. • ASAP for all customer classes, but not later than 1/1/2002 for industrial customers. • *Residential and small business customers go first*, or at least at same time as all other customer classes. • SCC to determine customer class	⇒	IF YES, what authority should the SCC be given to vary statutory timetable. • To delay or accelerate timetable, based on considerations, including reliability, safety, communications and market power. But, any delay should limited to period of time needed to address these issues. • To defer the dates for introducing retail competition until pre-conditions for genuine competition have been met. • Adjust for unanticipated market developments.

	eliminated or price regulation imposed in place for constrained areas. • SCC to determine timetable, subject to legislative guidelines. • 1-2 year unbundling period, followed by 4-5 year transition period in which rates would be capped.	phase-in. • Phase in through pilot programs with equal percentages of *all* customer classes. • Equal percentages of each customer classes' loads should begin retail competition simultaneously. • Phase in customers over three years using a subscription method.	

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rposes on a date
tain.

Should the commencement of retail competition be made contingent upon Virginia utilities participation in ISOs [S. & T. Staff matrix, pp. 4, 5.]

⇒

IF YES, then to what extent?

- No customer choice before ISO in place.
- ISO operation must be preceded by resolution of transmission constraints and market power issues.
- Other.

⇒ •

⇒ •

⇓

NO

Should the SCC examine utilities' current rates before the commencement of retail competition? [S. & T. staff matrix, pg. 5]

⇒

IF YES, then how:

- Utilities can file rate cases under current statutes prior to the transition to competition.
- Mandatory baseline rate cases to (i) establish base rates for transmission, distribution, and other services that will remain regulated after retail competition for generation begins, and (ii) unbundle generation rates for competitive purposes..
- Preliminary cost of service studies.
- Informational unbundling.
- Other.

⇒

IF YES, then when:

- Substantial lead time needed, in any event..
- Other

⇒

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⇓

NO

Should generation rate freezes or rate caps be imposed to mitigate stranded costs *or* to provide consumer price protection? [S. & T. Staff Matrix, pg. 5.

⇒

IF YES, which?
- rate freezes
- rate caps.

⇒

IF YES, during which periods?
- Transition to retail competition.
- Combination of transition and post-transition periods.
- Other.

⇒

IF YES, who should exercise authority over their imposition and enforcement?
- SCC.
- Other.

⇓

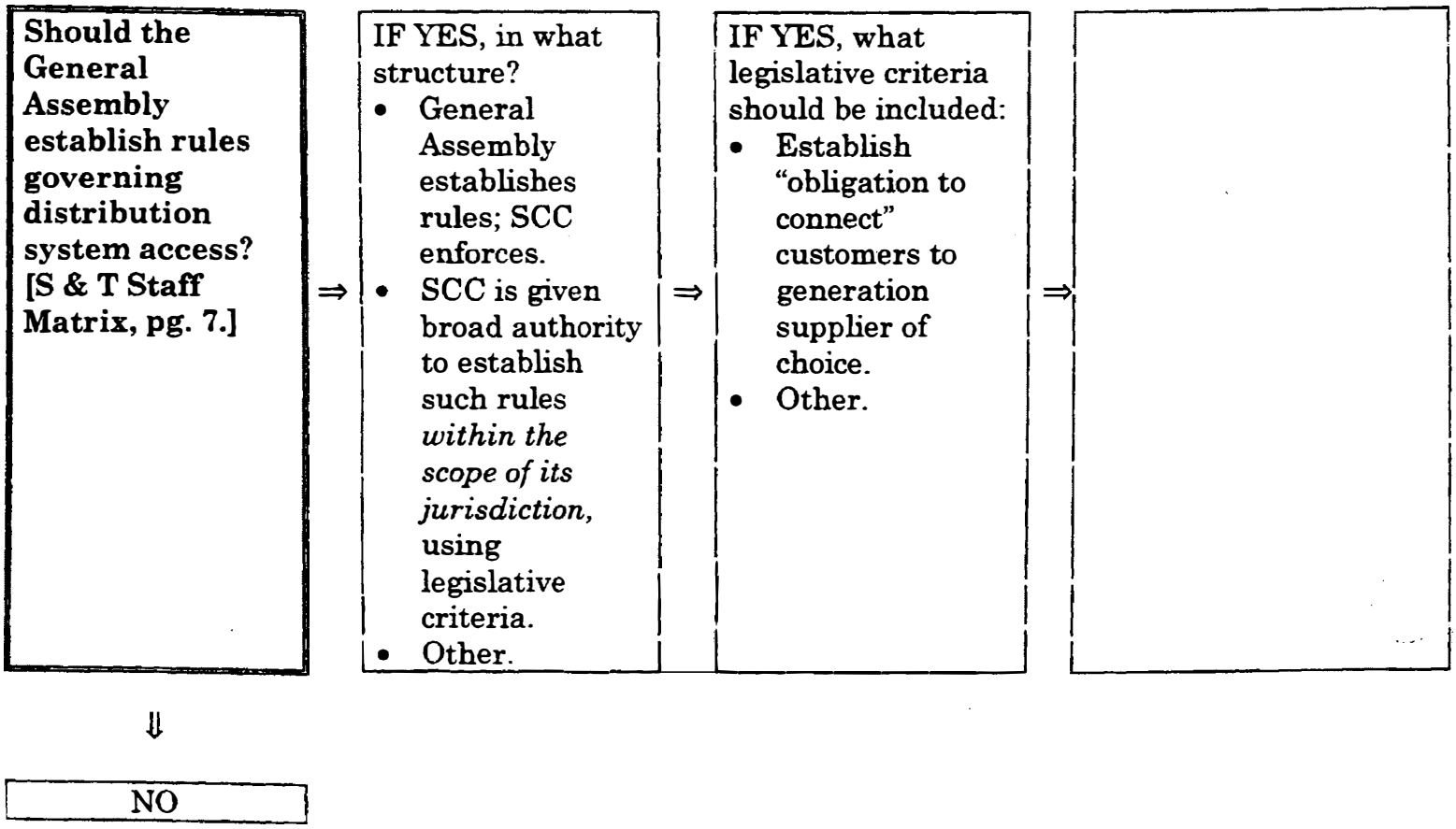
NO

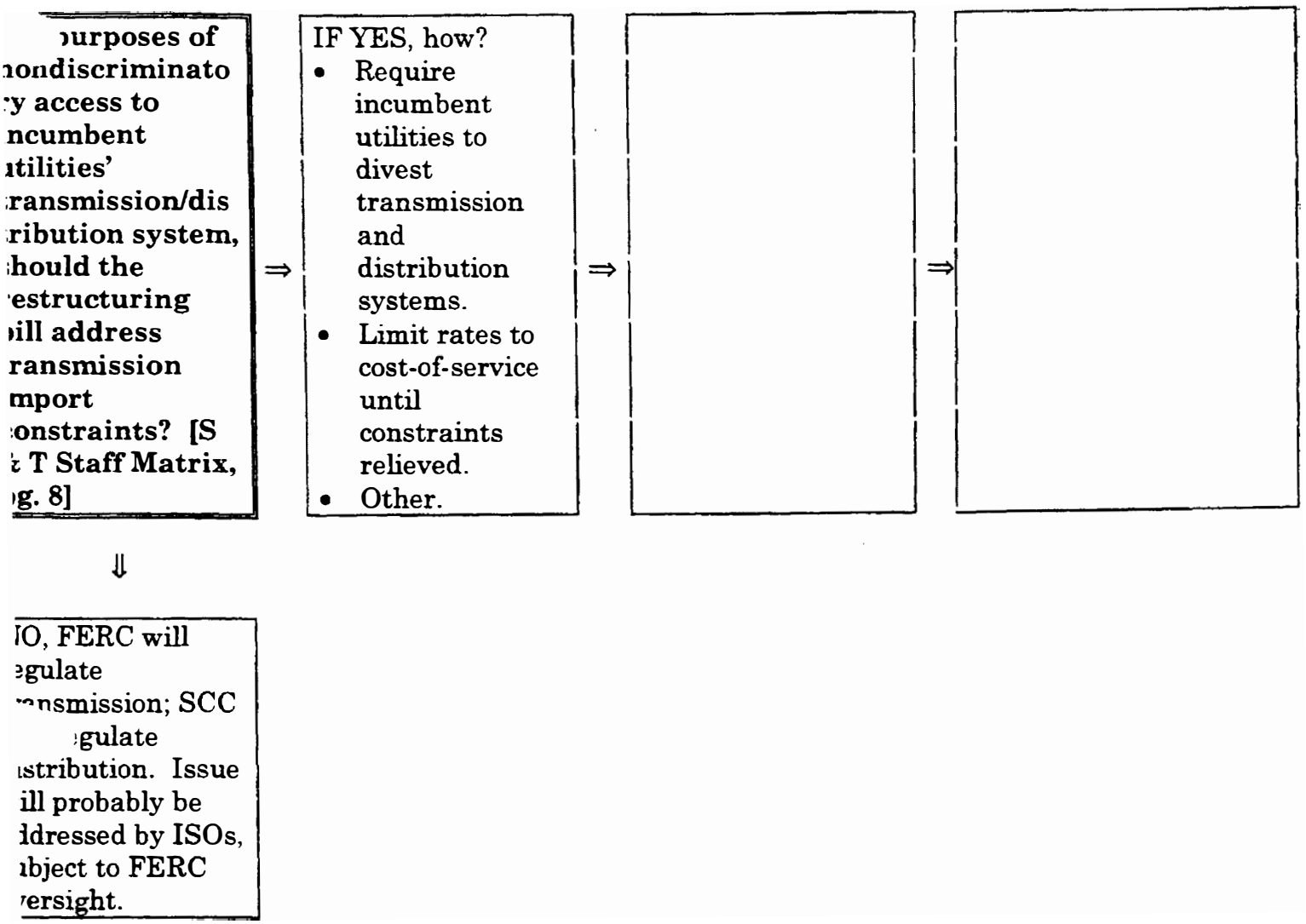
...ld pilot programs be incorporated into Virginia's transition to retail competition? [S & T Staff Matrix, pg. 7]	⇒	IF YES, under what authority? • Existing statutes & regulation administered by SCC (no need for new legislation on this issue). • New statutory scheme in restructuring bill. • Combination of the above. • Other.	⇒	IF PILOTS INCLUDED IN RESTRUCTURING BILL, HOW SHOULD PILOTS BE CONDUCTED: • Large-scale pilots overseen by SCC. • Pilots for residential and small business customers, emphasizing emissions disclosures. • Emphasis on date development; deemphasis on pricing information. • Other.	⇒	•

⇓

NO

56-580. Nondiscriminatory access to transmission and distribution system.




urposes of
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y access to
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ribution system,
hould the
estructuring
ill address
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mport
onstraints? [S
T Staff Matrix,
g. 8]
⇒
IF YES, how?
• Require incumbent utilities to divest transmission and distribution systems.
• Limit rates to cost-of-service until constraints relieved.
• Other.
⇒
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⇓
O, FERC will
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gulate
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56-581. Independent System Operators; roles and functions.

Should Virginia establish criteria ISOs must meet concerning their *governing boards,* before permitting incumbent utilities to join them? [S & T Staff Matrix, pg. 10].	⇒	IF YES, WHICH ONES? • Majority of board should have no financial stake in any ISO-controlled entity. • Board must be balanced between transmission-owning entities and other stakeholders. • Residential consumers should be on the governing board of any ISO. • Environmental interests must be represented on board. • If stakeholder board used, stakeholders must have an actual role in ISO governance. • Other.	⇒ •	⇒ •

⇓

NO

...uld Virginia establish public interest standards ISOs must meet before permitting incumbent utilities to join them? [S & T Staff Matrix, pg. 10.]	⇒	IF YES, which ones? • Give SCC authority to approve ISO participation on case-by-case basis, scrutinizing reliability, transmission constraints, and market power. • SCC can develop criteria. • Establish Virginia prototype ISO board to establish public interest criteria. • Address minimum ISO size. (matrix, pg. 11).	⇒	• ⇒ •

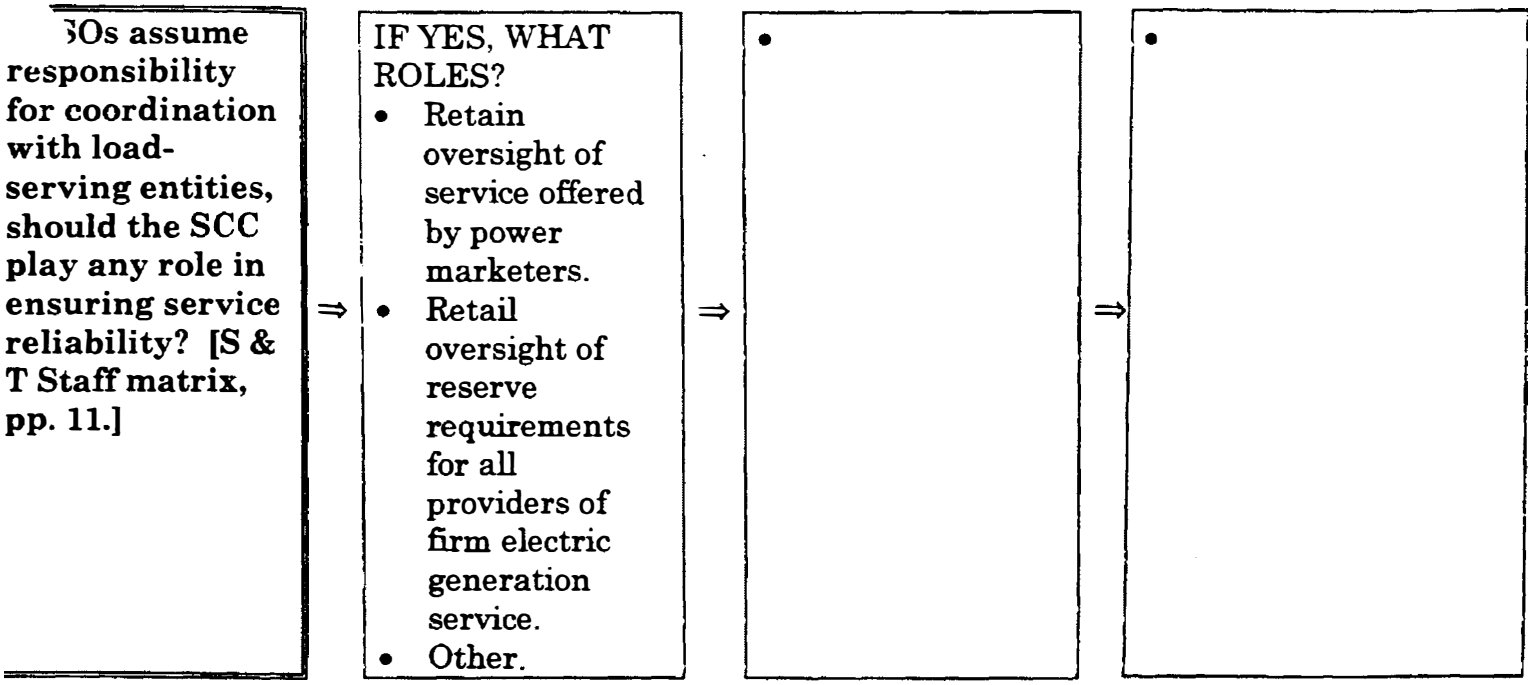
⇓

NO

Should the SCC retain any oversight of Virginia incumbent utilities participation in ISOs after incumbents join them? [S & T Staff Matrix, pg. 10.]	⇒	IF YES, to what extent? • SCC can intervene in FERC proceedings concerning such ISOs. • SCC can assert influence through it authority over transmission line siting. • SCC should have authority to determine whether a utility may continue in an ISO when an ISO's structure or operation changes. • SCC should have rate regulation authority over "must run" units until competition eliminates needs for price regulation (matrix, pg. 11. 14) • Other.	⇒	• ⇒ •

⇓

NO


SOs assume responsibility for coordination with load-serving entities, should the SCC play any role in ensuring service reliability? [S & T Staff matrix, pp. 11.]
IF YES, WHAT ROLES?
• Retain oversight of service offered by power marketers.
• Retail oversight of reserve requirements for all providers of firm electric generation service.
• Other.
•
•
NO

Incumbent utilities' transmission assets are subject to ISO control and FERC oversight, should Virginia's laws governing eminent domain and rights of condemnation be modified to reflect that development.? [Staff matrix pg. 12, 15]	⇒ IF YES, how? • Permit transmission owner to exercise *at the direction of an ISO.* • Continue to apply current law to transmission and distribution; after transition to competition, however, treat future generation as any other new manufacturing facility. • Keep current structure in place, but consider regional needs in siting. • Other.	⇒	⇒

⇓

NO

56-582. Regional Power Exchanges.

Should Virginia's restructuring bill mandate power suppliers' participation in an RPX? [S & T Staff Matrix, pg. 12]

⇒

IF YES, what RPX-related issues could/should be addressed in legislation:

- Whether RPX should conform to a public interest standard (matrix, pg. 12)
- Whether bilateral contracts should be permitted between suppliers and customers; RPX use not mandatory (matrix, pg. 13).
- Whether the SCC should be directed to closely monitor RPX operations, and exert influence over these operations.
- Whether the participation by electric cooperatives and municipal power suppliers should be optional (matrix, pg. 14)
- Other.

⇒

⇒

⇓

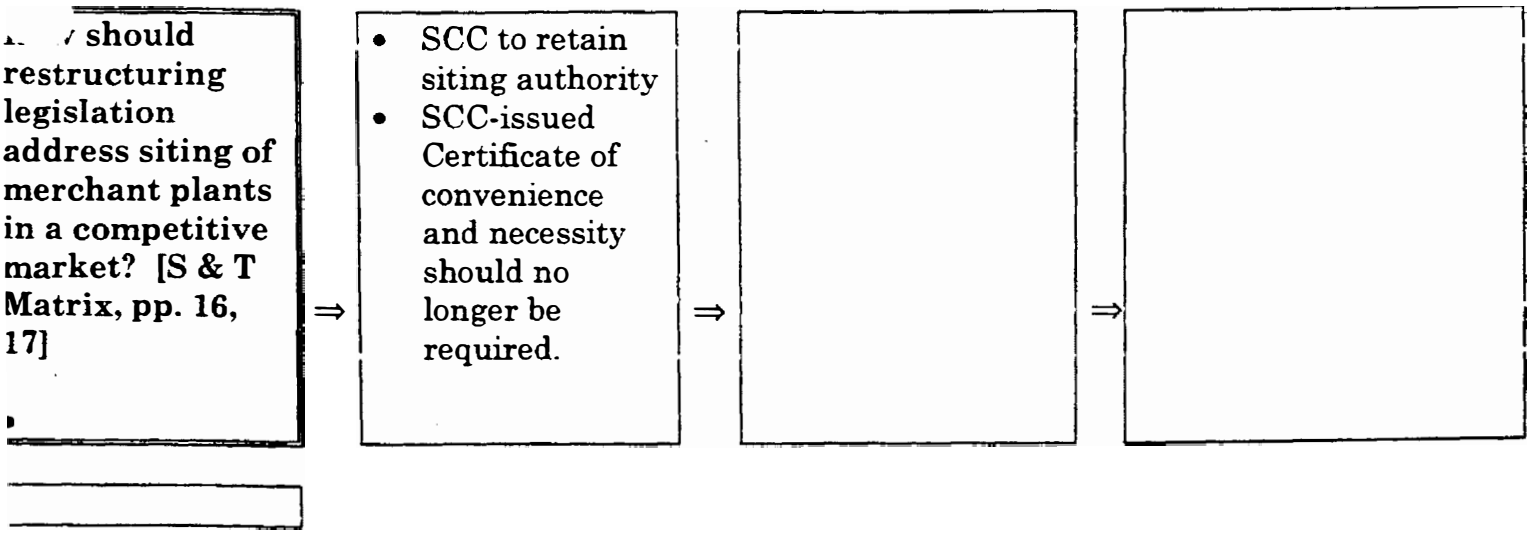
NO

§ 56-583. Transmission and Distribution of Electric Energy.

Should Virginia's restructuring legislation seek to address parity between incumbent and new entrants concerning access to transmission distribution systems? [S & T Staff Matrix, pg. 15]	⇒ IF YES, in what manner? • SCC should be directed to develop codes of conduct governing incumbent utility relations (concerning distribution) between affiliated and nonaffiliated suppliers of generation services.. • Other.	⇒	⇒

⇓

NO


should restructuring legislation address siting of merchant plants in a competitive market? [S & T Matrix, pp. 16, 17]
⇒
• SCC to retain siting authority
• SCC-issued Certificate of convenience and necessity should no longer be required.
⇒
⇒

v should existing IOU, cooperative and Municipal Power System Distribution System Service territories be preserved in a restructured market? [S & T Staff Matrix, pg. 17]	⇒	• Incumbents' distribution service preserved as regulated services. • Municipal power systems' geographic service territories remain intact, *unless* the local government opts into a competitive market. • Consider possible consolidation in the future.	⇒	⇒

56-584. Regulation of rates subject to SCC jurisdiction.

In a restructured market, which electric services should be made competitive? [S & T Staff Matrix pg. 17]	⇒	• Generation supply only. • Generation, initially; SCC given authority to declare other services competitive at a future date. • Generation, metering, billing, and data management. • SCC to determine. • Other.	⇒		⇒	

[illegible]-585. Licensure of retail electric energy suppliers.

What licensing and financial standards should be applied to suppliers of electricity in Virginia following restructuring? S & T Staff Matrix, pp. 18, 19.	⇒	• SCC to have full authority over licensing, financial, technical and other requirements. • Suppliers should post bonds to ensure performance. • Suppliers should be required to prove access to generation. • Suppliers should be required to prove access to adequate reserves. • Suppliers should be required to meet minimum market conduct standards. • Suppliers should be required to prove financial responsibility. • Have SCC establish and enforce these standards. • Other.	⇒	⇒

6-586. Suppliers of last resort, default suppliers, and backstop providers.

Who should provide default, supplier of last resort, and emergency, or backstop service in a restructured market? [S & T Staff Matrix, pg. 19]	⇒	• Incumbent utilities should provide all three. • Distribution utilities should provide all three during transition period, then services could be made competitive. • Distribution entity should have supplier of last resort function; default providers should be established competitively. • One entity should provide all of these services; should be established competitively. • SCC should designate providers of last resort. • Other.	⇒		⇒	

§ 56-587. Voluntary Aggregation permitted [see Consumer, Environment & Education decision tree].

§ 56-588. Metering, billing and other distribution Services [addressed above in § 56-584].

§ 56-589. Consumer Protections and customer service; penalties [see Consumer, Environment & Education decision tree].

§ 56-590. Public purpose programs [see Consumer, Environment & Education decision tree].

§ 56-590.1. Environment. [see Consumer, Environment & Education decision tree].

§ 56-590.2. Energy Efficiency. [see Consumer, Environment & Education decision tree].

§ 56-590.3. Utility Worker protection. [See Consumer, Environment & Education decision tree].

§ 56-591. Transition Costs [developed on a per-issue basis].

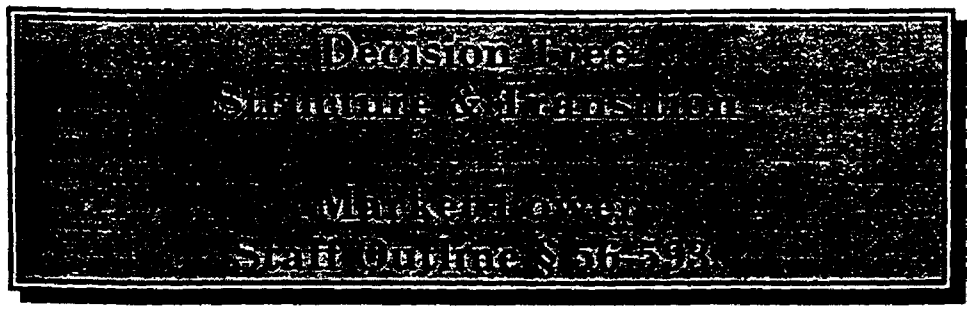
§ 56-591.1. Stranded Costs. [see Stranded Costs decision tree.].

§ 56-592. Nonbypassable wires charges.

To the extent, nonbypassable wires charges are used to assess customers for stranded costs and transition costs, should the General Assembly establish general criteria for their imposition? [Staff matrix, pp. 22, 23]	⇒ IF YES, what criteria: • Must be competitively neutral. • Must be absolutely nonbypassable. • Assessed on a cents-per-kilowatt-hour basis. • Residential and small business consumer must be protected from paying a disproportionate share of any such pro rata surcharges. • Customers should be given a buy-out option to ensure support for innovative generation options, e.g., distributed generation. • Other.	⇒	⇒

⇓

NO



§ 56-593. Divestitures, functional separation and other corporate relationships.

Should the General Assembly direct or encourage incumbent utilities to divest their generation in the interest of creating a competitive market? [S & T Staff Matrix, pg. 4]	⇒	IF YES, by what means? • Mandatory divestiture. • Voluntary Divestiture, only. • Neither prohibit nor require. • Give utilities incentives to divest their generation. • Give SCC authority to mandate divestiture if necessary to mitigate or eliminate market power. • Other.	⇒	IF YES, should any limitations be imposed on *voluntary* divestiture? • Should not be permitted on the part of utilities serving areas with transmission constraints. If permitted, sales price should be limited to book value, or below. • Other.	⇒	

⇓

NO

Should the General Assembly direct the functional separation of generation and distribution? [S & T Staff Matrix, pg. 25.]

⇒

IF YES, how?

- Require utilities to restructure into generation, transmission and distribution units.
- Prohibit cost-shifting between functionally separate units.
- Prohibit the functionally restructured entities from engaging in anticompetitive behavior, or self-dealing.
- Establish codes of conduct to address relations between functionally separate units.
- Other.

⇒

⇒

⇓

NO

Should the General Assembly address relationships between suppliers or distributors and their affiliates? [S & T Staff Matrix, pg. 25]	⇒	IF YES, in what way: • Establish Codes of conduct for affiliate transactions to prevent cross-subsidies among affiliated entities and discrimination by affiliated entities against nonafiliated entities. • Ensure that the provisions of existing antitrust laws are not by-passed under "state action" doctrine. • Other.	⇒	⇒

⇓

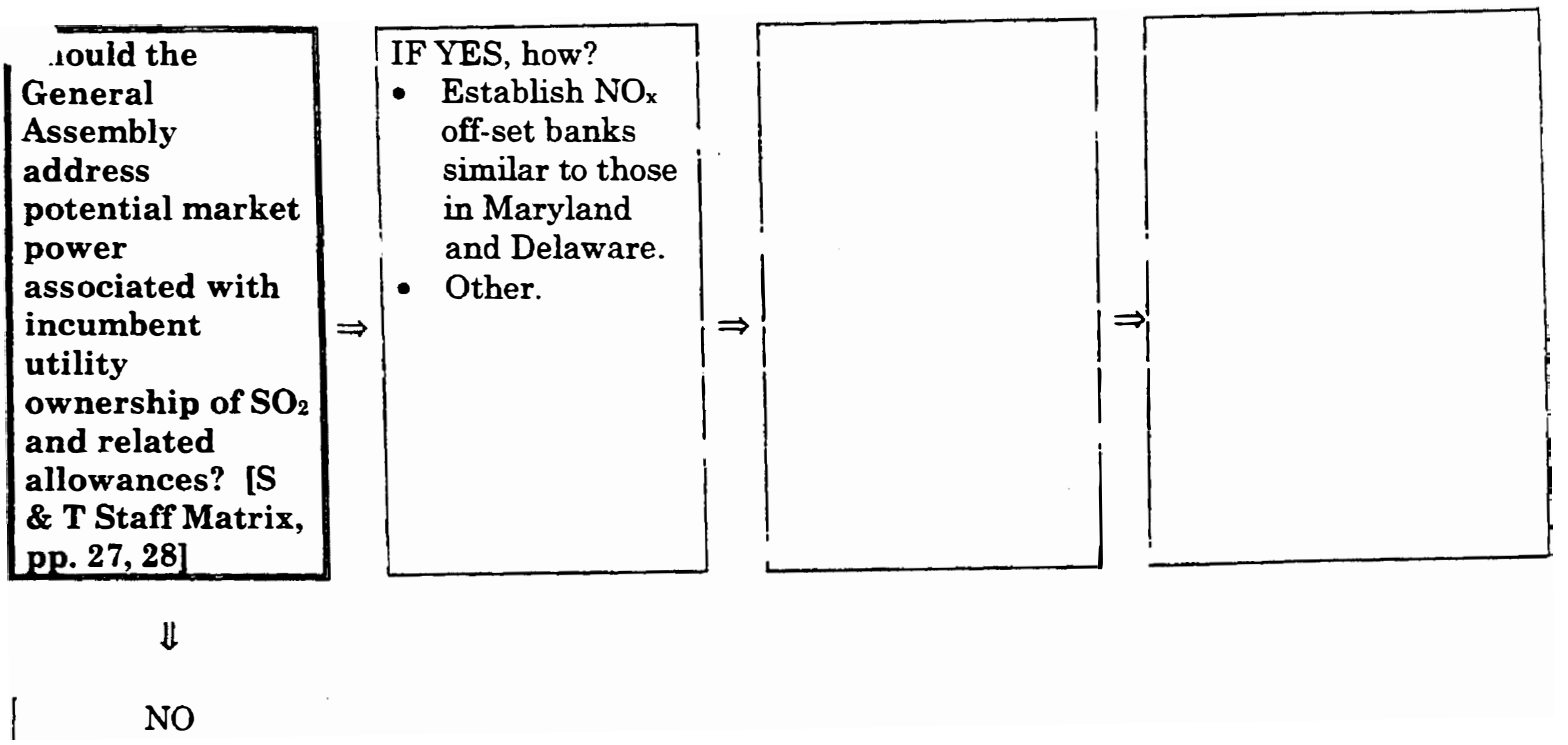
NO

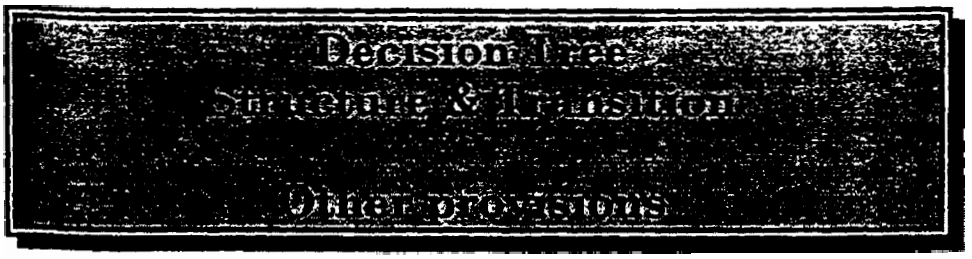
...ow should the General Assembly address the trend toward mergers and acquisitions in the electric utility industry, as part of Virginia's restructuring? [S & T Staff Matrix, pg. 25]	⇒ • Impose no moratorium, at this time. • Rely on current oversight structure, e.g., SCC, FERC, NERC, Attorney General, U.S. Justice Department. • Encourage state and federal regulators to examine market power levels likely to develop in connection with proposed M & As. • Other.	⇒	⇒

[W]ould the General Assembly adopt legislation seeking to mitigate potential market power associated with existing generation? [S & T Staff Matrix, pp. 26, 27]	⇒	IF YES, how? • Encourage construction of merchant plants. • Encourage construction of distributed generation. • Regulate rates of generation sold in transmission-constrained areas. • Authorize the SCC to order divestiture (discussed in 56-593) • Develop licensing scheme for unused space at existing generation sites (staff matrix, pg. 27) • SCC to monitor potential market power associated with the development of incremental generation at existing generation sites. (staff matrix, pg. 27) • Other.	⇒	⇒

⇓

NO


.ıould the General Assembly address potential market power associated with incumbent utility ownership of SO_2 and related allowances? [S & T Staff Matrix, pp. 27, 28]
IF YES, how?
• Establish NO_x off-set banks similar to those in Maryland and Delaware.
• Other.
NO



§ 56-594. Legislative Transition Task Force established.

Should the General Assembly establish a legislative transition task force in connection with the enacting of comprehensive r ructuring egislation? [S & Staff Matrix, p. 26.]	⇒	IF YES, how would it be established and operated? • Continue the current joint subcommittee. • Utilize any such oversight body during the transition to retail competition.. • Task force should work collaboratively with the SCC. • Other.	⇒	⇒

⇓

NO

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Restructuring Issue	SCC	ALERT	Va. Committee	Va.Pwr.	AEP-Va.	Allegheny	Co-ops.	MEPAV	Wash. Gas	CNG	AOBA	SELC	VCAP	AARP	VCCC
56-578; Municipalities; applicability.		Munis should be exempt from retail competition unless they sell (i) outside municipal supply territory (ii) through an RPX, or (iii) to a supplier/distributor of electricity.		Munis should be permitted to opt in to retail competition; reciprocity required if they sell outside their systems.	Munis should be permitted to opt in to retail competition, should not be permitted to sell outside their system, if they deny retail choice to their current customers.	Munis should be treated like any other electric utility. However, if exempted from restructuring plan, reciprocity must be required if they sell outside their systems	Munis should be permitted to opt in to retail competition; reciprocity required if they sell outside their systems	Munis should be permitted to opt in to retail competition; reciprocity required if they sell outside their systems.	Munis should be allowed to market their generation capacity to all customers, if their service territory is open to competition.	.....	Munis should exit from the electric generation and power sale business, unless they can provide services at rates below market. Muni customer should have same retail choice options as IOU customers.	.....	Local governments could help aggregate their residents	Municipalities should determine whether they want to participate in a competitive electric marketplace. However, if they do decide to participate, they should be required to allow their customers to have a choice of electric supplier.	
56-579; Schedule for transition;	~~Legislation defining SCC responsibilities should cover three areas: (i) defining competitive areas, (ii) establishing contingency provisions if prerequisites for choice not in place by legislative deadlines, and (iii) maintaining protective measures, e.g., regulated~~					Three year phase-in. Five year rate freeze corresponding to length of CTC recovery.									

1 9/21/98 Redraft of Structure & Transition Staff Matrix with comments of stakeholders and interested parties.

CHAPTER 411

An Act to amend the Code of Virginia by adding in Title 56 a chapter numbered 23, consisting of sections numbered 56-576 through 56-595, relating to the Virginia Electric Utility Restructuring Act.

[S 1269]

Approved March 25, 1999

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 56 a chapter numbered 23, consisting of sections numbered 56-576 through 56-595, as follows:

CHAPTER 23.

VIRGINIA ELECTRIC UTILITY RESTRUCTURING ACT.

§ 56-576. Definitions.

As used in this chapter:

"Affiliate" means any person that controls, is controlled by, or is under common control with an electric utility.

"Aggregator" means a person licensed by the Commission that purchases or arranges for the purchase of electric energy as an agent or intermediary for sale to, or on behalf of, two or more retail customers.

"Commission" means the State Corporation Commission.

"Cooperative" means a utility formed under or subject to Chapter 9 (§ 56-209 et seq.) of this title.

"Covered entity" means a provider in the Commonwealth of an electric service not subject to competition but shall not include default service providers.

"Covered transaction" means an acquisition, merger, or consolidation of, or other transaction involving stock, securities, voting interests or assets by which one or more persons obtains control of a covered entity.

"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase electric energy from any supplier licensed and seeking to sell electric energy to that customer.

"Distribute," "distributing" or "distribution of" electric energy means the transfer of electric energy through a retail distribution system to a retail customer.

"Distributor" means a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.

"Electric utility" means any person that generates, transmits, or distributes electric energy for use by retail customers in the Commonwealth, including any investor-owned electric utility, cooperative electric utility, or electric utility owned or operated by a municipality.

"Generate," "generating," or "generation of" electric energy means the production of electric energy.

"Generator" means a person owning, controlling, or operating a facility that produces electric energy for sale.

"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.

"Independent system operator" means a person that may receive or has received, by transfer pursuant to this chapter, any ownership or control of, or any responsibility to operate, all or part of the transmission systems in the Commonwealth.

"Market power" means the ability to impose on customers a significant and nontransitory price increase on a product or service in a market above the price level which would prevail in a competitive market.

"Municipality" means a city, county, town, authority or other political subdivision of the Commonwealth.

"Period of transition to customer choice" means the period beginning on January 1, 2002, and ending on January 1, 2004, unless otherwise extended by the Commission pursuant to this chapter,

during which the Commission and all electric utilities authorized to do business in the Commonwealth shall implement customer choice for retail customers in the Commonwealth.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Retail customer" means any person that purchases retail electric energy for its own consumption at one or more metering points or nonmetered points of delivery located in the Commonwealth.

"Retail electric energy" means electric energy sold for ultimate consumption to a retail customer.

"Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who offers to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but it does not mean a generator that produces electric energy exclusively for its own consumption or the consumption of an affiliate.

"Supply" or "supplying" electric energy means the sale of or the offer to sell electric energy to a retail customer.

"Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric energy through the Commonwealth's interconnected transmission grid from a generator to either a distributor or a retail customer.

"Transmission system" means those facilities and equipment that are required to provide for the transmission of electric energy.

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

A. The transition to retail competition for the purchase and sale of electric energy shall be implemented as follows:

1. On or before January 1, 2001, 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. On and after January 1, 2002, retail customers of electric energy within the Commonwealth shall be permitted to purchase energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth during and after the period of transition to retail competition, subject to the following:

a. The Commission shall establish a phase-in schedule for customers by class, and by percentages of class, to ensure that by January 1, 2004, all retail customers are permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth.

b. The Commission shall also ensure that residential and small business retail customers are permitted to select suppliers in proportions at least equal to that of other customer classes permitted to select suppliers during the period of transition to retail competition.

3. On and after January 1, 2002, the generation of electric energy shall no longer be subject to regulation under this title, except as specified in this chapter.

4. On and after January 1, 2004, 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.

B. The Commission may delay or accelerate the implementation of any of the provisions of this section, subject to the following:

1. Any such delay or acceleration shall be based on considerations of reliability, safety, communications or market power; and

2. Any such delay shall be limited to the period of time required to resolve the issues necessitating the delay, but in no event shall any such delay extend the implementation of customer choice for all customers beyond January 1, 2005.

The Commission shall, within a reasonable time, report to the General Assembly, or any legislative entity monitoring the restructuring of Virginia's electric industry, any such delays and the reasons therefor.

C. Except as may be otherwise provided in this chapter, prior to and during the period of transition to retail competition, the Commission may conduct pilot programs encompassing retail customer choice of electric energy suppliers, consistent with its authority otherwise provided in this

title and the provisions of this chapter.

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

§ 56-578. Nondiscriminatory access to transmission and distribution system.

A. All distributors shall have the obligation to connect any retail customer, including those using distributed generation, located within its service territory to those facilities of the distributor that are used for delivery of retail electric energy, subject to Commission rules and regulations and approved tariff provisions relating to connection of service.

B. Except as otherwise provided in this chapter, every distributor shall provide distribution service within its service territory on a basis which is just, reasonable, and not unduly discriminatory to suppliers of electric energy, including distributed generation, as the Commission may determine. The distribution services provided to each supplier of electric energy shall be comparable in quality to those provided by the distribution utility to itself or to any affiliate. The Commission shall establish rates, terms and conditions for distribution service under Chapter 10 (§ 56-232 et seq.) of this title.

C. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. The Commission shall determine questions about the ability of specific equipment to meet interconnection standards.

D. The Commission shall consider developing expedited permitting processes for small generation facilities of fifty megawatts or less. The Commission shall also consider developing a standardized permitting process and interconnection arrangements for those power systems less than 500 kilowatts which have demonstrated approval from a nationally recognized testing laboratory acceptable to the Commission.

E. Upon the separation and deregulation of the generation function and services of incumbent electric utilities, the Commission shall retain jurisdiction over utilities' electric transmission function and services, to the extent not preempted by federal law. Nothing in this section shall impair the Commission's authority under §§ 56-46.1, 56-46.2, and 56-265.2 with respect to the construction of electric transmission facilities.

F. If the Commission determines that increases in the capacity of the transmission systems in the Commonwealth, or modifications in how such systems are planned, operated, maintained, used, financed or priced, will promote the efficient development of competition in the sale of electric energy, the Commission may, to the extent not preempted by federal law, require one or more persons having any ownership or control of, or responsibility to operate, all or part of such transmission systems to:

1. Expand the capacity of transmission systems;

2. File applications and tariffs with the Federal Energy Regulatory Commission (FERC) which (i) make transmission systems capacity available to retail sellers or buyers of electric energy under terms and conditions described by the Commission and (ii) require owners of generation capacity located in the Commonwealth to bear an appropriate share of the cost of transmission facilities, to the extent such cost is attributable to such generation capacity;

3. Enter into a contract with, or provide information to, a regional transmission entity; or

4. Take such other actions as the Commission determines to be necessary to carry out the purposes of this chapter.

G. If the Commission determines, after notice and opportunity for hearing, that a person has or will have, as a result of such person's control of electric generating capacity or energy within a transmission constrained area, market power over the sale of electric generating capacity or energy to retail customers located within the Commonwealth, the Commission may, to the extent not preempted by federal law and to the extent that the Commission determines market power is not adequately mitigated by rules and practices of the applicable regional transmission entity having responsibility for management and control of transmission assets within the Commonwealth, adjust such person's rates for such electric generating capacity or energy, only within such transmission-constrained area and only to the extent necessary to protect retail customers from such

market power. Such rates shall remain regulated until the Commission, after notice and opportunity for hearing, determines that the market power has been mitigated.

§ 56-579. Regional transmission entities.

A. As set forth in § 56-577, on or before January 1, 2001, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity (RTE) to which such utility shall transfer the management and control of its transmission assets, subject to the following:

1. No such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth without obtaining the prior approval of the Commission, as hereinafter provided.

2. The Commission shall develop rules and regulations under which any such incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, may transfer all or part of such control, ownership or responsibility to an RTE, upon such terms and conditions that the Commission determines will:

a. Promote:

(1) Practices for the reliable planning, operating, maintaining, and upgrading of the transmission systems and any necessary additions thereto; and

(2) Policies for the pricing and access for service over such systems, which are safe, reliable, efficient, not unduly discriminatory and consistent with the orderly development of competition in the Commonwealth;

b. Be consistent with lawful requirements of the Federal Energy Regulatory Commission;

c. Be effectuated on terms that fairly compensate the transferor;

d. Generally promote the public interest, and are consistent with (i) ensuring the successful development of interstate regional transmission entities and (ii) meeting the transmission needs of electric generation suppliers both within and without this Commonwealth.

B. The Commission shall also adopt rules and regulations, with appropriate public input, establishing elements of regional transmission entity structures essential to the public interest, which elements shall be applied by the Commission in determining whether to authorize transfer of ownership or control from an incumbent electric utility to a regional transmission entity.

C. The Commission shall, to the fullest extent permitted under federal law, participate in any and all proceedings concerning regional transmission entities furnishing transmission services within the Commonwealth, before the Federal Energy Regulatory Commission. Such participation may include such intervention as is permitted state utility regulators under FERC rules and procedures.

D. Nothing in this section shall be deemed to abrogate or modify:

1. The Commission's authority over transmission line or facility construction, enlargement or acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ 56-265.1 et seq.) of this title;

2. The laws of this Commonwealth concerning the exercise of the right of eminent domain by a public service corporation pursuant to the provisions of Article 5 (§ 56-257 et seq.) of Chapter 10 of this title; however, on and after January 1, 2002, the right of eminent domain may not be exercised in conjunction with the construction or enlargement of any utility facility whose purpose is the generation of electric energy; or

3. The Commission's authority over retail electric energy sold to retail customers within the Commonwealth by licensed suppliers of electric service, including necessary reserve requirements, all as specified in § 56-587.

E. For purposes of this section, transmission capacity shall not include capacity that is primarily operated in a distribution function, as determined by the Commission, taking into consideration any binding federal precedents.

F. On or after January 1, 2002, the Commission shall report to the Legislative Transition Task Force its assessment of the success in the practices and policies of the RTE facilitating the orderly development of competition in the Commonwealth.

§ 56-580. Transmission and distribution of electric energy.

A. The Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution or transmission services, to the extent necessary to prevent impairment of competition.

D. The Commission may permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Nothing in this chapter shall impair the Commission's existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

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, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer outside the geographic area that was served by such municipality as of July 1, 1999.

§ 56-581. Regulation of rates subject to Commission's jurisdiction.

A. Subject to the provisions of § 56-582, the Commission shall regulate the rates for the transmission of electric energy, to the extent not prohibited by federal law, and for the distribution of electric energy to such retail customers on an unbundled basis, but, subject to the provisions of this chapter after the date of customer choice, the Commission no longer shall regulate rates and services for the generation component of retail electric energy sold to retail customers.

B. No later than September 1, 1999, and annually thereafter, the Commission shall submit a report to the General Assembly evaluating the advantages and disadvantages of competition for metering, billing and other services which have not been made subject to competition, and making recommendations as to when, and for whom, such other services should be made subject to competition.

C. Beginning July 1, 1999, and thereafter, no cooperative that was a member of a power supply cooperative on January 1, 1999, shall be obligated to file any rate rider as a consequence of an increase or decrease in the rates, other than fuel costs, of its wholesale supplier, nor must any adjustment be made to such cooperative's rates as a consequence thereof.

D. Except for the provision of default services under § 56-585 or emergency services in § 56-586, nothing in this chapter shall authorize the Commission to regulate the rates or charges for electric service to the Commonwealth and its municipalities.

§ 56-582. Rate caps.

A. The Commission shall establish capped rates, effective January 1, 2001, and expiring on July 1, 2007, for each service territory of every incumbent utility as follows:

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

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

3. The capped rates established under this section shall be the rates in effect for each incumbent utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a

rate application filed by an incumbent electric utility with the Commission prior to January 1, 2001, and subsequently approved by the Commission, and made by an incumbent electric utility that is not currently bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002. The Commission shall act upon such applications prior to commencement of the period of transition to customer choice, and capped rates determined pursuant to such applications shall become effective on January 1, 2001. Such rate application and the Commission's approval shall give due consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for a period of time ending as late as July 1, 2007. The capped rates established under this section, which include rates, tariffs, electric service contracts, and rate programs (including experimental rates, regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs of each incumbent electric utility, provided that experimental rates and rate programs may be closed to new customers upon application to the Commission.

B. The Commission may adjust such capped rates in connection with (i) utilities' recovery of fuel costs pursuant to § 56-249.6, (ii) any changes in the taxation by the Commonwealth of incumbent electric utility revenues, (iii) any financial distress of the utility beyond its control, (iv) respect to cooperatives that were not members of a power supply cooperative on January 1, 1999, and as long as they do not become members, their cost of purchased wholesale power, and (v) respect to cooperatives that were members of a power supply cooperative on January 1, 1999, their recovery of fuel costs, through the wholesale power cost adjustment clauses of their tariffs pursuant to § 56-226. Notwithstanding the provisions of § 56-249.6, the Commission may authorize tariffs that include incentives designed to encourage an incumbent electric utility to reduce its fuel costs by permitting retention of a portion of cost savings resulting from fuel cost reductions or by other methods determined by the Commission to be fair and reasonable to the utility and its customers.

C. A utility may petition the Commission to terminate the capped rates to all customers anytime after January 1, 2004, and such capped rates may be terminated upon the Commission finding of an effectively competitive market for generation services within the service territory of that utility. If the capped rates are continued after January 1, 2004, an incumbent electric utility which is not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002, may petition the Commission for approval of a one-time change in the nongeneration components of such rates.

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

E. During the period when capped rates are in effect for an incumbent electric utility, such utility may file with the Commission a plan describing the method used by such utility to assure full funding of its nuclear decommissioning obligation and specifying the amount of the revenues collected under either the capped rates, as provided in this section, or the wires charges, as provided in § 56-583, that are dedicated to funding such nuclear decommissioning obligation under the plan. The Commission shall approve the plan upon a finding that the plan is not contrary to the public interest.

§ 56-583. Wires charges.

A. To provide the opportunity for competition and consistent with § 56-584, the Commission shall establish wires charges for each incumbent electric utility, effective upon the commencement of customer choice, which shall be the sum (i) of the difference between the incumbent utilities' capped unbundled rates for generation and projected market prices for generation, as determined by the Commission, and (ii) any transition costs incurred by the incumbent electric utility determined by the Commission to be just and reasonable; however, the sum of such wires charges, the unbundled charge for transmission and ancillary services, the applicable distribution rates established by the Commission and the above projected market prices for generation shall not exceed the capped rates established under § 56-582 A 1 applicable to such incumbent electric utility. The Commission shall adjust such wires charges not more frequently than annually and shall seek to coordinate adjustments

of wires charges with any adjustments of capped rates pursuant to § 56-582.

B. Customers that choose suppliers of electric energy, other than the incumbent utility, or are subject to default service, prior to the expiration of the period for capped rates, as provided for in § 56-582, shall pay a wires charge determined pursuant to subsection A based upon actual usage of electricity distributed by the incumbent utility to the customer during the period from the time it chooses a supplier of electric energy other than the incumbent electric utility, until capped rates expire or are terminated, as provided in § 56-582.

C. The Commission shall permit any customer, at its option, to pay the wires charges owed to an incumbent electric utility on an accelerated or deferred basis upon a finding that such method is not (i) prejudicial to the incumbent electric utility or its ratepayers or (ii) inconsistent with the development of effective competition, provided, however, that all deferred wires charges shall be paid in full by July 1, 2007.

D. A supplier of retail electric energy may pay any or all of the wires charge owed by any customer to an incumbent electric utility. The supplier may not only pay such wires charge on behalf of any customer, but also contract with any customer to finance such payments. Further, on request of a supplier, the incumbent electric utility shall enter into a contract allowing such supplier to pay such wires charge on an accelerated or deferred basis. Such contract shall contain terms and conditions, specified in rules and regulations promulgated by the Commission to implement the provisions of this subsection, that fully compensate the incumbent electric utility for such wires charge, including reasonable compensation for the time value of money.

§ 56-584. Stranded costs.

Just and reasonable net stranded costs, to the extent that they exceed zero value in total for the incumbent electric utility, shall be recoverable by each incumbent electric utility provided each incumbent electric utility shall only recover its just and reasonable net stranded costs through either capped rates as provided in § 56-582 or wires charges as provided in § 56-583. To the extent not preempted by federal law, the establishment by the Commission of wires charges for any distribution cooperative shall be conditioned upon such cooperative entering into binding commitments by which it will pay to any power supply cooperative of which such distribution cooperative is or was a member, as compensation for such power supply cooperative's stranded costs, all or part of the proceeds of such wires charges, as determined by the Commission.

§ 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 date of customer choice for all retail customers 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. The Commission shall designate the providers of default service. In doing so, the Commission:

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

2. May, upon a finding that the public interest will be served, designate one or more willing 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; and

3. In the absence of a finding under subdivision 2, may require an incumbent electric utility or distribution utility to provide 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 which are fairly compensatory to the utility and which reflect any cost of energy prudently procured, including energy procured from the competitive market; however, the Commission may not require an incumbent electric utility or distribution utility, or affiliate thereof, to provide any such services outside the territory in which such utility provides service.

C. The Commission shall, after notice and opportunity for hearing, determine the rates, terms and

conditions for such services consistent with the provisions of subdivision B 3 and Chapter 10 (§ 56-232 et seq.) of this title and shall establish such requirements for providers and customers as it finds necessary to promote the reliable and economic provision of such services and to prevent the inefficient use of such services. The Commission may use any rate method that promotes the public interest and may establish different rates, terms and conditions for different classes of customers.

D. 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.

E. 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. 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.

§ 56-586. Emergency service provider.

On and after January 1, 2001, if any supplier fails to fulfill an obligation, resulting in the failure of retail electric energy to be delivered into the control area serving the supplier's retail customer, the entity fulfilling the control area function, or, if applicable, the regional transmission entity or other entity as designated by the Commission, shall be responsible for charging the defaulting supplier for the full cost of replacement energy, including the cost of energy, the cost incurred by others as a result of the default, and the assessment of penalties as may be approved either by the Commission, to the extent not precluded by federal law, or by the Federal Energy Regulatory Commission. The Commission, as part of the rules established under § 56-587, shall determine the circumstances under which failures to deliver electricity will result in the revocation of the supplier's license.

§ 56-587. Licensure of retail electric energy suppliers.

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. A license shall not be required solely for the leasing or financing of property used in the sale of electricity to any retail customer in the Commonwealth.

The license shall authorize that person to engage in the activities authorized by such license until the license expires or is otherwise terminated, suspended or revoked.

B. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (ii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iii) pay an annual license fee to be determined by the Commission; and (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including but not limited to requirements that such person demonstrate (i) technical capabilities as the Commission may deem appropriate; (ii) access to generation and generation reserves; and (iii) adherence to minimum market conduct standards. Any license issued by the Commission pursuant to this section may be conditioned upon the licensee furnishing to the Commission prior to the provision of electric energy to consumers proof of adequate access to generation and generation reserves.

C. 1. The Commission shall establish a reasonable period within which any retail customer may cancel, without penalty or cost, any contract entered into with a supplier licensed pursuant to this section.

2. The Commission may adopt other rules and regulations governing the requirements for

obtaining, retaining, and renewing a license to supply electric energy to retail customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements.

D. Notwithstanding the provisions of § 13.1-620, a public service company may, through an affiliate or subsidiary, conduct one or more of the following businesses, even if such business is not related to or incidental to its stated business as a public service company: (i) become licensed as a retail electric energy supplier pursuant to this section, or for purposes of participation in an approved pilot program encompassing retail customer choice of electric energy suppliers; (ii) become licensed as an aggregator pursuant to § 56-588, or for purposes of participation in an approved pilot program encompassing retail customer choice of electric energy suppliers; or (iii) own, manage or control any plant or equipment or any part of a plant or equipment used for the generation of electric energy.

§ 56-588. Licensing of aggregators.

A. As a condition of doing business in the Commonwealth, each person seeking to aggregate electric energy within this Commonwealth on and after January 1, 2002, shall obtain a license from the Commission to do so. The license shall authorize that person to act as an aggregator until the license expires or is otherwise terminated, suspended or revoked. Licensing pursuant to this section, however, shall not relieve any person seeking to act as a supplier of electric energy from their obligation to obtain a license as a supplier pursuant to § 56-587.

B. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) provide background information; (ii) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (iii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iv) pay an annual license fee to be determined by the Commission; and (v) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including, but not limited to, requirements that such person demonstrate technical capabilities as the Commission may deem appropriate. Any license issued by the Commission pursuant to this section may be conditioned upon the licensee, if acting as a supplier, furnishing to the Commission prior to the provision of electricity to consumers proof of adequate access to generation and generation reserves.

C. In establishing aggregator licensing schemes and requirements applicable to the same, the Commission may differentiate between (i) those aggregators representing retail customers only, (ii) those aggregators representing suppliers only, and (iii) those aggregators representing both retail customers and suppliers.

D. 1. The Commission shall establish a reasonable period within which any retail customer may cancel, without penalty or cost, any contract entered into with a supplier licensed pursuant to this section.

2. The Commission may adopt other rules and regulations governing the requirements for obtaining, retaining, and renewing a license to aggregate electric energy to retail customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements.

§ 56-589. Municipal and state aggregation.

A. Counties, cities and towns (hereafter "municipalities") and other political subdivisions of the Commonwealth may, at their election and upon authorization by majority votes of their governing bodies, aggregate electrical energy and demand requirements for the purpose of negotiating the purchase of electrical energy requirements from any licensed supplier within this Commonwealth, as follows:

1. Any municipality or other political subdivision of the Commonwealth may aggregate the electric energy load of residential, commercial and industrial retail customers within its boundaries on a voluntary, opt-in basis in which each such customer must affirmatively select such municipality or other political subdivision as its aggregator. The municipality or other political subdivision may not earn a profit but must recover the actual costs incurred in such aggregation.

2. Any municipality or other political subdivision of the Commonwealth may aggregate the electric energy load of its governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy.

3. Two or more municipalities or other political subdivisions within this Commonwealth may aggregate the electric energy load of their governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy.

B. The Commonwealth, at its election, may aggregate the electric energy load of its governmental buildings, facilities, and any other government operations requiring the consumption of electric energy for the purpose of negotiating the purchase of electricity from any licensed supplier within this Commonwealth.

§ 56-590. Divestiture, functional separation and other corporate relationships.

A. The Commission shall not require any incumbent electric utility to divest itself of any generation, transmission or distribution assets pursuant to any provision of this chapter.

B. 1. The Commission shall, however, direct the functional separation of generation, retail transmission and distribution of all incumbent electric utilities in connection with the provisions of this chapter to be completed by January 1, 2002.

2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a plan for such functional separation which may be accomplished through the creation of affiliates, or through such other means as may be acceptable to the Commission.

3. Consistent with this chapter, the Commission may impose conditions, as the public interest requires, upon its approval of the incumbent electric utility's plan for functional separation, including requirements that (i) the incumbent electric utility's generation assets or their equivalent remain available for electric service during the capped rate period as provided in § 56-582 and, if applicable, during any period the incumbent electric utility serves as a default provider as provided for in § 56-585, and (ii) the incumbent electric utility receive Commission approval for the sale, transfer or other disposition of generation assets during the capped rate period and, if applicable, during any period the incumbent electric utility serves as a default provider.

C. The Commission shall, to the extent necessary to promote effective competition in the Commonwealth, promulgate rules and regulations to carry out the provisions of this section, which rules and regulations shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;

2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self-dealing;

3. Prohibiting affiliated entities from engaging in discriminatory behavior towards nonaffiliated units; and

4. Establishing codes of conduct detailing permissible relations between functionally separate units.

D. Neither a covered entity nor an affiliate thereof may be a party to a covered transaction without the prior approval of the Commission. Any such person proposing to be a party to such transaction shall file an application with the Commission. The Commission shall approve or disapprove such transaction within sixty days after the filing of a completed application; however, the sixty-day period may be extended by Commission order for a period not to exceed an additional 120 days. The application shall be deemed approved if the Commission fails to act within such initial or extended period. The Commission shall approve such application if it finds, after notice and opportunity for hearing, that the transaction will comply with the requirements of subsection E, and may, as a part of its approval, establish such conditions or limitations on such transaction as it finds necessary to ensure compliance with subsection E.

E. A transaction described in subsection D shall not:

1. Substantially lessen competition among the actual or prospective providers of noncompetitive electric service or of a service which is, or is likely to become, a competitive electric service; or

2. Jeopardize or impair the safety or reliability of electric service in the Commonwealth, or the provision of any noncompetitive electric service at just and reasonable rates.

F. Nothing in this chapter shall be deemed to abrogate or modify the Commission's authority under Chapter 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or 5 (§ 56-88 et seq.) of this title. However, any

person subject to the requirements of subsection D that is also subject to the requirements of Chapter 5 of this title may be exempted from compliance with the requirements of Chapter 5 of this title.

§ 56-591. Application of antitrust laws.

Nothing in this chapter shall be construed to exempt or immunize from punishment or prosecution, conduct violative of federal antitrust laws, or the antitrust laws of this Commonwealth.

§ 56-592. Consumer education and protection; Commission report to Legislative Task Force.

A. The Commission shall develop a consumer education program designed to provide the following information to retail customers during the period of transition to retail competition and thereafter:

1. Opportunities and options in choosing (i) suppliers and aggregators of electric energy and (ii) any other service made competitive pursuant to this chapter;

2. Marketing and billing information suppliers and aggregators of electric energy will be required to furnish retail customers;

3. Retail customers' rights and obligations concerning the purchase of electric energy and related services; and

4. Such other information as the Commission may deem necessary and appropriate in the public interest.

B. The Commission shall complete the development of the consumer education program described in subsection A, and report its findings and recommendations to the Legislative Transition Task Force on or before December 1, 1999, and as frequently thereafter as may be required by the Task Force concerning:

1. The scope of such recommended program consistent with the requirements of subsection A;

2. Materials and media required to effectuate any such program;

3. State agency and nongovernmental entity participation;

4. Program duration;

5. Funding requirements and mechanisms for any such program; and

6. Such other findings and recommendations the Commission deems appropriate in the public interest.

C. The Commission shall develop regulations governing marketing practices by public service companies, licensed suppliers, aggregators or any other providers of services made competitive by this chapter, including regulations to prevent unauthorized switching of suppliers, unauthorized charges, and improper solicitation activities. The Commission shall also establish standards for marketing information to be furnished by licensed suppliers, aggregators or any other providers of services made competitive by this chapter during the period of transition to retail competition, and thereafter, which information shall include standards concerning:

1. Pricing and other key contract terms and conditions;

2. To the extent feasible, fuel mix and emissions data on at least an annualized basis;

3. Customer's rights of cancellation following execution of any contract;

4. Toll-free telephone number for customer assistance; and

5. Such other and further marketing information as the Commission may deem necessary and appropriate in the public interest.

D. The Commission shall also establish standards for billing information to be furnished by public service companies, suppliers, aggregators or any other providers of services made competitive by this chapter during the period of transition to retail competition, and thereafter. Such billing information standards shall require that billing formation:

1. Distinguishes between charges for regulated services and unregulated services;

2. Itemizes any and all nonbypassable wires charges;

3. Is presented in a format that complies with standards to be established by the Commission;

4. Discloses, to the extent feasible, fuel mix and emissions data on at least an annualized basis; and

5. Includes such other billing information as the Commission deems necessary and appropriate in the public interest.

E. The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against public service companies, licensed suppliers, aggregators and other providers of any services made competitive under this chapter. Upon

the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of this chapter and to enjoin or punish any violations thereof pursuant to its authority under this chapter, this title, and under Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.

F. The Commission shall establish reasonable limits on customer security deposits required by public service companies, suppliers, aggregators or any other persons providing competitive services pursuant to this chapter.

§ 56-593. Retail customers' private right of action; marketing practices.

A. No entity subject to this chapter shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing, distributing or marketing electric service.

B. 1. Any person who suffers loss (i) as the result of marketing practices, including telemarketing practices, engaged in by any public service company, licensed supplier, aggregator or any other provider of any service made competitive under this chapter, and in violation of subsection C of § 56-592, including any rule or regulation adopted by the Commission pursuant thereto or (ii) as the result of any violation of subsection A, shall be entitled to initiate an action to recover actual damages, or $500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or $1,000, whichever is greater.

2. Upon referral from the Commission, the Attorney General, the attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court for relief of violations within the scope of (i) subsection C of § 56-592, including any rule or regulation adopted by the Commission pursuant thereto or (ii) subsection A.

C. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person, or any governmental agency initiating such action, also may be awarded reasonable attorney's fees and court costs.

D. Any action pursuant to this section shall be commenced within two years after its accrual. The cause of action shall accrue as provided in § 8.01-230. However, if the Commission initiates proceedings, or any other governmental agency files suit for the purpose of enforcing subsection A or the provisions of subsection C of § 56-592, the time during which such proceeding or governmental suit and all appeals therefrom is pending shall not be counted as any part of the period within which an action under this section shall be brought.

E. The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice violative of subsection A or subsection C of § 56-592, provided, that such person shall be identified by order of the court within 180 days from the date of any order permanently enjoining the unlawful act or practice.

F. In any case arising under this section, no liability shall be imposed upon any licensed supplier, aggregator or any other provider of any service made competitive under this chapter, who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of subsection A or subsection C of § 56-592 was an act or practice over which the same had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subsection C to individuals aggrieved as a result of an unintentional violation of subsection A or subsection C of § 56-592.

§ 56-594. Net energy metering provisions.

A. The Commission shall establish by regulation a program, to begin no later than July 1, 2000, which affords eligible customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners and/or operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; or (v) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such

requirements do not adversely affect the public interest.

B. For the purpose of this section:

"Eligible customer-generator" means a customer that owns and operates an electrical generating facility that (i) has a capacity of not more than ten kilowatts for residential customers and twenty-five kilowatts for nonresidential customers; (ii) uses as its total source of fuel solar, wind, or hydro energy; (iii) is located on the customer's premises; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements.

"Net energy metering" means measuring the difference, over the net metering period, between (i) electricity supplied to an eligible customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-generator.

"Net metering period" means the twelve-month period following the date of final interconnection of the eligible customer-generator's system with an electric service provider, and each twelve-month period thereafter.

C. The Commission's regulations shall ensure that the metering equipment installed for net metering shall be capable of measuring the flow of electricity in two directions, and shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's solar, wind or hydro electrical generating system shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in this section, a customer-generator whose solar, wind or hydro electrical generating system meets those standards and rules shall bear the reasonable cost, if any, as determined by the Commission, to (i) install additional controls, (ii) perform or pay for additional tests, or (iii) purchase additional liability insurance.

D. The Commission shall establish minimum requirements for contracts to be entered into by the parties to net metering arrangements. Such requirements shall protect the customer-generator against discrimination by virtue of its status as a customer-generator. Where electricity generated by the customer-generator over the net metering period exceeds the electricity consumed by the customer-generator, the customer-generator shall not be compensated for the excess electricity unless the entity contracting to receive such electric energy and the customer-generator enter into a power purchase agreement for such excess electricity. The net metering standard contract or tariff shall be available to eligible customer-generators on a first-come, first-served basis in each electric distribution company's Virginia service area until the rated generating capacity owned and operated by eligible customer-generators in the state reaches 0.1 percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year.

§ 56-595. Legislative Transition Task Force established.

A. The Legislative Transition Task Force is hereby established to work collaboratively with the Commission in conjunction with the phase-in of retail competition within the Commonwealth.

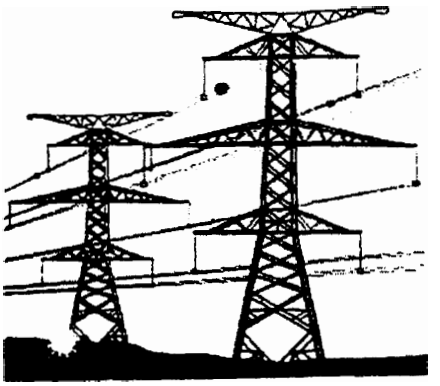
B. The Task Force shall consist of ten members, with six members from the House of Delegates and four members from the Senate. Appointments shall be made and vacancies filled by the Speaker of the House of Delegates in accordance with the principles of Rule 16 of the House of Delegates and the Senate Committee on Privileges and Elections, as appropriate.

C. The Task Force members shall be appointed to begin service on and after July 1, 1999, and shall continue to serve until July 1, 2005. They shall (i) monitor the work of the Virginia State Corporation Commission in implementing this chapter, receiving such reports as the Commission may be required to make pursuant thereto, including reviews, analysis, and impact on consumers of electric utility restructuring programs of other states; (ii) determine whether, and on what basis, incumbent electric utilities should be permitted to discount capped generation rates established pursuant to § 56-582; (iii) after the commencement of customer choice, monitor, with the assistance of the Commission, the Office of the Attorney General, incumbent electric utilities, suppliers, and retail customers, whether the recovery of stranded costs, as provided in § 56-584, has resulted or is likely to result in the overrecovery or underrecovery of just and reasonable net stranded costs; (iv) examine utility worker protection during the transition to retail competition; generation, transmission and distribution systems reliability concerns; energy assistance programs for low-income households;

renewable energy programs; and energy efficiency programs; and (v) annually report to the Governor and each session of the General Assembly during their tenure concerning the progress of each stage of the phase-in of retail competition, offering such recommendations as may be appropriate for legislative and administrative consideration in order to maintain the Commonwealth's position as a low-cost electricity market and ensuring that residential customers and small business customers benefit from competition.

D. There shall be established a Consumer Advisory Board effective July 1, 1999. The Consumer Advisory Board shall consist of seventeen members. The Senate Privileges and Elections Committee shall appoint six members. The Speaker of the House of Delegates shall appoint six members. The Governor shall appoint five members. Appointed members shall be from all classes of consumers and with geographical representation. The Consumer Advisory Board shall assist the Legislative Transition Task Force in its work as prescribed in this section, and on other issues as may be directed by the Legislative Transition Task Force.

SJR 91



Virginia General Assembly's Joint Subcommittee Studying Electric Utility Restructuring

This web site contains summaries of joint subcommittee and task force meetings, key materials presented at these meetings, and links to other important reports and documents relating to the study of electrical restructuring in the Commonwealth of Virginia.

Site last updated February 5, 1999.

NEW Senate Bill 1269 Substitute, adopted by the Utilities Subcommittee of the Senate Commerce & Labor Committee on February 4, 1999

Subcommittee Overview	**Senate Joint Resolution 91 (1998)**
Meeting Schedule	**House Bill 1172 (1998)**
Members and Staff	**Task Force Organization and Membership**

The following are summaries of joint subcommittee and task force meetings and documents presented at these meetings. (Some materials are made available in Portable Document Format. Before using PDF files, read the PDF file information page.)

MEETING SUMMARIES AND MATERIALS

Joint Subcommittee Meetings

Drafting Group Activities

Stranded Costs and Related Issues Task Force

Structure and Transition Task Force

Consumer, Environment and Education Task Force

Taxation Task Force

Links to other key reports and documents:

- SJR 118 (1997) Final Report (without appendices)
- SJR 259 (1998) Final Report (without appendices)

  For hard copy with appendices, contact the General Assembly bill room at (804) 786-6984.

- State Corporation Commission's Electric Industry Restructuring Reports
- Federal Comprehensive Electricity Competition Plan

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VIRGINIA ACTS OF ASSEMBLY -- 1999 RECONVENED SESSION

REENROLLED

CHAPTER 971

An Act to amend and reenact §§ 58.1-401, 58.1-402, 58.1-439.2, 58.1-504, 58.1-2600 through 58.1-2604, 58.1-2606, 58.1-2609, 58.1-2610, 58.1-2611, 58.1-2626, 58.1-2627, 58.1-2628, 58.1-2633, 58.1-2660, 58.1-2682, 58.1-3731 and 58.1-3814 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 58.1-400.2, 58.1-433.1, and 58.1-440.1 and by adding a chapter numbered 29, consisting of sections numbered 58.1-2900 through 58.1-2903, relating to electric utility taxation.

[S 1286]

Approved April 7, 1999

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-401, 58.1-402, 58.1-439.2, 58.1-504, 58.1-2600 through 58.1-2604, 58.1-2606, 58.1-2609, 58.1-2610, 58.1-2611, 58.1-2626, 58.1-2627, 58.1-2628, 58.1-2633, 58.1-2660, 58.1-2682, 58.1-3731 and 58.1-3814 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 58.1-400.2, 58.1-433.1, and 58.1-440.1 and by adding a chapter numbered 29, consisting of sections numbered 58.1-2900 through 58.1-2903, as follows:

§ 58.1-400.2. Taxation of electric suppliers.

A. Any electric supplier that is subject to income tax pursuant to the Internal Revenue Code of 1986, as amended, except those organized as cooperatives and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to the tax levied pursuant to § 58.1-400.

B. Any electric supplier that operates as a cooperative and is exempt from income tax pursuant to § 501 of the Internal Revenue Code of 1986, shall be subject to tax at the tax rate set forth in § 58.1-400 on all modified net income derived from nonmember sales.

C. The following words and terms, when used in this section, shall have the following meanings:

"Electric supplier" means any corporation, cooperative, partnership or other business entity providing electric service.

"Electricity" is deemed tangible personal property for purposes of the corporate income tax pursuant to Article 10 (§ 58.1-400 et seq.) of this chapter.

"Members" means those customers of a cooperative who receive allocations of patronage capital from a cooperative.

"Modified net income" means all revenue of a cooperative from the sale of electricity within the Commonwealth with the following subtractions:

1. Revenue attributable to sales of electric power to its members.

2. Nonmember share of all ordinary and necessary expenses paid or incurred during the taxable year in carrying on the sale of electric power to nonmembers. Such nonmember expenses shall be determined by allocating the amount of such expenses between sales of electricity to members and sales of electricity to nonmembers. Such allocation shall be applicable to all tax credits available to an electric supplier.

"Nonmember" means those customers which are not members.

"Ordinary and necessary expenses paid or incurred" means ordinary and necessary expenses determined according to generally accepted accounting principles.

D. The Department of Taxation shall promulgate all regulations necessary to implement the intent of this section. This section shall apply to taxable years beginning on and after January 1, 2001.

§ 58.1-401. Exemptions and exclusions.

No tax levied pursuant to §§ 58.1-400 ~~or~~ §, 58.1-400.1 *or § 58.1-400.2* is imposed on:

1. A public service corporation to the extent such corporation is subject to the license tax on gross receipts contained in Chapter 26 (§ 58.1-2600 et seq.) of this title;

2. Insurance companies to the extent such company is subject to the license tax on gross premiums under Chapter 25 (§ 58.1-2500 et seq.) of this title and reciprocal or interinsurance exchanges which pay a premium tax to the Commonwealth as provided by law;

3. State and national banks, banking associations and trust companies to the extent such companies are subject to the bank franchise tax on net capital;

3a. Credit unions organized and conducted as such under the laws of the Commonwealth or under the laws of the United States;

4. Electing small business corporations (S corporations);

5. Religious, educational, benevolent and other corporations not organized or conducted for pecuniary profit which by reason of their purposes or activities are exempt from income tax under the laws of the United States, except those organizations which have unrelated business income or other taxable income under such laws, *except as provided in § 58.1-400.2*;

6. Telephone companies chartered in the Commonwealth which are exclusively a local mutual association and are not designated to accumulate profits for the benefit of, or to pay dividends to, the stockholders or members thereof;

7. A corporation that has contracted with a commercial printer for printing and that is not otherwise taxable shall not become taxable by reason of: (i) the ownership or leasing by that corporation of tangible personal property located at the Virginia premises of the commercial printer and used solely in connection with the printing contract with such person; (ii) the sale by that corporation at another location of property of any kind printed at and shipped or distributed from the Virginia premises of the commercial printer; (iii) the activities in connection with the printing contract with such person of any kind performed by or on behalf of that corporation at the Virginia premises of the commercial printer; and (iv) the activities in connection with the printing contract with such person performed by the commercial printer for or on behalf of that corporation; and

8. Foreign sales corporations (FSC) and any income attributable to an FSC under the rules relating to the taxation of an FSC in Part III, Subpart C of the Internal Revenue Code (§ 921 et seq.) and the regulations thereunder.

§ 58.1-402. Virginia taxable income.

A. For purposes of this article, Virginia taxable income for a taxable year means the federal taxable income and any other income taxable to the corporation under federal law for such year of a corporation adjusted as provided in subsections B, C and D.

For a regulated investment company and a real estate investment trust, such term ~~shall mean~~ *means* the "investment company taxable income" and "real estate investment trust taxable income," respectively, to which shall be added in each case any amount of capital gains and any other income taxable to the corporation under federal law which shall be further adjusted as provided in subsections B, C and D.

B. There shall be added to the extent excluded from federal taxable income:

1. Interest, less related expenses to the extent not deducted in determining federal taxable income, on obligations of any state other than Virginia, or of a political subdivision of any such other state unless created by compact or agreement to which the Commonwealth is a party;

2. Interest or dividends, less related expenses to the extent not deducted in determining federal taxable income, on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

3. [Repealed.]

4. The amount of any net income taxes and other taxes, including franchise and excise taxes, which are based on, measured by, or computed with reference to net income, imposed by the Commonwealth or any other taxing jurisdiction, to the extent deducted in determining federal taxable income;

5. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

6. The amount of employee stock ownership credit carry-over deducted by the corporation in computing federal taxable income under § 404 (i) of the Internal Revenue Code;

7. The amount required to be included in income for the purpose of computing the partial tax on an accumulation distribution pursuant to § 667 of the Internal Revenue Code.

C. There shall be subtracted to the extent included in and not otherwise subtracted from federal taxable income:

1. Income derived from obligations, or on the sale or exchange of obligations, of the United States

and on obligations or securities of any authority, commission or instrumentality of the United States to the extent exempt from state income taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase contracts, or interest on other normal business transactions.

2. Income derived from obligations, or on the sale or exchange of obligations of this Commonwealth or of any political subdivision or instrumentality of this Commonwealth.

3. Dividends upon stock in any domestic international sales corporation, as defined by § 992 of the Internal Revenue Code, fifty percent or more of the income of which was assessable for the preceding year, or the last year in which such corporation has income, under the provisions of the income tax laws of the Commonwealth.

4. The amount of any refund or credit for overpayment of income taxes imposed by this Commonwealth or any other taxing jurisdiction.

5. Any amount included therein by the operation of the provisions of § 78 of the Internal Revenue Code (foreign dividend gross-up).

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280 C (a) of the Internal Revenue Code.

7. Any amount included therein by the operation of § 951 of the Internal Revenue Code (subpart F income).

8. Any amount included therein which is foreign source income as defined in § 58.1-302.

9. For taxable years beginning after December 31, 1983, the available portion of total excess cost recovery as defined in former § 58.1-323 B and for taxable years beginning after December 31, 1987, the excess cost recovery amount specified in § 58.1-323.1 C.

10. The amount of any dividends received from corporations in which the taxpaying corporation owns fifty percent or more of the voting stock.

11. [Repealed.]

12. [Expired.]

13. (Expires for taxable years beginning on and after January 1, 2004.) The amount of any qualified agricultural contribution as determined in § 58.1-322.2.

14. For taxable years beginning on or after January 1, 1995, the amount for "qualified research expenses" or "basic research expenses" eligible for deduction for federal purposes, but which were not deducted, on account of the provisions of § 280 C (c) of the Internal Revenue Code.

15. For taxable years beginning on or after January 1, 2000, the total amount actually contributed in funds to the Virginia Public School Construction Grants Program and Fund established in Chapter 11.1 (§ 22.1-175.1 et seq.) of Title 22.1.

16. For taxable years beginning on and after January 1, 2001, any amount included therein with respect to § 58.1-440.1.

D. Adjustments to federal taxable income shall be made to reflect the transitional modifications provided in § 58.1-315.

§ 58.1-433.1 Virginia Coal Employment and Production Incentive Tax Credit.

For taxable years beginning on and after January 1, 2001, every electricity generator in the Commonwealth shall be allowed a three-dollar-per-ton credit against the tax imposed by § 58.1-400 or § 58.1-400.2 for each ton of coal purchased by such electricity generator, provided such coal was mined in Virginia as certified by such seller. Notwithstanding any other provision of law, no electricity generator shall be allowed more than a three-dollar-per-ton coal tax credit and shall be subject to all limitations set forth in § 58.1-400.2. In no event shall the credit allowed hereunder exceed the total amount of tax liability of such taxpayer. Any tax credit not usable for the taxable year may be carried over to the extent usable for the next five succeeding taxable years or until the full credit is utilized, whichever is sooner. For the purposes of the credit provided by this section, "electricity generator" means any person who produces electricity for self-consumption or for sale. However, a cogenerator, as defined in § 58.1-2600, shall not be allowed to claim the credit provided by this section and the credit provided by § 58.1-433 on the same ton of coal.

§ 58.1-439.2. Coalfield employment enhancement tax credit.

A. For tax years beginning on and after January 1, 1996, but before January 1, 2002, any person who has an economic interest in coal mined in the Commonwealth shall be allowed a credit against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth in accordance with the following:

1. For coal mined by underground methods, the credit amount shall be based on the seam thickness as follows:

Seam Thickness	Credit per Ton
36" and under	$2.00
Above 36"	$1.00

The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer. Copies of such certification shall be maintained by the person qualifying for the credit under this section for a period of three years after the credit is applied for and received and shall be available for inspection by the Department of Taxation. The Department of Mines, Minerals and Energy is hereby authorized to audit all information upon which the isopach mapping is based.

2. For coal mined by surface mining methods, a credit in the amount of forty cents per ton for coal sold in 1996, and each year thereafter.

B. In addition to the credit allowed in subsection A, for tax years beginning on and after January 1, 1996, any person who is a producer of coalbed methane shall be allowed a credit in the amount of one cent per million BTUs of coalbed methane produced in the Commonwealth against the tax imposed by § 58.1-400 and any other tax imposed by the Commonwealth on such person.

C. For purposes of this section, economic interest is the same as the economic ownership interest required by § 611 of the Internal Revenue Code which was in effect on December 31, 1977. A party who only receives an arm's length royalty shall not be considered as having an economic interest in coal mined in the Commonwealth.

D. If the credit exceeds the person's state tax liability for the tax year, the excess shall be redeemable by the Tax Commissioner on behalf of the Commonwealth for ninety percent of the face value within ninety days after filing the return. The remaining ten percent of the value of the credit being redeemed shall be deposited by the Commissioner in a regional economic development fund administered by the Coalfields Economic Development Authority to be used for regional economic diversification in accordance with guidelines developed by the Coalfields Economic Development Authority and the Virginia Economic Development Partnership.

E. No person may utilize more than one of the credits on a given ton of coal described in subsection A. No person may claim a credit pursuant to this section for any ton of coal for which a credit has been claimed under §§ 58.1-433, *58.1-433.1* or § 58.1-2626.1. Persons who qualify for the credit may not apply such credit to their tax returns prior to January 1, 1999, and only one year of credits shall be allowed annually beginning in 1999.

F. The amount of credit allowed pursuant to subsection A shall be the amount of credit earned multiplied by the person's employment factor. The person's employment factor shall be the percentage obtained by dividing the total number of coal mining jobs of the person filing the return, including the jobs of the contract operators of such person, as reflected in the annual tonnage reports filed with the Department of Mines, Minerals and Energy for the year in which the credit was earned by the total number of coal mining jobs of such persons or operators as reflected in the annual tonnage reports for the year immediately prior to the year in which the credit was earned. In no case shall the credit claimed exceed that amount set forth in subsection A.

G. The tax credit allowed under this section shall be claimed according to the following schedule:

1. 50% of the credit allowed in tax year 1996 shall be claimed in tax year 1999 and the remainder in tax year 2005.

2. 50% of the credit allowed in tax year 1997 shall be claimed in tax year 2000 and the remainder in tax year 2006.

3. 75% of the credit allowed in tax year 1998 shall be claimed in tax year 2001 and the remainder in tax year 2007.

4. 75% of the credit allowed in tax year 1999 shall be claimed in tax year 2002 and the remainder in tax year 2008.

5. 100% of the credit allowed in tax year 2000 shall be claimed in tax year 2003.

6. 100% of the credit allowed in tax year 2001 shall be claimed in tax year 2004.

§ 58.1-440.1. Accounting-deferred taxes.

In the case of an electric supplier, as defined in § 58.1-400.2, that was subject to the tax imposed under § 58.1-2626 with respect to its gross receipts received during the year commencing January 1, 2000, and that on or after January 1, 2001, becomes subject to the corporate income tax pursuant to Article 10 (§ 58.1-400 et seq.) of this chapter, net income shall be computed by taking into account the following adjustments:

In addition to the deductions for depreciation, amortization, or other cost recovery currently allowed by this Code, there shall be allowed deductions for the amortization of the Virginia tax basis of assets that are recoverable for financial accounting and/or income tax purposes placed in service prior to the adjustment date. For purposes of this section, (i) "Virginia tax basis" means the aggregate adjusted book basis less the aggregate adjusted tax basis of such assets as recorded on the company's books of accounts as of the last day of the tax year immediately preceding the adjustment date and (ii) "adjustment date" means the first day of the tax year in which such electric supplier becomes subject to the tax imposed by § 58.1-400.2 A. The amortization of the Virginia tax basis shall be computed using the straight-line method over a period of thirty years, beginning on the adjustment date. Gain or loss on the disposition or retirement of any such asset shall be computed using its adjusted federal tax basis, and the amortization of the Virginia tax basis shall continue thereafter without adjustment. The Department of Taxation shall promulgate regulations describing a reasonable method of allocating the Virginia tax basis in the event that a portion of the electric power supplier's operations are separated, spun-off, transferred to a separate company or otherwise disaggregated.

§ 58.1-504. Failure to pay estimated income tax.

A. In case of any underpayment of estimated tax by a corporation, except as provided in subsection D, there shall be added to the tax for the taxable year an amount determined at the rate established for interest under § 58.1-15, upon the amount of the underpayment (determined under subsection B) for the period of the underpayment (determined under subsection C).

B. For purposes of subsection A, the amount of the underpayment shall be the excess of:

1. The amount of the installment which would be required to be paid if the estimated tax were equal to ninety percent of the tax shown on the return for the taxable year or, if no return was filed, ninety percent of the tax for such year, over

2. The amount, if any, of the installment paid on or before the last date prescribed for payment.

C. The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

1. The fifteenth day of the fourth month following the close of the taxable year.

2. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this ~~paragraph~~ *subdivision*, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subdivision B 1 for such installment date.

D. Notwithstanding the provisions of subsections A, B and C, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

1. The tax shown on the return of the corporation for the preceding taxable year, if a return showing a liability for tax was filed by the corporation for the preceding taxable year and such preceding year was a taxable year of twelve months.

2. An amount equal to the tax computed at the rate applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

3. An amount equal to ninety percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

a. For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month,

b. For the first three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month,

c. For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month, and

d. For the first nine months or for the first eleven months of the taxable year, in the case of the installment required to be paid in the twelfth month of the taxable year. For purposes of this subdivision, the taxable income shall be placed on an annualized basis by (i) multiplying by twelve the taxable income referred to in subdivision D 3, and (ii) dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or eleven, as the case may be) referred to in subsection A.

E. For purposes of subsection B, subdivisions D 2 and D 3, the term "tax" means the excess of the tax imposed by this chapter over the sum of any credits allowable against the tax.

F. The application of this to taxable years of less than twelve months shall be in accordance with regulations prescribed by the Commissioner.

G. Electric suppliers as defined in § 58.1-400.2 that become subject to taxation under this chapter and prior thereto paid the annual license tax based on gross receipts, shall make estimated tax payments during the first year they are so subject, and notwithstanding subsection D, any excesses described in subsection B shall constitute an underpayment for such year.

§ 58.1-2600. Definitions.

A. As used in this chapter:

"Certificated motor vehicle carrier" means a common carrier by motor vehicle, as defined in § 46.2-2000, operating over regular routes under a certificate of public convenience and necessity issued by the Commission or issued on or after July 1, 1995, by the Department of Motor Vehicles. A transit company or bus company that is owned or operated directly or indirectly by a political subdivision of this Commonwealth shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, nor shall such transit company or bus company thereby be subject to the imposition of local property levies. A common carrier of property by motor vehicle shall not be deemed a "certificated motor vehicle carrier" for the purposes of this chapter and shall not be subject to the imposition of the tax imposed in § 58.1-2652, but shall be subject to the imposition of local property taxes.

(Effective until December 31, 2001) "Cogenerator" means a qualifying cogenerator or qualifying small power producer within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Commission" means the State Corporation Commission which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency responsible for the assessment of the real and personal property of all public service corporations, except those public service corporations for which the Department of Taxation is so designated, upon which the Commonwealth levies a license tax measured by the gross receipts of such corporations. The State Corporation Commission shall also assess the property of each telephone or telegraph company, *every public service corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity, and each electric supplier, as provided by this chapter.*

"Department" means the Department of Taxation which is hereby designated pursuant to Article X, Section 2 of the Constitution of Virginia as the central state agency to assess the real and personal property of railroads and pipeline transmission companies as defined herein.

"Electric supplier" means any person owning or operating facilities for the generation, transmission or distribution of electricity for sales, except any person owning or operating solar, wind or hydroelectric facilities with a designed generation capacity of less than twenty-five megawatts.

"Estimated tax" means the amount of tax which a taxpayer estimates as being imposed by Article 2 (§ 58.1-2620 et seq.) of this chapter for the tax year as measured by the gross receipts received in the taxable year.

"Freight car company" includes every car trust, mercantile or other company or person not domiciled in this Commonwealth owning stock cars, furniture cars, fruit cars, tank cars or other similar cars. Such term shall not include a company operating a line as a railroad.

"Gross receipts" means the total of all revenue derived in the Commonwealth, including but not

limited to, income from the provision or performance of a service or the performance of incidental operations not necessarily associated with the particular service performed, without deductions for expenses or other adjustments. Such term shall not, however, include interest, dividends, investment income or receipts from the sale of real property or other assets except inventory of goods held for sale or resale.

"Pipeline distribution company" means a corporation, other than a pipeline transmission company, which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or by-products thereof to a purchaser for purposes of furnishing heat or light.

"Pipeline transmission company" means a corporation authorized to transmit natural gas, manufactured gas or crude petroleum and the products or by-products thereof in the public service by means of a pipeline or pipelines from one point to another when such gas or petroleum is not for sale to an ultimate consumer for purposes of furnishing heat or light.

"Tax Commissioner" means the chief executive officer of the Department of Taxation or his designee.

"Tax year" means the twelve-month period beginning on January 1 and ending on December 31 of the same calendar year, such year also being the tax assessment year or the year in which the tax levied under this chapter shall be paid.

"Taxable year" means the calendar year preceding the tax year, upon which the gross receipts are computed as a basis for the payment of the tax levied pursuant to this chapter.

"Telegraph company" means a corporation or person operating the apparatus necessary to communicate by telegraph.

"Telephone company" means a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service; or a person authorized by the Federal Communications Commission to provide commercial mobile service as defined in § 332(d) (1) of the Communications Act of 1934, as amended, where such service includes cellular mobile radio communications services or broadband personal communications services; or a person holding a certificate issued pursuant to § 214 of the Communications Act of 1934, as amended, authorizing domestic telephone service and belonging to an affiliated group including a person holding a certificate of convenience and necessity granted by the State Corporation Commission authorizing telephone service. The term "affiliated group" ~~shall have~~ *has* the meaning given in § 58.1-3700.1.

B. For purposes of this chapter the terms "license tax" and "franchise tax" shall be synonymous.

§ 58.1-2601. Boundaries of certain political units to be furnished company, Commission and Department.

A. The commissioner of the revenue in each county and city in which a public service corporation *or other person with property assessed pursuant to this chapter* does business or owns property shall furnish, on or before January 1 in each year, to each such corporation *or person*, the boundaries of each city and the magisterial district of the county and of each town therein in which any part of the property of such corporation *or person* is situated. A copy of such boundaries shall also be forwarded to the clerk of the Commission and the Tax Commissioner.

B. Whenever any commissioner of the revenue shall fail to furnish to such corporation *or other person*, the clerk of the Commission and the Tax Commissioner, such boundaries required in subsection A, the clerk of the Commission and the Tax Commissioner shall notify the judge of the circuit court of the county and city of such commissioner of the revenue, and the judge shall instruct the grand jury at the next term of the circuit court to ascertain whether such boundaries have been furnished as required in this section. Should the grand jury ascertain that such boundaries have not been furnished, they shall find an indictment against the commissioner of the revenue. Upon conviction thereof, such commissioner of the revenue shall be guilty of a Class 4 misdemeanor, each magisterial district and town boundary so omitted being a separate offense.

C. Notwithstanding the provisions of subsection A, whenever the boundaries have once been furnished to any public service ~~company~~ *corporation or other person with property assessed pursuant to this chapter*, the Commission and the Tax Commissioner, the commissioner of the revenue shall thereafter not be required to furnish the boundaries except as shall be necessary to show subsequent changes in such boundaries.

§ 58.1-2602. Local authorities to examine assessments and inform Department or Commission

whether correct.

The governing body of each county, city and town, receiving a copy of any assessment made by the Commission or the Department against property of a public service corporation *or other person with property assessed pursuant to this chapter* located in such county, city or town, shall forthwith review such assessments and determine whether they are accurate and notify the clerk of the Commission or the Department of any corrections thereto. Such governing bodies at their own expense may, when there is reason to doubt the correctness of the assessed length of any line, retain any surveyor in order to verify the assessment of the Commission or the Department.

§ 58.1-2603. Local levies to be extended by commissioners of the revenue; copies; forms.

All county, district and city levies on the property of public service corporations *or other persons with property assessed pursuant to this chapter* shall be extended by the commissioner of the revenue for the county or city, and a copy of such extensions shall be certified and transmitted by the commissioner of the revenue to the treasurer of his county or city for collection. In each city which has a collector of city taxes, such copy shall be certified and transmitted to such collector of city taxes. Forms for use by the commissioners of the revenue under this section shall be prescribed and furnished by the Department.

§ 58.1-2604. Assessed valuation.

A. Except as otherwise provided in § ~~58.1-2608, any increase in~~ *58.1-2609,* the *equalized* assessed valuation of *the property of* any public service corporation ~~property~~ *or other person with property assessed pursuant to this chapter* in any taxing district shall be made by application of the local assessment ratio prevailing in such taxing district for other real estate as most recently determined and published by the Department of Taxation. ~~On January 1, 1967, one-twentieth, and on each subsequent January 1 for nineteen years an additional one-twentieth, of the assessed valuation on January 1, 1966, (reduced by forty percent of the value of the amount, if any, by which total retirements since January 1, 1966, exceed total additions since that date), shall be assessed by application of the local assessment ratio as provided above, and the remainder shall continue to be assessed by application of the forty percent assessment ratio as heretofore administered. Thereafter the whole shall be assessed by application of the local assessment ratio as provided above.~~

~~B. All public service corporation property in the process of equalization over a twenty-year period as provided in subsection A is hereby defined as a separate item of taxation and shall be identified as a separate category of property for local taxation. Such property in the process of equalization shall, for such period as provided for in subsection A, continue to be assessed at forty percent of the fair market value.~~

~~C.~~ *B.* On request of any local taxing district in connection with any reassessment of property, representatives of the State Corporation Commission and the Department shall consult with representatives of the district with regard to ascertainment and equalization of values to help assure uniformity of appraisals and assessments in accordance with the provisions of this section.

~~D.~~ *C.* The Department of Taxation shall furnish to each county, city or town in which ~~a~~ *the property of* public service ~~corporation's~~ *corporations or other persons with* property *assessed pursuant to this chapter* represents twenty-five percent or more of the total assessed value of real estate in such county, city or town, the local assessment ratio to be applied within that county, city or town no later than April 1 of the year for which it is applicable.

~~E.~~ *D.* The Department of Taxation shall furnish to each county, city or town, by April 1 of each year, a description of the manner in which the local assessment ratio applicable to the county, city or town for the year was determined. The description furnished by the Department shall include, but not be limited to, a description of the parcels used, the time period from which sales transactions were drawn, the classification applied by the Department to any parcel or transaction, and any mathematical formulas used in calculating the local assessment ratio.

§ 58.1-2606. Local taxation of real and tangible personal property of public service corporations; other persons.

A. Notwithstanding the provisions of this section and §§ 58.1-2607 and 58.1-2690, all local taxes on the real estate and tangible personal property of public service corporations referred to in such sections *and other persons with property assessed pursuant to this chapter* shall be at the real estate rate applicable in the respective locality. ~~Property, however, which has not been equalized as provided~~

~~for in § 58.1 2604 shall continue to be assessed at forty percent of fair market value and taxed at the nominal rate applicable to public service corporation real property for the taxable year immediately preceding the year such locality assesses as provided in § 58.1 3201. If the resulting effective tax rate for such unequalized public service corporation property in any county, city or town is less than the effective tax rate applicable to other real property therein, the locality shall adjust such nominal rate to equalize the effective tax rate on such public service corporation property with the effective tax rate applicable to other real property.~~

~~B. The assessed valuation of any class of property taxed as tangible personal property by any county, city or town before January 1, 1966, may continue to be taxed at rates no higher than those levied on other tangible personal property on January 1, 1966. On January 1, 1967, one twentieth, and on each subsequent January 1 for nineteen years an additional one twentieth, of the assessed valuation of such tangible personal property on January 1, 1966, shall be taxed at the real estate rate and the remainder may continue to be taxed at a rate no higher than the rate levied on tangible personal property on January 1, 1966. After December 31, 1985, the whole shall be taxed at the full local real estate tax rate.~~

~~C.~~ *B.* Notwithstanding any of the foregoing provisions, all automobiles and trucks of such corporations *and other persons* shall be taxed at the same rate or rates applicable to other automobiles and trucks in the respective locality.

C. Notwithstanding any of the foregoing provisions, generating equipment which is reported to the Commission shall be taxed at a rate not to exceed the real estate rate applicable in the respective localities.

§ 58.1-2609. Local taxation of land and nonutility and noncarrier improvements of public service corporations; other persons.

Whenever land and noncarrier and nonutility improvements of public service corporations *and other persons with property assessed pursuant to this chapter* are appraised for local taxation by comparison to the appraised values placed by local assessors on similar properties in the taxing district, they shall be assessed by application of the local stated ratio of assessments to appraisals, and taxed at the rate applicable to other real property in the taxing district. Such property is hereby defined as a separate item of taxation for such purpose and shall be identified as a separate class of property for local taxation.

§ 58.1-2610. Penalty for failure to file timely report.

Any ~~taxpayer~~ *person* failing to make a report required under the provisions of this chapter within the time prescribed shall be liable to a penalty of $100 for each day such taxpayer is late in making such report. The State Corporation Commission or Tax Commissioner, as the case may be, may waive all or a part of such penalty for good cause.

§ 58.1-2611. Penalty for failure to pay tax.

A. Any ~~company or individual~~ *person* failing to pay the tax levied pursuant to this chapter into the state treasury within the time prescribed by law shall incur a penalty thereon of ten percent, which shall be added to the amount of the tax due.

B. Notwithstanding the provisions of subsection A, such penalty shall not accrue in any case unless the State Corporation Commission or the Department, as the case may be, mails the ~~corporation~~ *person* a certified copy of the assessment on or before May 15 preceding. In the event such copy is not mailed on or before May 15 preceding, the penalty for nonpayment in time shall not accrue until the close of the fifteenth day next following the mailing of such certified copy of the assessment.

§ 58.1-2626. Annual state license tax on companies furnishing water, heat, light or power.

A. Every corporation doing in the Commonwealth the business of furnishing water, heat, light or power, whether by means of ~~electricity,~~ gas or steam, except *(i)* a pipeline transmission company taxed pursuant to § 58.1-2627.1 *or (ii) an electric supplier as defined in § 58.1-400.2*, shall, for the privilege of doing business within the Commonwealth, pay to the Commonwealth for each tax year an annual license tax equal to ~~one and one-eighth~~ *two* percent *of* its gross receipts, actually received, from all sources ~~up to $100,000 of such gross receipts and two and three-tenths percent of all such gross receipts in excess of $100,000. For the tax year 1989 and thereafter the license tax shall be an amount equal to two percent.~~

B. The state license tax provided in subsection A shall be (i) in lieu of all other state license or franchise taxes on such corporation~~,~~ and (ii) in lieu of any tax upon the shares of stock issued by it.

C. Nothing herein contained shall exempt such corporation from motor vehicle license taxes, motor vehicle fuel taxes, fees required by § 13.1-775.1 or from assessments for street and other local improvements, which shall be authorized by law, nor from the county, city, town, district or road levies.

D. Nothing herein contained shall annul or interfere with any contract or agreement by ordinance between such corporations and cities and towns as to compensation for the use of the streets or alleys by such corporations.

§ 58.1-2627. Exemptions.

~~A. There shall be excluded from the gross receipts of any corporation engaged in the business of furnishing heat, light and power by means of electricity, receipts from interstate business.~~ *There shall be deducted from the gross receipts of any corporation engaged in the business of furnishing heat, light or power by means of gas, revenues billed on behalf of another person to the extent such revenues are later paid over to or settled with that person.*

~~B. There shall be deducted from the gross receipts of any power supply cooperative, defined in § 56-231.1, which purchases electricity for the sole purpose of resale to other cooperatives, the amount paid in such taxable period by such cooperative to purchase electricity from a vendor of electricity which is subject to the tax imposed by this chapter.~~

~~C. There shall be deducted from the gross receipts of any electric cooperative, as defined in § 56-209, which is engaged in sales to ultimate consumers, and every corporation engaged in the business of furnishing heat, light and power by means of electricity the amount so paid in such taxable period by such cooperative or corporation to purchase electricity from a vendor subject to the tax imposed by this chapter.~~

~~D. Whenever the total gross receipts of any corporation engaged in the business of furnishing heat, light or power by means of electricity or gas includes receipts from another corporation which is a member of an affiliated group of corporations and which is also subject to the tax imposed by § 58.1-2626, such receipts from such other corporation shall be deducted from such total gross receipts. The term "affiliated group" shall have the meaning given in § 58.1-3700.1.~~

~~E. Effective for purchases on and after July 1, 1994, there shall be deducted from the gross receipts of any electric cooperative, as defined in § 56-209, which is engaged in sales to ultimate consumers, the amount paid in such taxable period by such cooperative to purchase, for the purpose of resale within the Commonwealth, electricity from a federal entity which made payments during such taxable period to the Commonwealth in lieu of taxes in accordance with a federal law requiring such payments to be calculated on the basis of such federal entity's gross proceeds from the sale of electricity.~~

§ 58.1-2628. Annual report.

A. Each telegraph company and telephone company shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, owned, operated or used by it, except leased automobiles, leased trucks or leased real estate, as of January 1 preceding, showing particularly the county, city, town or magisterial district wherein such property is located.

The report shall also show the total gross receipts for the twelve months ending December 31 next preceding and the interstate revenue, if any, attributable to the Commonwealth. Such revenue shall include all interstate revenue from business originating and terminating within the Commonwealth and a proportion of interstate revenue from all interstate business passing through, into or out of the Commonwealth.

B. Every corporation doing in the Commonwealth the business of furnishing water, heat, light and power, whether by means of ~~electricity,~~ gas or steam, *except (i) pipeline transmission companies taxed pursuant to § 58.1-2627.1 or (ii) an electric supplier as defined in § 58.1-400.2,* shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, belonging to it as of January 1 preceding, showing particularly, as to property owned by it, the county, city, town or magisterial district wherein such property is located. The report shall also show the total gross receipts for the twelve months ending December 31 next preceding.

C. Every corporation in the Commonwealth in the business of furnishing heat, light and power by means of electricity shall report annually, on April 15, to the Commission all real and tangible personal property of every description in the Commonwealth, belonging to such corporation as of the preceding January 1, showing particularly the county, city, town or magisterial district in which such property is located.

D. Every electric supplier shall report annually, on April 15, to the Commission all real and tangible personal property owned in the Commonwealth and used directly for the generation, transmission or distribution of electricity for sale as of the preceding January 1, showing particularly the county, city, town or magisterial district in which such property is located.

~~C.~~ *E.* Every pipeline transmission company shall report annually, on April 15, to the Department all of its real and tangible personal property of every description as of the beginning of January 1 preceding, showing particularly in what city, town or county and magisterial district therein the property is located.

~~D.~~ *F.* The report required by subsections A ~~and~~ B *through E* shall be completed on forms prepared and furnished by the Commission. The Commission shall include on such forms such information as the Commission deems necessary for the proper administration of this chapter.

~~E.~~ *G.* The report required by this section shall be certified by the oath of the president or other designated official of the corporation *or person.*

§ 58.1-2633. Assessment by Commission.

A. The Commission shall assess the value of the *reported* property subject to local taxation of each telegraph, telephone, water, heat, light and power company *and electric supplier*, except a pipeline transmission company taxed pursuant to § 58.1-2627.1, and shall assess the license tax levied hereon if such company is subject to the license tax under this article.

B. Should any such ~~taxpayer~~ *person* fail to make the reports required by this article on or before April 15 of each year, the Commission shall assess the value of the property of such ~~taxpayer~~ *person*, and its gross receipts upon the best and most reliable information that can be obtained by the Commission.

C. In making such assessment, the Commission may require such ~~taxpayer~~ *person* or its officers and employees to appear with such documents and papers as the Commission deems necessary.

§ 58.1-2660. Special revenue tax; levy.

In addition to any other taxes upon the subjects of taxation listed herein, there is hereby levied, subject to the provisions of § 58.1-2664, a special regulatory revenue tax equal to two-tenths of one percent of the gross receipts such person receives from business done within the Commonwealth upon:

1. Corporations furnishing water, heat, light or power, ~~either~~ by means of ~~electricity,~~ gas or steam, *except for electric suppliers as defined in § 58.1-400.2*;

2. Telegraph companies owning and operating a telegraph line apparatus necessary to communicate by telecommunications in the Commonwealth;

3. Telephone companies whose gross receipts from business done within the Commonwealth exceed $50,000 or a company, the majority of stock or other property of which is owned or controlled by another telephone company, whose gross receipts exceed the amount set forth herein;

4. The Virginia Pilots' Association;

5. Railroads, except those exempt by virtue of federal law from the payment of state taxes, subject to the provisions of § 58.1-2661; and

6. Common carriers of passengers by motor vehicle, except urban and suburban bus lines, a majority of whose passengers use the buses for traveling a daily distance of not more than forty miles measured one way between their place of work, school or recreation and their place of abode.

§ 58.1-2682. District boundaries to be furnished company and Commission.

The commissioner of the revenue, or person performing the duties of such officer, of any county set forth in § 58.1-2680 in which a public service corporation *or other person with property assessed pursuant to this chapter* owns property, shall furnish, in like manner as is provided in this chapter to the Commission, the Department and to each public service corporation *or other person with property assessed pursuant to this chapter* owning property in such county subject to local taxation, the boundaries of each district in such county in which any local tax is or may be levied.

CHAPTER 29.
ELECTRIC UTILITY CONSUMPTION TAX.

§ 58.1-2900. Imposition of tax.

A. Effective January 1, 2001, there is hereby imposed, in addition to the local consumer utility tax of Article 4 (§ 58.1-3812 et seq.) of Chapter 38 and subject to the adjustments authorized by subdivision A 5 and by § 58.1-2902, a tax on the consumers of electricity in the Commonwealth based on kilowatt hours delivered by the incumbent distribution utility and used per month as follows:

1. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month not in excess of 2,500 kWh at the rate of $0.00155 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00102/kWh	$0.00015/kWh	$0.00038/kWh

2. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 2,500 kWh but not in excess of 50,000 kWh at the rate of $0.00099 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00065/kWh	$0.00010/kWh	$0.00024/kWh

3. Each consumer of electricity in the Commonwealth shall pay electric utility consumption tax on all electricity consumed per month in excess of 50,000 kWh at the rate of $0.00075 per kWh, as follows:

State consumption tax rate	Special regulatory tax rate	Local consumption tax rate
$0.00050/kWh	$0.00007/kWh	$0.00018/kWh

4. The tax rates set forth in subdivisions 1, 2, and 3 in are in lieu of and replace the state gross receipts tax (§ 58.1-2626), the special regulatory revenue tax (§ 58.1-2660), and the local license tax (§ 58.1-3731) levied on corporations furnishing heat, light or power by means of electricity.

5. The tax on consumers under this section shall not be imposed on consumers served by an electric utility owned or operated by a municipality if such municipal electric utility elects to have an amount equivalent to the tax added on the bill such utility (or an association or agency of which it is a member) pays for bundled or unbundled transmission service as a separate item. Such amount, equivalent to the tax, shall be calculated under the tax rate schedule as if the municipal electric utility were selling and collecting the tax from its consumers, adjusted to exclude the amount which represents the local consumption tax if the locality in which a consumer is located does not impose a license fee rate pursuant to § 58.1-3731, and shall be remitted to the Commission pursuant to § 58.1-2901. Municipal electric utilities may bundle the tax in the rates charged to their retail customers. Notwithstanding anything contained herein to the contrary, the election permitted under this subdivision shall not be exercised by any municipal electric utility if the entity to whom the municipal electric utility (or an association or agency of which it is a member) pays for transmission service is not subject to the taxing jurisdiction of the Commonwealth, unless such entity agrees to remit to the Commonwealth all amounts equivalent to the tax pursuant to § 58.1-2901.

B. The tax authorized by this chapter shall not apply to municipalities' own use or to use by divisions or agencies of federal, state and local governments.

§ 58.1-2901. Collection and remittance of tax.

A. The service provider shall collect the tax from the consumer by adding it as a separate charge to the consumer's monthly statement. Until the consumer pays the tax to such provider, the tax shall constitute a debt of the consumer to the Commonwealth. If any consumer refuses to pay the tax, the service provider shall notify the Commission and/or localities of the names and addresses of such consumers. After the consumer pays the tax to the service provider, the taxes collected shall be deemed to be held in trust by such provider until remitted to the Commission and/or localities.

B. A service provider shall remit monthly to the Commission the amount of tax paid during the preceding month by the service provider's consumers, except for (i) amounts added on the bills to utilities owned and operated by municipalities which are collected by the entity providing transmission directly to such utilities (or an association or agency of which the municipality is a member), which they shall remit directly to the Commission and (ii) the portion which represents the local consumption tax, which portion shall be remitted to the locality in which the electricity was consumed and shall be based on such locality's license fee rate which it imposed. Amounts of the tax that are added on the bills to utilities owned and operated by municipalities, which are collected by the entity providing transmission directly to such utilities (or an association or agency of which the municipality is a member), shall be remitted monthly by such entity to the Commission, except that the portion which represents the local consumption tax shall be remitted to the locality in which the electricity was consumed and shall be based on such locality's license fee rate which it imposed.

C. The electric utility consumption tax shall be remitted monthly, on or before the last day of the succeeding month of collection. Those portions of the electric utility consumption tax that relate to the state consumption tax and the special regulatory tax shall be remitted to the Commission; the portion that relates to the local consumption tax shall be remitted to the localities. Failure to remit timely will result in a ten percent penalty.

D. Taxes on electricity sales in the year ending December 31, 2000, relating to the local consumption tax, shall be paid in accordance with § 58.1-3731. Monthly payments in accordance with subsection C shall commence on February 28, 2001.

E. For purposes of this section, "service provider" means the person who delivers electricity to the consumer.

F. The portion of the electric utility consumption tax relating to the local consumption tax replaces and precludes localities from imposing a license tax in accordance with § 58.1-3731 and the business, professional, occupation and license tax in accordance with Chapter 37 (§ 58.1-3700 et seq.) on electric suppliers subsequent to December 31, 2000, except as provided in subsection D. If the license fee rate imposed by a locality is less than the equivalent of the local consumption tax rate component of the consumption tax paid under subsection A of § 58.1-2900, the excess collected by the Commission shall constitute additional state consumption tax revenue and shall be remitted by the Commission to the state treasury.

G. The Department of taxation may audit the books and records of any electric utility owned and operated by a municipality (or an association or agency of which the municipality is a member) to verify that the tax imposed by this chapter has been correctly determined and properly remitted to the Commission.

§ 58.1-2902. Electric utility consumption tax relating to the special regulatory tax; when not assessed or assessed only in part.

A. The Commission may in the performance of its function and duty in levying the electric utility consumption tax relating to the special regulatory tax, omit the levy on any portion of the tax fixed in § 58.1-2900 as is unnecessary within the Commission's sole discretion for the accomplishment of the objects for which the tax is imposed, including a reasonable margin in the nature of a reserve fund.

B. The Commission shall notify all service providers collecting the tax on consumers of electricity of any change in the electric utility consumption tax relating to the special regulatory tax not later than the first day of the second month preceding the month in which the revised rate is to take effect.

§ 58.1-2903. Use of electric utility consumption tax relating to special regulatory tax.

The electric utility consumption tax relating to the special regulatory tax paid into the treasury under this chapter shall be deposited into a special fund used only by the Commission for the purpose of making appraisals, assessments and collections against electric suppliers as defined in §§ 58.1-400.2 and 58.1-2600 and public service corporations furnishing heat, light and power by means of electricity and for the further purposes of the Commission in investigating and inspecting the properties or the service or services of such electric suppliers and public service corporations, and for the supervision and administration of all laws relative to such electric suppliers and public service corporations, whenever the same shall be deemed necessary by the Commission.

§ 58.1-3731. Certain public service corporations; rate limitation.

Every county, city or town is hereby authorized to impose a license tax, in addition to any tax

levied under Chapter 26 of this title, on (i) telephone and telegraph companies, (ii) water companies, and (iii) heat, light and power companies *(except electric suppliers as defined in § 58.1-400.2)* at a rate not to exceed one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer in such county, city or town. However, in the case of telephone companies, charges for long distance telephone calls shall not be included in gross receipts for purposes of license taxation. *After December 31, 2000, the license tax authorized by this section shall not be imposed on electric suppliers (as defined in § 58.1-400.2), except as provided in § 58.1-2901 D.*

§ 58.1-3814. Water or heat, light and power companies.

A. Any county, city or town may impose a tax on the consumers of the utility service or services provided by any water or heat, light and power company or other corporations coming within the provisions of Chapter 26 (§ 58.1-2600 et seq.), which tax shall not be imposed at a rate in excess of twenty percent of the monthly amount charged to consumers of the utility service and shall not be applicable to any amount so charged in excess of fifteen dollars per month for residential customers. Any city, town or county that on July 1, 1972, imposed a utility consumer tax in excess of limits specified herein may continue to impose such a tax in excess of such limits, but no more.

B. Any tax enacted pursuant to the provisions of this section, or any change in a tax or structure already in existence, shall not be effective until sixty days subsequent to written notice by certified mail from the county, city or town imposing such tax or change thereto, to the registered agent of the utility corporation that is required to collect the tax.

C. Any county, city or town may impose a tax on the consumers of services provided within its jurisdiction by any electric light and power, water or gas company owned by another municipality; provided, that no county shall be authorized under this section to impose a tax within a municipality on consumers of services provided by an electric light and power, water or gas company owned by that municipality. Any county tax imposed hereunder shall not apply within the limits of any incorporated town located within such county which town imposes a town tax on consumers of utility service or services provided by any corporation coming within the provisions of Chapter 26, provided that such town (i) provides police or fire protection, and water or sewer services, provided that any such town served by a sanitary district or service authority providing water or sewer services or served by the county in which the town is located when such service or services are provided pursuant to an agreement between the town and county shall be deemed to be providing such water and sewer services itself, or (ii) constitutes a special school district and is operated as a special school district under a town school board of three members appointed by the town council.

Any county, city or town may provide for an exemption from the tax for any public safety agency as defined in § 58.1-3813.

Any city with a population of not less than 27,000 and not more than 28,500 may provide an exemption from the tax for any church or religious body entitled to an exemption pursuant to Article 4 (§ 58.1-3650 et seq.) of Chapter 36.

Any municipality required to collect a tax imposed under authority of this section for another city or county or town shall be entitled to a reasonable fee for such collection.

D. In a consolidated county wherein a tier-city exists, any county tax imposed hereunder shall apply within the limits of any tier-city located in such county, as may be provided in the agreement or plan of consolidation, and such tier-city may impose a tier-city tax on the same consumers of utility service or services, provided that the combined county and tier-city rates do not exceed the maximum permitted by state law.

E. The tax authorized by this section shall not apply to utility sales of products used as motor vehicle fuels.

F. For taxable years beginning on and after January 1, 2001, any county, city or town may impose a tax on consumers of electricity provided by electric suppliers as defined in § 58.1-400.2 which shall not be imposed at a rate in excess of $.015 (1 1/2 cent) per kWh billed monthly to consumers of electricity and shall not be applicable to any kilowatt hours billed in excess of 200 kWh per month for residential customers. In any county, city or town that imposes a consumer utility tax immediately prior to January 1, 2001, (i) on residential customers at a higher rate than the maximum rate on residential customers under this section because the rate of consumer utility tax it imposed on July 1, 1972, exceeded the limits specified in subsection A or (ii) on other consumers not subject to

the maximum rate set by this section, the service provider shall convert the dollar amount rate to a kWh rate of tax be based on the monthly tax that is being collected immediately prior to January 1, 2001. However, nothing in this section shall be construed to prohibit or limit any county, city or town, after completion of the transition period on January 1, 2004, from imposing a consumer utility tax on nonresidential customers (as converted to a per kWh rate basis) in any amounts authorized by this section immediately prior to July 1, 1999. The service provider shall bill the tax to all users to whom it delivers electricity, and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. The provisions of this subsection shall be applicable without the necessity of the locality amending or reenacting its existing ordinance imposing such tax.

Subsection B shall apply to any tax on the consumers of electricity enacted or amended pursuant to this section, except that the notice provided therein shall be given to the registered agent of the service provider that is required to collect the tax.

G. Until the consumer pays the tax to such service provider, the tax shall constitute a debt to the locality. If any consumer refuses to pay the tax, the service provider shall notify the localities of the names and addresses of such consumers. After the consumer pays the tax to the service provider, the taxes shall be deemed to be held in trust by such service provider until remitted to the localities.

2. That the provisions of this act amending various sections of Chapter 26 (§ 58.1-2600 et seq.) of Title 58.1 shall be effective for tax years, beginning on and after January 1, 2002.

3. That the provisions of this act adding Chapter 29 (§ 58.1-2900 et seq.) shall be effective for tax years, beginning on and after January 1, 2001.

Structure & Transition Task Force
Narrative Plans
Staff Summary of Key Areas of Agreement & Disagreement [rev. 9/21/98]

The following is a summary of the positions of stakeholders and other interested parties concerning key issues involving the structure of a restructured market, and the transition to such a market. This summary was initially developed from (i) information contained in the staff matrix summarizing the parties' narrative plans, and (ii) from information received from the parties subsequent to the matrix's release at the task force's August 12 meeting.

This version incorporates revisions requested, in writing, by stakeholders and other interested parties on and through September 18. This revised summary, together with the revised matrix, will be presented to the full joint subcommittee at its meeting in Roanoke on September 23.

Note:

- Except as otherwise indicated, wherever this summary indicates that the parties were unanimous in their approval or disapproval of any particular point or issue, the comment refers only to those parties who responded to the same.

- Changes requested by the parties are indicated in double-underlined text. Comments concerning SCC positions were added by staff.

I. The Transition to Retail Competition.

1. If the Virginia General Assembly enacts comprehensive electric utility restructuring legislation, which services should be made competitive? [Matrix pp. 17, 20].

- *The SCC believes that incumbent utilities should be obligated to provide service on a regulated basis until competition becomes an effective regulator of rates for service considered for competition.*

- The greater majority of respondents said that generation should be made competitive, and that transmission and distribution should remain regulated services (the former by FERC, the latter by the SCC).

- *AARP and VCCC* said that the SCC should have the authority to determine which, if any, services should be made competitive once it determines that effective competition exists for these services.

- Some respondents, including *AEP-Virginia, AOBA, CNG, Virginia Power* and *Washington Gas,* said that metering and billing and other ancillary distribution services could be considered for competition following transition to retail competition.

2. ***When should retail competition begin? [Staff Matrix pp. 1-3].***

- *The SCC believes that the HB-1772 schedule should be subject to modifications, if necessary. Additionally, the SCC believes that there should be no predetermined schedule for the deregulation of generation assets.*

- The *AARP and VCCC* believe that no service should be made competitive until the SCC determines that there exists in the market effective competition for that service.

- However, ~~all of the investor-owned utilities supported~~ *Virginia Power and Allegheny support* the timetable established by House Bill 1172 (1998) which begins the transition in 2002 and concludes it in 2004 (following the establishment of ISOs and RPXs in 2001).

- *AEP-Virginia believes the schedule in HB-1172 is aggressive. The company supports a 4-5 year transition period following an unbundling period. Moreover, AEP Virginia believes that if the transition to retail competition begins on January 1, 2002, then full retail choice should occur in 2005 or 2006.*

- *ALERT* and the *Virginia Committee for Fair Utility Rates* favor more aggressive timetables: *ALERT* wants full retail competition for all classes by 7/1/2001; The *Committee* would like retail choice for industrial customers not later than 1/1/2002.

3. ***Should the SCC have authority to delay the commencement of retail competition? [Staff matrix, pg. 5].***

- *The SCC believes it should have this authority.*

- The parties were nearly unanimous in declaring that the SCC should have such authority. But many, including *ALERT, Virginia Power,*

Allegheny and *MEPAV* suggested that such authority be limited to specific circumstances, mainly the lack of readiness for competition at particular legislative milestones.

- *AEP believes that continuing oversight will be necessary throughout transition. Such policy oversight, in its estimation, should come from the legislature, with assistance from the Commission.*

4. Should the commencement of retail competition be made contingent upon the implementation of an ISO/RPX? [Staff Matrix, pg. 4]

- *The SCC believes that an ISO should be in place before significant customer choice is implemented.*

- Nearly all of the parties said yes. *Allegheny, the Virginia Committee for Fair Utility Rates* and *CNG* said no.

5. Should pilot programs accompany the transition to retail competition? [Staff matrix, page 7.]

- *The SCC notes that pilot program development is in progress at the SCC.*

- Virtually no one objected to pilot programs, with one exception—CNG—which believes that Virginia should simply make use of pilot program information developed in other states. However, *Allegheny* and *Virginia Power* believe it's unnecessary to include them in any comprehensive restructuring plan since the SCC has already requested that Virginia's investor-owned utilities submit pilot programs by November 2.

- *AOBA*, on the other hand, believes that large-scale pilot programs should be key components in any phased restructuring plan. *Washington Gas* also believes pilot programs should be formally included in any restructuring plan.

6. Should retail competition be phased in? [Staff Matrix pg. 3].

- Nearly all respondents agreed that retail competition should be phased in; they were far from unanimous about how that should be accomplished. *AARP* and *ALERT*, for example, believe that equal percentages of each customer class should be phased into retail competition over a specified phase-in period.

- *AEP-Virginia believes that a phase-in may be a practical necessity; that no customer class should be disadvantaged during a phase-in.*

- ~~*Virginia Power* and the~~ *The Virginia Committee for Fair Utility Rates* recommended that industrials customers go first by 2002. *The Virginia Council Against Poverty* took the opposite view: residential and small business first, then the other classes.

- The *Co-ops, CNG, the VCCC* and *The Southern Environmental Law Center* believe that all customers and customer classes should begin retail competition together.

- *The SCC believes in flexibility tailored to fix circumstances.*

7. Should unbundling of utilities' current rates accompany retail competition? [Staff Matrix pg. 6.]

- ~~Virtually everyone~~ *The SCC and virtually all the parties* agreed that unbundling (i.e., separating each utility's rates into their component parts) is essential. However, the parties drew sharp distinctions between *informational unbundling* and *competitive unbundling. AEP-Virginia* and *Allegheny* support preliminary cost of service studies or rate analysis as the basis for informational unbundling.

8. Should mandatory baseline rates cases precede retail competition? [staff matrix, pg. 5]

- *Allegheny, Virginia Power, CNG* and the *Co-ops* suggested that rate unbundling would serve the same purpose; thus, baseline rate cases would be unnecessary.

- *AEP-Virginia agrees that unbundling can serve the same purpose. However, it also believes that there may be a need to examine costs at the time of transition, thus recognizing major cost changes such as environmental costs.*

- ~~*Virginia Power* believes that pre-transition rate cases should be filed under existing statutes.~~

- *AOBA* says the SCC should have discretion to require baseline cases, but that rate cases for unbundling purposes should be mandatory.

- *Washington Gas* suggests that rate cases should be used to establish base rates and to unbundle rates.

- *The SCC favors a flexible approach, recognizing the unique circumstances of each utility.*

9. Should preliminary rate freezes or rate caps be utilized in mitigation of stranded costs? [staff matrix, pg. 5]

- *The SCC believes that rate caps may be the most effective means of providing (i) long-term consumer rate protection, and (ii) the return of any stranded benefits.*

- All of the *investor-owned* electric utilities favor or support rate freezes *or rate caps*, with *AEP Virginia* and *Allegheny* favoring frozen retail rates during a 4-5 year transition period. The *Co-ops* said they are not opposed, but believe that a preliminary review of stranded costs must precede any rate freezes.

- *CNG* and AOBA oppose such rate freezes, with *CNG* voicing opinion that such freezes stifle competition.

II. Supplying and Pricing Electricity in a Restructured Market.

10. Should all retail electric energy suppliers in a restructured market be licensed? [staff matrix, pg. 18]

- Stakeholders and interested parties were unanimous in their opinion that all such suppliers should be licensed and subject to regulatory oversight (most suggested the SCC for that role). *The SCC concurs.* Virtually all agreed that suppliers should be bonded, or required to provide proof of financial responsibility, and required to meet certain market standards of conduct.

- The *Co-ops, AOBA*,and AARP suggested that all suppliers should also furnish proof of adequate generation reserves. *Virginia Power also supports this requirement.*

- *The VCCC also believes that all such suppliers should be required to offer service to every customer within the service territories chosen by the suppliers.*

- *CNG also believes that that all suppliers should furnish proof of adequate generation reserves, so long as suppliers are permitted to demonstrate adequate generation reserves either through contractual or equity means. Rationale: Limiting market access to suppliers owning an equity stake in generation facilities would be a barrier to entry and would serve to restrain competition.*

11. Should municipal power suppliers be exempted from retail competition? [staff matrix, pg. 1]

- The majority agreed that municipals could be exempted, but only if they refrained from offering electricity to customers outside their distribution territories. Most agreed that municipals should be permitted to "opt in" to retail competition on a reciprocal basis, i.e., if the municipals permit other suppliers to sell generation service to municipal customers.

12. Who should provide default, supplier-of-last-resort, and emergency service in a restructured market? [staff matrix, pp. 19, 28]

- Nearly all of the parties (except ~~*CNG*~~, *SELC and AARP*) agreed that incumbent utilities or incumbent local distribution providers (e.g., co-ops and municipal power suppliers) should provide all of these services during the transition to retail competition.

- ~~*CNG, SELC and AARP*~~ believe that default provider service should be competitively bid at the outset. *VCAP* and *Washington Gas* support making these services competitive following the completion of the transition period.

- *CNG believes that the SCC should determine when there is sufficient competition to allow competitive bids; sufficient competition could occur at any time but is unlikely to happen during the transition to competition.*

- *The VCCC says that the SCC should designate providers of last resort; that all suppliers should be able to serve as suppliers of last resort either through assignment or competitive bidding for that load.*

- *The SCC says that it is currently developing a proposal with respect to this issue.*

13. Should voluntary customer aggregation be permitted? [Staff matrix, pg. 20]

- The parties were unanimous in their support for aggregation.

- *AOBA* emphasized that aggregation should be permitted without any restrictions on utility service, customer class, etc.

- *AARP* believes that the SCC should assist customer aggregation, while *VCAP* suggested that the development of nonprofit or public aggregators for residential and other small consumer groups should be encouraged. *Virginia Power also supports the development of nonprofit or public aggregators.*

- *The VCCC also advocates customer aggregation by municipalities, cooperatives, or non-profit or for-profit entities.*

III. Transmission, Distribution and Wholesale Pricing of Electricity in a Restructured Market.

14. What are the respective roles of the SCC and FERC in the transmission and distribution of electricity in a restructured market? [staff matrix, pp. 7, 8]

- The parties agree that FERC will have authority over transmission (including transmission rates) and the SCC will have authority over distribution. *Virginia Power* believes that this separation of regulatory jurisdiction should be stated in any Virginia restructuring bill.

- The *Co-ops* suggests that the SCC have seats on ISO boards of advisory committees.

- *MEPAV* suggests that FERC's 7-factor test for distinguishing between transmission and distribution facilities be incorporated into any Virginia restructuring legislation.

- *The SCC advocates retaining maximum state authority in any restructuring legislation; and to ensure no gaps in authority between state and federal authority.*

15. What role should the General Assembly and the SCC play in the development of independent system operators serving Virginia? [staff matrix, pp. 9-11]

- The respondents are unanimous in their agreement that ISOs are needed to coordinate the transmission system and to ensure its reliability.

- The parties disagree about whether Virginia restructuring legislation should condition utilities' participation in ISOs meeting Virginia-specific criteria. Related to this issue are the collateral issues of appropriate ISO size (matrix, pg. 8), ISO board composition (matrix, pg. 7), and ISO identification and dispatch of must-run units (matrix, pg. 8).

- *Virginia Power*, *Allegheny*, and *AEP Virginia* believe that the SCC can bring its influence to bear in ISO development through ISO approval processes before FERC.

- *AEP-Virginia also notes that development of ISOs is essentially under FERC jurisdiction and that the SCC can provide input through that body's approval process.*

- Others, including *ALERT*, *AOBA*, *the VCCC* and *SELC* support the development of a public interest standard, or giving the SCC authority to approve each utility's participation in an ISO. *The Virginia Committee for Fair Utility Rates* supports the SCC's development of advisory standards to guide utilities in developing or joining an ISO.

- *The SCC believes the Commonwealth has an important role to play in ISO formation, and notes that it has an open docket on this issue.*

16. Should the SCC have any oversight of electric utilities' participation in ISOs following ISO implementation? [staff matrix, pg. 10]

- *Virginia Power*, *Allegheny* and *CNG* believe that any post-implementation concerns should be addressed by the SCC to FERC.

- *ALERT* and *The Virginia Committee for Fair Rates*, however, believe that the SCC should continue to have oversight and enforcement authority over utilities' ISO involvement—*ALERT*, for example, believes that any change in structure or operation of an ISO could trigger an SCC review to determine whether continued participation by Virginia utilities is appropriate.

- *The VCCC believes that the same standards for continued operation of ISOs should apply as for joining ISOs.*

17. Should incumbent investor-owned utilities, electric cooperatives and municipal power suppliers retain their role of distributors during and following any transition to retail competition? [matrix, pg. 17]

- The parties were nearly unanimous in declaring that distribution should remain a regulated service, and that incumbents should continue to furnish it through their current distribution system. *AOBA* suggested that it could be considered for competition at some time in the future.

18. What role should regional power exchanges, or RPXs play in Virginia's utility restructuring. [matrix, pp. 12-14]

- The parties did not advocate that the establishment of RPXs be addressed in legislation. *Virginia Power, AEP-Virginia* and *Allegheny* responses suggest that the mix of the marketplace and FERC oversight will be sufficiently protective of the public interest.

- *ALERT* believes that any Virginia utility's involvement should be subject to SCC approval.

- ~~The parties all~~ *A majority of the parties* agreed that (i) bilateral contracts should be permitted between suppliers and customers, (ii) not all sales need be made through RPXs, and (iii) Co-ops and Municipal power suppliers should be permitted to participate in RPXs.

- *The VCCC and VCAP oppose bilateral contracts, contending (in the case of VCAP) that such contracts will permit some to by-pass wires charges intended to pay for stranded costs or fund public benefits programs. The VCCC adds that bilateral contracting permits large electricity customers to by-pass the market and lock up low cost power.*

- *If bilateral contracts are permitted, the VCCC proposes residential customers rate reductions indexed to reductions in large customer rates.*

IV. Market Power.

19. Should incumbents be required to divest themselves of their generation, or functionally separate generation from distribution in order to mitigate potential market power in a competitive retail market? [staff matrix, pg. 23-25]

- The *investor-owned* electric utilities and cooperatives oppose mandatory divestiture, while either supporting or not opposing functional separation.

MEPAV believes that functional separation may require SCC or FERC oversight to prevent cost-shifting.

- *ALERT, MEPAV, the VCCC* and *VCAP* said that the SCC should have the authority to mandate divestiture if necessary to eliminate market power.

- *CNG* and *AOBA* said that incumbent utilities should be given incentives to divest.

- *The Virginia Committee for Fair Utility Rates says it favors both (i) permitting the SCC to require divestiture of a utility's generating assets if its determines that the utility may influence unduly the price of electricity and (ii) permitting the SCC to impose conditions on the sale of such assets in order to promote competition and the public interest (including conditions to ensure that any buyer or group of buyers is not able to influence unduly the price of electricity).*

- *The SCC believes that functional separation and divestiture could be helpful in alleviating generation market power. Additionally, the SCC said that divestiture could also be helpful in quantifying stranded costs and benefits.*

20. How should the General Assembly and the SCC address potential market power arising from transmission constraints, e.g., market power associated with must-run units? [staff matrix, pp. 8, 11, 14]

- *The SCC believes that state regulatory authority must be maintained over "must run units." The SCC further notes, however, that FERC's pricing of transmission in constrained areas will vary across ISOs.*

- *ALERT* and the investor-owned utilities believe, in general, that market forces (the construction of merchant plants, in particular) will ultimately resolve market power associated with transmission constraints.

- *AEP* advocated transmission line construction in its service territory as a means of alleviating some existing constraints. *MEPAV and Virginia Power concur.*

- However, the *Co-ops* contend that must-run generation in transmission-constrained areas should be regulated and priced by the SCC on a cost-of-service basis until any such constraint is eliminated. *AEP-Virginia, Allegheny,* and *CNG* concur.

- *Virginia Power* believes that pricing of must-run units should be addressed by FERC, which can establish a rate based on cost and a reasonable return.

- *AEP-Virginia also notes its belief that market power and transmission constraint issues must be dealt with prior to and as a part of the development of full customer choice. One solution this company offers is the construction of facilities to eliminate constraints. AEP-Virginia also says that its current proposal for construction of a 765 kV line is solely predicated on maintaining reliability of service to its native customers.*

Staff Summary
SJR 91
Stranded Costs and Related Issues Task Force

The task force on Stranded Costs and Related Issues held five public meetings during the 1998 interim, hearing from stakeholders representing the investor owned utilities(Virginia Power, AEP-Virginia, and Allegheny) electric cooperatives, potential suppliers of electricity (Washington Gas and CNG), and consumers (ALERT, Virginia Committee for Fair Utility Rates, AARP, and the VCCC), along with the staff of the State Corporation Commission and the Office of the Attorney General's Consumer Counsel. The task force requested and received statutory language describing each stakeholders position on the definition of and appropriate recovery mechanism for stranded costs and benefits in a competitive retail electric market.

This staff summary is intended to provide an overview of the various positions and in particular identify stakeholder areas of consensus and disagreement. Stakeholder positions are subject to change, and any analysis of the proposals must carefully consider the impact and effect of numerous other restructuring issues, especially those issues referred for consideration to other task forces.

During the course of the study, the co-chairmen directed staff to prepare a matrix comparing the legislative proposals submitted to the task force. This summary was developed using the matrix and the legislative proposals submitted to the task force, and is intended to compare methods of identifying and recovering stranded costs and stranded benefits. It is acknowledged that the General Assembly must approve the policy regarding the recovery of stranded costs, and these proposals allow for such recovery. ~~These proposals assume that the General Assembly makes the policy decision to allow for such recovery.~~

I. WHAT elements are included in the definition of stranded costs? (Staff matrix pages 3-5).

1. Elements.

Essentially all of the proposals allow recovery of those elements relating to potential losses originating from the continuing generation-related fixed costs the electric utilities incurred over the years in fulfilling their obligations to provide reliable service to their customers. These elements most commonly included:

***generation asset devaluation**-net losses in the economic value of an incumbent utility's investments and costs attributable to the electric utility's existing generation plants and facilities resulting from deregulation of generation.

***purchased power contracts**- NUG contracts and, for cooperatives, their wholesale power contracts.

***regulatory assets**-previously deferred, generation-related costs or obligations that have been incurred by a regulated electric utility in providing electricity prior to the deregulation of generation.

~~3~~2. Stranded benefits. (Staff Matrix page 12, 13).

Proposals that recognize and allow for the return of stranded benefits to ratepayers to be calculated by the SCC include those submitted by *SCC staff*, the *Office of Attorney General's Consumer Counsel*, *ALERT*, the *Virginia Committee for Fair Utility Rates, AARP*, and *VCCC*. ~~*Virginia Power's* proposal allows for the return of excess payments resulting from purchase power contracts.~~

Virginia Power, AEP-*Virginia* and *Allegheny* state that capping or freezing retail rates during the transition period will ~~capture~~ provide a fair and balanced treatment of any stranded costs and any stranded benefits. The electric cooperatives state that by virtue of the cooperative structure, any benefits "stranded" by restructuring eventually will accrue to the cooperative member-consumers.

~~2~~3. Transition costs.

Additionally, *Virginia Power*, *AEP-Virginia*, *Allegheny* and the *electric cooperatives* propose collecting from ratepayers transitional costs, defined as those costs associated with (i) implementing competition, (ii) employee and public benefits ~~surcharges~~ programs, (iii) the costs associated with consumer education, and(iv) the cost of establishing and operating an independent system operator (ISO) or regional power exchange (RPX).

II. WHO determines stranded costs or stranded benefits? (Staff Matrix page 1)

1. Role of the SCC.

All stakeholders agree that the State Corporation Commission should play a significant role ~~in the determination of~~ addressing stranded costs and stranded benefits, including the ~~determinations~~ establishment of frozen or capped rates which may occur through unbundling and nonbypassable wires charges. Several proposals, including the *SCC staff*, the *Office of Attorney General's Consumer Counsel*, *ALERT*, and the *Virginia Committee for Fair Utility Rates*, specifically enumerate factors that the SCC would use in calculating and determining stranded costs and stranded benefits.

III. WHEN does the collection or payment of stranded costs or stranded benefits begin and end? (Staff Matrix page 6, 11)

1. "Transition period".

Virginia Power, *AEP-Virginia*, and *Allegheny* propose initiating the recovery of stranded costs by a specified "date certain" and for a definitive ~~time~~ transition period. These transition periods range from 3 to 5 years. The electric cooperatives suggest that the period for recovery of stranded costs and transition costs be determined for each cooperative by the SCC.

Washington Gas and *AARP* propose that the collection or payment of stranded benefits not extend past a ten year period. *Virginia Power*, *AEP-Virginia* and *Allegheny* propose that when the transition period ends, customers pay a competitive generation rate and a nonbypassable wires charge for any remaining transition costs over the duration of the programs or service. *Virginia Power* would also continue to collect, also through a nonbypassable wires charge, for

costs associated with power purchase contracts over the remaining terms of the contracts and nuclear decommissioning over the remaining terms of the NRC licenses.

2. "Effective competition.

The Office of Attorney General's Consumer Counsel, *ALERT*, the *Virginia Committee for Fair Utility Rates*, and the *VCCC* propose that stranded cost recovery not begin until an SCC finding of an effective, competitive marketplace. (NOTE: *ALERT* would not allow recovery to commence until the SCC finds there is a competitive marketplace, but the SCC would begin monitoring, measuring, and adjusting from the time that alternative sellers begin providing service.)

~~**3. WHEN does the collection or payment of stranded benefits end? (Staff Matrix page 11)**~~

~~*Washington Gas* and *AARP* propose that the collection or payment of stranded benefits not extend past a ten year period. *Virginia Power, AEP-Virginia* and *Allegheny* propose that when the transition period ends, customers pay a competitive generation rate and a nonbypassable wires charge for transition costs over the duration of the benefit program or service. *Virginia Power* would also continue to collect, also through a nonbypassable wires charge, for costs associated with power purchase contracts over the remaining terms of the contracts and nuclear decommissioning over the remaining terms of the NRC licenses.~~

IV. HOW are stranded costs or benefits collected or paid?

1. For those retail customers who, for whatever reason, do not want to shop. (Staff Matrix page 7)

Frozen or capped rates for nonshopping generation customers are proposed by the *SCC staff*, *Virginia Power, AEP-Virginia, Allegheny, Washington Gas, and ALERT.*

2. For those who want to shop. (Staff Matrix pages 9-10)

Virginia Power, *Allegheny,* the *electric cooperatives* , and *CNG* propose that those retail customers who switch pay a competitive transition charge or a nonbypassable wires charge during the transition period only. *AEP-Virginia* proposes a competitive transition charge for those retail customers who switch during the transition period only and a nonbypassable wires charge, which may also extend beyond the transition period. Electric cooperatives have not limited the competitive transition charge or nonbypassable wires charge to customers who switch. The electric cooperatives propose that all distribution customers share in stranded cost recovery through a competitive transition charge.

3. For those retail customers who choose to self-generate. (Staff Matrix pages 9-10)

Virginia Power and the *electric cooperatives* propose imposing a disconnection charge on retail customers who would avoid their share of stranded costs through a switch to ~~local or~~ on-site generation. *Washington Gas* and *ALERT* propose that no such exit fees be permitted.

4. Treatment of cooperatives (Staff Matrix pages 18-19).

The *electric cooperatives* propose that, due to the fundamental difference in the structure of electric cooperatives and investor-owned utilities, any stranded cost recovery legislation address the electric cooperatives separately, by amending those sections of the Code of Virginia applicable to cooperatives. *ALERT's* proposal is not applicable to co-ops, while the *SCC staff*, *Consumer Counsel*, *Virginia Power* and *AEP-Virginia* submitted stranded cost proposals that are applicable to all electric utilities.

5. Mitigation. (Staff Matrix pages 14-16)

Essentially all of the proposals require the SCC to examine mitigation efforts when determining stranded costs. *Virginia Power's* proposal would result in the utility and the ratepayers sharing equally in any reduced costs related to purchase power contracts.

6. "True-up mechanisms". (Staff Matrix pages 19-21)

~~Essentially all~~ Many of the proposals require the SCC to perform periodic reviews and reconciliation of stranded costs. *AEP-Virginia* proposes that stranded costs will be dealt with during the transition period under a rate cap or rate freeze. As such, no true-up or reconciliation procedure would be required for stranded costs. According to *AEP-Virginia*, the frozen rate applicable during the transition period may be subject to limited adjustments during that transition period for such items as major environmental costs, and that costs included for recovery in the transition cost component (through a nonbypassable wires charge) would need to be subject to SCC review.

Virginia Power does not propose a true-up during the period of frozen or capped rates. However, Virginia Power does propose an annual true-up of the collection of above-market NUG costs and nuclear decommissioning fees, via nonbypassable wires charges, that would return any over collection to the customers.

7. Standard or burden of proof. (Staff Matrix pages 16-18)

The *staff of the SCC*, *Washington Gas*, *ALERT*, and the *Virginia Committee for Fair Utility Rates* place the burden of proof on the entity seeking to recover stranded costs. The *Office of Attorney General's Consumer Counsel*, *CNG*, and *AARP* require stranded costs to be verifiable and nonmitigable. *Virginia Power's* position is that any potential stranded cost that is being recovered in current regulated rates has already been justified and therefore is recoverable under a competitive structure.

SJR 91 home

State and Local Taxation Task Force
Staff Matrix Summary
November ~~4~~ 10, 1998

The brief summary below highlights responses by stakeholders and other interested parties to a series of questions covering the topics addressed by this task force:

The purpose of this summary is to identify areas of agreement and disagreement among the respondents on key issues before this task force. The respondents include:

- Allegheny Power.
- American Electric Power ("AEP").
- Attorney General's Division of Consumer Counsel ("Consumer Counsel").
- Municipal Electric Power Association of Virginia ("MEPAV").
- Virginia State Corporation Commission ("SCC").
- Virginia Association of Counties ("VACO").
- Virginia, Maryland & Delaware Association of Electric Cooperatives and Old Dominion Electric Cooperative ("Co-ops").
- Virginia Municipal League ("VML").
- Virginia Power.

The parties' written responses have been posted to the SJR-91 Joint Subcommittee's web site, and are available under the link for this task force. The matrix summarizing their positions is posted to the same location.

Brief Summary of the Current Taxation Scheme for Public Utilities

Under current law, the investor-owned electric utilities and the electric cooperatives and electric energy customers pay a variety of taxes to the Commonwealth and localities. Taxes paid directly by the utilities are "recaptured" from customers through the utility's regulated rates. Revenue received by the Commonwealth directly from utilities is collected on a gross receipts basis. In 1996, the State Corporation Commission received approximately 90.2 million dollars in gross receipts taxes (§ 58.1-2626). Utilities currently benefit from the Virginia Coal Employment and Production Incentive Tax Credit (§ 58.1-2626.1) which provides a credit against the state gross receipts tax for the purchase of Virginia coal, a credit of approximately 18.1 million dollars in 1996. Electric utilities also paid approximately 5.4 million dollars in 1996 as a result of the special regulatory revenue tax (§ 58.1-2660). This tax is levied for the specific purpose of raising funds to be expended by the SCC in making independent appraisals and valuations of the property of the utilities.

Localities also receive a large amount of revenue from electric utilities. These sources include local gross receipts taxes, consumer utility taxes, and revenues from property taxes. Local gross receipts (§ 58.1-3731) are imposed on the utility's gross receipts and can vary from locality to locality, although most localities impose this tax at a rate of 0.5% of the gross receipts of the utility derived from within that locality. The consumer utility tax (§ 58.1-3814) is imposed on the customer's monthly gross charge and the amount may vary from locality to locality. Many counties and cities have been granted an

exemption to the statutory limits currently in the Code of Virginia. The current law distinguishes between residential and other customers in establishing the rate limits.

Property taxes paid by electric utilities also represent a significant source of revenue for localities. Under current law, the State Corporation Commission assesses the property of public utilities. The assessment includes the value of both the real estate and equipment located at the facility. The certified assessment is forwarded to the locality in which the facility is located, and the real estate tax rate is applied to the total assessed value of the facility. Independent power producers, on the other hand, have their property and equipment assessed by the locality. The land is taxed at the real estate rate, and the equipment is taxed separately at a "machinery and tools" rate. There are also differences in the depreciation method used by the SCC and the methods utilized by the localities.

The 1997 Taxation Task Force formed pursuant to SJR 259, comprised of representative stakeholders and chaired by Senator John Watkins, formulated draft legislation designed to (i) retain the current level of revenue for the Commonwealth and localities, and (ii) maintain the current apportionment of tax burden among residential, commercial, and industrial users.

Relying extensively on the Department of Taxation for technical assistance, the task force developed such a taxation scheme. Embodied in SB 619 and SB 620 is a taxation scheme that imposes a corporate net income tax on profits derived from generation. A "declining block" consumption tax, which also serves as a collection vehicle for the special regulatory revenue tax and the local gross receipts tax, is used to make up the resulting revenue shortfall. SB 619 and SB 620 were introduced during the 1998 session of the General Assembly and, at the request of Senator Watkins, carried over for further study during the interim.

Representative Stakeholder responses to Staff Questionnaire

Should the current taxation methodology for electric utilities remain in effect if there is restructuring resulting in retail competition?

The **SCC, Consumer Counsel, Virginia Power, AEP, Allegheny, and the co-ops** all agree that retail competition will require changes in the current tax scheme.

MEPAV suggested that restructuring will require some modification of the state and local tax code, but that a modified gross receipts tax could be collected at the transmission provider level from municipal electric systems. **MEPAV** also suggested that ~~urged the task force to address~~ the tax issues associated with out-of-state gas purchases be addressed as a matter of fairness.

VML and VACO filed a joint response to the staff questionnaire. **VML and VACO** indicated that the current tax scheme should remain in effect, but that the local consumer utility tax and the local gross receipts tax may need to be based on a kWh consumption basis rather than on a gross receipts basis.

Taxation of investor-owned utilities, electric cooperatives, municipal electric power suppliers in a restructured environment.

Virtually all respondents agree that a corporate income tax is an appropriate replacement mechanism for the state gross receipts tax. There is disagreement concerning whether or not to apply this income tax to all business income or only to apply the tax to that income that is derived from generation. The **SCC,**

Consumer Counsel, AEP, the **co-ops** and **MEPAV** would all impose a corporate income tax on the total business income. **Virginia Power, ~~AEP,~~ and Allegheny** would impose this corporate income tax only on the income derived from generation.

Electric cooperatives also currently pay the gross receipts tax and the special regulatory revenue tax. However, unlike the investor-owned utilities, the co-ops pay no federal income tax because they are non-profit entities owned by their customers. **AEP ~~and MEPAV~~** would impose a modified gross receipts tax on the co-ops, an approach also contained in SB 620. The **co-ops** stated that continuing to subject an electric coop to a minimum GRT would cause an unfair tax burden and inequitable tax treatment, since a coop's power transactions in a competitive environment may result in significant gross receipts, but may generate little or no margin ("profit"). Co-ops are now exempt from federal corporate income tax only if they meet specific requirements and have no profits. The co-ops are willing to pay a corporate net income tax on federal taxable income, which translates to taxable profits. The **SCC** stated that the co-ops should pay a corporate income tax if they are liable under current statutes.

Municipal electric utilities and their customers are ~~not~~ currently subject to ~~any~~ some but not all of the taxes mentioned in this report. The local consumer utility tax is collected from municipal utility customers in the same way that this tax is collected from the customers of investor-owned utilities and the cooperatives. ~~However~~ Moreover, municipal purchases of electricity from in-state providers ~~does~~ includes the embedded cost of the gross receipts and special regulatory revenue tax. **VML** stated that electricity purchases , either inside or outside the state, should be subject to the state's taxation at a level comparable to the current state gross receipts tax. VML also believes that municipal electric systems should continue to have the authority to set their own rates and to be governed by local governing bodies, not a state governing or a state regulatory board.

The SCC also noted that wholesale power transactions should be subject to the corporate net income tax, as well as the special regulatory revenue tax.

"Declining block" Consumption Tax; Components.

All stakeholders who responded support the concept of implementing a consumption tax based on kWh usage to make up the substantial revenue shortfall that occurs when moving from a gross receipts tax to a corporate net income tax. **The SCC, Virginia Power, AEP, and Allegheny Power** all endorsed the "declining block" method that serves to maintain the current tax apportionment among user categories (residential, commercial, and industrial). **Consumer Counsel** stated that any consumption tax should equitably allocate the tax burden among customer classes and prevent further shifting of the tax burden to smaller customers. **MEPAV** noted that a consumption tax will substantially increase the tax burden on the customers of a municipal electric utility, and that a state gross receipts tax levied on the wholesale purchase of the municipal utility would ~~may~~ be more revenue neutral. **MEPAV and VML** believe there should not be direct taxation of municipal electric customers. MEPAV stated that if a consumption tax is enacted, the measure should allow the municipal electric utility the option of providing the revenue through their transmission and/or purchase power contracts.

Virginia Power, AEP, Allegheny Power, the co-ops, and VML/VACO all agreed that the consumption tax should serve as a replacement method for the revenue currently received from the state gross receipts tax, local gross receipts taxes and the special revenue regulatory tax. **The co-ops** would allow localities the option of adjusting the minimum consumption tax rates to ensure no loss of revenue. **The SCC** proposes limiting any consumption tax to the state tax portion only. **MEPAV** agrees that it may be appropriate to collect the ~~with including~~ local gross receipts taxes in the consumption tax, but

objects to including the special revenue regulatory tax, stating that it is inappropriate for the municipal electric systems to pay for the regulatory functions of the SCC which do not benefit them because their purchases are regulated entirely by the FERC. MEPAV and VML/VACO also suggest that any consumption tax should be "unbundled" so that the tax rate for each component included in the consumption tax can be properly identified and remitted to the locality and the Commonwealth.

Administration of Replacement Taxation Program.

Who should bear the responsibility for administering any new tax programs designed to replace the current tax scheme? **MEPAV, VML, and Allegheny Power** favor oversight by the Department of Taxation. **VACO** prefers that the SCC oversee this function. **The co-ops** propose delegating the corporate income tax portion to the Department of Taxation, with the SCC assigned responsibility for any consumption tax and oversight in determining the allocation between generation and nongeneration business segments. **The SCC** believes that if the taxation scheme is limited only to general fund taxes, the Department of Taxation should administer the program. However, if the "declining block" consumption tax as contained in SB 619 is implemented, the SCC should administer the program. **Virginia Power** indicated no preference as to whether the SCC or the Department of Taxation administers the program, but did encourage the planning of an effort to educate consumers.

Real Property; Assessment Methodology; Performance of Assessments.

The onset of retail competition could have significant impact on the property tax revenues localities receive from electric utilities.. A decline in the price of electricity could cause a drop in property tax assessments, which would be especially painful to localities who have generation facilities physically located within their jurisdictional boundaries. **The SCC** would protect and preserve the current revenues received from real property taxes imposed on generation facilities by providing that the General Assembly mandate central assessment of the property by the SCC. **AEP** feels that any changes in facility value are speculative at this time, and that the SCC should have central assessment authority over all generating facilities within Virginia.

Virginia Power, VML/VACO and **MEPAV** would give localities the authority to assess and adjust the property tax rates on generation facilities. **VACO/VML** feels that if localities are charged with assessing generating facilities, the state should provide guidelines and assistance, and that the SCC should continue to assess distribution and transmission lines. **The co-ops** suggest allowing localities to make up any loss in property tax revenue by increasing the consumption tax. The co-ops also believe that all property owned by electric generators should be subject to uniform central assessment.

Virginia Power and AEP state that fair market principles in accordance with the Virginia Constitution (Article X, § 2) must be the assessment method used when determining the value of property owned by suppliers of electricity. AEP would require the SCC to continually review the depreciation factors to assure accuracy in the assessments. **The co-ops** proposal would be to assess at "book value", as defined by generally accepted accounting principles, while **Allegheny Power** would tax all generation property similarly, using a uniform and consistent assessment method. **The SCC's** proposed assessment method on real property would be original cost less depreciation. The SCC also notes that deregulation may require other appraisal techniques. **VML/VACO** proposes defining a uniform method of assessing generation facilities in the Code of Virginia, provided that a mechanism for allowing a separate rate classification of this type of property is provided also. VML/VACO also felt that localities must have the flexibility to adjust their tax rates in the event the assessment method adopted results in a reduction in revenue.

Consumer Utility Tax; Collection.

While **Allegheny Power** states that ideally a governmental entity imposing a tax should have the duty of collection, all respondents do agree that the local distribution company should serve as the collector of the consumer utility tax. **Virginia Power, AEP, VML/VACO and MEPAV** would protect the revenue from this source by basing the tax on a kWh consumption rather than price. **Allegheny Power** and **the co-ops** would incorporate the consumer utility tax into any consumption tax. **The co-ops and VML/VACO** also propose allowing localities to adjust the rates charged to ensure revenue neutrality.

SJR 91 home

Consumer, Environment & Education Task Force
Staff Matrix Summary
~~October 27, 1998~~11/6/98 Revision

The brief summary below highlights responses by stakeholders and other interested parties to a series of forty-five questions covering the seven topics addressed by this task force:

- Public Benefits Charges for the Benefit of Low-Income Households
- Consumer Education.
- Customer Aggregation.
- Consumer Protection.
- Environmental Protection.
- Energy Efficiency.
- Electric Utility Worker Protection.

The purpose of this summary is to identify areas of agreement and disagreement among the respondents on key issues before this task force. The respondents include:

- Allegheny Power.
- American Electric Power.
- American Association of Retired Persons (AARP).
- Association of Energy Conservation Professionals.
- Attorney General's Division of Consumer Counsel.
- Consensus Group[1]
- CNG
- Maryland-D.C.-Virginia Solar Energy Industries Association (MDV-SEIA)
- Ogden Energy Group, Inc.
- Southern Environmental Law Center.
- Virginia State Corporation Commission.
- Virginia Association of Counties (VACO).
- Virginia Citizens Consumer Council (VCCC).
- Virginia Cooperatives.
- Virginia Council Against Poverty (VCAP).
- Virginia Municipal League (VML).
- Virginia Power.

[1] The "Consensus Group" includes the Southern Environmental Law Center, Virginia Council Against Poverty, Sierra Club, Virginia State Conference NAACP, VMH, Inc., Association of Energy Conservation Professionals, International Brotherhood of Electrical Workers System Council U-1, and Virginia Power.

The parties' written responses have been posted to the SJR-91 Joint Subcommittee's web site, and are available under the link for this task force. The matrix summarizing their positions is posted to the same location.

Public Benefits Charges for the Benefit of Low-Income Households

Virginia currently has no statutory or regulatory programs furnishing energy assistance to low-income households throughout the Commonwealth. The task force learned, however, that a number of *voluntary* programs—such as Virginia Power's EnergyShare and AEP Virginia's Neighbor-to-Neighbor—provide emergency energy assistance to low-income households in need. Additionally, the Weatherization Assistance Program (WAP) provides weatherization assistance to low-income households on a statewide basis through a combination of federal and state funding.

The question put before this task force by consumer group representatives is whether—as part of Virginia's utility restructuring—the Commonwealth should formally adopt legislation establishing energy assistance programs for low-income households. Respondents were asked about eligibility, funding, and administration criteria for such programs.

Establishing low-income programs.

- Consumer groups such as the Southern Environmental Law Center, the VCCC, VCAP and others expressed support for programs that provided rate subsidies, crisis assistance, and weatherization assistance to low-income households.

- The Consensus Group said the law should establish a statewide low-income electric service payments assistance program and that home weatherization and energy conservation programs designed to assist low-income citizens also should be established.

- Virginia's utilities and cooperatives provided wide-ranging responses. AEP said that mandating such assistance is not appropriate. Allegheny Power, on the other hand, said that such assistance programs are both necessary and desirable—provided there are adequate funding mechanisms. Virginia's cooperatives recommend that policy makers recognize the additional costs of such programs and consider all of the other costs of restructuring in evaluating whether such programs would be appropriate.

Funding.

- If such programs were established through restructuring legislation, however, virtually all respondents agreed that these programs should be funded by a per-kWh, nonbypassable wires charge paid by all consumers of electricity.

Administration.

- All respondents agreed that any such programs should be administered by the Virginia State Corporation Commission, or by some other agency. Virginia's cooperatives and others noted that state agencies and non-profit organizations experienced in ~~working with the low-income population~~ administering social and public welfare programs could assist in coordinating such programs.

Eligibility.

- The VCCC and VCAP proposed a specific eligibility benchmark: households with income at 150% of federal poverty guidelines—an eligibility standard currently used for both the Weatherization Assistance Program (WAP), and the Low Income Home Energy Assistance Program, or LIHEAP. Other respondents suggested general support for means-tested eligibility criteria.

Other suggestions.

- Allegheny Power suggested that any low-income, energy assistance programs adopted be reviewed periodically to determine their efficiency and impact.

Consumer Education.

The parties all agreed that consumers must be prepared for the transition to a restructured electric utility market. During the course of task force meetings, repeated references were made to the consumer confusion and uncertainty generated by telecommunications market deregulation. There was universal agreement that restructuring could be even more complex to the average consumer.

Parties' presentations to the task force on this topic suggested several key questions: (i) the specific focus of such education programs, (ii) who should conduct consumer education programs, (iii) when should they be conducted, and (iv) what level of regulatory oversight is appropriate.

General purpose.

- The SCC's response was typical of that offered by other respondents: draw a sharp distinction between *marketing* and *public education*. The VCCC's response was also representative: (i) prepare consumers for structural changes, (ii) assist consumers in shopping for electric service, and (iii) inform consumers of their rights and obligations as customers.

When and for what length of time.

- In terms of a start date, some, including the Attorney General's Division of Consumer Counsel, suggested that such education programs begin at least six months prior to retail choice. Virginia Power suggested that it begin July 1, 1999. Many others, including the VCCC, believe that such education should continue through the transition, and for a reasonable period of time thereafter.

- The Consensus Group recommended that consumer education programs be implemented to inform consumers, in advance of competition and on a continuing basis, about changes in the way they may purchase electric energy and about using electric energy safely, efficiently, and in an environmentally sound manner.

- ~~Most~~ Several respondents believe that long-term consumer education programs may be necessary. VCAP, for example, stated that these programs should continue until such time as retail competition is determined to be effective. AARP offered the idea of an SCC investigation to help in this determination five years after the commencement of retail competition. Virginia's cooperatives do not believe an ongoing education program is necessary.

Funding and regulatory oversight.

- ~~Without exception~~, Virtually all parties responding said that consumer education should be funded through a nonbypassable wires charge paid by all consumers of electricity.

- Allegheny Power, Virginia's cooperatives and American Electric Power envision a consumer education program coordinated principally by the Virginia State Corporation Commission. Other respondents mentioned state agencies with consumer expertise and contacts, including the Office of Consumer Affairs, the Department of Housing and Community Development, the Department for the Aging and others.

- According to the Consensus Group, effective and unbiased consumer education programs should be conducted, independent of the electric utilities and other electric energy suppliers, under the supervision of the State Corporation Commission and in association with other state governmental agencies. The SCC should contract with appropriate private non-profit organizations and other media, educational, and consumer organizations to implement such consumer education programs, the Consensus Group said.

- The VCCC and Virginia Power emphasized that non-profit, community-based organizations should play a role—particularly in educating hard-to-reach populations.

Customer Aggregation.

The aggregation issue concerns the development of electricity customer groups in a restructured market. Virginia's cooperatives were quick to emphasize their years of experience accomplishing just that. The task force discovered that virtually no stakeholder or any other interested party expressed any opposition to customer aggregation, per se. And study participants agreed that aggregators should be licensed—with some subject to more stringent requirements than others.

Testimony before the task force revealed that Massachusetts restructuring legislation permits localities to shop for the electrical power needs of all of their residents and businesses, except for those that affirmatively "opt out," choosing to shop for power on their own. The "opt out" approach (also called community choice) proved to be very controversial as it was discussed before the task force. This issue pitted the incumbent utilities against locality representatives. VML, VACO and others believe that community choice offers residential customers and small businesses a realistic chance to benefit from utility restructuring. Incumbents take an opposite view, contending that community choice would effectively eliminate competition in locality markets.

Licensing and regulating aggregators.

- All respondents said that aggregation should be permitted, and that aggregators should be licensed by the Virginia State Corporation Commission. VCAP and Virginia's cooperatives cautioned, however, that overly-burdensome licensing requirements could discourage non-profit groups helping low-income households from obtaining licenses as aggregators.

- The Consensus Group said local governments, community action agencies, for-profit entities, and non-profit organizations should be permitted to aggregate customers for the purpose of purchasing electric generation service.

- VML and Virginia Power urged that the regulation of aggregators distinguish between those representing electricity suppliers and those negotiating on behalf of customer aggregates. Virginia Power thinks that the former should be required to provide proof of financial responsibility, reliability, and adequate reserve margins. In the same vein, Allegheny Power believes that aggregators contracting to provide energy should be licensed as generation suppliers and subject to all requirements applicable to that license.

"Opt out" or community choice, and other aggregations.

- ~~All of the~~ The investor-owned electrical utilities, ~~and~~ electric cooperatives, and CNG oppose it. All of the consumer and locality groups favor it. ~~It's that simple~~. The electric cooperatives ~~called it~~ remarked that allowing localities to take over customers by simply declaring themselves to be aggregators would be tantamount to "state-supported slamming." VML said that opt-out aggregation

will result in load profiles that will enable localities to successfully negotiate competitive electrical rates with generation suppliers.

- All parties responding on this issue supported localities aggregating their load with other localities, and with private companies outside their jurisdictions—~~with one exception: American Electric Power~~. Additionally, Virginia Power believes that locality aggregation with private entities should be scrutinized from a tax-equity viewpoint.

Consumer Protection

When this topic was before the task force, everyone agreed that some heightened consumer protection would be necessary in the transition to and aftermath of electric utility restructuring. However, the parties presentations and discussions that followed, suggested that a number of specific consumer protection issues are unique to restructuring, and that not everyone agrees on the appropriate approach to each of them.

Here are several of the issues raised by the parties, and then incorporated into staff matrix questions: (i) whether all generation suppliers should be required to provide certain information in their marketing materials, (ii) whether billing information should be standardized, and in what form, (iii) consumers' rights to cancel electricity supply contracts within a specified period of time, (iv) protections against "slamming" as well as against certain telemarketing practices, and (v) complaint assistance.

Standardized marketing disclosures.

- While most of the respondents expressed support for certain stipulated disclosures, Allegheny Power said that marketing materials should comply with existing laws, but that standardizing information may have the effect of stifling innovation. CNG also opposes standardization.

- Consumer groups, including the VCCC, VCAP, the Southern Environmental Law Center, said that, at a minimum, price, fuel mix, and emissions should be core disclosures. The VCCC also suggested that such disclosures include a description of cancellation rights, and toll-free information numbers. Virginia's cooperatives recommend that a standardized, generic formula for rate comparisons be established.

Billing disclosures

- AARP's response was representative: billings should be "unbundled" to show, separately, the charges for regulated services (most likely, transmission and distribution) and the charges for competitive generation. The VCCC and others also expressed support for uniform billing formats as well (uniform terms, clear language and visual simplicity). Virginia's cooperatives recommend that all services that are subject to competition be identified.

- The Consensus Group said customer bills should be presented in a clear,, uniform and customer-friendly format. On customer bills and supplier marketing materials, the separate charges for the various unbundled services should be clearly shown. Bills should provide uniform information regarding the supplier's fuel mix and a meaningful representation of the emissions resulting from the power generation sold to the customer, according to the Consensus Group.

- Virginia Power's response also flagged the taxation and nonbypassable wires charges issues. It suggested that taxation charges be identifiable within bills. The company also stated that bills should break down customers' nonbypassable wires charges by component (e.g., stranded costs, low-income energy subsidies, etc.).

Consumer Cancellation Rights.

- Virginia's Home Solicitation Sales Act currently gives persons solicited at home (in person, or by telephone) the right to cancel any contract resulting from such solicitations within three business days. CNG believes that Act should be amended to include the sales of energy products and services. Most respondents felt that similar protection should be given consumers solicited by energy supply companies. AARP suggested a one week "cooling off" period; Virginia Power would apply such a right to contracts in which an energy service contract covers a specified period of time.

Slamming and certain telemarketing practices.

- The unauthorized switching of energy providers, or "slamming" should be specifically addressed in restructuring legislation, according to most respondents. VCAP suggested heavy fines for slammers, while Virginia's cooperatives, American Electric Power and VML believed this problem should be addressed through the registration and certification of energy providers, with the potential for loss of certification.

- The VCCC believes that changes in energy suppliers obtaining through telemarketing should be confirmed through third-party verification. This would be consistent with current FCC regulations governing slamming in the telecommunications market. The VCCC also believes that that slammers should be barred from collecting payments for services from slammed customers—a remedy under consideration by the FCC for the telecommunications market, but not yet adopted.

- The Consensus Group said the law should protect consumers from unfair and deceptive advertising, marketing, and business practices, including misrepresentations of "green power" and intrusive telemarketing tactics. An

agreement to obtain service from a supplier should be made in writing with a 3-day right to cancel. Accordingly, any agreement made by telephone or electronically should be confirmed in writing, the Consensus Group said.

- On the telemarketing issue, most respondents believe that consumers should be protected against deceptive practices and intrusive telemarketing. Some, like Allegheny Power, believe that current law will suffice. Others, like the Virginia cooperatives, believe that applying the Virginia Consumer Protection Act to energy solicitations is appropriate.

Consumer Complaints.

- Most respondents would hand the SCC the job of mediating conflicts between energy suppliers and customers, although a handful—like ~~Virginia's cooperatives and~~ the VCCC—would give that duty to the Attorney General's office as well. However, American Electric Power cautioned that the SCC will likely require additional resources to carry out this broad tasking.

Other consumer protection issues.

- Consumer privacy protections concerning billing, payment history and consumption patterns were issues of concern to the Southern Environmental Law Center and the VCCC.

- The Consensus Group emphasized that customer privacy must be protected. Customer specific information, such as personal, billing or credit data, should be divulged only upon consent of the customer, according to the Consensus Group.

- Virginia Power recommends a Customer Advisory Board to review consumer issues and problems associated with the transition to retail competition. The proposed board would report annually to the Legislative Transition Task Force.

- The Consensus Group said safe, reliable and affordable electric services should be available for all consumers. State law should include a strong prohibition against electric energy supplier discrimination or supplier or distributor redlining based on gender, race, or income. All suppliers of electric energy should be licensed by the State Corporation Commission, according to the Consensus Group. All electric suppliers should be required to meet service quality standards set by the SCC. Within the boundary of its service territory, the incumbent electric utility, or distribution service provider, should be the supplier of last resort, at least in the beginning of the transition period, and should also serve as the emergency supplier for customers whose alternative supplier fails to provide electric energy as contracted, the Consensus Group said.

Environmental Protection.

For several years, the joint subcommittee—and now this task force—has been told by the Southern Environmental Law Center and others, that Virginia can help support the environment through its restructuring legislation. The Center has expressed its fear that retail competition for generation (with its intensive emphasis on price) will extend the operation of older, less efficient power plants entitled to emit at higher levels under federal clean air laws—plants that might otherwise have been retired in a regulated environment.

The Center and others have suggested that the General Assembly counter the effects of this possible development by (i) urging federal amendments to federal clean air laws, eliminating any and all emissions-related exemptions older plants currently enjoy, (ii) requiring all power suppliers in Virginia to disclose fuel mix and emissions, and (iii) adopting a renewable portfolios standard, in which a percentage of generation offered for sale in Virginia by each retail supplier must be generated from renewable resources.

The Consensus Group said electric utility restructuring should be implemented so that the competitive market for electric generation services operates in a manner that protects consumers, maintains environmental quality, and offers opportunities to enhance the quality of the environment.

Renewable Portfolios standards.

- Allegheny Power, ~~and~~ American Electric Power and CNG are firmly opposed to mandated renewables portfolio standards; Virginia's cooperatives said it was an issue for the General Assembly to determine, particularly in light of increased costs associated with such standards. Virginia Power supports research and development in this area, using funds generated by a nonbypassable wires charge.

- On the other side of the issue, the Southern Environmental Law Center, the VCCC, and MDV-SEIA support a statutory renewables portfolio standard.

Air quality provisions in Virginia restructuring legislation.

- Allegheny Power, ~~and~~ American Electric Power, CNG and Virginia Power are also firmly opposed to coupling new environmental mandates and restructuring legislation. ~~Both companies said~~ They believe that both the federal EPA and Virginia's DEQ have sufficient authority under current law to address al present and future air quality concerns. Ogden Energy—a waste-to-fuels company—expressed a similar sentiment, while the SCC stated that it does not recommend any new air quality initiatives as part of restructuring. Also, Virginia Power supports restructuring legislation that offers the opportunity to improve air quality indirectly by providing programs to

encourage conservation and the use of renewables which will reduce emissions and the need for additional generating capacity.

- With the exception of the Southern Environmental Law Center (which wants state support for changes in the federal clean air laws establishing uniform emissions restrictions for all generation facilities), almost all other respondents on this issue emphasized their support for enforcing existing emissions laws. Virginia's cooperatives recommend recognition of differences in emissions among the various sources of energy marketed in Virginia.

Generation fuels disclosures.

- On this issue, the electric utilities and cooperatives were in disagreement. American Electric Power and Allegheny Power opposed this requirement, while Virginia Power and Virginia's cooperatives supported it. CNG opposes it.

- To enable consumers to make informed choices among competing power suppliers, the law should require the disclosure by all suppliers of the fuel mix and the resulting emissions from the power generation sold by the supplier, according to the Consensus Group. This information must be provided in a clear, uniform and customer-friendly format on customers bills.

- The Attorney General's Division of Consumer Counsel together with all consumer groups and the Southern Environmental Law Center also supported this proposed requirement.

- Ogden Energy Group, however, supports voluntary program designed to help consumers identify green, clean electricity products.

Other issues:

- MDV-SEIA, a solar energy trade association, proposes that "net metering" be mandated. Net metering allows self-generators—such as those using solar power—to receive credit for electricity they generate in excess of their own usage.

- The SCC strongly advocated regulatory verification of green power suppliers' energy sources.

- The Consensus Group said that funding for programs that encourage the use of renewable energy resources and promote energy efficiency and conservation should be provided by a nonbypassable public benefits charge imposed on all purchasers of electric energy. These funds should be administered by an independent entity, according to the Consensus Group

Energy Efficiency

Electric utilities' efforts to use energy more efficiently fall into two categories: *conservation programs* and *load management programs*. Conservation reduces usage, and load management shifts usage to use generation units more efficiently. Collectively these two approaches are called "demand side management," or DSM. The overarching purpose of DSM is to reduce the need for constructing new generation.

The Southern Environmental Law Center and others have expressed their concern that restructuring will put a premium on short-term profits, making DSM programs (and their lengthy savings payback periods) unappealing. To counter that, the Center has proposed implementing a public benefits charge to ensure that DSM and renewable technology research is conducted in a post-restructuring market. This proposal raises two key questions reiterated in the staff matrix questions: (i) how should energy efficiency programs be supported during and after restructuring, and (ii) whether a public benefits surcharge should be imposed to fund R & D for energy efficiency and conservation.

- Consumer groups (VCCC, VCAP and others), together with the Association of Energy Conservation Professionals (AECP) and the solar consortium MDV-SEIA, joined the Southern Environmental Law Center in suggesting that the best way to promote energy conservation is through a public benefits charge for energy investments.

- Funding for programs that encourage the use of renewable energy resources and promote energy efficiency and conservation should be provided by a nonbypassable public benefits charge imposed on all purchasers of electric energy, according to the Consensus Group. These funds should be administered by an independent entity.

- The electric utilities fell into three camps on this issue: those who opposed public benefits charges for energy efficiency (Allegheny and the cooperatives); those who supported them (Virginia Power) and those who took no position (AEP).

- Other ideas included that of Allegheny Power to use tax incentives to promote energy efficiency initiatives. MDV-SEIA believes that the Commonwealth should set the example by directly investing in energy efficiency "seed projects" through its capital outlay for new and renovated public facilities.

- The SCC does not support a public benefits charge for energy efficiency.

Electric Utility Worker Protection

The International Brotherhood of Electrical Workers, or IBEW has appeared several times before the joint subcommittee and its task forces to emphasize its concerns

about restructuring's potential impact on electric utility workers—both in terms of job retention, and in terms of easing their transition to new careers in the event of significant restructuring-related downsizing.

An IBEW representative reminded this task force of positions this labor organization had taken before the joint subcommittee at a meeting earlier this year in which it had urged statutory protections for utility worker, such as (i) minimum staffing levels linked to reliability considerations, (ii) continuing utility worker employment at generation units or stations, and protecting their wages and terms of employment, (iii) worker qualifications for purposes of quality, safety and reliability, (iv) quality, safety and reliability standards applicable to new market entrants, and (v) mandatory training and skill standards for all electrical workers responsible for systems and equipment after restructuring.

The IBEW continues to support these positions and desired responses to them from stakeholders and other interested parties. At the task force's direction, these issues were included in the staff matrix questionnaire. The electric utilities and cooperatives were the principal respondents to these questions.

The Consensus Group noted that a well-trained and highly skilled workforce will be essential for ensuring reliability in a competitive market for electricity. The Consensus Group suggested that programs that offer education, retraining and outplacement services should be established to assist electric utility employees directly affected by the implementation of competition in the generation and supply of electric energy.

Statutory protections, including minimum staffing levels and employment continuation.

- American Electric Power and Allegheny Power do not support providing new statutory protections for electric utility workers. However, they join Virginia's cooperatives and Virginia Power in supporting downsizing-related needs through a nonbypassable wires charge, e.g., covering such costs as severance pay, outplacement services, and retraining.

- Virginia's utilities showed no support for any minimum plant or station staffing level requirement. In sum, they believe that reliability is a responsibility all energy suppliers currently have and will have in the future, and that minimum staffing should not be mandated.

- The utilities also believe that electric utility workers assigned to any incumbent utilities' generation assets sold in restructuring-related sales, should receive no new statutory protections insofar as job protections or wage and benefits guarantees.

Worker standards for new market entrants relating to safety and reliability, and training and skill standards for all electrical workers.

- The utilities emphasized that new market entrants would and should be subject to current state, federal and industry requirements governing safety and reliability. These include standards imposed by the National Electric Safety Code, the North American Reliability Council and Regional Reliability Council rules, and utility interconnection requirements.

- The utilities also emphasized that utility workers—employed by new entrants and incumbents alike—should continue to be trained in accordance with existing utility practices and standards, and in conformity to requirements imposed by applicable state and federal law. Any new standards generated by restructuring, they said, should be applicable to all.

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SENATE BILL NO. _____ HOUSE BILL NO. _____

SJR-91 Electric Utility Restructuring Draft—January 13, 1999.

Please note: ***This draft consolidates the (i) Structure & Transition, (ii) Structure & Transition Supplement (iii) Stranded Costs, and (iv) Consumer Environment & Education drafts. However, this draft is broken into these four sections for ease of reference in comparing current language to earlier versions. The draft revisions (shown in strike & add format) incorporate all drafting group work through Monday, January 11. FYI, The italicized revisions are those made at the January 11 drafting group meeting.***

While the capped rate, stranded costs and nonbypassable wires charge sections are included in this draft, the drafting group has not formally reviewed or modified them. Thus, these sections remain as submitted by staff. It is anticipated that they will be taken up by the full joint subcommittee at its meeting on Thursday, January 14.

This draft has been posted to the joint subcommittee's Internet site in PDF format to ensure that everyone present at the January 14 meeting will be using uniform page and line numbers. However, electronic copies of this draft in Word format are available upon request from staff.

Structure & Transition

§56-579. Schedule for transition to retail competition; **Commission** authority. **[pp. 1-6, generally]**

A. The transition to retail competition for the purchase and sale of electric energy shall be implemented as follows **[pg. 1, column 2, bullet 2]**:

1. On or before January 1, 2001, each **incumbent electric utility** owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish ~~an **independent system operator (see SCC definition on pg. 4 of SCC proposal)**, or ISO~~ a regional transmission entity, *which entity may be an intrastate independent system operator*, to which such utility shall transfer the management and control of its **transmission system**, subject to the provisions of §56-581.

2. On and after January 1, 2002, **retail customers** of electric energy within the Commonwealth shall be permitted to purchase energy from any **supplier** of electric energy licensed to sell **retail electric energy** within the Commonwealth during *and after* **the period of transition to retail competition**, subject to the following:

a. The Commission shall establish a phase-in schedule for customers by class, and by percentages of class, to ensure that by January 1, 2004, all retail customers are permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth **[pg. 1, column 3, bullet 4]**.

~~b. The Commission shall ensure that during such phase-in, equal percentages of the loads of each retail customer class are concurrently permitted to purchase electric energy from any supplier **[pg. 2, column 3, bullet 2]**.~~

c. The Commission shall also ensure that residential and small business retail customers are permitted to select suppliers ~~(i) in advance of any other retail customers, or (ii) in the alternative,~~ in proportions at least equal to that of other customer classes permitted to select suppliers during the period of transition to retail competition **[pg. 1, column 3, bullet 3]**.

3. On and after January 1, 2004, 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.

B. The Commission may delay or accelerate the implementation of any of the provisions of this section, subject to the following **[pg. 1, column 4, bullet 1. *Note:* subdivision B3 suggested by drafting group]**:

1. Any such delay or acceleration shall be based on considerations of reliability, safety, communications or market power; and

2. Any such delay shall be limited to the period of time required to resolve the issues necessitating the delay, but in no event shall *any* such delay extend *the implementation of customer choice for all customers* beyond January 1, 2005.

3. The Commission shall, within a reasonable time, report to the General Assembly or any legislative entity monitoring the restructuring of Virginia's electric industry, any such delays and the reasons therefor.

C. Except as may be otherwise provided in this chapter, prior to and during the period of transition to retail competition, the Commission may:

1. Examine the rates of electric utilities pursuant to and in accordance with the provisions of Chapters 9 (§ 56-209 et seq.) and 10 (§ 56-234 et seq.) of this title **[pg. 4; language suggested by drafting group]**, and

2. Conduct pilot programs encompassing retail customer choice of electric energy suppliers, consistent with its authority otherwise provided in this title, and the provisions of this chapter **[pg. 6, column 1, bullet 1 plus language suggested by drafting group].**

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

§ 56-580. Nondiscriminatory access to transmission and distribution system **[pp. 7,8]**.

A. All **distributors** shall have the obligation to connect any retail customer located within its service territory to those facilities of the distributor that are used for delivery of retail electric energy **[pg. 7, column 2, bullet 1]**.

B. Except as otherwise provided in this chapter, every distributor shall provide distribution service within its service territory on a basis which is just, reasonable, and not

unduly discriminatory to suppliers of electric energy, as the Commission may determine. The distribution services provided to each supplier of electric energy shall be at least equal in quality to those provided by the distribution utility to itself or to any affiliate. The Commission shall establish rates, terms and conditions for distribution service under Chapter 10 of Title 56 (§§ 56-232 et seq.) **[pg. 7, column 1, bullet 2]**.

C. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability. In adopting standards pursuant to this subsection the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. The Commission shall determine questions about the ability of specific equipment to meet interconnection standards.

D. The Commission shall consider developing expedited permitting processes for small generation facilities of 50 MW or less.

~~C~~ E. Upon the separation and deregulation of the generation function and services of incumbent electric utilities, the Commission shall retain jurisdiction over utilities' electric transmission function and services, to the extent not preempted by federal law. Nothing in this section shall impair the Commission's authority under §§ 56-46.1, 56-46.2, and 56-265.2 of this title with respect to the construction of electric transmission facilities **[pg. 7, column 1, bullet 2]**.

~~D~~ F. If the Commission determines that increases in the capacity of the transmission systems in the Commonwealth, or modifications in how such systems are planned, operated, maintained, used, financed or priced, will promote the efficient development of competition in the sale of electric energy, the Commission may, to the extent not preempted by federal law, require one or more persons having any ownership or control of, or responsibility to operate, all or part of such transmission systems to: **[SCC amendments, pg. 2, questions 1, 2, 3]**

1. Expand the capacity of transmission systems; **[SCC amendments, pg. 2, question 1]**

2. File applications and tariffs with the Federal Energy Regulatory Commission which

(i) make transmission systems capacity available to retail sellers or buyers of electric energy under terms and conditions described by the Commission, and (ii) require owners of generation capacity located in the Commonwealth to bear an appropriate share of the cost of transmission facilities, to the extent such cost is attributable to such generation capacity; **[SCC amendments, pg. 2, question 2]**

3. Enter into a contract with, or provide information to, ~~an independent system operator~~ *a regional transmission entity* ; or **[SCC amendments, pg. 2, question 3]**

4. Take such other actions as the Commission determines to be necessary to carry out the purposes of this chapter.

E. If the Commission determines, after notice and opportunity for hearing, that a person has or will have, as a result of such person's control of electric generating capacity or energy within a transmission constrained area, **market power (see SCC definition on pg. 5 of the SCC statutory proposal)** over the direct or indirect sale of electric generating capacity or energy to buyers located within the Commonwealth, the Commission may, within such transmission constrained area, regulate such person's rates pursuant to Chapter 10 (§ 56-232 et seq.) of this title. Such rates shall remain regulated until the Commission, after notice and opportunity for hearing, determines that the ~~transmission constraint~~ market power has been ~~relieved~~ mitigated **[pg. 8, column 1, bullet 2]**.

§ 56-581. ~~Independent System Operators~~ Regional transmission entities. [pp. 3, 9-12 of decision tree; pg. 1 of SCC amendments, responses to bolded questions under "ISO requirement."]

A. As set forth in § 56-579, on or before January 1, 2001, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish an ~~independent system operator, or~~ RTE to which such utility shall transfer the management and control of its transmission assets to, subject to the following:

1. No such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in

the Commonwealth without obtaining the prior approval of the Commission, as hereinafter provided **[pg. 1 of SCC Decision tree amendments under "ISO requirements," questions 1 and 3.]**.

2. The Commission shall develop rules and regulations under which any such incumbent electric utility ~~having any ownership or control of, or any responsibility to operate, a transmission system in the Commonwealth, or any portion thereof~~ *owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth*, may transfer all or part of such control, ownership or responsibility to an ~~independent system operator~~ RTE, upon such terms and conditions that the Commission determines will **[pg. 1 of SCC Decision tree amendments under "ISO requirements," question 2.]**:

(a) Promote:

(1) Practices for the reliable planning, operating, maintaining, and upgrading of the transmission systems and any necessary additions thereto, and

(2) Policies for the pricing and access for service over such systems, which are safe, reliable, efficient, not unduly discriminatory and consistent with the orderly development of competition in the Commonwealth;

(b) Be consistent with lawful requirements of the Federal Energy Regulatory Commission;

(c) Be effectuated on terms that fairly compensate the transferor;

(d) Generally promote the public interest, and are consistent with (i) ensuring the successful development of interstate ~~ISOs~~ RTEs, and (ii) meeting the transmission needs of electric generation suppliers both within and without this Commonwealth **[pg. 10; language suggested, in concept, by drafting group]**.

B. The Commission shall also adopt rules and regulations, with appropriate public input, establishing elements of RTE structures essential to the public interest, which elements shall be applied by the Commission in determining whether to authorize transfer of ownershi

or control from an incumbent electric utility to an RTE ~~implementing the following requirements concerning ISO governance:~~

~~1. No incumbent electric utility shall be authorized by the Commission to establish or join any ISO unless the majority of such ISO's governing board shall have no ownership interest in any transmission asset owned, managed or controlled by such ISO [pg. 9, column 2, bullet 1].~~

~~2. No incumbent electric utility shall be authorized by the Commission to establish or join any ISO unless residential retail customers are represented on the ISO's governing board [pg. 9, column 2, bullet 3].~~

C. The Commission shall, to the fullest extent permitted under federal law, participate in any and all proceedings concerning ~~ISOs~~ RTEs furnishing transmission services within the Commonwealth, before the Federal Energy Regulatory Commission ("FERC"). Such participation may include such intervention as is permitted state utility regulators under FERC rules and procedures. ~~whenever such proceedings concern the approval or modification of any ISO of which an incumbent electric utility is or proposes to be a member~~ **[pg. 11, column 2, bullet 1]**.

D. Nothing in this section shall be deemed to abrogate or modify:

1. The Commission's authority over transmission line or facility construction, enlargement or acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ 56-265.1, et seq.) of this title **[pg. 11, column 2, bullet 2]**;

2. The laws of this Commonwealth concerning the exercise of the right of eminent domain by a public service corporation pursuant to the provisions of Article 5 (§ 56-257 et seq.) of Chapter 10 of this title provided, however, that on and after January 1, 2004, the right of eminent domain may not be exercised in conjunction with the construction or enlargement of any utility facility whose purpose is the **generation of electric energy** **[pg. 13, column 1, bullet 2]**; or

3. The Commission's authority over retail electric energy sold to retail customers within the Commonwealth by licensed suppliers of electric service, including necessary reserve requirements, all as specified in § 56-585 **[pg. 12, column 2, bullets 1 and 2]**.

§ 56-582. Regional power exchanges. [Mandatory not approved; permissive not discussed].

§ 56-583. Transmission and Distribution of Electric energy. **[pp. 15, 16, and 17]**

A. The Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth, and to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth **[pg. 15, column 1, bullet 1]**.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems **[pg. 15, column 1, bullet 1]**.

C. The Commission shall develop codes of conduct governing ~~conduct between affiliated and nonaffiliated suppliers of generation services~~ the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, *or control any entity that provides, generation*, distribution or transmission services, to the extent necessary to prevent impairment of competition. **[pg. 15, column 1, bullet 1]**.

D. The Commission may permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities including transmission lines and equipment ~~(i) will have no material adverse effect upon any regulated rates paid by retail customers in the Commonwealth; (ii)~~ (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility; and ~~(iii)~~ (ii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmissio lines and equipment, on the environment and establish such conditions as may be desirable

or necessary to minimize adverse environmental impact as provided in §56-46.1. ~~*Facilities authorized by a certificate issued pursuant to this subsection may be exempted by the Commission from the provisions of Chapter 10 (§ 56-232 et seq.) of Title 56*~~ **[pg. 16, column 1, bullet 1, additional language as suggested by drafting group]**.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Nothing in this chapter shall impair the Commission's existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title **[pg. 17, column 1, bullet 1, additional language as suggested by drafting group]**.

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, *directly or indirectly*, sells, offers to sell or seeks to sell electric energy ~~*to any retail customer in Virginia outside of the utility's electric distribution territory as it existed on January 1, 1999 or to a supplier or distributor of electric energy*~~ *retail customer outside the geographic area that was served by such municipality as of July 1, 1999.* **[pg. 17, column 1, bullet 2]**.

§ 56-584. Regulation of rates subject to Commission's jurisdiction **[pg. 18]**.

A. The Commission shall regulate the rates for the transmission of electric energy, to the extent not prohibited by federal law, and for the distribution of electric energy to such retail customers on an unbundled basis, but, subject to the provisions of this chapter after the date of customer choice, the Commission no longer shall regulate rates for the generation component of retail electric energy sold to retail customers **[pg. 18, column 1, bullet 1]**.

B. No later than September 1, 1999 and annually thereafter, the Commission shall submit a report to the General Assembly evaluating the advantages and disadvantages of

competition for metering, billing and other services which have not been made subject to competition, and making recommendations as to when, and for whom, such other services should be made subject to competition **[pg. 18, column 1, bullet 1, additional language as suggested by drafting group]**.

§ 56-585. Licensure of retail electric energy suppliers **[pg. 19]**.

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 license shall authorize that person to act as a supplier until the license expires or is otherwise terminated, suspended or revoked **[pg. 19, column 1, bullet 1]**.

B. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (ii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iii) pay an annual license fee to be determined by the Commission; and (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including but not limited to requirements that such person demonstrate (i) technical capabilities as the Commission may deem appropriate; (ii) access to generation and generation reserves; and (iii) adherence to minimum market conduct standards **[pg. 19, column 1, bullets 2-6, additional language as suggested by the drafting group]**.

C. *1. The Commission shall establish a reasonable period within which any retail customer may cancel any contract entered into with a supplier licensed pursuant to this section.*

2. The Commission may adopt other rules and regulations governing the requirements for obtaining, retaining, and renewing a license to supply electric energy to retail customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements **[pg. 19, column 1, bullet 7]**.

§ 56-586. ~~Suppliers of last resort, default suppliers and backstop providers~~ Default Services **[pg. 20 of decision tree; pg. 4 of SCC proposed amendments to decision tree. Drafting group did not adopt any of the options listed on the decision tree, adopting instead the 7 bolded items on pg. 4 of the SCC's amendments, answering questions 1-5 in the affirmative; stipulating that questions 3 and 6 should be subject to "public interest" criteria; and requiring the SCC to review and report on question 7 at the end of the transition period.]**.

A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of *default services* ~~**supplier of last resort (should be defined) and default (should be defined) services**~~ **[SCC question 1]**, and (ii) establish one or more programs making such services available to retail customers requiring them *commencing with the date of customer choice for all retail customers established pursuant to § 56-579.* ~~during the period of transition to customer choice~~. *For purposes of this chapter, "default service" means service made available under this section to retail customers who (i) do not select an alternative provider, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.*

B. The Commission shall designate *the* providers of ~~*supplier of last resort and*~~ default services. In doing so, the Commission:

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

2. May designate one or more *willing* 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 **[SCC question 2]**; and

3. May require an incumbent electric utility or distribution utility to provide 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 which ~~*afford the entity a reasonable opportunity to earn a fair rate of return*~~ *are fairly compensatory to the utility and which reflect any cost of energy prudently procured, including energy procured from the competitive market*; provided that the Commission may not require an incumbent electric utility or distribution utility, or affiliate thereof, to provide any such services outside the territory in which such utility provides service **[SCC question 4]**.

C. The Commission shall, after notice and opportunity for hearing, determine the rates, terms and conditions for such services consistent with the provisions of *subsection B 3 and* Chapter 10 (§ 56-232 et seq.) of this title and shall establish such requirements for providers and customers as it finds necessary to promote the reliable and economic provision of such services and to prevent the inefficient use of such services. The Commission may use any rate method that promotes the public interest, and may establish different rates, terms and conditions for different classes of customers **[SCC questions 5 and 6]**.

D. On or before July 1, ~~2003~~ *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 ~~supplier of last resort~~ *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 ~~supplier of last resort~~ *default* service to the General Assembly and to the Legislative Transition Task Force, not later than December 1, ~~2003~~ *2004, and annually thereafter* **[SCC question 7]**.

E. 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. 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.

§ 56-586.1. Emergency Services Provider.

On and after January 1, 2001, if any supplier fails to fulfill its obligation to ~~*deliver electricity scheduled into the control area*~~ *provide electricity to a retail customer*, the entity fulfilling the control area function, or, if applicable, the regional transmission entity or other entity as designated by the Commission, shall be responsible for charging the defaulting supplier for the full cost of replacement energy, including the cost of energy, the cost incurred by others as a result of the default, and the assessment of penalties as may be approved either by the Commission, to the extent not precluded by federal law, or by the Federal Energy Regulatory Commission. The Commission, as part of the rules established under section 56-585, shall determine the circumstances under which failures to deliver electricity will result in the revocation of the supplier's license.

§ 56-593. Divestiture, functional separation and other corporate relationships.

A. The Commission shall not order any incumbent electric utility, nor shall it require any such utility to divest itself of any generation, transmission or distribution assets pursuant to any provision of this chapter **[pg. 23, generally]**.

B. 1. The Commission shall, however, direct the functional separation of generation, retail transmission and distribution of all incumbent electric utilities in connection with the provisions of this chapter to be completed by January 1, 2002 **[pg. 24, generally]**.

2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a plan for such functional separation which may be accomplished through the creation of

affiliates or through such other means as may be acceptable to the Commission ***[This language drawn from § 56-593 in SB-688]***.

C. The Commission shall promulgate rules and regulates to carry out the provisions of this section, which rules and regulations shall include provisions **[pg. 24, column 2, bullets 1-5; pg. 25, column 2, bullet 1]**:

1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;

2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self-dealing;

3. Prohibiting affiliated entities from engaging in discriminatory behavior towards nonaffiliated units; and

4. Establishing codes of conduct detailing permissible relations between functionally separate units.

~~D. Nothing in this chapter shall be construed to exempt or immunize from punishment or prosecution, conduct (i) engaged in by functionally separate generation, transmission or distribution, or any of their affiliates, and (ii) violative of federal antitrust laws, or the antitrust laws of this Commonwealth **[pg. 25, column 2, bullet 2]**:.~~

[Note: Subsections ~~E~~ D& ~~F~~ E were adopted, in concept, by the drafting group in response to questions raised about mergers and acquisitions on pg. 26 of the decision tree. The drafting group directed staff to incorporate language in § 56-591 {SCC numbering} of the SCC draft proposal. The language that follows is identical to the provisions of the SCC draft language, except that references to "basic electric service" have been deleted; that concept has not been adopted by the drafting group.]

~~E~~ D. Neither a **covered entity** **[defined in SCC draft proposal]** nor an affiliate thereof may be a party to a **covered transaction** **[defined in SCC draft proposal]** without the prior approval of the Commission. Any such person proposing to be a party to such transaction shall file an application with the Commission. The Commission shall approve or disapprove such transaction within sixty days after the filing of a completed application; however, the sixty

day period may be extended by Commission order for a period not to exceed an additional 120 days. The application shall be deemed approved if the Commission fails to act within such initial or extended period. The Commission shall approve such application if it finds, after notice and opportunity for hearing, that the transaction will comply with the requirements of subsection ~~F~~ E, and may, as a part of its approval, establish such conditions or limitations on such transaction as it finds necessary to ensure compliance with said subsection ~~F~~ E.

~~F~~ E. A transaction described in subsection ~~E~~ D of this section shall not:

1. Substantially lessen competition among the actual or prospective providers of noncompetitive electric service or of a service which is, or is likely to become, a competitive electric service; or

2. Jeopardize or impair the safety or reliability of electric service in the Commonwealth, or the provision of any noncompetitive electric service at just and reasonable rates.

~~G~~ F. Nothing in this chapter shall be deemed to abrogate or modify the Commission's authority under Chapter 5 (56-88 et seq.) of this title **[Note: the first sentence was incorporated to reflect frequent drafting group and interest group references to the continuing application of the Utilities Facilities Act during the transition period, and possibly thereafter. The SCC language that follows, however, may eliminate the need for its reference here]**. However, any person subject to the requirements of subsection ~~E~~ D that is also subject to the requirements of Chapter 5 (§ 56-88 et seq.) of Title 56 may, in the discretion of the Commission, be exempted from compliance with some or all of the requirements of said Chapter 5 of Title 56.

§ 56-593.1. Application of antitrust laws.

Nothing in this chapter shall be construed to exempt or immunize from punishment or prosecution, conduct ~~(i) engaged in by functionally separate generation, transmission or distribution, or any of their affiliates, and~~ (ii) violative of federal antitrust laws, or the antitrust laws of this Commonwealth ***[pg. 25, column 2, bullet 2]***.

§ 56-594. Legislative Transition Task Force established **[S & T pg. 29, column 2, bullets 1-4, plus additional language adopted, in concept, by drafting group on 12/17 and 12/29].**

A. A legislative transition task force is hereby established to work collaboratively with the Commission in conjunction with the phase-in of retail competition within the Commonwealth.

B. The transition task force shall consist of ten members, with six members from the House of Delegates and four members from the Senate. Appointments shall be made and vacancies filled by the Speaker of the House of Delegates and the Senate Committee on Privileges and Elections, as appropriate.

C. The task force members shall be appointed to begin service on and after July 1, 1999, and shall continue to serve until July 1, 2005. They shall (i) monitor the work of the Virginia State Corporation Commission in implementing this chapter, receiving such reports the Commission may be required to make pursuant thereto; (ii) examine utility worker protection during the transition to retail competition; generation, transmission and distribution systems reliability concerns; energy assistance programs for low-income households; *renewable energy programs*; and energy efficiency programs; and (iii) annually report to the Governor and each session of the General Assembly during their tenure concerning the progress of each stage of the phase-in of retail competition, offering such recommendations as may be appropriate for legislative and administrative consideration.

Structure & Transition Supplement

§ 56-579.1 Rate caps. **[S & T pg. 5, generally]**.

A. The Commission shall establish ***capped rates [should be defined]***, effective January 1, 2001 and, unless extended as provided hereafter, expiring on January 1, 2005 for each service territory of every incumbent utility as follows:

1. A capped rate shall be established for bundled electric transmission, distribution and generation services applicable to customers receiving (i) default service, or (ii) supplier of last resort service.

2. A capped rate for electric generation services, only, shall also be established for the purpose of effecting customer choice for those retail customers authorized and opting to purchase generation services from a supplier other than the incumbent utility during this period, and any extensions thereof.

B. The Commission may adjust such capped rates in connection with (i) utilities' recovery of fuel costs pursuant to § 56-249.6, and (ii) emergency conditions as provided in § 56-245.

C. 1. The Commission may, by order, annually extend any capped rate authorized under this section beyond January 1, 2005, in any incumbent utility's service territory if the Commission determines that ***effective competition*** ***[should be defined]*** for the sale of electric generation services does not exist within such service territory.

2. The Commission shall report any capped rate extension orders made pursuant to this section and the reasons therefor, to the Legislative Transition Task Force within thirty days of any such order.

§56-592. Nonbypassable wires charges **[S & T, pg. 22, generally]**.

A. The Commission shall develop appropriate mechanisms maximizing and promoting competition pursuant to this chapter, for assessing per kWh-based charges against retail customers in conjunction with allocating (i) such stranded costs as may be determined pursuant to § 56-591.1, or (ii) any ***transition costs*** **[should be defined]** allocated to retail customers under any other provision of this chapter.

B. **[S & T, pg. 22, generally; language suggested in concept by drafting group]** The Commission shall also develop such alternative costs-allocating mechanisms as may be required to permit any retail customer to pay its appropriate share of any just and reasonable net stranded costs or transition costs, if any, on an accelerated basis upon a finding that such

method of payment is not (i) prejudicial to the incumbent utility or its ratepayers, or (ii) inconsistent with the development of effective competition.

Stranded Costs.

§ 56-591. Stranded Costs.

A. **[p. 2, column 1, bullets 1-4 plus language suggested by drafting group]** The Commission shall, after notice and opportunity for hearing, determine for each incumbent electric utility the just and reasonable net **stranded costs** (need definition) associated with all assets and obligations used to provide regulated service within the service territory of such incumbent electric utility as of January 1, 2002. Such determination shall include, but not be limited to, consideration of stranded costs associated with **power production assets** (need definition), **regulatory assets (as defined in SB 688), power purchase contracts** (need definition), **nuclear decommissioning costs** (need definition), and **environment compliance costs** (need definition). Such stranded costs shall be recovered via a nonbypassable wires charge, in accordance with the provisions of § 56-592, from persons who purchase any transmission or distribution service after the date of **customer choice (as defined in SB 688)**, within the territory served by such electric utility as of the date of customer choice **[p. 4, column 4, bullet 1]**.

B. **[p. 3 generally, language suggested by drafting group]** A recovery period for the amounts determined under subsection A shall be established by the Commission for each incumbent electric utility. Such recovery period shall continue for each incumbent electric utility until the Commission determines that such utility has recovered all stranded costs. No further stranded costs shall be recovered by an electric utility after the Commission makes such determination.

C. **[Structure and Transition p. 22, bullet 5]** The Commission shall permit any customer to pay its appropriate share of any stranded costs due to the incumbent electi utility on an accelerated basis upon a finding that such method of payment is not (i) prejudicial

to the incumbent electric utility or its ratepayers or (ii) inconsistent with the development of effective competition.

D. **[p. 4, column 2, bullet 2]** Except as provided in subsection C, customers that do not change suppliers of electric energy during the stranded cost recovery period established by the Commission under subsection B shall not pay the nonbypassable wires charge pursuant to this section but shall pay the capped rate as determined under § 56-579.1.

E. **[p. 4, column 3, bullet 2]** Customers that elect to change suppliers of electric energy during the stranded cost recovery period established by the Commission under subsection B shall pay such nonbypassable wires charge as the Commission may determine pursuant to subsection A.

Consumer, Environment & Education

§ 56-587. Licensing of Aggregators. **[CEE pg. 3, bullets 1 & 6 mandatory; bullets 2-5 permissive, subject to SCC development of licensing and regulatory scheme.]**

A. As a condition of doing business in the Commonwealth, each person seeking to aggregate electric energy within this Commonwealth on and after January 1, 2002, shall obtain a license from the Commission to do so. The license shall authorize that person to act as an ***aggregator*** **[should be defined]** until the license is otherwise terminated, suspended or revoked. Licensing pursuant to this section, however, shall not relieve any person seeking to act as a supplier of electric energy from their obligation to obtain a license as a supplier pursuant to § 56-585.

B. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) provide background information; (ii) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (iii) post a bond as deemed adequate by the Commission to ensure

that financial responsibility; (iv) pay an annual license fee to be determined by the Commission; and (v) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including, but not limited to, requirements that such person demonstrate ~~(i)~~ technical capabilities as the Commission may deem appropriate~~; and (ii) access to generation and generation reserves, if acting as a supplier~~ *Any license issued by the Commission pursuant to this section may be conditioned upon the licensee, if acting as a supplier, furnishing to the Commission prior to the provision of electricity to consumer proof of adequate access to generation and generation reserves.*

C. In establishing aggregator licensing schemes and requirements applicable to the same, the Commission may differentiate between (i) those aggregators representing retail customers only, (ii) those aggregators representing suppliers only, and (iii) those aggregators representing both retail customers and suppliers.

D. *1. The Commission shall establish a reasonable period within which any retail customer may cancel any contract entered into with a supplier licensed pursuant to this section.*

2. The Commission may adopt other rules and regulations governing the requirements for obtaining, retaining, and renewing a license to aggregate electric energy to retail customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements.

§ 56-587.1. Municipal aggregation. **[CEE pg. 5, bullets 1-3, as modified by the drafting group. CEE, pg. 6, bullet 2]**.

Counties, cities and towns (hereafter "municipalities") may, at their election and upon authorization by majority votes of their governing bodies, aggregate electrical energy a

demand requirements for the purpose of negotiating the purchase of electrical energy requirements from any licensed supplier within this Commonwealth, as follows:

~~*1. Any municipality may aggregate the electric energy load of residential, commercial and industrial retail customers within its boundaries on a voluntary, opt-in basis in which each such customer must affirmatively select such municipality as its aggregator.*~~

~~2~~ 1. Any municipality may aggregate the electric energy load of its governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy.

~~3~~ 2. Two or more municipalities within this Commonwealth may aggregate the electric energy load of their governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy.

~~*4. Any municipality within this Commonwealth may aggregate (i) the electric energy load of its governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy, together with (ii) the electric energy load of any nongovernmental person or entity within this Commonwealth.*~~

§ 56-588. Metering and billing, etc. **[incorporated into § 56-584 in Structure & Transition draft dated 12/26/98]**

§ 56-589. Consumer education and protection; Commission report to legislative task force.

A. **[CEE pg. 7, column 2, bullets 1-3 and language suggested, in concept, by drafting group on 12/29/98]** The Commission shall develop a consumer education program designed to provide the following information to retail customers during the period of transition to retail competition and thereafter:

1. Opportunities and options in choosing (i) suppliers and aggregators of electric energy, and (ii) any other service made competitive pursuant to this chapter;

2. Marketing and billing information suppliers and aggregators of electric energy will be required to furnish retail customers;

3. Retail customers' rights and obligations concerning the purchase of electric energy, and related services; and

4. Such other information as the Commission may deem necessary and appropriate in the public interest.

B. The Commission shall complete the development of the consumer education program described in subsection A, and report its findings and recommendations to the Legislative Transition Task Force on or before December 1, 1999, and as frequently thereafter as may be required by such task force concerning:

1. The scope of such recommended program consistent with the requirements of subsection A;

2. Materials and media required to effectuate any such program;

3. State agency and nongovernmental entity participation;

4. Program duration;

5. Funding requirements and mechanisms for any such program; and

6. Such other findings and recommendations the Commission deems appropriate in the public interest.

C. **[CEE pg. 9, generally; CEE pg. 10, generally; CEE page 12, column 2, bullet 5].** The Commission shall develop regulations governing marketing practices by *public service companies,* licensed suppliers, aggregators or any other providers of services made competitive by this chapter. The Commission shall also establish standardized marketing information to be furnished by licensed suppliers, aggregators or any other providers of services made competitive by this chapter during the period of transition to retail competition, and thereafter, which information ~~may~~ *shall* include:

1. Pricing and other key contract terms and conditions;

2. To the extent feasible, fuel mix and emissions data on at least an annualized basis.

3. Consumers' rights of cancellation following execution of any contract.

4. Toll-free telephone number for customer assistance.

5. Such other and further marketing information as the Commission may deem necessary and appropriate in the public interest.

D. **[CEE pg. 11, bullets 1, 2 and 5-7]** The Commission shall also establish standardized billing information to be furnished by *public service companies,* suppliers, aggregators or any other providers of services made competitive by this chapter during the period of transition to retail competition, and thereafter. Such billing information shall:

1. Distinguish between charges for regulated services and unregulated services.

2. Itemize any and all nonbypassable wires charges.

3. Be presented in a standardized format to be established by the Commission.

4. Disclose, to the extent feasible, fuel mix and emissions data on at least an annualized basis.

5. Include such other billing information as the Commission deems necessary and appropriate in the public interest.

E. **[CEE, pg. 14]** The Commission shall establish *or maintain* a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against *public service companies,* licensed suppliers, aggregators and other providers of any services made competitive under this chapter. ~~*The*~~ *Upon the request of any interested person or the Attorney General, or upon its own motion, the* Commission shall be authorized to inquire into possible violations of this chapter and to enjoin or punish any violations thereof pursuant to its authority under this chapter, this title, and under Title 12.1 (§ 12.1-1 et seq.). *The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.*

F. **[CEE, pg. 15, bullets 1 & 4]** The Commission shall establish reasonable limits on customer security deposits required by *public service companies,* suppliers, aggregators or any other persons providing competitive services pursuant to this chapter.

§ 56-589.1. **[CEE, pg. 12, column 2, bullet 4; and column 4, bullet 4, as modified by the drafting group on 12/29/98]** Retail customers private right of action; marketing practices.

A. No entity subject to this chapter shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing, distributing or marketing electric service.

~~A~~ B 1. Any person who suffers loss as the result of *any violation of subsection A, or as the result of* marketing practices, including telemarketing practices, (i) engaged in by any *public service company,* licensed supplier, aggregator or any other provider of any service made competitive under this chapter, and (ii) in violation of subsection C of § 56-589, including any rule or regulation adopted by the Commission pursuant thereto, shall be entitled to initiate an action to recover actual damages, or $500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding th times the actual damages sustained, or $1,000, whichever is greater.

2. Upon referral from the Commission, the Attorney General, the attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court for relief of violations within the scope of subsection A.

~~B~~ C. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person, *or any governmental agency initiating such action,* also may be awarded reasonable attorney's fees and court costs.

~~C~~ D. Any action pursuant to this section shall be commenced within two years after its accrual. The cause of action shall accrue as provided in § 8.01-230. However, if the Commission *initiates proceedings,* or any other governmental agency files suit for the purpose of enforcing *subsection A or* the provisions of subsection C of § 56-589, the time during which such *proceeding or* governmental suit and all appeals therefrom is pending shall not be counted as any part of the period within which an action under this section shall be brought.

D. The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice violative of *subsection A or* subsection C of § 56-589, provided, that such person shall be identified by order of the court within 180 days from the date of any order permanently enjoining the unlawful act or practice.

E. In any case arising under this section, no liability shall be imposed upon any licensed supplier, aggregator or any other provider of any service made competitive under this chapter, who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of *subsection A or* subsection C of § 56-589 was an act or practice over which the same had no control, or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subsection ~~B~~ C to individuals aggrieved as a result of an unintentional violation of *subsection A or* subsection C of § 56-589.

§ 56-590. Public purpose programs. **[CEE pp. 1 & 2]. At its 12/29 meeting, the Drafting group recommended further study of this issue by Legislative Transition Task Force. See Structure & Transition Draft Supplement--additions to § 56-594.**

~~*§ 56 590.1. [CEE, pg. 16, bullet 4] Environment and Renewable energy; net energy metering provisions.*~~

~~*A. The Commission shall establish net energy metering provisions designed to encourage private investment in renewable energy resources, stimulate economic growth within the Commonwealth, enhance the continued diversification of Virginia's energy resource mix, and reduce interconnection and administrative costs for electric service providers.*~~

~~*B. For the purpose of this section "net energy metering" means measuring the difference between electricity supplied to an eligible customer generator, and the electricity*~~

~~generated and fed back to the electric grid by the eligible customer generator over an annual period, with corresponding billing or crediting of the customer generator retail customer account by such customer generator's supplier of electric energy~~.

§ 56-590.2. Energy efficiency. **At its 12/29 meeting, the Drafting group recommended further study of this issue by the Legislative Transition Task Force. See Structure & Transition Draft Supplement--additions to § 56-594.**

§ 56-590.3. Utility worker protection. **At its 12/29 meeting, the Drafting group recommended further study of this and related reliability issues by the Legislative Transition Task Force. See Structure & Transition Draft Supplement--additions to § 56-594.**

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SENATE BILL NO. _____ HOUSE BILL NO. _____

SJR-91 Electric Utility Restructuring Draft—January 13, 1999.

Please note: ***This draft consolidates the (i) Structure & Transition, (ii) Structure & Transition Supplement (iii) Stranded Costs, and (iv) Consumer Environment & Education drafts. However, this draft is broken into these four sections for ease of reference in comparing current language to earlier versions. The draft revisions (shown in strike & add format) incorporate all drafting group work through Monday, January 11. FYI, The italicized revisions are those made at the January 11 drafting group meeting.***

While the capped rate, stranded costs and nonbypassable wires charge sections are included in this draft, the drafting group has not formally reviewed or modified them. Thus, these sections remain as submitted by staff. It is anticipated that they will be taken up by the full joint subcommittee at its meeting on Thursday, January 14.

This draft has been posted to the joint subcommittee's Internet site in PDF format to ensure that everyone present at the January 14 meeting will be using uniform page and line numbers. However, electronic copies of this draft in Word format are available upon request from staff.

Structure & Transition

§56-579. Schedule for transition to retail competition; **Commission** authority. **[pp. 1-6, generally]**

A. The transition to retail competition for the purchase and sale of electric energy shall be implemented as follows **[pg. 1, column 2, bullet 2]**:

1. On or before January 1, 2001, each **incumbent electric utility** owning, operati
controlling, or having an entitlement to transmission capacity shall join or establish ~~an~~ ~~**independent system operator (see SCC definition on pg. 4 of SCC proposal)**~~, ~~or ISO~~ a regional transmission entity, *which entity may be an intrastate independent system operator*, to which such utility shall transfer the management and control of its **transmission system**, subject to the provisions of §56-581.

2. On and after January 1, 2002, **retail customers** of electric energy within the Commonwealth shall be permitted to purchase energy from any **supplier** of electric energy licensed to sell **retail electric energy** within the Commonwealth during *and after* **the period of transition to retail competition**, subject to the following:

a. The Commission shall establish a phase-in schedule for customers by class, and by percentages of class, to ensure that by January 1, 2004, all retail customers are permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth **[pg. 1, column 3, bullet 4]**.

~~b. The Commission shall ensure that during such phase-in, equal percentages of the loads of each retail customer class are concurrently permitted to purchase electric energy from any supplier **[pg. 2, column 3, bullet 2]**.~~

c. The Commission shall also ensure that residential and small business retail customers are permitted to select suppliers ~~(i) in advance of any other retail customers, or (ii) in the alternative,~~ in proportions at least equal to that of other customer classes permitted to select suppliers during the period of transition to retail competition **[pg. 1, column 3, bullet 3]**.

3. On and after January 1, 2004, 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.

B. The Commission may delay or accelerate the implementation of any of the provisions of this section, subject to the following **[pg. 1, column 4, bullet 1. *Note:* subdivision B3 suggested by drafting group]**:

1. Any such delay or acceleration shall be based on considerations of reliability, safety, communications or market power; and

2. Any such delay shall be limited to the period of time required to resolve the issues necessitating the delay, but in no event shall *any* such delay extend *the implementation of customer choice for all customers* beyond January 1, 2005.

3. The Commission shall, within a reasonable time, report to the General Assembly or any legislative entity monitoring the restructuring of Virginia's electric industry, any such delays and the reasons therefor.

C. Except as may be otherwise provided in this chapter, prior to and during the period of transition to retail competition, the Commission may

1. Examine the rates of electric utilities pursuant to and in accordance with the provisions of Chapters 9 (§ 56-209 et seq.) and 10 (§ 56-234 et seq.) of this title **[pg. 4; language suggested by drafting group]**, and

2. Cconduct pilot programs encompassing retail customer choice of electric energy suppliers, consistent with its authority otherwise provided in this title, and the provisions of this chapter **[pg. 6, column 1, bullet 1 plus language suggested by drafting group].**

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

§ 56-580. Nondiscriminatory access to transmission and distribution system **[pp. 7,8]**.

A. All **distributors** shall have the obligation to connect any retail customer including those using distributed generation located within its service territory to those facilities of the distributor that are used for delivery of retail electric energy **[pg. 7, column 2, bullet 1]**.

B. Except as otherwise provided in this chapter, every distributor shall provide distribution service within its service territory on a basis which is just, reasonable, and not

unduly discriminatory to suppliers of electric energy **including distributed generation**, as th Commission may determine. The distribution services provided to each supplier of electric energy shall be at least equal in quality to those provided by the distribution utility to itself or to any affiliate. The Commission shall establish rates, terms and conditions for distribution service under Chapter 10 of Title 56 (§§ 56-232 et seq.) **[pg. 7, column 1, bullet 2]**.

C. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, **which standards shall not exceed or be inconsistent with nationally recognized standards acceptable to the** Commission. In adopting standards pursuant to this subsection the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. The Commission shall determine questions about the ability of specific equipment to meet interconnection standards.

D. The Commission shall consider developing expedited permitting processes for small generation facilities of 50 MW or less. **The Commission shall also consider developing a standardized permitting process and interconnection arrangements for those power systems less than 500 kW which have demonstrated approval from a nationally recognized testing laboratory acceptable to the Commission.**

~~C~~ E. Upon the separation and deregulation of the generation function and services of incumbent electric utilities, the Commission shall retain jurisdiction over utilities' electric transmission function and services, to the extent not preempted by federal law. Nothing in this section shall impair the Commission's authority under §§ 56-46.1, 56-46.2, and 56-265.2 of this title with respect to the construction of electric transmission facilities **[pg. 7, column 1, bullet 2]**.

~~D~~ F. If the Commission determines that increases in the capacity of the transmission systems in the Commonwealth, or modifications in how such systems are planned, operated, maintained, used, financed or priced, will promote the efficient development of competition in the sale of electric energy, the Commission may, to the extent not preempted by federal law

require one or more persons having any ownership or control of, or responsibility to operate, all or part of such transmission systems to: **[SCC amendments, pg. 2, questions 1, 2, 3]**

1. Expand the capacity of transmission systems; **[SCC amendments, pg. 2, question 1]**

2. File applications and tariffs with the Federal Energy Regulatory Commission which

(i) make transmission systems capacity available to retail sellers or buyers of electric energy under terms and conditions described by the Commission, and (ii) require owners of generation capacity located in the Commonwealth to bear an appropriate share of the cost of transmission facilities, to the extent such cost is attributable to such generation capacity; **[SCC amendments, pg. 2, question 2]**

3. Enter into a contract with, or provide information to, ~~an independent system operator~~ *a regional transmission entity*; or **[SCC amendments, pg. 2, question 3]**

4. Take such other actions as the Commission determines to be necessary to carry out the purposes of this chapter.

E. If the Commission determines, after notice and opportunity for hearing, that a person has or will have, as a result of such person's control of electric generating capacity or energy within a transmission constrained area, **market power (see SCC definition on pg. 5 of the SCC statutory proposal)** over the direct or indirect sale of electric generating capacity or energy to buyers **retail customers** located within the Commonwealth, the Commission may, **to the extent not preempted by federal law and only to the extent that market power is not adequately mitigated by rules and practices of the applicable RTE having responsibility for management and control of transmission assets within the Commonwealth,** within such transmission constrained area, regulate such person's rates pursuant to Chapter 10 (§ 56-232 et seq.) of this title adjust such person's retail [redacted] rates to the extent necessary to protect retail customers from such market power. Such rates shall remain regulated until the Commission, after notice and opportunity for hearing, determines that the ~~transmission constraint~~ market power has been ~~relieved~~ mitigated **[pg. 8, column 1, bullet 2]**.

§ 56-581. ~~Independent System Operators~~ Regional transmission entities. [pp. 3, 9-1 of decision tree; pg. 1 of SCC amendments, responses to bolded questions under "ISO requirement."]

A. As set forth in § 56-579, on or before January 1, 2001, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish an ~~independent system operator, or~~ RTE to which such utility shall transfer the management and control of its transmission assets to, subject to the following:

1. No such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth without obtaining the prior approval of the Commission, as hereinafter provided **[pg. 1 of SCC Decision tree amendments under "ISO requirements," questions 1 and 3.]**.

2. The Commission shall develop rules and regulations under which any such incumbent electric utility ~~having any ownership or control of, or any responsibility to operate, a transmission system in the Commonwealth, or any portion thereof~~ *owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth,* may transfer all or part of such control, ownership or responsibility to an ~~independent system operator~~ RTE, upon such terms and conditions that the Commission determines will **[pg. 1 of SCC Decision tree amendments under "ISO requirements," question 2.]**:

(a) Promote:

(1) Practices for the reliable planning, operating, maintaining, and upgrading of the transmission systems and any necessary additions thereto, and

(2) Policies for the pricing and access for service over such systems, which are safe, reliable, efficient, not unduly discriminatory and consistent with the orderly development of competition in the Commonwealth;

(b) Be consistent with lawful requirements of the Federal Energy Regulator Commission;

(c) Be effectuated on terms that fairly compensate the transferor;

(d) Generally promote the public interest, and are consistent with (i) ensuring the successful development of interstate ~~ISOs~~ RTEs, and (ii) meeting the transmission needs of electric generation suppliers both within and without this Commonwealth **[pg. 10; language suggested, in concept, by drafting group]**.

B. The Commission shall also adopt rules and regulations, with appropriate public input, establishing elements of RTE structures essential to the public interest, which elements shall be applied by the Commission in determining whether to authorize transfer of ownership or control from an incumbent electric utility to an RTE ~~implementing the following requirements concerning ISO governance:~~

~~1. No incumbent electric utility shall be authorized by the Commission to establish or join any ISO unless the majority of such ISO's governing board shall have no ownership interest in any transmission asset owned, managed or controlled by such ISO **[pg. 9, column 2, bullet 1]**.~~

~~2. No incumbent electric utility shall be authorized by the Commission to establish or join any ISO unless residential retail customers are represented on the ISO's governing board **[pg. 9, column 2, bullet 3]**.~~

C. The Commission shall, to the fullest extent permitted under federal law, participate in any and all proceedings concerning ~~ISOs~~ RTEs furnishing transmission services within the Commonwealth, before the Federal Energy Regulatory Commission ("FERC"). Such participation may include such intervention as is permitted state utility regulators under FERC rules and procedures, ~~whenever such proceedings concern the approval or modification of any ISO of which an incumbent electric utility is or proposes to be a member~~ **[pg. 11, column 2, bullet 1]**.

D. Nothing in this section shall be deemed to abrogate or modify:

1. The Commission's authority over transmission line or facility construction, enlargement or acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ 56-265.1, et seq.) of this title **[pg. 11, column 2, bullet 2]**;

2. The laws of this Commonwealth concerning the exercise of the right of eminent domain by a public service corporation pursuant to the provisions of Article 5 (§ 56-257 et seq.) of Chapter 10 of this title provided, however, that on and after January 1, 2004, the right of eminent domain may not be exercised in conjunction with the construction or enlargement of any utility facility whose purpose is the **generation of electric energy** **[pg. 13, column 1, bullet 2]**; or

3. The Commission's authority over retail electric energy sold to retail customers within the Commonwealth by licensed suppliers of electric service, including necessary reserve requirements, all as specified in § 56-585 **[pg. 12, column 2, bullets 1 and 2]**.

§ 56-582. Regional power exchanges. [Mandatory not approved; permissive r discussed].

§ 56-583. Transmission and Distribution of Electric energy. **[pp. 15, 16, and 17]**

A. The Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth, and to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth **[pg. 15, column 1, bullet 1]**.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems **[pg. 15, column 1, bullet 1]**.

C. The Commission shall develop codes of conduct governing ~~conduct between affiliated and nonaffiliated suppliers of generation services~~ the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, *or control any entity that provides, generation*, distribution or transmission services, to the extent necessary to preve impairment of competition. **[pg. 15, column 1, bullet 1]**.

D. The Commission may permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities including transmission lines and equipment ~~(i) will have no material adverse effect upon any regulated rates paid by retail customers in the Commonwealth; (ii)~~ (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility; and ~~(iii)~~ (ii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in §56-46.1. ~~*Facilities authorized by a certificate issued pursuant to this subsection may be exempted by the Commission from the provisions of Chapter 10 (§ 56-232 et seq.) of Title 56*~~ **[pg. 16, column 1, bullet 1, additional language as suggested by drafting group]**.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Nothing in this chapter shall impair the Commission's existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title **[pg. 17, column 1, bullet 1, additional language as suggested by drafting group]**.

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, *directly or indirectly*, sells, offers to sell or seeks to sell electric energy ~~*to any retail customer in Virginia outside of the utility's electric distribution territory as it existed on January 1, 1999 or to a supplier or distributor of electric energy*~~ *retail customer*

outside the geographic area that was served by such municipality as of July 1, 1999. **[pg. 17, column 1, bullet 2]**.

§ 56-584. Regulation of rates subject to Commission's jurisdiction **[pg. 18]**.

A. **Subject to the provisions of § 56-579.1,** the Commission shall regulate the rates for the transmission of electric energy, to the extent not prohibited by federal law, and for the distribution of electric energy to such retail customers on an unbundled basis, but, subject to the provisions of this chapter after the date of customer choice, the Commission no longer shall regulate rates for the generation component of retail electric energy sold to retail customers **[pg. 18, column 1, bullet 1]**.

B. No later than September 1, 1999 and annually thereafter, the Commission shall submit a report to the General Assembly evaluating the advantages and disadvantages of competition for metering, billing and other services which have not been made subject to competition, and making recommendations as to when, and for whom, such other service should be made subject to competition **[pg. 18, column 1, bullet 1, additional language as suggested by drafting group]**.

§ 56-585. Licensure of retail electric energy suppliers **[pg. 19]**.

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. **A license shall not be required solely for the leasing or financing of property used in the sale of electricity to any retail customer in the Commonwealth.**

The license shall authorize that person to act as a supplier until the license expires or is otherwise terminated, suspended or revoked **[pg. 19, column 1, bullet 1]**.

B. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (ii) post a

bond as deemed adequate by the Commission to ensure that financial responsibility; (iii) pay an annual license fee to be determined by the Commission; and (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including but not limited to requirements that such person demonstrate (i) technical capabilities as the Commission may deem appropriate; (ii) access to generation and generation reserves; and (iii) adherence to minimum market conduct standards **[pg. 19, column 1, bullets 2-6, additional language as suggested by the drafting group]**.

C. *1. The Commission shall establish a reasonable period within which any retail customer may cancel any contract entered into with a supplier licensed pursuant to this section.*

2. The Commission may adopt other rules and regulations governing the requirements for obtaining, retaining, and renewing a license to supply electric energy to retail customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements **[pg. 19, column 1, bullet 7]**.

§ 56-586. ~~Suppliers of last resort, default suppliers and backstop providers~~ Default Services **[pg. 20 of decision tree; pg. 4 of SCC proposed amendments to decision tree. Drafting group did not adopt any of the options listed on the decision tree, adopting instead the 7 bolded items on pg. 4 of the SCC's amendments, answering questions 1-5 in the affirmative; stipulating that questions 3 and 6 should be subject to "public interest" criteria; and requiring the SCC to review and report on question 7 at the end of the transition period.]**.

A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of *default services* ~~supplier of last resort (should be defined) and default~~

~~(should be defined) services~~ **[SCC question 1]**, and (ii) establish one or more programs making such services available to retail customers requiring them *commencing with the date of customer choice for all retail customers established pursuant to § 56-579,* ~~during the period of transition to customer choice~~. *For purposes of this chapter, "default service" means service made available under this section to retail customers who (i) do not select an alternative provider, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.*

B. The Commission shall designate *the* providers of ~~supplier of last resort and~~ default services. In doing so, the Commission:

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

2. May designate one or more *willing* 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 **[SCC question 2]**; and

3. May require an incumbent electric utility or distribution utility to provide 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 which ~~afford the entity a reasonable opportunity to earn a fair rate of return~~ *are fairly compensatory to the utility and which reflect any cost of energy prudently procured, including energy procured from the competitive market*; provided that the Commission may not require an incumbent electric utility or distribution utility, or affiliate thereof, to provide any such services outside the territory in which such utility provides service **[SCC question 4]**.

C. The Commission shall, after notice and opportunity for hearing, determine the rates, terms and conditions for such services consistent with the provisions of *subsection B 3 an* Chapter 10 (§ 56-232 et seq.) of this title and shall establish such requirements for providers

and customers as it finds necessary to promote the reliable and economic provision of such services and to prevent the inefficient use of such services. The Commission may use any rate method that promotes the public interest, and may establish different rates, terms and conditions for different classes of customers **[SCC questions 5 and 6]**.

D. On or before July 1, ~~2003~~ *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 ~~supplier of last resort~~ *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 ~~supplier of last resort~~ *default* service to the General Assembly and to the Legislative Transition Task Force, not later than December 1, ~~2003~~ *2004, and annually thereafter* **[SCC question 7]**.

E. 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. 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.

F. ***In the event the the Commission designates a provider of default service other than the incumbent electric utility to provide default service in the territory of such utility the Commission shall establish a wires charge pursuant to § 56-592, which wires charge shall terminate on July 1, 2007.***

§ 56-586.1. Emergency Services Provider.

On and after January 1, 2001, if any supplier fails to fulfill its obligation to ~~deliver electricity scheduled into the control area~~ *provide electricity to a retail customer*, the entity fulfilling the control area function, or, if applicable, the regional transmission entity or other entity as designated by the Commission, shall be responsible for charging the defaulting

supplier for the full cost of replacement energy, including the cost of energy, the cost incurred by others as a result of the default, and the assessment of penalties as may be approved either by the Commission, to the extent not precluded by federal law, or by the Federal Energy Regulatory Commission. The Commission, as part of the rules established under section 56-585, shall determine the circumstances under which failures to deliver electricity will result in the revocation of the supplier's license.

§ 56-593. Divestiture, functional separation and other corporate relationships.

A. The Commission shall not order any incumbent electric utility, nor shall it require any such utility to divest itself of any generation, transmission or distribution assets pursuant to any provision of this chapter **[pg. 23, generally]**.

B. 1. The Commission shall, however, direct the functional separation of generation, retail transmission and distribution of all incumbent electric utilities in connection with the provisions of this chapter to be completed by January 1, 2002 **[pg. 24, generally]**.

2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a plan for such functional separation which may be accomplished through the creation of affiliates or through such other means as may be acceptable to the Commission ***[This language drawn from § 56-593 in SB-688]***.

C. The Commission shall promulgate rules and regulates to carry out the provisions of this section, which rules and regulations shall include provisions **[pg. 24, column 2, bullets 1-5; pg. 25, column 2, bullet 1]**:

1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;

2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self-dealing;

3. Prohibiting affiliated entities from engaging in discriminatory behavior towards nonaffiliated units; and

4. Establishing codes of conduct detailing permissible relations between functionally separate units.

~~D. Nothing in this chapter shall be construed to exempt or immunize from punishment or prosecution, conduct (i) engaged in by functionally separate generation, transmission or distribution, or any of their affiliates, and (ii) violative of federal antitrust laws, or the antitrust laws of this Commonwealth **[pg. 25, column 2, bullet 2]**.~~

[Note: Subsections ~~E~~ D & ~~F~~ E were adopted, in concept, by the drafting group in response to questions raised about mergers and acquisitions on pg. 26 of the decision tree. The drafting group directed staff to incorporate language in § 56-591 {SCC numbering} of the SCC draft proposal. The language that follows is identical to the provisions of the SCC draft language, except that references to "basic electric service" have been deleted; that concept has not been adopted by the drafting group. The definitions of covered entity and covered transaction are proposed to be amended to read as follows: 1)"Covered entity" means a provider of an electric service not subject to competition within the Commonwealth but shall not include default service providers; 2) "Covered transaction" means an acquistion, merger, or consolidation of, or other transaction involving, stock, securities, voting interests or assets, by which one or more persons obtains control of a covered entity.]

~~E~~ D. Neither a **covered entity** **[defined in SCC draft proposal]** nor an affiliate thereof may be a party to a **covered transaction** **[defined in SCC draft proposal]** without the prior approval of the Commission. Any such person proposing to be a party to such transaction shall file an application with the Commission. The Commission shall approve or disapprove such transaction within sixty days after the filing of a completed application; however, the sixty day period may be extended by Commission order for a period not to exceed an additional 120 days. The application shall be deemed approved if the Commission fails to act within such initial or extended period. The Commission shall approve such application if it finds, after notice and opportunity for hearing, that the transaction will comply with the requirements of subsection ~~F~~ E, and may, as a part of its approval, establish such conditions or limitations on such transaction as it finds necessary to ensure compliance with said subsection ~~F~~ E.

~~F~~ E. A transaction described in subsection ~~E~~ D of this section shall not:

1. Substantially lessen competition among the actual or prospective providers of noncompetitive electric service or of a service which is, or is likely to become, a competitive electric service; or

2. Jeopardize or impair the safety or reliability of electric service in the Commonwealth, or the provision of any noncompetitive electric service at just and reasonable rates.

~~G~~ F. Nothing in this chapter shall be deemed to abrogate or modify the Commission's authority under Chapters 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or 5 (56-88 et seq.) of this title **[Note: the first sentence was incorporated to reflect frequent drafting group and interest group references to the continuing application of the Utilities Facilities Act during the transition period, and possibly thereafter. The SCC language that follows, however, may eliminate the need for its reference here]**. However, any person subject to the requirements of subsection ~~E~~ D that is also subject to the requirements of Chapter 5 (56-88 et seq.) of Title 56 may, in the discretion of the Commission, may be exempted from compliance with some or all of the requirements of said Chapter 5 of Title 56.

§ 56-593.1. Application of antitrust laws.

Nothing in this chapter shall be construed to exempt or immunize from punishment or prosecution, conduct ~~(i) engaged in by functionally separate generation, transmission or distribution, or any of their affiliates, and (ii)~~ violative of federal antitrust laws, or the antitrust laws of this Commonwealth ***[pg. 25, column 2, bullet 2]***.

§ 56-594. Legislative Transition Task Force established **[S & T pg. 29, column 2, bullets 1-4, plus additional language adopted, in concept, by drafting group on 12/17 and 12/29].**

A. A legislative transition task force is hereby established to work collaboratively with the Commission in conjunction with the phase-in of retail competition within the Commonwealth.

B. The transition task force shall consist of ten members, with six members from the House of Delegates and four members from the Senate. Appointments shall be made and vacancies filled by the Speaker of the House of Delegates and the Senate Committee on Privileges and Elections, as appropriate.

C. The task force members shall be appointed to begin service on and after July 1, 1999, and shall continue to serve until July 1, 2005. They shall (i) monitor the work of the Virginia State Corporation Commission in implementing this chapter, receiving such reports as the Commission may be required to make pursuant thereto; (ii) examine utility worker protection during the transition to retail competition; generation, transmission and distribution systems reliability concerns; energy assistance programs for low-income households; *renewable energy programs*; and energy efficiency programs; and (iii) annually report to the Governor and each session of the General Assembly during their tenure concerning the progress of each stage of the phase-in of retail competition, offering such recommendations as may be appropriate for legislative and administrative consideration.

Structure & Transition Supplement

§ 56-579.1 Rate caps. **[S & T pg. 5, generally]**.

A. The Commission shall establish ***capped rates [should be defined]***, effective January 1, 2001 and, unless extended as provided hereafter, expiring on January 1, 2005 July 1, 2007 for each service territory of every incumbent utility as follows:

1. A capped rate shall be established for bundled electric transmission, distribution and generation services. applicable to customers receiving (i) default service, or (ii) supplier of last resort service.

2. 1. A capped rate for electric generation services, only, shall also be established for the purpose of effecting customer choice for those retail customers authorized under this chapter and opting to purchase generation services from a supplier other than the incumbent utility during this period, and any extensions thereof.

2. The capped rates established under this section shall be the rates in effect for each incumbent utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a rate application made by an incumbent electric utility [redacted] . made by an incumbent electric utility. The capped rates established under this section, which include rates, tariffs, electric service contracts, and rate programs (including experimental rates, regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs in effect for each incumbent utility as of the date of this chapter rpovided however, that experimental rates and rate programs may be closed to new customer upon application to the Commission.

B. The Commission may adjust such capped rates in connection with (i) utilities' recovery of fuel costs pursuant to § 56-249.6, and (ii) emergency conditions as provided in 56-245. (ii) any changes in the taxation by the Commonwealth of incumbent electric utiltiy revenues made by this chapter or chapter ____ of title ____, and (iii) notwithstanding the provisions of § 56-249.6, the Commission may authorize tariffs that include incentives designed to encourage an incumbent electric utility to reduce its fuel costs by permitting retention of a portion of cost savings resulting from fuel cost reductions or by other methods determined by the Commission to be fair and reasonable to the utility and its customers.

C. 1. The Commission may, by order, annually extend any capped rate authorized under this section beyond January 1, 2005, in any incumbent utility's service territory if the Commission determines that ***effective competition [should be defined]*** for the sale of electric generation services does not exist within such service territory. A utility may petition the Commission to terminate the capped rates [redacted] anytime after January 1, 2004 and such capped rates may be terminated upon the Commission finding of a competitive market for generation services within the service territory of that utility [redacted]

2. The Commission shall report any capped rate extension orders made pursuant to this section and the reasons therefor, to the Legislative Transition Task Force within thirty days of any such order.

§56-592. Nonbypassable wires charges **[S & T, pg. 22, generally]**.

A. The Commission shall develop appropriate mechanisms maximizing and promoting competition pursuant to this chapter, for assessing per kWh-based charges against retail customers in conjunction with allocating (i) such stranded costs as may be determined pursuant to § 56-591.1, or (ii) any ***transition costs*** **[should be defined]** allocated to retail customers under any other provision of this chapter.

B. **[S & T, pg. 22, generally; language suggested in concept by drafting group]** The Commission shall also develop such alternative costs-allocating mechanisms as may be required to permit any retail customer to pay its appropriate share of any just and reasonable net stranded costs or transition costs, if any, on an accelerated basis upon a finding that such method of payment is not (i) prejudicial to the incumbent utility or its ratepayers, or (ii) inconsistent with the development of effective competition.

A. The Commission shall establish a wires charge for each incumbent electric utility which shall be the sum (i) of the difference between the incumbent utilities capped unbundled rates for generation and the market rate for generation as determined by the Commission and (ii) any transition costs incurred by the incumbent utility determined by the Commission; subject however, to such wires charge and the market rate for generation [redacted] not exceeding the capped rate applicable to such incumbent utility.

B. Customers that choose suppliers of electric energy, other than the incumbent utility, [redacted], prior to the expiration of the period for capped rates, as provided for in § 56-579.1, shall pay a wires charge determined pursuant to subsection A hereof based upon actual usage of electricity [redacted]

[redacted] during the period from the time they [redacted] choose a supplier of electric energy other than the incumbent electric utility, until July 1, 2007.

C. The Commission shall permit any customer, at its option, to pay the wires charge due to the incumbent electric utility on an accelerated basis upon a finding that such method is not (i) prejudicial to the incumbent electric utility or its ratepayers or (ii) inconsistent with the development of effective competition.

Stranded Costs.

§ 56-591. Stranded Costs.

A. **[p. 2, column 1, bullets 1-4 plus language suggested by drafting group]** The Commission shall, after notice and opportunity for hearing, determine for each incumbent electric utility the just and reasonable net **stranded costs** (need definition) associated with all assets and obligations used to provide regulated service within the service territory of such incumbent electric utility as of January 1, 2002. Such determination shall include, but not limited to, consideration of stranded costs associated with **power production assets** (need definition), **regulatory assets (as defined in SB 688), power purchase contracts** (need definition), **nuclear decommissioning costs** (need definition), and **environmental compliance costs** (need definition). Such stranded costs shall be recovered via a nonbypassable wires charge, in accordance with the provisions of § 56-592, from persons who purchase any transmission or distribution service after the date of **customer choice (as defined in SB 688)**, within the territory served by such electric utility as of the date of customer choice **[p. 4, column 4, bullet 1]**.

B. **[p. 3 generally, language suggested by drafting group]** A recovery period for the amounts determined under subsection A shall be established by the Commission for each incumbent electric utility. Such recovery period shall continue for each incumbent electric utility until the Commission determines that such utility has recovered all stranded costs. No further stranded costs shall be recovered by an electric utility after the Commission makes such determination.

C. **[Structure and Transition p. 22, bullet 5]** The Commission shall permit any customer to pay its appropriate share of any stranded costs due to the incumbent electric utility on an accelerated basis upon a finding that such method of payment is not (i) prejudicial to the incumbent electric utility or its ratepayers or (ii) inconsistent with the development of effective competition.

D. **[p. 4, column 2, bullet 2]** Except as provided in subsection C, customers that do not change suppliers of electric energy during the stranded cost recovery period established by the Commission under subsection B shall not pay the nonbypassable wires charge pursuant to this section but shall pay the capped rate as determined under § 56-579.1.

E. **[p. 4, column 3, bullet 2]** Customers that elect to change suppliers of electric energy during the stranded cost recovery period established by the Commission under subsection B shall pay such nonbypassable wires charge as the Commission may determine pursuant to subsection A.

56-591 **Stranded Costs**

Just and reasonable net stranded costs shall be recoverable by each incumbent electric utility provided each incumbent electeic utility shall only recover its just and reasonable net stranded costs thru either capped rates provided in Sec. 56-579.1 or a wires charge as provided in Sec. 56-592.

Consumer, Environment & Education

§ 56-587. Licensing of Aggregators. **[CEE pg. 3, bullets 1 & 6 mandatory; bullets 2-5 permissive, subject to SCC development of licensing and regulatory scheme.]**

A. As a condition of doing business in the Commonwealth, each person seeking to aggregate electric energy within this Commonwealth on and after January 1, 2002, shall

obtain a license from the Commission to do so. The license shall authorize that person to act as an ***aggregator*** **[should be defined]** until the license is otherwise terminated, suspended or revoked. Licensing pursuant to this section, however, shall not relieve any person seeking to act as a supplier of electric energy from their obligation to obtain a license as a supplier pursuant to § 56-585.

B. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) provide background information; (ii) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (iii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iv) pay an annual license fee to be determined by the Commission; and (v) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including, but not limited to, requirements that such person demonstrate ~~*(i)*~~ technical capabilities as the Commission may deem appropriate~~*; and (ii) access to generation and generation reserves, if acting as a supplier*~~ *Any license issued by the Commission pursuant to this section may be conditioned upon the licensee, if acting as a supplier, furnishing to the Commission prior to the provision of electricity to consumer proof of adequate access to generation and generation reserves.*

C. In establishing aggregator licensing schemes and requirements applicable to the same, the Commission may differentiate between (i) those aggregators representing retail customers only, (ii) those aggregators representing suppliers only, and (iii) those aggregators representing both retail customers and suppliers.

D. *1. The Commission shall establish a reasonable period within which any retail customer may cancel any contract entered into with a supplier licensed pursuant to this section.*

2. The Commission may adopt other rules and regulations governing the requirements for obtaining, retaining, and renewing a license to aggregate electric energy to retail customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements.

§ 56-587.1. Municipal aggregation. **[CEE pg. 5, bullets 1-3, as modified by the drafting group. CEE, pg. 6, bullet 2]**.

Counties, cities and towns (hereafter "municipalities") may, at their election and upon authorization by majority votes of their governing bodies, aggregate electrical energy and demand requirements for the purpose of negotiating the purchase of electrical energy requirements from any licensed supplier within this Commonwealth, as follows:

~~*1. Any municipality may aggregate the electric energy load of residential, commercial and industrial retail customers within its boundaries on a voluntary, opt in basis in which each such customer must affirmatively select such municipality as its aggregator.*~~ ***Any municipality may aggregate the electric energy load of residential, commercial and industrial retail customers within its boundaries on a voluntary, opt in basis in which each such customer must affirmatively select such municipality as its aggregator. The municipality may not earn a profit but must recover the actual costs incurred in such aggregation.***

~~2~~ 1. Any municipality may aggregate the electric energy load of its governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy.

~~3~~ 2. Two or more municipalities within this Commonwealth may aggregate the electric energy load of their governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy.

~~*4. Any municipality within this Commonwealth may aggregate (i) the electric energy load of its governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy, together with (ii) the electric energy load of any nongovernmental person or entity within this Commonwealth.*~~

§ 56-588. Metering and billing, etc. **[incorporated into § 56-584 in Structure & Transition draft dated 12/26/98]**

§ 56-589. Consumer education and protection; Commission report to legislative task force.

A. **[CEE pg. 7, column 2, bullets 1-3 and language suggested, in concept, by drafting group on 12/29/98]** The Commission shall develop a consumer education program designed to provide the following information to retail customers during the period of transition to retail competition and thereafter:

1. Opportunities and options in choosing (i) suppliers and aggregators of electric energy, and (ii) any other service made competitive pursuant to this chapter;

2. Marketing and billing information suppliers and aggregators of electric energy will be required to furnish retail customers;

3. Retail customers' rights and obligations concerning the purchase of electric energy and related services; and

4. Such other information as the Commission may deem necessary and appropriate in the public interest.

B. The Commission shall complete the development of the consumer education program described in subsection A, and report its findings and recommendations to the Legislative Transition Task Force on or before December 1, 1999, and as frequently thereafter as may be required by such task force concerning:

1. The scope of such recommended program consistent with the requirements of subsection A;

2. Materials and media required to effectuate any such program;

3. State agency and nongovernmental entity participation;

4. Program duration;

5. Funding requirements and mechanisms for any such program; and

6. Such other findings and recommendations the Commission deems appropriate in the public interest.

C. **[CEE pg. 9, generally; CEE pg. 10, generally; CEE page 12, column 2, bullet 5].** The Commission shall develop regulations governing marketing practices by *public service companies*, licensed suppliers, aggregators or any other providers of services made competitive by this chapter. The Commission shall also establish standardized marketing information to be furnished by licensed suppliers, aggregators or any other providers of services made competitive by this chapter during the period of transition to retail competition, and thereafter, which information ~~may~~ *shall* include:

1. Pricing and other key contract terms and conditions;

2. To the extent feasible, fuel mix and emissions data on at least an annualized basis.

3. Consumers' rights of cancellation following execution of any contract.

4. Toll-free telephone number for customer assistance.

5. Such other and further marketing information as the Commission may deem necessary and appropriate in the public interest.

D. **[CEE pg. 11, bullets 1, 2 and 5-7]** The Commission shall also establish standardized billing information to be furnished by *public service companies*, suppliers, aggregators or any other providers of services made competitive by this chapter during the period of transition to retail competition, and thereafter. Such billing information shall:

1. Distinguish between charges for regulated services and unregulated services.

2. Itemize any and all nonbypassable wires charges.

3. Be presented in a standardized format to be established by the Commission.

4. Disclose, to the extent feasible, fuel mix and emissions data on at least an annualized basis.

5. Include such other billing information as the Commission deems necessary and appropriate in the public interest.

E. **[CEE, pg. 14]** The Commission shall establish *or maintain* a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against *public service companies,* licensed suppliers, aggregators and other providers of any services made competitive under this chapter. ~~*The*~~ *Upon the request of any interested person or the Attorney General, or upon its own motion, the* Commission shall be authorized to inquire into possible violations of this chapter and to enjoin or punish any violations thereof pursuant to its authority under this chapter, this title, and under Title 12.1 (§ 12.1-1 et seq.). *The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.*

F. **[CEE, pg. 15, bullets 1 & 4]** The Commission shall establish reasonable limits on customer security deposits required by *public service companies,* suppliers, aggregators o any other persons providing competitive services pursuant to this chapter.

§ 56-589.1. **[CEE, pg. 12, column 2, bullet 4; and column 4, bullet 4, as modified by the drafting group on 12/29/98]** Retail customers private right of action; marketing practices.

A. No entity subject to this chapter shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing, distributing or marketing electric service.

~~A~~ B 1. Any person who suffers loss as the result of *any violation of subsection A, or as the result of* marketing practices, including telemarketing practices, (i) engaged in by any *public service company,* licensed supplier, aggregator or any other provider of any service made competitive under this chapter, and (ii) in violation of subsection C of § 56-589, including any rule or regulation adopted by the Commission pursuant thereto, shall be entitled to initiate an action to recover actual damages, or $500, whichever is greater. If the trier of fac

finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or $1,000, whichever is greater.

2. Upon referral from the Commission, the Attorney General, the attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court for relief of violations within the scope of subsection A.

~~B~~ C. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person, *or any governmental agency initiating such action*, also may be awarded reasonable attorney's fees and court costs.

~~C~~ D. Any action pursuant to this section shall be commenced within two years after its accrual. The cause of action shall accrue as provided in § 8.01-230. However, if the Commission *initiates proceedings*, or any other governmental agency files suit for the purpose of enforcing *subsection A or* the provisions of subsection C of § 56-589, the time during which such *proceeding or* governmental suit and all appeals therefrom is pending shall not be counted as any part of the period within which an action under this section shall be brought.

D. The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice violative of *subsection A or* subsection C of § 56-589, provided, that such person shall be identified by order of the court within 180 days from the date of any order permanently enjoining the unlawful act or practice.

E. In any case arising under this section, no liability shall be imposed upon any licensed supplier, aggregator or any other provider of any service made competitive under this chapter, who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of *subsection A or* subsection C of § 56-589 was an act or practice over which the same had no control, or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment

of reasonable attorney's fees and court costs pursuant to subsection ~~B~~ C to individuals aggrieved as a result of an unintentional violation of *subsection A or* subsection C of § 56-589.

§ 56-590. Public purpose programs. **[CEE pp. 1 & 2]. At its 12/29 meeting, the Drafting group recommended further study of this issue by Legislative Transition Task Force. See Structure & Transition Draft Supplement--additions to § 56-594.**

~~*§ 56-590.1. [CEE, pg. 16, bullet 4] Environment and Renewable energy; net energy metering provisions.*~~

~~*A. The Commission shall establish net energy metering provisions designed to encourage private investment in renewable energy resources, stimulate economic growth within the Commonwealth, enhance the continued diversification of Virginia's energy resource mix, and reduce interconnection and administrative costs for electric service providers.*~~

~~*B. For the purpose of this section "net energy metering" means measuring the difference between electricity supplied to an eligible customer generator, and the electricity generated and fed back to the electric grid by the eligible customer generator over an annual period, with corresponding billing or crediting of the customer generator retail customer account by such customer generator's supplier of electric energy.*~~

§ 56-590.2. Energy efficiency. **At its 12/29 meeting, the Drafting group recommended further study of this issue by the Legislative Transition Task Force. See Structure & Transition Draft Supplement--additions to § 56-594.**

§ 56-590.3. Utility worker protection. **At its 12/29 meeting, the Drafting group recommended further study of this and related reliability issues by the Legislative Transition Task Force. See Structure & Transition Draft Supplement--additions to § 56-594.**

Draft Substitute adopted by the SJR-91 Joint Subcommittee on January 18, 1999, with amendments (plain text). The code sections have been renumbered, conforming them to the section numbers in the introduced restructuring bill. [section numbers used in the Draft Substitute are, however, provided in brackets for comparison purposes]

§ 56-577. [§ 56-579] **Schedule for transition to retail competition; Commission authority.**

A. The transition to retail competition for the purchase and sale of electric energy shall be implemented as follows:

1. On or before January 1, 2001, 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 intrastate 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. On and after January 1, 2002, retail customers of electric energy within the Commonwealth shall be permitted to purchase energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth during and after the period of transition to retail competition, subject to the following:

a. The Commission shall establish a phase-in schedule for customers by class, and by percentages of class, to ensure that by January 1, 2004, all retail customers are permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth.

b. The Commission shall also ensure that residential and small business retail customers are permitted to select suppliers in proportions at least equal to that of other customer classes permitted to select suppliers during the period of transition to retail competition.

3. On and after January 1, 2004, 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.

B. The Commission may delay or accelerate the implementation of any of the provisions of this section, subject to the following:

1. Any such delay or acceleration shall be based on considerations of reliability, safety, communications or market power; and

2. Any such delay shall be limited to the period of time required to resolve the issues necessitating the delay, but in no event shall any such delay extend the implementation of customer choice for all customers beyond January 1, 2005.

The Commission shall, within a reasonable time, report to the General Assembly, or any legislative entity monitoring the restructuring of Virginia's electric industry, any such delays and the reasons therefor.

C. Except as may be otherwise provided in this chapter, prior to and during the period of transition to retail competition, the Commission may conduct pilot programs encompassing retail customer choice of

electric energy suppliers, consistent with its authority otherwise provided in this title and the provisions of this chapter.

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

§ 56-578. [§ 56-580] **Nondiscriminatory access to transmission and distribution system.**

A. All distributors shall have the obligation to connect any retail customer, including those using distributed generation, located within its service territory to those facilities of the distributor that are used for delivery of retail electric energy, subject to Commission rules and regulations and approved tariff provisions relating to connection of service.

B. Except as otherwise provided in this chapter, every distributor shall provide distribution service within its service territory on a basis which is just, reasonable, and not unduly discriminatory to suppliers of electric energy, including distributed generation, as the Commission may determine. The distribution services provided to each supplier of electric energy shall be at least equal in quality to those provided by the distribution utility to itself or to any affiliate. The Commission shall establish rates, terms and conditions for distribution service under Chapter 10 (§ 56-232 et seq.) of this title.

C. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not exceed or be inconsistent with nationally recognized standards acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. The Commission shall determine questions about the ability of specific equipment to meet interconnection standards.

D. The Commission shall consider developing expedited permitting processes for small generation facilities of 50 MW or less. The Commission shall also consider developing a standardized permitting process and interconnection arrangements for those power systems less than 500 kW which have demonstrated approval from a nationally recognized testing laboratory acceptable to the Commission.

E. Upon the separation and deregulation of the generation function and services of incumbent electric utilities, the Commission shall retain jurisdiction over utilities' electric transmission function and services, to the extent not preempted by federal law. Nothing in this section shall impair the Commission's authority under §§ 56-46.1, 56-46.2, and 56-265.2 with respect to the construction of electric transmission facilities.

F. If the Commission determines that increases in the capacity of the transmission systems in the Commonwealth, or modifications in how such systems are planned, operated, maintained, used, financed or priced, will promote the efficient development of competition in the sale of electric energy, the Commission may, to the extent not preempted by federal law, require one or more persons having any ownership or control of, or responsibility to operate, all or part of such transmission systems to:

1. Expand the capacity of transmission systems;

2. File applications and tariffs with the Federal Energy Regulatory Commission which (i) make transmission systems capacity available to retail sellers or buyers of electric energy under terms and conditions described by the Commission, and (ii) require owners of generation capacity located in the Commonwealth to bear an appropriate share of the cost of transmission facilities, to the extent such cost

is attributable to such generation capacity;

3. Enter into a contract with, or provide information to, a regional transmission entity; or

4. Take such other actions as the Commission determines to be necessary to carry out the purposes of this chapter.

G. If the Commission determines, after notice and opportunity for hearing, that a person has or will have, as a result of such person's control of electric generating capacity or energy within a transmission constrained area, market power over the sale of electric generating capacity or energy to retail customers located within the Commonwealth, the Commission may, to the extent not preempted by federal law and to the extent that the Commission determines market power is not adequately mitigated by rules and practices of the applicable regional transmission entity having responsibility for management and control of transmission assets within the Commonwealth, within such transmission constrained area, adjust such rates for generation services to the extent necessary to protect retail customers from such market power. Such rates shall remain regulated until the Commission, after notice and opportunity for hearing, determines that the market power has been mitigated.

§ 56-579. [§ 56-581] **Regional transmission entities.**

A. As set forth in § 56-577, on or before January 1, 2001, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity to which such utility shall transfer the management and control of its transmission assets, subject to the following:

1. No such incumbent electric utility shall transfer to any person any ownership or control of, or any responsibility to operate, any portion of any transmission system located in the Commonwealth without obtaining the prior approval of the Commission, as hereinafter provided.

2. The Commission shall develop rules and regulations under which any such incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity within the Commonwealth, may transfer all or part of such control, ownership or responsibility to an RTE, upon such terms and conditions that the Commission determines will:

a. Promote:

1. Practices for the reliable planning, operating, maintaining, and upgrading of the transmission systems and any necessary additions thereto; and

2. Policies for the pricing and access for service over such systems, which are safe, reliable, efficient, not unduly discriminatory and consistent with the orderly development of competition in the Commonwealth;

b. Be consistent with lawful requirements of the Federal Energy Regulatory Commission;

c. Be effectuated on terms that fairly compensate the transferor;

d. Generally promote the public interest, and are consistent with (i) ensuring the successful development of interstate regional transmission entities and (ii) meeting the transmission needs of electric generation suppliers both within and without this Commonwealth.

B. The Commission shall also adopt rules and regulations, with appropriate public input, establishing elements of regional transmission entity structures essential to the public interest, which elements shall be applied by the Commission in determining whether to authorize transfer of ownership or control from an incumbent electric utility to a regional transmission entity.

C. The Commission shall, to the fullest extent permitted under federal law, participate in any and all proceedings concerning regional transmission entities furnishing transmission services within the Commonwealth, before the Federal Energy Regulatory Commission (FERC). Such participation may include such intervention as is permitted state utility regulators under FERC rules and procedures.

D. Nothing in this section shall be deemed to abrogate or modify:

1. The Commission's authority over transmission line or facility construction, enlargement or acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ 56-265.1 et seq.) of this title;

2. The laws of this Commonwealth concerning the exercise of the right of eminent domain by a public service corporation pursuant to the provisions of Article 5 (§ 56-257 et seq.) of Chapter 10 of this title; however, on and after January 1, 2004, the right of eminent domain may not be exercised in conjunction with the construction or enlargement of any utility facility whose purpose is the generation of electric energy; or

3. The Commission's authority over retail electric energy sold to retail customers within the Commonwealth by licensed suppliers of electric service, including necessary reserve requirements, all as specified in § 56-585.

§ 56-580. [§ 56-583] **Transmission and distribution of electric energy**.

A. The Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution or transmission services, to the extent necessary to prevent impairment of competition.

D. The Commission may permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric

utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Nothing in this chapter shall impair the ...mmission's existing authority over the provision of electric distribution services to retail customers in ...e Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

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, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer outside the geographic area that was served by such municipality as of July 1, 1999.

§ 56-581. [§ 56-584] **Regulation of rates subject to Commission's jurisdiction.**

A. Subject to the provisions of § 56-582, the Commission shall regulate the rates for the transmission of electric energy, to the extent not prohibited by federal law, and for the distribution of electric energy to such retail customers on an unbundled basis, but, subject to the provisions of this chapter after the date of customer choice, the Commission no longer shall regulate rates for the generation component of retail electric energy sold to retail customers.

B. No later than September 1, 1999, and annually thereafter, the Commission shall submit a report to the General Assembly evaluating the advantages and disadvantages of competition for metering, billing and other services which have not been made subject to competition, and making recommendations as to when, and for whom, such other services should be made subject to competition.

...6-582 [§ 56-579.1] **Rate caps.**

A. The Commission shall establish capped rates, effective January 1, 2001, and expiring on July 1, 2007, for each service territory of every incumbent utility as follows:

1. A capped rate shall be established for bundled electric transmission, distribution and generation services.

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

3. The capped rates established under this section shall be the rates in effect for each incumbent utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a rate application filed with and approved by the Commission prior to January 1, 2001, and made by an incumbent electric utility that is not currently bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002. The capped rates established under this section, which include rates, tariffs, electric service contracts, and rate programs (including experimental rates, regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs in effect for each incumbent utility as of the date of this chapter provided that experimental rates and rate programs may be closed to new customers upon application to the Commission.

.he Commission may adjust such capped rates in connection with (i) utilities' recovery of fuel costs pursuant to § 56-249.6, (ii) any changes in the taxation by the Commonwealth of incumbent electric utility revenues and (iii) electric cooperatives' recovery of energy costs, through the wholesale power

cost adjustment pursuant to § 56-266. Notwithstanding the provisions of § 56-249.6, the Commission may authorize tariffs that include incentives designed to encourage an incumbent electric utility to reduce its fuel costs by permitting retention of a portion of cost savings resulting from fuel cost reductions or by other methods determined by the Commission to be fair and reasonable to the utility and its customers

C. A utility may petition the Commission to terminate the capped rates to all customers anytime after January 1, 2004, and such capped rates may be terminated upon the Commission finding of a competitive market for generation services within the service territory of that utility to the extent that capped rates are no longer necessary to protect retail consumers.

§ 56-583. [§ 56-592] **Wires charges.**

A. The Commission shall establish a wires charge for each incumbent electric utility which shall be the sum (i) of the difference between the incumbent utilities' capped unbundled rates for generation and (a) costs avoided by the incumbent utilities, or (b) the market rate for generation, as determined by the Commission, and (ii) any transition costs incurred by the incumbent utility determined by the Commission; however, such wires charge and the market rate for generation shall not exceed the capped rate applicable to such incumbent utility.

B. Customers that choose suppliers of electric energy, other than the incumbent utility, or are subject to default service, prior to the expiration of the period for capped rates, as provided for in § 56-582, shall pay a wires charge determined pursuant to subsection A based upon actual usage of electricity distributed by the incumbent utility to the customer during the period from the time it chooses a supplier of electric energy other than the incumbent electric utility, until July 1, 2007.

C. The Commission shall permit any customer, at its option, to pay the wires charge due to the incumbent electric utility on an accelerated basis upon a finding that such method is not (i) prejudicial to the incumbent electric utility or its ratepayers or (ii) inconsistent with the development of effective competition.

§ 56-584. [§ 56-591] **Stranded costs.**

Just and reasonable net stranded costs, to the extent that they exceed zero value in total for the incumbent electric utility, shall be recoverable by each incumbent electric utility provided each incumbent electric utility shall only recover its just and reasonable net stranded costs through either capped rates provided in § 56-582 or a wires charge as provided in §. 56-583. In determining total stranded costs for a distribution electric cooperative, the Commission shall use a methodology that ensures that the cooperative and any power supply cooperative of which the cooperative is or was a member will be able to continue to meet their required financial obligations, commitments and covenants. For cooperatives, stranded costs will be measured by the amount of cash necessary to reduce the average cost of wholesale power to the distribution cooperative to the cost the competitive market would charge for equivalent service upon the commencement of customer choice. For cooperatives that are members of a power supply cooperative, the average cost of wholesale power shall be determined by taking the total expense for delivered kilowatt-hours, adding indenture or mortgage net margin requirements, and dividing that amount by the total kilowatt-hours.

§ 56-585. [§ 56-586] **Default services.**

A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of

default services and (ii) establish one or more programs making such services available to retail customers requiring them commencing with the date of customer choice for all retail customers 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 select an alternative provider, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.

B. The Commission shall designate the providers of default services. In doing so, the Commission:

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

2. May, upon a finding that the public interest will be served, designate one or more willing 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; and

3. In the absence of a finding under subdivision 2, may require an incumbent electric utility or distribution utility to provide 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 which are fairly compensatory to the utility and which reflect any cost of energy prudently procured, including energy procured from the competitive market; however, the Commission may not require an incumbent electric utility or distribution utility, or affiliate thereof, to provide any such services outside the territory in which such utility provides service.

The Commission shall, after notice and opportunity for hearing, determine the rates, terms and conditions for such services consistent with the provisions of subdivision B 3 and Chapter 10 (§ 56-232 et seq.) of this title and shall establish such requirements for providers and customers as it finds necessary to promote the reliable and economic provision of such services and to prevent the inefficient use of such services. The Commission may use any rate method that promotes the public interest and may establish different rates, terms and conditions for different classes of customers.

D. 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.

E. 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. 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.

F. In the event the Commission designates a provider of default service other than the incumbent electric utility to provide default service in the territory of such utility the Commission shall establish a wires charge pursuant to § 56-592, which wires charge shall terminate on July 1, 2007.

§ 56-586. [§ 56-586.1] **Emergency services provider**.

On and after January 1, 2001, if any supplier fails to fulfill its obligation to provide electricity to a retail customer, the entity fulfilling the control area function, or, if applicable, the regional transmission entity or other entity as designated by the Commission, shall be responsible for charging the defaulting supplier for the full cost of replacement energy, including the cost of energy, the cost incurred by others as a result of the default, and the assessment of penalties as may be approved either by the Commission, to the extent not precluded by federal law, or by the Federal Energy Regulatory Commission. The Commission, as part of the rules established under § 56-585, shall determine the circumstances under which failures to deliver electricity will result in the revocation of the supplier's license.

§ 56-587. [§ 56-585] **Licensure of retail electric energy suppliers**.

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. A license shall not be required solely for the leasing or financing of property used in the sale of electricity to any retail customer in the Commonwealth.

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

B. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (ii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iii) pay an annual license fee to be determined by the Commission; and (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including but not limited to requirements that such person demonstrate (i) technical capabilities as the Commission may deem appropriate; (ii) access to generation and generation reserves; and (iii) adherence to minimum market conduct standards.

C. 1. The Commission shall establish a reasonable period within which any retail customer may cancel, without penalty or cost, any contract entered into with a supplier licensed pursuant to this section.

2. The Commission may adopt other rules and regulations governing the requirements for obtaining, retaining, and renewing a license to supply electric energy to retail customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements.

§ 56-588. [§ 56-587] **Licensing of aggregators**.

A. As a condition of doing business in the Commonwealth, each person seeking to aggregate electric energy within this Commonwealth on and after January 1, 2002, shall obtain a license from the Commission to do so. The license shall authorize that person to act as an aggregator until the license expires or is otherwise terminated, suspended or revoked. Licensing pursuant to this section, however, shall not relieve any person seeking to act as a supplier of electric energy from their obligation to obtain a license as a supplier pursuant to § 56-587.

B. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) provide background information; (ii) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (iii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iv) pay an annual license fee to be determined by the Commission; and (v) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including, but not limited to, requirements that such person demonstrate technical capabilities as the Commission may deem appropriate. Any license issued by the Commission pursuant to this section may be conditioned upon the licensee, if acting as a supplier, furnishing to the Commission prior to the provision of electricity to consumers proof of adequate access to generation and generation reserves.

C. In establishing aggregator licensing schemes and requirements applicable to the same, the Commission may differentiate between (i) those aggregators representing retail customers only, (ii) those aggregators representing suppliers only, and (iii) those aggregators representing both retail customers and suppliers.

D. 1. The Commission shall establish a reasonable period within which any retail customer may cancel, without penalty or cost, any contract entered into with a supplier licensed pursuant to this section.

2. The Commission may adopt other rules and regulations governing the requirements for obtaining, retaining, and renewing a license to aggregate electric energy to retail customers, and may, as appropriate, refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does not meet those requirements.

§ 56-589. [§ 56-587.1] **Municipal aggregation**.

Counties, cities and towns (hereafter "municipalities") and other political subdivisions of the Commonwealth may, at their election and upon authorization by majority votes of their governing bodies, aggregate electrical energy and demand requirements for the purpose of negotiating the purchase of electrical energy requirements from any licensed supplier within this Commonwealth, as follows:

1. Any municipality or other political subdivision of the Commonwealth may aggregate the electric energy load of its governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy.

2. Two or more municipalities or other political subdivisions within this Commonwealth may aggregate the electric energy load of their governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy.

§ 56-590. [§ 56-593] **Divestiture, functional separation and other corporate relationships.**

A. The Commission shall not order any incumbent electric utility, nor shall it require any such utility to divest itself of any generation, transmission or distribution assets pursuant to any provision of this chapter.

B. 1. The Commission shall, however, direct the functional separation of generation, retail transmission and distribution of all incumbent electric utilities in connection with the provisions of this chapter to be

completed by January 1, 2002.

2. By January 1, 2001, each incumbent electric utility shall submit to the Commission a plan for such functional separation which may be accomplished through the creation of affiliates, or through such other means as may be acceptable to the Commission.

C. The Commission shall, to the extent necessary to promote effective competition in the Commonwealth, promulgate rules and regulations to carry out the provisions of this section, which rules and regulations shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;

2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self-dealing;

3. Prohibiting affiliated entities from engaging in discriminatory behavior towards nonaffiliated units; and

4. Establishing codes of conduct detailing permissible relations between functionally separate units.

D. Neither a covered entity nor an affiliate thereof may be a party to a covered transaction without the prior approval of the Commission. Any such person proposing to be a party to such transaction shall file an application with the Commission. The Commission shall approve or disapprove such transaction within sixty days after the filing of a completed application; however, the sixty-day period may be extended by Commission order for a period not to exceed an additional 120 days. The application shall be deemed approved if the Commission fails to act within such initial or extended period. The Commission shall approve such application if it finds, after notice and opportunity for hearing, that the transaction will comply with the requirements of subsection E, and may, as a part of its approval, establish such conditions or limitations on such transaction as it finds necessary to ensure compliance with subsection E.

E. A transaction described in subsection D shall not:

1. Substantially lessen competition among the actual or prospective providers of noncompetitive electric service or of a service which is, or is likely to become, a competitive electric service; or

2. Jeopardize or impair the safety or reliability of electric service in the Commonwealth, or the provision of any noncompetitive electric service at just and reasonable rates.

F. Nothing in this chapter shall be deemed to abrogate or modify the Commission's authority under Chapter 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or 5 (§ 56-88 et seq.) of this title. However, any person subject to the requirements of subsection D that is also subject to the requirements of Chapter 5 of this title may be exempted from compliance with the requirements of Chapter 5 of this title.

§ 56-591. [§ 56-593.1] **Application of antitrust laws.**

Nothing in this chapter shall be construed to exempt or immunize from punishment or prosecution, conduct violative of federal antitrust laws, or the antitrust laws of this Commonwealth.

§ 56-592. [§ 56-589] **Consumer education and protection; Commission report to Legislative Task Force.**

A. The Commission shall develop a consumer education program designed to provide the following information to retail customers during the period of transition to retail competition and thereafter:

1. Opportunities and options in choosing (i) suppliers and aggregators of electric energy and (ii) any other service made competitive pursuant to this chapter;

2. Marketing and billing information suppliers and aggregators of electric energy will be required to furnish retail customers;

3. Retail customers' rights and obligations concerning the purchase of electric energy and related services; and

4. Such other information as the Commission may deem necessary and appropriate in the public interest.

B. The Commission shall complete the development of the consumer education program described in subsection A, and report its findings and recommendations to the Legislative Transition Task Force on or before December 1, 1999, and as frequently thereafter as may be required by the Task Force concerning:

1. The scope of such recommended program consistent with the requirements of subsection A;

2. Materials and media required to effectuate any such program;

State agency and nongovernmental entity participation;

4. Program duration;

5. Funding requirements and mechanisms for any such program; and

6. Such other findings and recommendations the Commission deems appropriate in the public interest.

C. The Commission shall develop regulations governing marketing practices by public service companies, licensed suppliers, aggregators or any other providers of services made competitive by this chapter. The Commission shall also establish standardized marketing information to be furnished by licensed suppliers, aggregators or any other providers of services made competitive by this chapter during the period of transition to retail competition, and thereafter, which information shall include:

1. Pricing and other key contract terms and conditions;

2. To the extent feasible, fuel mix and emissions data on at least an annualized basis;

3. Customer's rights of cancellation following execution of any contract;

4. Toll-free telephone number for customer assistance; and

Such other and further marketing information as the Commission may deem necessary and appropriate the public interest.

D. The Commission shall also establish standardized billing information to be furnished by public

service companies, suppliers, aggregators or any other providers of services made competitive by this chapter during the period of transition to retail competition, and thereafter. Such billing information shall:

1. Distinguish between charges for regulated services and unregulated services;

2. Itemize any and all nonbypassable wires charges;

3. Be presented in a standardized format to be established by the Commission;

4. Disclose, to the extent feasible, fuel mix and emissions data on at least an annualized basis; and

5. Include such other billing information as the Commission deems necessary and appropriate in the public interest.

E. The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against public service companies, licensed suppliers, aggregators and other providers of any services made competitive under this chapter. Upon the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of this chapter and to enjoin or punish any violations thereof pursuant to its authority under this chapter, this title, and under Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.

F. The Commission shall establish reasonable limits on customer security deposits required by public service companies, suppliers, aggregators or any other persons providing competitive services pursuant to this chapter.

§ 56-593. [§ 56-589.1] **Retail customers' private right of action; marketing practices.**

A. No entity subject to this chapter shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing, distributing or marketing electric service.

B. Any person who suffers loss (i) as the result of marketing practices, including telemarketing practices, engaged in by any public service company, licensed supplier, aggregator or any other provider of any service made competitive under this chapter, and in violation of subsection C of § 56-592, including any rule or regulation adopted by the Commission pursuant thereto, or (ii) as the result of any violation of subsection A, shall be entitled to initiate an action to recover actual damages, or $500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or $1,000, whichever is greater.

2. Upon referral from the Commission, the Attorney General, the attorney for the Commonwealth, or the attorney for any city, county, or town may cause an action to be brought in the appropriate circuit court for relief of violations within the scope of (i) subsection C of § 56-592, including any rule or regulation adopted by the Commission pursuant thereto, or (ii) subsection A.

C. Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person, or any governmental agency initiating such action, also may be awarded reasonable attorney's fees and court costs.

D. Any action pursuant to this section shall be commenced within two years after its accrual. The cause of action shall accrue as provided in § 8.01-230. However, if the Commission initiates proceedings, or ıy other governmental agency files suit for the purpose of enforcing subsection A or the provisions of ubsection C of § 56-592, the time during which such proceeding or governmental suit and all appeals therefrom is pending shall not be counted as any part of the period within which an action under this section shall be brought.

E. The circuit court may make such additional orders or decrees as may be necessary to restore to any identifiable person any money or property, real, personal, or mixed, tangible or intangible, which may have been acquired from such person by means of any act or practice violative of subsection A or subsection C of § 56-592, provided, that such person shall be identified by order of the court within 180 days from the date of any order permanently enjoining the unlawful act or practice.

F. In any case arising under this section, no liability shall be imposed upon any licensed supplier, aggregator or any other provider of any service made competitive under this chapter, who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of subsection A or subsection C of § 56-592 was an act or practice over which the same had no control, or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subsection C to individuals aggrieved as a result of an unintentional violation of subsection A or subsection C of § 56-589.

§ 56-594. [§ 56-590.1] **Net energy metering provisions.**

. The Commission shall establish by regulation a program, to begin no later than July 1, 2000, which affords eligible customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners and/or operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; or (v) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest.

B. For the purpose of this section:

"Eligible customer-generator" means a customer that is a residential or small commercial customer; and owns and operates an electrical generating facility that (i) has a capacity of not more than twenty-five kilowatts; (ii) uses as its primary source of fuel solar, wind, or hydro energy; (iii) is located on the customer's premises; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements.

"Net energy metering" means measuring the difference, over a twelve-month period, between (i) electricity supplied to an eligible customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-generator.

The Commission's regulations shall ensure that the metering equipment installed for net metering ıl be capable of measuring the flow of electricity in two directions, and shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's solar electrical generating system shall meet all applicable safety and performance standards established by the National

Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in this section, a customer-generator whose solar electrical generating system meets those standards and rules shall not be required to bear the cost to (i) install additional controls, (ii) perform or pay for additional tests, or (iii) purchase additional liability insurance.

D. The Commission shall establish minimum requirements for contracts to be entered into by the parties to net metering arrangements. Such requirements shall protect the customer-generator against discrimination by virtue of its status as a customer-generator. Where electricity generated by the customer-generator over a twelve-month period exceeds the electricity consumed by the customer-generator, the customer-generator shall not be compensated for the excess electricity unless the entity contracting to receive such electric energy and the customer-generator enter into a power purchase agreement for such excess electricity. The net metering standard contract or tariff shall be available to eligible customer-generators on a first-come, first-served basis in each electric distribution company's service area until the rated generating capacity owned and operated by eligible customer-generators in the state reached 0.1 percent of each electric distribution company's adjusted peak-load forecast for the previous year.

E. The Commission may establish regulations authorizing net energy metering by persons who meet the definition of "eligible customer-generator" other than the criterion set forth in its definition set forth in subsection B, provided that such regulations are otherwise consistent with this section, and provided further that the total amount of generating capacity owned and operated by eligible customer-generators authorized by this subsection shall not exceed 0.1 percent of each electric distribution company's adjusted peak-load forecast for the previous year.

56-595. [§ 56-594] **Legislative Transition Task Force established.**

A. The Legislative Transition Task Force is hereby established to work collaboratively with the Commission in conjunction with the phase-in of retail competition within the Commonwealth.

B. The Task Force shall consist of ten members, with six members from the House of Delegates and four members from the Senate. Appointments shall be made and vacancies filled by the Speaker of the House of Delegates and the Senate Committee on Privileges and Elections, as appropriate.

C. The Task Force members shall be appointed to begin service on and after July 1, 1999, and shall continue to serve until July 1, 2005. They shall (i) monitor the work of the Virginia State Corporation Commission in implementing this chapter, receiving such reports as the Commission may be required to make pursuant thereto; (ii) examine utility worker protection during the transition to retail competition; generation, transmission and distribution systems reliability concerns; energy assistance programs for low-income households; renewable energy programs; and energy efficiency programs; and (iii) annually report to the Governor and each session of the General Assembly during their tenure concerning the progress of each stage of the phase-in of retail competition, offering such recommendations as may be appropriate for legislative and administrative consideration.

HOUSE OF DELEGATES
AMENDMENT FORM

ımber: SB 1269 Amendment Number: _____

Committee: HOUSE CORPORATIONS, INSURANCE AND BANKING
or
Floor Amendment Offered By: _____

Title Amendment:
(Circle)

Page 6 **Substitute** Line 16 , After **§ 56-226.**

Strike:

Insert:

In addition, on or before January 1, 2003, the Commission may adjust such capped
es to prevent over-recovery or under-recovery of just and reasonable net
stranded costs. Upon a finding of under-recovery, the Commission may (i) increase the capped rates, or (ii) establish a separate mechanism (which may extend in its effect beyond July 1, 2007 and which may include adjustments to the wires charges established under § 56-583) to prevent the under-recovery, or (iii) both (i) and (ii).

e: _____ Date: _____

greed to: _____ Agreed to: _____
Committee Clerk Clerk

Rejected: _____
Clerk