REPORT OF THE
LEGISLATIVE TRANSITION TASK FORCE ESTABLISHED UNDER

THE VIRGINIA ELECTRIC UTILITY RESTRUCTURING ACT

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

SENATE DOCUMENT NO. 54

COMMONWEALTH OF VIRGINIA
RICHMOND
2000

MEMBERS OF THE LEGISLATIVE TRANSITION TASK FORCE

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

STAFF

Division of Legislative Services

Franklin D. Munyan, Senior Attorney
C. Maureen Stinger, Staff Attorney
Michelle Montgomery, Operations Staff Assistant

Senate of Virginia - Clerk's Office

Thomas C. Gilman, Coordinator of Committee Operations

EXECUTIVE SUMMARY

The passage of Senate Bill 1269 (1999), establishing the Virginia Electric Utility Restructuring Act, marked the start of a new era in the way Virginians buy electric power. Starting in 2002, consumers in the Commonwealth will have the ability to choose the entity from which they purchase electrical generation services.

Implementing the deregulation of the generation component of electric service is a complex undertaking. For most of the past century, electric power was sold at retail by licensed public utilities that were granted service monopolies within specified areas while their rates and services were subject to regulation by the State Corporation Commission. In moving to retail competition for electricity generation services, Virginia has joined a growing number of other states that seek to take advantage of the efficiencies and lower costs that a market-based system offers. While generation is being made competitive, other elements of electric utility service will continue to be provided as they were prior to the passage of the Restructuring Act. The distribution and transmission of electricity will remain regulated by the Commission and the Federal Energy Regulatory Commission, respectively.

While the shift to competition creates new opportunities for economic efficiencies, the General Assembly has acknowledged that implementing retail choice must be done in a manner that maintains the Commonwealth's position as a low-cost electricity market and ensures that residential customers and small business customers benefit from competition.

Though the Restructuring Act was the product of three years of intensive work by a legislative joint subcommittee, it is widely acknowledged that the General Assembly's work did not end with the enactment of SB 1269. Restructuring Virginia's electric utility industry will be an ongoing endeavor, requiring monitoring of competition and addressing issues that arise as the framework established by the Act is implemented.

The Legislative Transition Task Force was established pursuant to § 56-595 of the Restructuring Act to work collaboratively with the Commission in conjunction with the phase-in of retail competition in electric services. The Task Force met eight times between June 23, 1999, and January 19, 2000. The Task Force recommended, after receiving valuable information and participating in lively airings of a range of perspectives, that the Restructuring Act be amended in the 2000 Session to address a variety of issues. Recommendations of the Task Force to the General Assembly include:

- Directing the State Corporation Commission to report to the Task Force, commencing January 1, 2001, with a recommended schedule and draft plan for implementing competition for metering services, billing services, or both.

- Implementing the Commission's proposed consumer education program, to be funded through the special regulatory taxes that the Commission is authorized to levy under existing statutes.

- Eliminating the possibility that incumbent electric utilities may be assessed negative wires charges if the projected market price for generation and other allowable charges exceeds the capped rate for electric service.

- Clarifying that a person providing legal services or uncompensated educational services, default service, or conducting certain other activities will not need to obtain licensure from the Commission as an aggregator.

- Re-writing provisions of 1999's Senate Bill 1286 relating to the conversion of the local consumer utility tax on electricity from a tax based on the cost of power consumed to a tax based on the amount of power consumed.

- Refining the definition of "projected market price for generation."

- Directing the Consumer Advisory Board to continue and expand its study of low-income energy assistance programs.

The Task Force also recommended several technical and clarifying amendments to the Restructuring Act. The recommendations of the Task Force were introduced in the 2000 Session as Senate Bills 163, 532 and 585 and Senate Joint Resolutions 95 and 154. All of the recommendations of the Task Force were enacted by the General Assembly.

Though the Task Force tackled a number of the controversial issues raised by passage of the Restructuring Act, its work is not completed. The Task Force is scheduled to remain in existence until July 2005. Until that time, it will continue to monitor the Commission's introduction of retail choice for electrical services, recommend appropriate legislation, and study the issues delegated to the Task Force by various provisions of the Restructuring Act.

Table of Contents

Executive Summary iii

I. Introduction 1
A. Background 1
B. Membership 2
C. Consumer Advisory Board 2

II. Issues Examined by the Task Force 3
A. Implementation of the Electric Utility Restructuring Act 3
B. Consumer Education Program 7
C. Competition for Metering, Billing and Other Services 8
D. Discounting of Capped Rates 11
E. System Reliability 13
F. Energy Assistance Programs for Low-Income Households 15
G. Energy Efficiency Programs 32
H. Renewable Energy Programs 33
I. Utility Worker Protection 35

III. Consideration of Proposed Amendments to Restructuring Legislation 36
A. Licensing of Aggregators 36
B. Licensing of Suppliers 37
C. Metering and Billing 38
D. Negative Wires Charges 39
E. Consumer Education Program 39
F. Local Electric Utility Consumption Tax 40
G. Public Benefits Fund for Energy Efficiency and Renewable Programs 40
H. Renewable Portfolio Standard 41
I. Utility Worker Protection 42
J. Net Energy Metering Under the Electricity Consumption Tax 42
K. Technical Amendments 42
L. Study of Low-Income Energy Assistance Program 43
M. Consumer Education Program in Natural Gas Deregulation Legislation 44
N. Projected Market Price for Generation 44
O. Capped Rate for Certain Distribution Cooperatives 45
P. Other Issues Brought Forward by Consumer Advisory Board 45

IV. Action by the 2000 General Assembly Session 46
A. Senate Bill 585 46
B. Senate Bill 163 47
C. Senate Bill 532 48
D. Senate Joint Resolutions 95 and 154 48

V. Conclusion 48

Appendices

A. Restructuring Act Provisions Imposing Duties on the Legislative Transition Task Force.....A-1

B. Alliance Regional Transmission Organization Membership.....A-3

C. Summary of State Electric Utility Legislation: Universal Service Provisions.....A-5

D. Energy Assistance for Low-Income Households -- Service Provider Questionnaire Results.....A-16

E. Energy Assistance for Low-Income Households -- Charitable Organization Programs.....A-20

F. Low-Income Electric Rate Affordability in Virginia: Funding Low-Income Assistance.....A-21

G. Low-Income Rate Affordability and Energy Efficiency Funding VACAP Proposal.....A-27

H. State Electric Restructuring Laws -- Energy Efficiency and Renewables Programs.....A-32

I. Selected Energy Efficiency and Renewable Energy Provisions of Restructuring Legislation.....A-33

J. Renewable Energy Policy Options -- October 7, 1999.....A-40

K. State Renewable Energy Incentive Programs.....A-50

L. Proposed Amendment to Definition of Aggregator.....A-52

M. Proposal Addressing Competition for Metering and Billing Services.....A-54

N. Proposed Resolution Regarding Study of Low-Income Energy Assistance Programs.....A-67

O. Proposed Definition of "Projected Market Price for Generation".....A-68

P. Issue Paper on Consumer and Small Business Market Power.....A-69

Q. Senate Bill 585 (2000).....A-72

R. Amendments Proposed by the Senate Committee on Commerce and Labor to SB 585.....A-82

S. Proposed Amendment Regarding Licensure of Retail Electric Energy Suppliers.....A-83

T. Senate Bill 163 (2000).....A-84

U. Senate Bill 532 (2000).....A-88

V. Senate Joint Resolution 154 (2000).....A-90

REPORT OF THE
LEGISLATIVE TRANSITION TASK FORCE
ESTABLISHED PURSUANT TO THE
VIRGINA ELECTRIC UTILITY RESTRUCTURING ACT

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

Richmond, Virginia
April, 2000

I. INTRODUCTION

A. BACKGROUND

The 1999 Session of the General Assembly enacted Senate Bill 1269, which created the Virginia Electric Utility Restructuring Act. With the adoption of the Act, Virginia joined 21 states that have enacted legislation deregulating the market for electricity generation services.

The Legislative Transition Task Force, established by § 56-595 of the Act, was created to work collaboratively with the State Corporation Commission in conjunction with the phase-in of retail competition in electric services within the Commonwealth. The members of the Task Force are directed to monitor the work of the Commission in implementing the Act, as well as to (i) determine whether, and on what basis, incumbent electric utilities should be permitted to discount capped generation rates; (ii) monitor the recovery of stranded costs by incumbent electric utilities; (iii) examine utility worker protection during the transition to retail competition; (iv) examine generation, transmission and distribution systems reliability concerns; (v) examine energy assistance programs for low-income households; (vi) examine renewable energy programs; and (vii) examine energy efficiency programs. The Task Force is further directed to make annual reports concerning the progress of the each stage of the phase-in of retail competition, offering such recommendations as may be appropriate in order to maintain the Commonwealth's position as a low-cost electricity market and ensure that residential customers and small business customers benefit from competition.

The Virginia Electric Utility Restructuring Act was the product of three years of effort by the Joint Subcommittee Studying Restructuring of the Electric Utility Industry, established by Senate Joint Resolution 118 (1996) and chaired by Senator Jackson Reasor of Bluefield. The joint subcommittee was charged with determining whether restructuring the retail electricity market in Virginia is feasible and in the public interest. That study was continued under Senate Joint Resolution 259 of 1997 and Senate Joint Resolution 91 of 1998. House Bill 1172, enacted in 1998, established a framework for the restructuring of the Commonwealth's electric utilities,

and provided that future sessions of the General Assembly would address the details required to implement the deregulation of the industry. The task of providing the details needed to effect electric utility restructuring was accomplished in the joint subcommittee's third year. The work of the joint subcommittee in crafting the comprehensive restructuring plan, which was introduced in the 1999 Session as Senate Bill 1269, is described in Senate Document 34 (1999).

B. MEMBERSHIP

The membership of the Legislative Transition Task Force is required by § 56-595 to consist of 10 members, of whom six are members of the House of Delegates and four are members of the Senate. The members appointed to the Task Force had all previously served on the 11-member joint subcommittee under Senate Joint Resolution 91. The reduction to 10 members reflected the resignation of Senator Reasor prior to the 1999 Session.

The members of the Task Force are Senator Norment of James City County, who was elected chairman; Senator Holland of Isle of Wight County; Senator Stolle of Virginia Beach; and Senator Watkins of Chesterfield County; Delegate Woodrum of Roanoke, who continued to serve as vice chairman; Delegate Cantor of Henrico County; Delegate J. C. Jones of Norfolk; Delegate Kilgore of Scott County; Delegate Parrish of Manassas; and Delegate Plum of Fairfax County.

Subsection C of § 56-595 provides that Task Force members are appointed to serve until July 1, 2005. The term of the Task Force overlaps the period of phasing in customer choice, which is scheduled from January 1, 2002, through January 1, 2004, with the possibility that competition for generation may be delayed based on considerations of reliability, safety, communications or market power, but in no event shall any delay in the implementation of customer choice for all customers extend beyond January 1, 2005.

C. CONSUMER ADVISORY BOARD

The Act, at subsection C of § 56-595, establishes a Consumer Advisory Board. The Board is directed to assist the Task Force in its work under § 56-595, and in other issues as may be directed by the Task Force.

The 17-member Board is required to be appointed from all classes of consumers and with geographical representation. The six members of the Board appointed by the Senate Committee on Privileges and Elections are Emmitt Carlton, Robert Goldsmith, Jack Hundley, William Lukhard, Donald Sullivan, and Jimmie Trent. The six members appointed by the Speaker of the House are Quentin Wilhelmi, Bradley Wike, Linda Sharpe-Anderson, The Reverend Fletcher Lowe, Aubrey Layne, and Ann Hedgepeth. The five members appointed by the Governor are Otis Brown, James Copp, Steve Walker, John Greenhalgh, and Oswald Gasser. The members of the Consumer Advisory Board elected William Lukhard as chairman and Otis Brown as vice chairman. The Board was requested by the Task Force at its August 16, 1999, meeting to examine and make recommendations regarding programs for low-income energy assistance, energy efficiency, and renewable energy. Delegate Plum served as liaison between the Task Force and the Consumer Advisory Board.

II. ISSUES EXAMINED BY THE TASK FORCE

The Restructuring Act envisions that the Legislative Transition Task Force will have an active, multi-faceted role in its implementation. The duties of the Task Force are listed in Appendix A.

In the course of its eight meetings, the Task Force addressed many issues relating to the transition of Virginia's electric utility market from a system of regulated monopolies to a market-based system providing for customer choice in the provider of generation and other services. Much of the material presented by persons testifying at Task Force meetings may be viewed on the Task Force's internet web site (http://dls.state.va.us/elecutil.htm). The materials are posted by the date of the meeting at which they were presented.

A. IMPLEMENTATION OF THE ELECTRIC UTILITY RESTRUCTURING ACT

The Restructuring Act requires the State Corporation Commission to perform much of the groundwork in implementing customer choice for certain electric services in the Commonwealth. Rather than reducing its workload, the task of overseeing the paradigm shift from a regulated industry to a competitive market has increased the work required of the Commission's staff. Beyond preparing the groundwork for a competitive market for electricity generation services, the Commission is adopting an approach that recognizes competition as a new constituency. This approach requires Commission staff to inquire whether actions will facilitate or hinder competition, and whether actions will reward the efficient while holding the inefficient accountable.

The Commission reported to the Task Force, at the commencement of most of its meetings, on the status of implementation issues. Topics addressed by the Commission spotlight the complexity of issues faced in implementing industry restructuring.

1. Regional Transmission Entities

The Restructuring Act imposes two duties on the Commission relating to regional transmission entities (RTEs). Commission approval is a prerequisite to the transfer of ownership or control of transmission assets. It must also adopt rules and regulations for RTEs, including whether incumbent electric utilities may transfer to an RTE all or part of their control of, ownership of, or responsibility for, transmission capacity. Commission staff is focusing on ways to use the multi-state transmission grid, of which Virginia is a member, in a manner that advances competition.

The Commission will play a prominent role in the establishment of RTEs in the Commonwealth. Every incumbent electric utility owning, operating, controlling or having an entitlement to transmission capacity is required to join or establish an RTE by January 1, 2001. In May 1999, the Commission issued an order establishing an investigation of, and requesting comments on, proposed guidelines for transfer of control of transmission assets to RTEs.

In early June 1999, American Electric Power (AEP) and Virginia Power, along with Consumers Energy, Detroit Edison, and First Energy, filed a request with the Federal Energy Regulatory Commission (FERC) regarding the establishment of the Alliance Regional Transmission Organization (RTO). These five firms serve a population of 26 million and have 43,000 miles of transmission lines, service territories of 124,000 square miles, and more than 71,000 megawatts of generating capacity. If approved, the Alliance RTO will be the largest RTE in the nation in terms of generating capacity and control area peak load, and tied for second largest in terms of square mileage of combined service areas (Appendix B).

Under the Alliance RTO's business model, all electric suppliers will have equal, nondiscriminatory access to the electric power grid and to wholesale and retail customers. The proposed structure of the Alliance RTO calls for a publicly-held independent transmission organization that would control, and perhaps own, transmission facilities. This structure will give the owners of transmission assets the flexibility to maintain or divest ownership of these facilities. It will be controlled by an independent board of directors, the members of which cannot have any material business relationship with a member or user of the RTO.

On July 7, 1999, the Commission filed its notice of intervention with the FERC regarding the Alliance RTO application. In its notice of intervention, the Commission expressed concerns in four areas: (i) geographic scope and regional configuration, (ii) RTO structure and governance, (iii) RTO operations and (iv) pricing. The proposed geographic scope and configuration of the Alliance RTO raised questions about reliability, because the proposed boundaries bisect two major reliability regions, and market power. The Commission stressed the importance of a neutral body supervising the transmission system as well as making the operational decisions of the RTO. Finally, the Commission asked the FERC to closely examine the issue of "pancaking" in transmission pricing, i.e., the access charge paid by transmission consumers each time the transmission path crosses an owner boundary.

The Commission identified three uncertainties that exist in the area of regional transmission policy: market uncertainty (questions as to who will be buying power from which generators); regulatory uncertainty (the FERC and Congress are still in the process of making policy); and legal uncertainty (lack of case law outlining FERC vs. state jurisdiction). The Eighth Circuit recently held that the FERC's curtailment procedures would indirectly regulate curtailment of transmission to retail customers, thereby exceeding the scope of the FERC's jurisdiction. This court decision underscores the uncertainty of the boundary of authority between the FERC and state regulators. It also shows the wisdom of granting the Commission authority to take action regarding transmission policy, as the Restructuring Act does. This feature allows Virginia's Commission to act on issues where action is appropriate but beyond the jurisdiction of the FERC.

On August 16, 1999, the Commission filed comments with the FERC on rulemaking proceedings regarding rules for RTEs. The Commission voiced its support for the development of RTEs and urged FERC to require true independent operators for RTEs, to give RTEs system reliability planning responsibility and to establish complaint resolution and rules enforcement mechanisms. The Commission also cited the complementary roles of state and federal regulation and reminded the FERC of state law not inconsistent with the Federal Power Act.

2. Pilot Programs

Section 56-777 of the Act specifically provides that prior to and during the period of transition to retail competition the Commission may conduct pilot programs encompassing retail choice of electric energy suppliers. Both Virginia Power and AEP-Virginia have filed proposals for retail customer choice pilot projects with the Commission. In addition, Mecklenburg Electric Cooperative and Rappahannock Electric Cooperative announced at the Task Force's June 23 meeting that they intend to file proposals for pilot programs.

Virginia Power's Customer Choice program is viewed as the first step in a seamless transition to full retail competition. The prototype pilot, which will encompass 24,000 customers drawn from all classes, will help the utility understand the processes and systems required for retail competition. Alternative suppliers are expected to begin providing electricity to customers who participate in the pilot around June 1, 2000. The pilot will end on January 1, 2002, when full retail competition begins to be implemented.

Under the pilot's first phase, choice will be offered to residential and small commercial customers in the Richmond area. In its second phase, choice will be offered to a limited number of large commercial and industrial users throughout Virginia. The pilot's design will give about 7.4 percent of the customers in the phase one area the option to buy electricity from a competitive service provider. The program proposal includes a rescission period for customers who change their minds, safeguards to prevent unauthorized switching of customers, and other customer protection measures.

On November 2, 1998, AEP-Virginia filed a pilot program with the Commission whereby between 3,200 and 3,500 of its customers would have a choice regarding the provider of their electricity. Representing all classes, these customers would account for two percent, or 50 mW, of the supplier's Virginia retail customer load. Following the enactment of Senate Bill 1269, AEP-Virginia redrafted its pilot program design to incorporate a wires charge and other aspects of implementing choice in accordance with the parameters described in the legislation, and has resubmitted its pilot proposal. Depending on the outcome of the pending interim rules case and the nature of the approvals granted by the Commission, a customer choice pilot could begin in AEP-Virginia's service territory by mid-2000.

Mecklenberg Electric Cooperative decided to establish a retail customer choice pilot program for two reasons. First, the cooperative may influence the restructuring process in such a manner that residential and small business consumers will benefit on par with industrial, government, or aggregated loads. Second, it may provide knowledge relating to the administrative and technical changes that must be made to fully implement retail competition. The co-op's plan is expected to include about 350 customers, most of whom are residential, or approximately three megawatts of load, near Chase City. During the pilot program, participants will be able to change suppliers as of their monthly meter reading date.

Rappahannock Electric Cooperative (REC) identified three issues that are critical to pilot programs. First, they provide an opportunity to help formulate and test the interim rules relating

to codes of conduct applicable to various parties participating in pilot projects. The interim rules, which may be the foundation for the permanent rules during and after the transition to a competitive energy market, were initiated by the Commission in December 1998. Second, the development of standards for electronic data interchange (EDI) is crucial if a competitive marketplace will be able to efficiently distribute the ensuing large volume of data to the local delivery company, the transmission entity, the competitive service provider, the generator, and the customer. An EDI working group is assisting in the development of standards that will be effective and acceptable to all of these groups. The third issue is consumer education. The educational programs, it was suggested, should be coordinated with the pilot projects so that the effectiveness of educational materials can be evaluated prior to the distribution to all Virginians.

REC's Energy Choice pilot proposal anticipates including 1.4 percent of its system load. Approximately 900 customers, of whom the vast majority will be residential customers, will be allowed to participate. Though customers within all classes will be eligible to participate in the pilot, the selection method for each class will vary in order to ensure that the load dedicated to each class will roughly match existing load characteristics. The pilot is expected to start in the spring or summer of 2000 and run until December 31, 2001.

3. Other Commission Activities

Much of the burden of preparing the Commonwealth for the transition to retail competition for electrical generation has been placed on the State Corporation Commission. In addition to the tasks outlined elsewhere in this report, the Commission's staff has:

- Held a workshop on net energy metering for a diverse group of stakeholders, and drafted rules for net energy metering have been prepared in anticipation of its July 1, 2000, commencement.

- Proposed procedures for electric utility rate cases to be held prior to the start of the capped rate periods.

- Conducted hearings on utilities' pilot programs.

- Developed standards for functional separation and affiliate relations.

- Prepared policies for designating default service providers.

- Analyzed rules for distribution services, including interconnection standards.

- Worked with a group of stakeholders to develop standards for electronic data interchange.

- Begun studying transmission capacity needs and whether transmission constraints require pricing limits.

B. CONSUMER EDUCATION PROGRAM

Section 56-592 of the Restructuring Act requires the Commission to develop a consumer education plan designed to provide information to retail consumers during the period of transition to retail competition and thereafter. The Commission was required to develop the program, and report its findings and recommendations, to the Task Force by December 1, 1999.

Kenneth Schrad, Director of the Commission's Division of Information Resources, presented the Commission's Consumer Education Report to the Task Force at the meeting on December 8, 1999. The Commission's Report to the General Assembly on a Consumer Education Plan for Virginia's Retail Energy Supply Market (December 1999) is available on-line at www.state.va.us/scc/orders/case/edrpt.pdf.

The objective of the "Virginia Energy Choice" plan is to provide Virginians with relevant and comprehensible information without creating an advantage for one competitive supplier over another. The plan aims to provide objective, credible information on how a deregulated market will operate to give residential and small business consumers a greater opportunity to become full participants in that market.

The Commission, in developing the plan, attempted to determine, through review of similar efforts in a dozen other states, the most efficient means of educating the public about deregulation of the electricity market. The Virginia Energy Choice plan covers years from 2001 through 2005. The timing of plan elements is keyed to dates connected with the development of retail access throughout Virginia. A toll-free number and a web site for Virginia Energy Choice will be operational shortly after the Commission issues final orders on the pilot programs, and the Commission has created a position for a full-time employee to help administer the plan. The education plan will be continually evaluated during its five-year run. Adjustments to the plan will occur as necessary to ensure that funds are being spent in the most cost-effective manner.

The education plan will be coordinated with the Commission's rules governing the marketing practices of public service companies, licensed suppliers, and other providers. Although this plan is specific to a retail electric market as directed by the Act, it has been designed to be energy neutral and could easily emphasize customer choice and the mechanics of choice for both electric and natural gas supply, offering "one-stop" educating. The Commission will create an education advisory committee to receive input and suggestions from those with a direct interest in the education effort. Enlisting the involvement of community-based organizations, with which consumers already have established relationships, will be an important means of educating consumers.

The total estimated cost of the five-year "Virginia Energy Choice" education plan is $30 million. The annual cost to each Virginian is 89 cents. The figures are subject to change as the effectiveness of the plan is determined through continuous program monitoring. Education programs being implemented in other states that are introducing retail competition for energy services have ranged from 55 cents to $1.45 per resident. Mass media marketing and advertising comprise nearly 70 percent of the projected cost.

Funding for the consumer education program will be provided through the special regulatory revenue tax currently authorized by § 58.1-2660 and by the special regulatory tax component of the electric utility consumption tax scheduled to take effect on January 1, 2001. The cost of the consumer education program, it is assumed, can be funded by increasing the amount currently charged under the regulatory revenue tax, which is now capped at 0.2 percent of the incumbent utilities' gross receipts. The Commission did not perceive a need to raise the maximum levels in order to fund the consumer education program.

The current rate charged by the Commission is 0.11 percent; the Commission is authorized to increase the rate of its assessment by 0.09 percent without further statutory approval. Section 58.1-2900, which is effective on and after January 1, 2001, sets the maximum rate of the special regulatory tax rate at $0.00015/kWh for the first 2,500 kWh consumed; $0.00010/kWh for electricity consumed in excess of 2,500 kWh but not more than 50,000 kWh; and $0.0007/kWh for electricity consumed in excess of 50,000 kWh. Under § 58.1-2902, the Commission may omit the levy on any portion of such tax as in unnecessary, in the Commission's discretion. The Commission reported that the special revenue tax is a funding option that is equitable to utilities; is one that it has existing authority to administer; and will allow the Commission to direct the consumer education program and monitor consumer education cost recovery.

C. COMPETITION FOR METERING, BILLING AND OTHER SERVICES

The Restructuring Act phases in a competitive market for electric energy generation. Distribution and transmission of electric energy, to the extent not preempted by federal law, will continue to be regulated by the State Corporation Commission. Subsection B of § 56-581 provides that 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 that have not been made subject to competition under the Act. The Commission's reports are to include recommendations as to when, and for whom, such other services should be made competitive.

The Commission presented its first such report at the Task Force's September 28 meeting. The Staff Report on Competition for Electric Metering Billing and Other Services (September 1999) is available on-line at www.state.va.us/scc/orders/case/mandb1.pdf.

The Commission reported that opening electric metering and billing services to competition will stimulate the development of the competitive retail electricity market in Virginia by promoting diverse pricing and billing options. Virginia's electricity customers currently receive all of their metering and billing services from their local electric utilities. These utilities own, install, maintain, and read their customers' electric meters. Most meters are read manually once every month at the customer's residence or business. Utilities offer their customers few, if any, billing options. Some electric utilities are already outsourcing metering and billing services to non-utility entities.

A majority of the states that have passed electricity competition laws have either required metering and billing to be competitive, or directed their respective regulatory commissions to address the issue. Competitive billing may allow suppliers to distinguish their services through such means as "value-added" services. Competitive metering may also encourage entry into the market of companies offering to price their power based on the time of day of its consumption.

The Commission recommended that it be authorized to decide on the timing and type of metering and billing competition. Under this proposal, the General Assembly would direct the Commission during the 2000 Session to make the necessary decisions regarding implementation of competition in metering, billing, or both, based on criteria adopted by the legislature. The criteria would require the Commission to consider such issues as economic and physical feasibility, safety, accuracy, and consumer preparedness.

The Commission's Solicitor General suggested that the report's recommendation reflects a middle course between those who are urging that a date be set for competition in metering and billing services, and those who are asking that consideration of legislation authorizing competition be postponed until the 2001 Session. Technological developments affecting safety, reliability and other concerns can change rapidly, and fixing a date for competition will leave the Commission and the market unable to respond quickly. On the other hand, postponing action for another year might forestall entry by marketers that are seeking to avoid uncertainty. The implementation of competition in a historically monopolistic industry was acknowledged to be a difficult task. Competition for metering and billing do not need to occur simultaneously, but will be addressed separately as the process advances.

The Task Force heard a wide range of reactions to the Commission's metering and billing report. The Alliance for Lower Electric Rates Today (ALERT) strongly endorsed the recommendations in the Commission's report. Authorizing the Commission to determine if, when, and how to have competition for metering, billing, and ancillary services is preferable to adopting statutory language that prohibits, or that allows, competition for these services. Delaying action on this issue until the 2001 Session, ALERT argued, ensures a competitive advantage for incumbent utilities.

The Commission's recommendation was also endorsed by Enron Corporation, the Virginia Retail Merchants Association, the American Association of Retired Persons (AARP), and the Office of the Attorney General.

Virginia's electric cooperatives agreed that giving the Commission the authority to decide questions regarding the implementation of competitive metering and billing is preferable to having the General Assembly make all of the relevant decisions. The Commission should have the power to examine the issue on a utility-by-utility basis, and be able to exempt classes of utilities in appropriate cases. It was noted that Maryland's restructuring law exempts electric cooperatives from the deadlines for implementation of competitive metering and billing. Delaware's law goes further by providing that electric cooperatives shall continue to conduct metering and billing functions within its service territory.

AEP-Virginia agreed that metering and billing services should be competitive, and sooner rather than later. While the Commission's report was described as well-done first step, other issues--especially regarding metering--need to be addressed. Legislation should be based on the premise that metering and billing will be competitive and on the schedule already approved by the General Assembly for competition. Competitive metering and billing merits early attention. Legislation should make it clear that competition will be permitted as soon as is reasonably practicable. The utility endorsed a directive from the 2000 Session of the General Assembly providing for implementation of competition for these services on the basis of acceptable, yet-to-be developed criteria.

Allegheny Power Systems agreed with the recommendation that the Commission should have the authority to implement competition for metering and billing. However, the implementation can be phased in and need not be required for all areas at the same time as customer choice for generation services. Concerns about customer education led the company to propose a delayed start of competitive metering and billing in Maryland.

Virginia Power voiced concerns with the Commission's approach and offered an alternative. Metering and billing are two different issues, presenting different technological and business challenges. Both services should eventually be competitive. Opening them to competition may produce additional benefits for consumers. But before these functions become competitive, Virginia Power believes that issues of timing and the means used to open these two functions to choice need to be addressed.

Moreover, a high level of consumer confidence is vital to the development of a truly competitive marketplace for the supply of electricity. The introduction of competition for generation will present significant challenges for consumers. Adding competition for either competitive metering and billing at or near the same time could lead to customer confusion, thereby damaging public confidence in the entire restructuring process. Delaware, Maryland, Massachusetts, New Jersey, Nevada, and Pennsylvania have delayed the start of competitive metering until customers have had a chance to get used to choice in supply.

Virginia Power asked the Task Force to carefully consider the means through which the billing and metering markets are opened to competition. Substituting choice for monopoly in the provision of any service related to electricity is a major policy decision. That decision should be made by the policy-making arm of government: the General Assembly. Virginia Power proposed that in the 2000 Session the General Assembly should adopt legislation stating that it is the policy of the Commonwealth that both metering and billing be opened to competition, to the extent practicable and when customers are ready. The legislation would direct the Commission to form working groups to examine the timing of the opening of competition in metering and billing services and the methods needed to implement competitive markets. Based on their findings, the Commission would be required to submit reports on competitive metering and billing to the General Assembly.

D. DISCOUNTING OF CAPPED RATES

The Restructuring Act directs the Task Force to "determine whether, and on what basis, incumbent electric utilities should be permitted to discount capped generation rates established pursuant to § 56-582." Section 56-582 directs the Commission to establish capped rates for every incumbent utility, effective January 1, 2001, and expiring July 1, 2007. The Act allows the Commission to adjust capped rates to address situations such as changes in fuel costs, changes in taxation, and financial distress of an incumbent utility. The Commission may terminate capped rates as early as January 1, 2004, if it finds an effectively competitive market for generation services. During the capped rate period, incumbent utilities are required to make electric service available at capped rates to any customer in the incumbent's service territory.

Other provisions in Title 56 generally require uniformity of charges for all members of a class. The purpose behind such uniformity is to prevent discrimination among members of a class. A rate undercharge may be an unlawful preference. C & P Telephone Co. v. Bles, 218 Va. 1010, 243 S.E. 2d 473 (1978). However, § 56-235.2 was amended in 1996 to authorize the Commission to approve special (preferential) rates when they would be in the public interest. The Commission must find that the special rates (i) protect the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or customer class, and (iii) will not jeopardize the continuation of reliable electric service. Commission guidelines prevent other electric utility customers from bearing increased rates as a result of the special rates.

The Task Force examination of this issue focused on two related questions: To what extent, if any, are Virginia incumbent electric utilities authorized to discount capped rates during the capped rate period? Under what conditions, if any, should incumbent electric utilities be allowed to discount capped rates during the capped rate period?

Stewart Farrar, Solicitor General of the Commission, noted that the issue of discounting involves the bundled rates rather than merely the generation rate component, which will be used principally to determine liability for wires charges. The appropriateness of the discount should turn on whether the customer receiving the discount is eligible to shop for competitive generation services. If the customer is ineligible, the utility may seek the Commission's approval of discounted rates under § 56-235.2. However, if the customer is eligible to shop for competitive rates, discounting would conflict with two provisions of the Restructuring Act: (i) functional separation of generation, transmission, and distribution services and (ii) stranded cost recovery.

Discounting is a competitive tool that can be used to attract or retain customers. The provision of electric service at capped rates becomes a noncompetitive service once customers are eligible to shop for competitive generation service. The Restructuring Act, in § 56-590, requires a separation between an incumbent utility's noncompetitive transmission and distribution activities and its competitive generation activities. Allowing an incumbent utility to discount its capped, bundled rates for the benefit of a customer who is eligible to shop for competitive generation services would be contrary to the Act's principal tool for implementing competition: allowing customers who want "discounts" to shop for them in the market. If an incumbent utility wants to offer competitive prices for generation services, it may do so through its functionally separate generation entity, consistent with rules governing affiliate conduct.

Discounting capped rates may adversely effect stranded cost recovery. Capped rates and wires charges are the statutory methods for recovering an incumbent electric utility's stranded costs. The portion of the capped rate that exceeds the utility's costs may be used for stranded cost recovery. If a customer leaves the incumbent utility to obtain a competitive (lower) rate, the customer must pay a wires charge, which will allow for recovery of the incumbent's stranded costs. If the customer receives a discounted rate from the incumbent, the customer pays less of a wires charge and the utility receives less revenue to cover its stranded costs.

The Commission suggested that selective discounting of capped rates for noncompetitive, regulated distribution services may be appropriate after retail competition begins. This discounting could attract customers to locate or expand usage in Virginia. Discounting of rates for distribution services under § 56-235.2 might be appropriate if they are competitive-neutral, do not increase distribution costs of non-discounted customers, and do not result in cost under-recovery. Such discounting should be subject to Commission review and oversight. The Commission will continue to examine the interplay between relevant existing Code sections and the Restructuring Act to determine if they adequately ensure the development of a competitive market for generation services.

Interested stakeholders agreed with the Commission's critique of discounting capped rates. Tom Hyland, spokesman for the Apartment and Office Building Association of Metropolitan Washington (AOBA), stated that the discounting of capped rates, if allowed, should be made equally available to all members of a particular rate class for which discounts are issued to avoid discriminating among members of the same class. Though AOBA had urged the Task Force to examine the issue of discounting capped rates, it acknowledged the issue is complicated.

Virginia Power agreed with the Commission's comments regarding discounting. The statutory intent behind capped rates is to fix incumbent electric utilities' rates, since the Restructuring Act outlines limited, specific grounds for Commission adjustment of capped rates. The Act establishes capped rates for three purposes: (i) protecting consumers, since consumers may use the capped rates as a "safe harbor" if competitive rates become volatile, (ii) fostering true competition, so that consumers may measure offers from alternate suppliers, and (iii) recovering stranded costs. Discounting of these capped rates will likely deter the entry of new suppliers, as well as make some rate classes bear a disproportionate share of the stranded costs.

Section 56-235.2 continues to provide a tool for incumbent utilities to provide special rates when doing so would be in the public interest. In response to Senator Watkins' question of whether incumbent utilities are permitted to discount rates for all classes of consumers in order to protect market share in a competitive environment, it was pointed out that the Act allows the Commission to terminate capped rates upon a utility's petition as early as 2004 if it finds that a competitive market for generation exists. While the Restructuring Act used the term "capped" rather than "frozen" rates, Virginia Power spokesman William G. Thomas contended that the development of the legislation resulted in a policy that rates are to be fixed, subject to the Commission's authority in enumerated circumstances to increase or decrease the rates.

Therefore, the provisions of the Restructuring Act do not allow discounting of capped rates, either for individual members of a class or for a class or classes across the board.

AEP-Virginia concurred, contending it would be inappropriate for incumbent utilities to discount the capped rates. Capped rates will provide customers with a basis for evaluating competition. They are also critical to determining wires charges in the recovery of stranded costs. Discounting capped rates would result in a disincentive to alternative electric service providers to enter the Commonwealth's competitive market, and would negatively affect wires charges and stranded cost recovery.

The Virginia, Maryland and Delaware Association of Cooperatives and Old Dominion Electric Cooperative urged the Task Force to examine (i) how rate reductions interplay with stranded costs, (ii) the effect of discounting on new market entrants, and (iii) the option for Commission termination of capped rates after January 1, 2004. Other groups endorsing this position at the Task Force's July 13 meeting included the Virginia Independent Power Producers and ALERT, whose spokesman agreed with Virginia Power's interpretation of the Act's use of the phrase "capped rates" rather than "frozen rates." When the SJR 91 joint subcommittee first adopted "capped rates," the phrase may have been envisioned as a ceiling. However, as the bill proceeded through the legislative process, the term came to mean a fixed rate, which (unlike a "frozen" rate) is subject to adjustment by the Commission in specific circumstances.

The Commission will continue to look at whether the criteria for approval of special rates under § 56-235.2 are adequate in a competitive market. The Task Force did not believe that the issue necessitates action at the present time, in light of the near-consensus among stakeholders. As the Restructuring Act continues to be implemented, the Task Force may revisit the propriety of allowing the discounting of capped rates.

E. SYSTEM RELIABILITY

In response to the direction in subsection C of § 56-595 that the Task Force examine generation, transmission, and distribution systems reliability concerns, the Commission briefed the Task Force regarding factors that affect reliability in the electric utility industry. Currently, responsibility for reliability rests primarily with electric utilities, which have an obligation to provide adequate service at just and reasonable rates. Other entities with roles in maintaining reliability include control area operators, regional reliability councils (of which Virginia is a member of three), the voluntary North American Reliability Council (NARC), FERC, and state regulatory commissions.

Under competition, utilities may have less overall responsibility for maintaining reliability. Though regulated utilities will continue to construct and maintain distribution facilities, RTEs will probably assume much of the transmission reliability obligations, and the adequacy of generation capacity will largely be determined by market forces.

The roles of control area operators and regional reliability councils are not expected to change to a great extent. The NARC is working on plans that would transform it from a voluntary system of reliability management into a mandatory organization with the backing and

support of governments. The FERC's role in ensuring reliability could increase as RTEs assume ongoing responsibilities for ongoing assessments of transmission adequacy and system security. The FERC's policies and approved tariffs will influence RTE activity. The role of state commissions will diminish as reliance on market forces for generation increases. There is little practical experience for predicting how reliability may be affected after generation adequacy becomes a function of market forces.

The Restructuring Act alters the Commission's ongoing reliability oversight role. It will continue to monitor reliability developments and will report significant reliability-related developments to the Task Force. To date, the Commission has not identified the need for any legislative changes to address reliability issues.

The Commission reported that it currently has the necessary tools to ensure reliability in electricity distribution. It can assess reliability in making its determinations regarding the allocation of assets relating to the functional separation of generation, transmission and distribution services. In exercising its authority to regulate distribution rates, the Commission reviews quality and service. Finally, the Commission has the authority to revoke distribution rights if service is inadequate and the provider has not cured the problem.

A principal transmission-related reliability issue is that transmission systems will increasingly be asked to handle large bulk-power transactions that they were not originally designed to accommodate. The addition of new transmission lines is difficult to accomplish. A NARC reliability assessment concludes that electric supply and transmission systems in the United States and Canada are adequate for the next three to five years. Transmission systems will be increasingly challenged to accommodate the demands of the evolving competitive electricity markets. In the long-term, electric supply adequacy could deteriorate if development of additional generating and transmission capacity does not keep pace with growing customer demand.

The Virginia Retail Merchants Association warned that system constraints will cause problems with reliability as demand increases. In a deregulated electric market, decisions concerning the types, amounts, locations, and timing of investments in generation, transmission, and distribution systems will no longer be made by vertically-integrated firms, subject to the approval of state public utility commissions. With the introduction of retail competition, such decisions will increasingly be made by unrelated entities. Generation decisions will be driven more by market decisions rather than reliability concerns.

The International Brotherhood of Electrical Workers (IBEW) suggested that the issue of statutory protections for utility workers is closely tied to the issue of safety and reliability of the electrical system. The Commonwealth should ensure that the workers who build and maintain generation, transmission, and distribution systems in Virginia are qualified and certified to do their jobs. This should be accomplished by a mandatory training, certification, and licensing program developed by labor and utility industry representatives, trade associations, educational institutions, and the Department of Labor and Industry. An IBEW spokesman urged the adoption of industry-wide maintenance plans and inspection standards. Financial penalties for

noncompliance should be set high enough to discourage any financial gains by cutting service quality.

Joshua Lief, Deputy Secretary of Commerce and Trade, addressed the Task Force at its November 9, 1999, meeting, and noted that reliability currently is the responsibility of utilities. In a restructured market, reliability will be addressed by the marketplace. Restructuring will not bring total deregulation; there are still regulatory controls over utilities, and the Occupational Safety and Health Administration will still govern address worker safety. Therefore, licensing and certification requirements for utility workers will not be necessary.

F. ENERGY ASSISTANCE PROGRAMS FOR LOW-INCOME HOUSEHOLDS

1. Introduction

It has been suggested by advocates for low-income persons that electric utility industry restructuring may increase, rather than decrease, the energy burden borne by low-income households. They predict that their energy costs will rise as costs are shifted to groups that have little market power and existing regulatory protections are eroded.

Other groups have countered that the implementation of retail choice for electric service is unrelated to the adequacy of Virginia's programs providing assistance to low-income households, and that lowering the burden of energy costs paid by low-income households by programs funded by other classes of consumers will raise the cost of power, thereby undercutting the potential benefits of competition for other consumers. While Virginia has not had a state-financed program to assist low-income households with their electric energy costs, the Commonwealth does administer several federal programs and is served by a number of voluntary programs.

After hearing testimony on this issue at its August meeting, the Task Force asked the Consumer Advisory Board to develop recommendations on this issue. Developing a consensus position proved very difficult. Among the issues raised in the Board's deliberations were (i) whether an energy assistance program should assist consumers of electricity or all types of energy; (ii) how a program should be funded; and (iii) the extent to which existing programs are meeting the energy needs of low-income Virginians.

2. Provisions in Other States' Restructuring Laws

Of the 21 states that have passed legislation to restructure the electric utility industry, 18 have included provisions for low-income utility assistance programs as a part of their restructuring legislation. In at least six other states, utility commissions have adopted comprehensive restructuring orders. Some of these commission restructuring orders, including New York's, have required the continuation of low-income assistance programs in utility's new restructuring plans.

Several states (including California, Massachusetts, and Montana) with restructuring legislation have called for the continuation and expansion of existing low-income rate assistance

and conservation programs. Others (including Illinois and New Hampshire) funded low-income rate assistance programs for the first time as part of the restructuring process. Maryland, Oregon, and Texas granted new and significant amounts for rate and conservation assistance through system benefits or public benefits charges. Table 1 summarizes actions with respect to low-income electricity assistance programs in states that have enacted restructuring legislation.

Table 1: Low-income Energy Assistance Programs in Electricity Restructuring Legislation

State	Did a Program Exist Pre-restructuring?	Continuation or Expansion of Existing Program? Or New Program?	Funding Mechanism for Program under Restructuring
Arkansas	No	No	---
Arizona	Yes	Continuation	Systems benefit charge
California	Yes	Continuation	Systems benefit charge
Connecticut	Yes	Expansion	Systems benefit charge
Delaware	Yes	Continuation (new funding)	Systems benefit charge
Illinois	No	New program	Systems benefit charge
Maine	Yes	Continuation	Rate structure
Maryland	Pilot	New program	Systems benefit charge
Massachusetts	Yes	Expansion	Systems benefit charge
Montana	Yes	Continuation	Systems benefit charge
Nevada	No	No	----
N. Hampshire	No	New program	Systems benefit charge
New Jersey	Yes	Continuation (new funding)	Systems benefit charge
New Mexico	No	New program	Systems benefit charge
Ohio	Yes	Continuation	Systems benefit charge
Oklahoma	Yes	Continuation	Distribution rates (under consideration)
Oregon	No	New program	Systems benefit charge
Pennsylvania	Yes	Continuation	Systems benefit charge
Rhode Island	Yes	Continuation	Distribution rates
Texas	Limited	New program	Systems benefit charge

A summary of state restructuring statute provisions prescribing universal service programs for households, submitted at the Task Force's August 16 meeting, is attached as Appendix C.

3. Low-Income Energy Assistance Program Models

States have adopted a variety of approaches to providing assistance to low-income residents with their energy payments. The low-income assistance programs of other states include a variety of unique features, such as: (i) allowing municipal utilities and cooperatives to opt out of funding requirements for a universal service program, with customers of those utilities not eligible to receive benefits under the program; (ii) allowing utilities to receive credits for their costs in implementing these programs; (iii) crediting excess funding at the end of each year back to consumers, or (iv) requiring excess funds, interest earned, and penalties assessed utilities to be placed in a dedicated special fund for use in meeting low-income energy needs.

However, most long-term energy assistance programs, as contrasted with crisis assistance programs, conform to one of three models, based on the type of benefit provided and the method by which the benefit is provided: rate discount programs, percentage of income payment plans (PIPPS), or payment restructuring programs.

Examples of rate discount programs include straight discounts (off the amount of the bill), discounts on usage charge/marginal cost-based rate (off the rate per kWh), consumption-based discounts (where the discount percentage declines as the amount of consumption increases), lifeline rate structures (where the charge for a minimum amount of service is kept relatively low), and customer charge waivers (where the fixed charge for such things as metering and billing is waived). Charge waivers have been adopted in Alabama, Georgia, Mississippi, and Washington. States with rate discounts include Alaska, Arizona, California, Massachusetts, Minnesota, Montana, New York, North Carolina, Oklahoma, Rhode Island, Texas, Washington, and West Virginia.

Under a PIPP, a household is obligated to pay a portion of its energy bill, with the percentage being tied to the household's income. The balance of the bill is paid by program funds. For example, if a household has an income of $10,000 and the limit on the percentage of income to be used for electricity is six percent, the household would be responsible for paying $600 per year, or $42 per month, for service, and the balance of the household's electricity bill would be paid by the energy assistance program. Variations of the straight PIPP include the percentage of bill plan, in which the administrator determines the percentage of the energy bill that the customer would pay under a basic PIPP program and then requires the program participant to pay an equivalent percentage of each month's bill rather than a fixed dollar amount. Some PIPPs require the household's energy bill to exceed a certain percentage of household income in order to be eligible for a credit, which is tiered based on income. Others require the customer to pay a certain percentage of resources left after all necessary household expenses are paid. States with PIPPs include Kentucky, Maine, New Hampshire, New Jersey, Ohio, and Pennsylvania.

Elements of payment restructuring programs include budget billing and arrearage forgiveness. Arrearage forgiveness programs have been established in Connecticut, New York, and Wisconsin.

4. Reasons for Including Low-Income Energy Assistance Provisions in Restructuring Legislation

At the Consumer Advisory Board's September meeting, staff was asked why several other states' electric utility restructuring programs included provisions providing assistance for low-income customers. Responding definitively to such an inquiry is problematic because state legislatures often act as they do in response to a variety of pressures and motivations, often obscure to outsiders.

Utility commissions and legislatures in many other states apparently perceive that fixed and low-income households face unique market barriers to obtaining low-cost services in an open market. To address some of these concerns, low-income program advocates have pushed

for consumer education programs and aggregation policies, as well as for programs to reduce the cost of electricity for low-income households. As a result, "In every state that has moved toward deregulation, consumer activists have raised concerns about whether low-income customers would be worse off as power producers vied for more affluent users and shunned the poor." (Washington Post, Sunday, October 17, 1999, p. 3).

The arguments raised in Colorado are illustrative of the case made by advocates of low-income energy assistance during the transition to a restructured electric industry. Colorado Governor Romer's Energy Assistance Reform Task Force concluded that restructuring of both the gas and electric industries may put low-income households at a tremendous disadvantage, and that the threats to this vulnerable population in an unregulated environment are numerous.

Among the potential risks identified by low-income advocates, and apparently adopted by legislatures and regulators in other states, are:

- **Higher rates.** A study by economist Roger Colton prepared for Colorado's legislative study panel identified three concerns with respect to low-income populations: (i) an increasing disparity between prices charged to large and small customers as common costs are disproportionately allocated to the less competitive class; (ii) an eventual fly-up in rates charged to high-risk, high-cost customers; and (iii) the imposition of a variety of ancillary fees akin to the propensity of the banking industry to attach unbundled fees to services that historically have been included in basic service charges.

  A 1997 Oak Ridge National Laboratory study, "Low-Income Energy Policy in a Restructuring Electrical Industry," observed that in restructuring a greater portion of costs may be allocated to fixed charges, accompanied by a declining per unit rate of gas or electricity. However, most discount programs focus on volume of usage and not on fixed charges. The fixed costs of serving low-volume customers, such as low-income residential customers, are proportionately greater than for high-volume customers. As low-volume customers, low-income customers may confront cost increases from restructuring.

- **Negative policy changes regarding termination protection, credit policies, collection practices, payment practices, and understandable billing.** The regulated system is seen as protecting the vast majority of customers from unfair treatment.

- **Redlining of low-income neighborhoods and demographic groups.** The regulated system benefits small consumers by obligating utilities to serve all customers within their franchised service area and by setting an established rate for all residential customers. Some small customers fear that they could be refused service based on their neighborhood, credit rating, or limited usage of electricity.

Low-income and other advocates in various states are taking advantage of the upheaval of gas and electric industry restructuring to push for statewide independent administration of utility low-income bill assistance and energy efficiency programs. The public utility commissions in California and New York have created statewide non-utility administration of a number of public benefit programs, including some low-income programs. In some cases,

statewide administration of utility programs is mandated or fostered by industry restructuring legislation. California, Illinois, New Hampshire, New York, and Wisconsin have moved toward statewide administration. Maine and Massachusetts have recognized the value of statewide programs. Montana has a mixed statewide and utility-based program (which functions like Vermont's home energy assistance trust, in that utilities can receive credits against statewide obligations for local programs).

5. Quantifying Energy Assistance Program Resources and Shortfalls

During the Task Force's August meeting, staff was asked for data regarding the extent of assistance provided by government and private sector programs to low-income families in meeting their energy needs, and to quantify the extent to which these current programs fail to meet the need for such assistance. The inquiry was not limited to electricity but covered all sources of energy.

a. Assistance Provided by Existing Programs

Responding to the inquiry required identifying the amount of assistance currently available to meet energy needs of low-income families, as well as identify the amount of need not met by these programs. In an attempt to answer this question as thoroughly as possible, staff prepared a Service Provider Questionnaire and sent it to energy providers, charities and local social services agencies. The responses to the questionnaire are summarized in Appendix D. Staff's estimate of expenditures on aid for Virginia's low-income families with their energy needs for the preceding three years are set forth in Table 2.

Table 2: Virginia Low-income energy assistance expenditures, 1997-1999

Program	1997	1998	1999
LIHEAP	$23,595,601	$20,406,965	$29,379,398
WAP	$ 5,886,857	$ 4,941,258	$ 6,648,655
Voluntary Utility Programs	N/A	$ 1,849,708	$ 1,946,961
FEMA Emergency Food & Shelter*	N/A	$ 418,297	$ 359,437
Local/Charitable Programs	N/A	$ 45,434	$ 41,314
Total	$29,484,455	$27,663,660	$38,377,764

*Amount based on 25% of annual allocation

Source: Staff survey of assistance providers

(i) LIHEAP

The largest program for the provision of energy assistance to low-income Virginians is the Low-Income Home Energy Assistance Program (LIHEAP). The Virginia Department of Social Services (DSS) administers the program, which is a federally-funded block grant program. It is not an entitlement program; assistance is provided to approved applicants only to the extent funds are available.

Residents are eligible for LIHEAP and Weatherization assistance if they have a total household income at or below 130 percent of the federal poverty guideline. For an individual living alone, 130 percent of the federal poverty guideline is $10,716 per year. Approximately

$3,700 are added for each additional family member. In addition, households are ineligible if they exceed certain resource levels. Resource levels are $3,000 with households with elderly and/or disabled members and $2,000 for all others. "Resources" include cash or other intangible assets that are convertible into cash, such as deposits, retirement accounts, bonds, and burial accounts. Houses and cars are not counted in determining eligible resources.

Virginia's LIHEAP has three major components: fuel assistance program, crisis assistance program, and cooling assistance program. The largest of the three is the fuel assistance program.

Priority is given to the elderly (over age 60), the disabled and families with young children (under age 6). Of the households served, more than one-third included at least one member age 60 or older, one-third included at least one disabled member, and nearly one in four had at least one child under age six. Priority is also given to households with the highest energy costs (based on their heating source) and lowest incomes. Benefit levels are based on household size and the climate zone tied to geographic area of the state.

Local departments of social services accept applications for help with home heating costs in October and November. The applicant is required to identify the vendor, on an approved list, from which he or she purchases fuel. The information obtained from the eligible applications is analyzed by a computer program that determines the benefit level. The results are generated in early December. An award letter, stating the amount of the benefit for the season, is mailed by the DSS to both the approved applicant and the applicant's fuel vendor. The letter acts as a credit authorization. Fuel payments may be made until the following March 31, unless the household uses all of its benefit allowance prior to that date. In most cases, payments are made by the DSS directly to the fuel vendor. However, homes using wood or coal, or having limited fuel storage capacity receive direct payments. Awards may be applied to accrued arrearages for fuel for the current season. Once the benefit is exhausted, the vendor is not required to continue serving the customer.

The average payment was $232, with the largest payment amount being $346. Data in Table 3 reveals that during the past seven years, the amount of fuel assistance and number of households served have fallen by 20 to 30 percent, respectively, while the average benefit per household has jumped by approximately 20 percent. The DSS expected to have approximately $20 million for its fuel assistance program for the winter of 1999-2000.

Table 3: LIHEAP Fuel Assistance Program

Season	Households served	Average benefit/ household	Total amount paid (millions)
92-93	124,743	$194.93	$24.3
93-94	124,568	$178.73	$22.3
94-95	118,709	$174.00	$20.7
95-96	106,960	$163.63	$17.5
96-97	95,729	$197.61	$18.9
97-98	90,973	$180.83	$16.5
98-99	84,068	$231.57	$19.5

Source: Virginia Department of Social Services

The DSS collects data on the source of energy used to heat households applying for LIHEAP fuel assistance. Table 4 indicates that a plurality of the eligible households designate electricity as the primary heating source.

Table 4: LIHEAP Fuel Assistance Program, Fiscal Year1999 (By Fuel Type)

	Electricity	Nat. Gas	Oil	Kerosene	Coal	Wood	LP Gas
Number of households	34,092	11,873	11,138	9,414	2,805	7,007	4,959
% of households served	40.6	14.1	13.2	15.7	3.3	8.3	4.7
Avg. benefit amount	$229.46	$224.80	$201.02	$274.50	$222.90	$213.21	$251.32

The LIHEAP crisis assistance program seeks to prevent or alleviate a crisis by ensuring that a household has heat. It consists of two sub-components: emergency assistance and primary fuel assistance. For each of the past two year, Crisis assistance program funds have not been fully utilized; leftover funds are used for the cooling assistance program. Local DSS representatives reported that funding has been exhausted in very cold winters requiring increased fuel usage. In 1993, crisis assistance program funds ran out in February.

The program's income and resource eligibility criteria are the same as for the fuel assistance program. An average of 3,300 households received LIHEAP crisis assistance during each of the past five years (Table 5).

Table 5: LIHEAP Crisis Assistance Program

Season	Households served	Average benefit/ household	Total amount paid (millions)
92-93	13,357	$195.53	$2.6
93-94	17,881	$173.91	$3.1
94-95	4,605	$339.73	$1.6
95-96	3,633	$417.64	$1.5
96-97	1,769	$71.77	$0.12
97-98	2,412	$108.46	$0.26
98-99	4,255	$325.96	$1.4

For fiscal year 2000, emergency assistance sub-program applications must have been received between November 1, 1999, and March 15, 2000, or until funds are exhausted. These funds may be used only for customers needing help with security deposits and heating equipment repair or replacement.

Applications for the primary fuel assistance component of the Crisis Assistance Program may be submitted between early January and March 15, or until the funds are exhausted. This sub-program is for households that have a vulnerable person (under six, over 60, or disabled) in the home, who did not receive LIHEAP fuel assistance, and that have received a service cut-off notice. Applications are made at the local DSS office and forwarded electronically to Richmond for determination of the amount of the award.

The LIHEAP cooling assistance program has in some years provided funding for paying for electricity and purchasing new cooling equipment. The Department of Social Services

contracts with Community Action Programs, Area Associations on Aging, the United Way and weatherization grantees for administration of the program. The purchase of window air conditioning units comprises the largest percentage of funding, payment of electric bills is the second largest, and the program may also include the purchase of fans and repair of air conditioning systems. No actual numbers are available for the 1999 season, but an estimated $3.5 million was spent on administration costs and benefits distributed. Of that sum, contractors get a fee on a per-case basis. The determination of whether or not to operate a cooling assistance program is based on the amount of funding left over from the winter crisis programs.

(ii) Weatherization Assistance Program

The Weatherization Assistance Program (WAP) has been managed by the Department of Housing and Community Development since 1991. According to the DHCD's 1999 report on the structure and delivery of low-income energy assistance program services, the homes of approximately 2,100 low-income families received state weatherization services in FY 1997. Approximately 89,000 Virginia households have received assistance since the inauguration of the WAP. Funding for the program has fluctuated between $4.9 million and $6.6 million during the past five years. As compiled in Table 6, sources include federal WAP funding, a set-aside of 15 percent of LIHEAP funds, state general funds, oil overcharge funds, and special needs funds.

Table 6: Weatherization Assistance Program Funding

Source	FY 1994-95	FY 1995-96	FY 1996-97	FY 1997-98	FY 1998-99
Fed WAP	$3,581,526	$3,783,537	$1,963,243	$2,122,089	$2,198,999
LIHEAP Weatherization			$1,696,128	$1,420,728	$4,288,713
LIHEAP Crisis	$1,485,144	$2,063,295			
Oil Overcharge	$ 800,000	$ 500,000	$1,300,000	$1,248,441	
APCO	$ 134,600				
Special Needs	$ 200,000	$ 250,000	$ 927,486		
General Fund	$ 250,000			$ 150,000	$ 160,943
TOTAL	$6,451,270	$6,596,832	$5,886,857	$4,941,258	$6,648,655

Note: Includes federal and state funds at DHCD from all sources spent on the Weatherization Assistance Program, including the set-aside provided from LIHEAP funds and transfers from the VHDA energy efficiency program.

(iii) FEMA Emergency Food and Shelter National Board Program

The Federal Emergency Management Agency (FEMA) provides funding for the Emergency Food and Shelter National Board (EFSNB) Program. This program provides a variety of types of crisis assistance to families, including assistance with utility bill payments, limited to one month's past due bill. Funding is appropriated by the federal government. The National Board and a board at each local level, comprised of representatives of the same organizations as the National Board, administer the program. The local board determines which organizations receive funding, then organizations are paid directly by National Board.

Data were not available for provided in or after 1997. In 1996, $407,447.48 was provided to pay 5,967 energy bills; in 1995, $484,641.62 paid 5,350 bills; and in 1994,

$506,215.80 paid 5,215 energy bills. The amount of low-income household energy assistance provided for the past three years has been estimated based on the fact that approximately 25 percent of Virginia's EFSNB Program funds were spent on utility bill payments in years that such data were available.

(iv) Voluntary Utility Programs

Many electric and gas utilities in the Commonwealth conduct programs to assist low-income households with their energy needs. Programs include:

- **Virginia Power's EnergyShare program:** The program is funded by voluntary contributions from customers, stockholders, employees and business partners. Virginia Power pays all administrative and advertising costs and provides full-time staff management. Customers are eligible for assistance of up to $500 once during a heating season. Applicants must live within the Company's service area; be in danger of losing the primary source of fuel; have household income that is 50 percent or less of the local median income; have the head of household be unemployed or have a demonstrated family crisis; and have exhausted other available sources of fuel assistance. A network of approximately 70 local health and social service agencies, selected by local Virginia Power Citizen Oversight Committees and including groups such as United Way, Salvation Army, American Red Cross, and local departments of social services, determine eligibility and distribute funds to vendors on the clients' behalf. In 1996-97, contributions of $1,155,157 helped 6,149 households; in 1997-98, $1,254,601 helped 6,336; and in 1998-99, $1,282,288 helped 6,439 households.

- **AEP-Virginia's Neighbor-to-Neighbor program:** Contributions solicited from customers during the months of November, December, January, and February are matched by the utility dollar for dollar up to a maximum of $37,500. The DSS determines the eligibility of customers and authorizes deductions from the Neighbor-to-Neighbor Special Account maintained by AEP. In 1996-1997, 1,481 customers received $135,809.15; in 1997-1998, 1,125 customers received $146,736.77; and in 1998-1999, 1,396 customers received $106,648.98.

- **Allegheny Power System's Community Energy Fund:** Allegheny Power solicits contributions from customers annually for distribution to its selected Community Energy Fund agency. The contributions are matched 50 cents on the dollar by Allegheny Power. The Community Energy Fund agencies determine eligibility and issue payment to Allegheny Power, which credits the eligible customers' accounts. In 1998-99, 1,389 customers received $ 154,505; in 1997-98, 1,403 customers received $131,505.

- **Northern Virginia Electric Cooperative's Operation Round Up:** The program is funded through voluntary customer donations primarily through the rounding up of the monthly bill to the next higher dollar. It provides bill payment assistance and community grants. Benefits are administered by community service agencies. Contributions totaled $37,237 in 1996; $24,000 in 1997; $36,000 in 1998; and

$27,000 in 1999. In 1998-99, 238 households received assistance. In addition, $14,800 in community grants were made in 1998 and 1999 with leftover funds.

- **Shenandoah Valley Electric Cooperative's Energy Assistance:** Voluntary contributions from SVEC members/consumers and employees fund the program, which provides bill payment assistance for any type of permanent residential energy fuel bill. The Cooperative may contribute additional funding. The Cooperative bears the cost of administering the program. Donations are remitted to the Salvation Army and local DSS agencies. Contributions by consumers in 1996 totaled $6,867; in 1997 totaled $5,099; and in 1998 totaled $6,245.

- **Columbia Gas' HeatShare program:** Voluntary customer contributions are matched by Columbia Gas. The Salvation Army administers the program. Data were not available regarding eligibility guidelines, number of customers served by the program, or the dollar amounts used.

- **Virginia Natural Gas' EnergyShare:** Voluntary customer contributions are matched dollar-for-dollar by VNG. The Salvation Army administers the program, and VNG contributes $10,000 per year for administrative costs. VNG's EnergyShare provides an average of almost $60,000 per year to go directly to low-income family assistance.

- **Washington Gas' Washington Area Fuel Fund (WAFF):** Washington Gas serves as the collection agent for voluntary customer contributions, which are distributed by the Salvation Army to low-income families regardless of their primary fuel source. Money is collected throughout the year, but distributed only January through June. To be eligible for assistance, the customer must first exhaust all possibility of government energy assistance, must present a service cut-off notice or have had utility service disconnected, and provide proof of income. Benefits are limited to $400 per customer per year, and are made only for the primary source of heat. In 1999, the program provided $303,000 to 1,179 Virginia customers; in 1998, $287,766 to 1,268 customers; and in 1997, $293,376 to 1,126 customers.

(v) Local and charitable assistance programs

Several of Virginia's 16 municipally-owned electric systems have low-income assistance programs. Examples include Harrisonburg Electric Commission's Energy Share and Bristol Utilities Board's Help Your Neighbor programs. Some municipal electric systems, including Manassas and Martinsville, make direct or indirect payments to their local Department of Social Services that are designated for low-income energy assistance. Survey information regarding low-income assistance provided by municipal utilities and local government programs is included in Appendix D.

Staff also solicited information from a number of small local charities, including faith-based organizations and small volunteer groups. Few were able to provide information regarding the number of requests received or amount of assistance provided. Appendix E provides

information regarding a sample of the programs operated by charitable organizations. However, these funding amounts are not an accurate total of the amount of assistance provided in Virginia. Certain programs provide energy assistance as part of their general emergency assistance, but do not enumerate the amount of those funds spent solely on energy assistance. Responses were received from some local agencies that described their programs, but did not provide dollar amounts for assistance.

b. Difficulty of Determining Unmet Need

As the preceding part of this report illustrates, collecting data on the amount of aid for low-income households for energy assistance programs is difficult and the results are incomplete. Moreover, the data that are available does not answer the question posed by the Task Force: Whether enough assistance is being provided.

Hurdles in obtaining the type of information necessary to quantify any shortfall in energy assistance programs for low-income households include:

(i) Lack of data on people who are turned away or do not apply

The DSS does not keep records of the number of persons seeking fuel assistance who contact the state agency or local social service offices outside of the 30-day application period. Staff could not determine the number of persons who would have applied and been eligible for energy assistance had they known about the program or the procedure for applying for benefits.

(ii) Lack of data on household energy burdens

Energy burden, or the percentage of income that is spent on energy, is often cited as evidence of the need for a low-income assistance program. However, information provided in program applications does not include the amount of the applicant's energy expenses. As a result, it is not possible to determine the extent to which program benefits reduce a household's energy burden.

(iii) Lack of consistent criteria for program eligibility

In order to determine the extent of any unmet need for low-income energy assistance, the parameters of the population intended to be served must be ascertained. However, there are no uniform standards for persons eligible for energy assistance, either for federally-funded programs or for voluntary or charitable programs within Virginia. The federal LIHEAP program allows states to adopt income thresholds that range between 110 and 150 percent of poverty level or 60 percent of state median income. LIHEAP fuel assistance program eligibility in Virginia is based on 130 percent of federal poverty level. The LIHEAP crisis assistance program imposes the additional requirement that a household have an elderly, child, or disabled member. Other assistance programs use different eligibility criteria. For example, Virginia Power conditions eligibility for its Energy Share Program on income being 50 percent or less of the median income of the locality where the applicant resides. Several advocacy groups have suggested that "low income" be set at 150 percent of the federal poverty level.

(iv) Lack of a definition of "need" for energy assistance

The task of ascertaining the extent to which there is unmet "need" in the Commonwealth for low-income energy assistance ultimately turns on the gap between the level that is currently provided and what is needed to bring that level up to an adequate amount of assistance. But there is no consensus regarding the amount of energy a household needs, or what portion of that need should be covered by energy assistance programs. Caps on amounts of assistance would provide a benchmark against which existing expenditures could be measured. The LIHEAP fuel assistance program allocates available dollars among eligible applicants, but does not set dollar caps on the amount of aid that a family is eligible to receive. Virginia Power's EnergyShare program caps the amount of assistance per applicant at $500 per year, but the program is directed at crisis situations rather than at ensuring households receive bill payment assistance throughout the heating season. Other programs have different caps on annual benefits.

(v) Directing assistance at usage of electricity or all energy sources

The Consumer Advisory Board deliberated, but did not reach a consensus on, the question of whether an energy assistance program should help low-income households with heating costs, with general electricity usage (such as operating appliances), or both. Research in Colorado has found that a low-income policy focusing exclusively on home heating would address less than half of the average low-income household's energy expenditures. A related issue is whether energy assistance within the context of the restructuring of the electric utility industry should encompass all types of fuel or be limited to assistance with additional costs related to electricity deregulation.

c. Alternative Approaches to Measuring Unmet Need for Low-Income Assistance

Given these obstacles to compiling an answer to the question of whether (and how much) unmet need exists, several approaches to measuring unmet need were offered for Task Force consideration.

(i) Survey responses

As part of the survey of energy assistance provided to low-income households, organizations were asked to identify any unmet need for their program. Though most respondents were not able to provide information on unmet need, the data supplied by the following organizations illustrates that the demand for services often exceeds available resources.

Spotsylvania County's response is typical: "The numbers and amounts (of unmet need) are unknown. Each year we probably cannot service almost as many as we actually service due to lack of funds and/or not meeting the local requirements of eligibility (these requirements are necessitated by shortage of funds)."

The agencies administering the Virginia Power EnergyShare program turned away 752 applicants in 1998-99, 2,452 in 1997-98, and 2,884 in 1996-97. The figures for 1996-97 and 1997-98 include turnaways recorded when funds were exhausted, and include some applicants who would have been ineligible for assistance. The 1998-99 number reflects only turned-away applicants who met the eligibility requirements.

The Salvation Army, which administers Washington Gas's WAFF program, estimated that 20 percent of people in need are not helped. During the distribution period about 10 percent of the applicants are ineligible because they slightly exceed the income guidelines. About 50 percent of all people who are helped are deemed underserved because the WAFF assistance payments are not sufficient to pay their outstanding energy bill balances.

Bristol's local Department of Social Services office estimated the dollar amount of unmet need in 1996 at $18,000, 1997 at $10,000, and 1998 at $10,000. Most other local social services departments did not keep similar records quantifying the amount of aid requested but unfunded.

The only survey respondent that did not report any unmet need was the Northern Virginia Electric Cooperative. Its "Operation Round Up" had enough funds to meet all requests received in its service territory for 1996, 1997 and 1998.

(ii) Weatherization Assistance Program waiting lists

According to testimony of the Deputy Secretary of Commerce and Trade at the August meeting of the Task Force, nearly 375,000 households, not in public housing, are eligible for weatherization assistance in Virginia.

The LIHEAP application form asks whether the applicant has previously received weatherization services. The applications from FY 1999 indicate that 14,191 (about 16 percent) of the 88,323 approved for LIHEAP assistance had received weatherization services.

Data regarding the extent of current unmet need are available for the Weatherization Assistance Program, based on polling program sub-grantees for information regarding waiting lists for service. According to Billy Weitzenfeld of the Association of Energy Conservation Professionals, the total number of clients on waiting lists is 3,600. This generally does not include jobs in progress or applications that are approved and waiting for services. This number is a constant number and represents households that are not expected to receive weatherization services for a long time. Based on the average cost of conducting weatherization services on a residence of $2,032, and multiplying it by the number of residences on the waiting list, it is possible to float as an estimate of the amount of current unmet need for weatherization assistance in Virginia at $7.3 million.

(iii) LIHEAP Crisis Assistance programs requests

The LIHEAP Crisis Assistance programs are available to applicants on a first-come, first-served basis until funds run out. For each of the past two year, Crisis Assistance Program funds have not run out. Unused funds are carried forward to fund the LIHEAP cooling program or

other programs. Local DSS representatives indicate that funds have run out in past years when very cold winters have increased fuel consumption.

(iv) Households receiving LIHEAP Fuel Assistance Program benefits

The Fuel Assistance Program constitutes the largest component of LIHEAP, which in turn is by far the largest energy assistance program in the Commonwealth. From 1993 to 1999, the number of Virginia households served by both the LIHEAP fuel assistance and crisis assistance programs declined from approximately 138,000 to 88,000. Part of the reason for the decline in households participating in the program may be due to declines in the number of households in poverty. In Virginia, the poverty rate fell from 12.5 percent to 10.8 percent between fiscal year between 1996-97 and 1997-98. Another reason may be implementation of the TANF program, which is believed to reduce the rates of participation by eligible persons in programs administered by local social services offices.

The federal Department of Health and Human Services has estimated, based on the three-year average from the March Current Population Survey data files for 1994, 1995, and 1996, that in fiscal year 1995 there were 346,245 LIHEAP-eligible households in Virginia, using Virginia's eligibility threshold of 130 percent of federal poverty guidelines. Using a 1994-96 three-year average of approximately 117,000 households receiving LIHEAP fuel assistance and the 1994-96 average of 346,000 eligible households, approximately 34 percent of eligible households received fuel assistance in Virginia in that period. However, if the 1999 figure of 84,068 households receiving LIHEAP fuel assistance is used, and if we assume the number of eligible households was 346,000, then approximately 24 percent of eligible households receive fuel assistance in Virginia.

If 150 percent of the federal poverty level is used as the threshold for a "low income" household, there are approximately 430,000 low-income households in Virginia. This estimate is based on 2.444 million residential electric utility accounts and census data that 17.7 percent of Virginians live at or below that income level. Based on these assumptions, around 20 percent of low-income households received LIHEAP assistance.

Participation in LIHEAP by 100 percent of income-eligible households is not possible. A certain percentage of eligible persons elect not to participate, and others that are income-eligible will be disqualified because they are not responsible for heating their residence, exceed the limits on financial resources, or are otherwise barred from the program. In each of the past three years, approximately 10,000 households have been denied LIHEAP benefits for various reasons. In addition, eligible persons may not be aware of, or may miss, the 30-day window during which applications must be filed with local social services offices.

The National Consumer Law Center estimates that participation levels average less than 40 percent of those eligible. If a 40 percent participation rate is adopted as a measure of the maximum achievable rate of participation in the program, the number of Virginia households that would be expected to receive benefits is approximately 138,400. Based on serving an average of 90,000 households during the past three years, the number of eligible households that could be viewed as not having any of their energy needs met by the program could be estimated

at approximately 48,400. At an average benefit during the past three years of $204, the cost to provide that benefit to 48,400 additional households could be $9.9 million.

However, if the percentage of participation deemed achievable with greater resources is assumed to be 30 percent, the number of unserved households would be closer to 20,000. The cost of providing the FY 1999 average benefit of $231 to this currently-unserved population could be $4.6 million.

(v) Amount of LIHEAP Fuel Assistance Benefit per Household

The absence of guidelines establishing a uniform policy as to determining at what point an appropriate degree of assistance has been given makes it difficult to ascertain the extent of unmet need. As LIHEAP is designed, available moneys are divided among eligible applicants. The goal of LIHEAP is to provide *assistance* to low-income families in meeting their energy needs, and not to pay the full amount required to meet the energy needs.

A better measure of whether low-income families are receiving "enough" energy assistance may be the difference between the amount of assistance provided to applying households in recent years compared to the level in previous years. For example, if the average benefit under the LIHEAP program for the most recent year is $231 per participating household, and in 1992 the average benefit was $262 (unadjusted for inflation), the difference, $31, would be a measure of the unmet need per participating household. Based on 84,068 households that received LIHEAP fuel assistance in fiscal year 1999, the cost to raise the benefit to the 1992 level, unadjusted for inflation, would be approximately $2.6 million. However, as Table 3 (p. 20) shows, increased LIHEAP funding and declining participation made the average amount of the benefit awarded in fiscal year 1999 larger than that paid in any of the preceding six years.

(vi) Effect of LIHEAP Fuel Assistance Benefits on Household Energy Burden

Low-income households on average spend less on energy needs than do median-income households. Part of this difference is because low-income households tend to live in smaller units with smaller areas to heat. While low-income households may spend less on energy in absolute terms, they generally spend a greater percentage of their income on energy. According to the federal Department of Energy, the cost of energy makes up about three to five percent of the budget for an average-income household. Low-income families pay, on national average, approximately 14 percent of their household income for energy, and poor families that heat with electricity may spend up to 40 percent of their monthly income in winter on electricity.

According to the National Consumer Law Center, in 1992, Virginia's average LIHEAP benefit of $262 exceeded the national average of $214 (A State-By-State Analysis of Energy Burden (Jan. 1995), Table 14). Virginia's benefit level paid a greater percentage of a low-income household's annual average energy costs (23.3 percent) that did the national average (20.6 percent).

The energy assistance need of households participating in LIHEAP may be measured by calculating the amount of annual benefit required to reduce their energy expenditures as a

percentage of income to a targeted level. The National Consumer Law Center's calculation of the effect of LIHEAP benefits on the energy burden for families receiving AFDC benefits and for couples receiving SSI benefits, shown in Tables 7 and 8, shows that the reduction in the energy burden for these classes of Virginia's LIHEAP recipients ranged between 5.2 and 6.2 percent. The post-LIHEAP energy burden was still approximately five times that of median-income households (17 to 20 percent vs. 3.5 percent).

Table 7: LIHEAP's effect on burden on AFDC families, 1992

	Annual low-income energy costs	Average LIHEAP Benefit	Annual AFDC-3 benefit	Energy burden before LIHEAP	Energy burden after LIHEAP	Change in energy burden
Virginia	$1,124.14	$262	$4,248	26.5%	20.3%	6.2%
U.S. Average	$1,036.62	$214	$4,541	26.0%	21.1%	4.9%

Source: National Consumer Law Center, A State-By-State Analysis of Energy Burden (1995), Table 22

Table 8: LIHEAP's effect on burden on SSI Individuals, 1992

	Annual low-income energy costs	Average LIHEAP Benefit	Annual SSI benefit	Energy burden before LIHEAP	Energy burden after LIHEAP	Change in energy burden
Virginia	$1,124.14	$262	$5,064	22.2%	17.0%	5.2%
U.S. Average	$1,036.62	$214	$5,437	19.3%	15.3%	3.9%

Source: National Consumer Law Center, A State-By-State Analysis of Energy Burden (1995), Table 23

(vii) VACAP's Estimate of Low-Income Assistance Funding Needs

A report presented by the Virginia Council Against Poverty (VACAP) at the Task Force's August meeting (Appendix F) estimated that the total annual amount of new funding needed to address low-income electric needs in Virginia at $65.1 million dollars. This estimate of unmet need was prepared in November 1998, based on fuel assistance needs of $54.6 million (comprised of $49.1 million for general use and $5.5 million for electric space heating) and on weatherization needs of $10.5 million. The report concluded that this sum could be raised by a kWh charge of $0.000765/kWh. This rate would generate an estimated $65 million, based on calculations that a one mil charge in Virginia would raise approximately $85 million.

The figures of $49.1 million for general use and $5.5 million for electric space heating are based on (i) low-income meaning household income at or below 150 percent of the federal poverty level; (ii) 215,000 low-income customers statewide; (iii) a 50 percent program participation rate, for 107,500 participating households; (iv) electricity bills for this population of $850 for general use and $400 for space heating; and (v) a legislated "fixed credit" percentage of income payment program (PIPP) that requires low-income households to pay between five and seven percent of their income for general electric usage (and between three and five percent for electric space heating) and a credit equal to the difference between household payment obligation and the bill amount.

Staff contacted the study's author, Roger Colton, to discuss his assumption that the number of low-income households in Virginia, based on 150 percent of the federal poverty level, is 215,000. As noted previously, based on (i) census data that 17.7 percent of Virginians live at or below 150 percent of the federal poverty level and (ii) an estimated 2.444 million households, the number of households meeting this test of eligibility is approximately 430,000. An estimate of 430,000 eligible households is consistent with the federal Department of Health and Human Services' estimated that in fiscal year 1995 Virginia had 346,245 LIHEAP eligible households in Virginia, based on an eligibility threshold of 130 percent of the federal poverty level. If this estimate is correct, the cost of implementing VACAP's program would double to $130 million annually, requiring a wires charge $0.0013/kWh.

In addition, the assumed 50 percent participation rate is almost double the current estimated participation rate for Virginia's LIHEAP fuel assistance program. A 50 percent rate is at the high end of other PIPP program participation rates, which range between 40 and 50 percent. The cost of the program would be affected by the percentage of participation, as well as by the percentage of household income that the members of the classes of participating households are required to spend on energy.

6. Stakeholder Perspectives

At the Task Force's August 16 meeting, a variety of interest groups staked their positions regarding the advisability of expanding low-income energy assistance programs in Virginia.

Virginia Power suggested that a single point of contact would be more efficient and helpful to Virginians in need. Current programs are administered by a variety of agencies, which may hinder some Virginians from receiving the assistance they need. Programs generally assist households on an emergency basis and only during the heating season. Funding is at risk, and must be shared by both LIHEAP and the Weatherization Assistance Program. While private programs are successful and do help many families, a statutory program would help citizens with their utility bills and consumption. The Restructuring Act would benefit from a statement of state policy endorsing a right of access to affordable basic energy services.

The Virginia Poverty Law Center's representative testified that most states implementing restructuring have provided for programs in their statutes because they recognize the need to protect all consumers' access to affordable electricity. The VPLC recommends that electric utilities be required to provide discounted transmission rates for low-income consumers, with the costs of such discounts included in the rates charged to all other consumers. The goal should be that no low-income customers should pay more than six percent of their income for electric utility usage.

The American Association of Retired Persons expressed support for a statutory year-round universal service policy to assist low-income families with energy resources. Eligibility could be determined by federal poverty guidelines, and assistance should be provided as a credit on the utility bill, rather than a cash payment. Funding could be provided by a charge per kilowatt hour levied on electric suppliers or a portion of revenue from the "special regulatory tax rate" as alternatives to the nonbypassable wires charge. The AARP recommends that, at a

minimum, the Task Force should introduce legislation ensuring universal service and authorizing the Commission to create a program to assist low-income households with their energy service and designate a funding source.

The VACAP urged the Task Force to add low-income energy assistance programs to the Restructuring Act. The decline in federal funding for programs and the increase in state programs around the country may lead to the demise of the LIHEAP program. The VACAP urged Virginia to join the mainstream of states with restructuring legislation and provide for low-income Virginians' access to electricity. To that end, draft legislation originally presented to the SJR 91 joint subcommittee in December 1998 was re-offered for the Task Force's consideration. A copy of the proposal is attached as Appendix G.

The deputy secretary of Commerce and Trade provided the Task Force with an overview of the current state programs for energy assistance. He observed that Congress is currently considering legislation that would require states to provide a 25 percent match of federal funding for the LIHEAP program.

G. ENERGY EFFICIENCY PROGRAMS

The Task Force began its examination of energy efficiency programs, including weatherization programs, in the context of the Restructuring Act at its August 16 meeting. Efforts to promote electric utility energy efficiency fall into two broad categories: conservation programs and load management programs. These concepts are collectively referred to as demand side management (DSM) programs. Conservation involves reducing usage, while load management allows generating units to be used more efficiently by shifting usage patterns. The reduced costs of new gas-fired generation, shortened planning horizons and declining power prices have led to the reduction or elimination of some state DSM programs.

Sixteen of the 20 states with restructuring legislation have established funding for energy efficiency programs, weatherization programs, or both, through a "systems benefit charge" or similar mechanism (Appendix H). Several of these specifically provide that a portion of the revenue generated from a charge for low-income assistance programs is to be used for energy efficiency programs for low-income families, or weatherization. Provisions of other states' electric utility restructuring legislation addressing energy efficiency programs are summarized in Appendix I.

The Commission observed that investments in energy efficiency, as well as renewable energy sources, can serve the purpose of the Restructuring Act; that is, to provide for diverse suppliers of varied electric products with competitive prices and numerous substitutes for reliability. The Commission also outlined arguments that have been raised both in favor of and in opposition to energy efficiency programs. One concern about implementing such programs is that they would actually increase the short-term costs of electricity and defeat one purpose of implementing competition--to make electricity cheaper. Proponents of energy efficiency programs counter that incentives are needed to overcome existing barriers, including retail transaction costs, such as marketing associated with sales of energy efficiency services, and

limited access to financing capital. Supporting these programs, Commission staff reported, could provide long-term economic benefits and societal benefits.

The Virginia Tech Center for Energy and Global Environment (CEAGE) supports energy efficiency programs in the Commonwealth. The types of public benefits programs the Task Force could and should consider are (i) cost-sharing of research and development; (ii) rebates of incremental first costs; (iii) performance- and production-based financial incentives; (iv) outreach activities such as technical assistance, training and education; and (v) deployment of energy efficiency and renewables technologies in schools. Funding of these programs has achieved least-cost delivery of energy services and reduction of pollutants as well as equitable distribution of benefits to consumers of all classes.

The Association of Energy Conservation Professionals (AECP) provided the Task Force with statistical information about weatherization programs nationwide. There is currently a three-month to five-year waiting list for weatherization. Nationally, only 16 percent of eligible homes have been weatherized. Weatherization increases disposable income by making energy more affordable. Weatherization tries to identify underlying causes of energy hardship rather than simply provide crisis assistance to those in need.

The Southern Environmental Law Center (SELC) also expressed support for energy efficiency programs, including weatherization efforts aimed at low-income consumers. Weatherization assistance has generally cut energy use by about 25 percent. Energy efficiency is the most cost effective way to decrease air emissions under restructuring. Investments in energy efficiency also help foster development of clean industries and help create jobs.

The VACAP expressed concern that funding limits may severely restrict weatherization programs, and observed that the demand for such programs already exceeds the resources available. The current program is not advertised or promoted and the demand still far outweighs available funding. The VACAP recommended state-sponsored programs for weatherization at increased funding levels and replacement of inefficient appliances and lighting for low-income families to reduce electricity consumption and, therefore, electric bills.

The Direct Current Electrical Association (DCEA) asserted that energy efficiency programs should be designed to give citizens and plant owners greater control over power generation, protection from power interruptions and more energy information about equipment used for on-site energy production. All inverters and transformers should be required to display their coefficient of energy conversion and loss of energy so that producers and consumers can make informed energy decisions, including the option to use solar and fuel cell energy sources. The DCEA also recommended that electric power lines be buried underground, based on its assertion that above-ground lines are overloaded, inefficient and hazardous.

H. RENEWABLE ENERGY PROGRAMS

The definition of renewable energy turns on legislative or regulatory decisions. Renewable energy generally includes wind, solar, hydro, geothermal, and biomass. Burning waste to create energy is sometimes included in the definition of renewable energy.

Advocates of renewable energy have argued that retail competition for generation (with its emphasis on price) may extend the operation of older, less efficient power plants entitled to emit at higher levels under federal clean air laws. Restructuring legislation enacted in may other states has attempted to encourage the use of renewable energy sources by (i) instituting wires charges to fund renewable energy initiatives, such as research and development of renewables technologies, incentives for implementing renewables, and consumer education; (ii) adopting a renewable portfolio standard requiring suppliers to purchase or generate a specified percentage of electricity from renewable sources; and (iii) requiring a disclosure of information regarding the type, emissions, price volatility, or other aspects about generation sources. A table identifying states with these types of programs is also included in Appendix H.

Addressing the Task Force at its August 16 meeting, the Commission raised the issue of whether the electricity markets emerging from the Restructuring Act will generate a level of investment in renewable energy (as well as energy efficiency) consistent with the Commonwealth's long-term interests, or whether some change to the Act may be necessary to monitor and adjust this level of investment. Competition for electricity generation services, as mandated by the Act, may not necessarily generate the appropriate level of investment, due to historic and future defects and barriers in energy markets. The question is whether reasonable measures might be formulated that can encourage these investments, in a manner compatible with the goals and objectives of electricity competition. The Commission observed that intervention to correct market defects can be phased and moderated in a variety of ways. Appendix J describes options identified by Commission staff for encouragement of the production of renewable energy as part of the implementation of retail electricity competition. A chart attached thereto identifies differences between a renewables portfolio standard and a systems benefit charge for funding production incentives. The Commission expressed its willingness to work with the Task Force to determine how to encourage generation from renewable energy sources in the Commonwealth.

Appendix I summarizes provisions of other state restructuring legislation addressing renewable energy programs. Information about funding levels, where available, has been included in this material.

Virginia Power urged the Task Force to continue exploring funding and incentives for renewable energy initiatives. The SELC and CEAGE also support state funding for renewable energy programs and incentives. Both BP-Solarex and the Maryland-District-Virginia Solar Energy Industries Association (MDV-SEIA) have recommended that the Commonwealth develop a public benefits fund to pay for expansion of solar manufacturing incentives.

The Restructuring Act, at § 56-592, requires the Commission to establish billing information standards and standards for marketing information that require suppliers and aggregators to disclose, to the extent feasible, fuel mix and emissions data on at least an annual basis. The Restructuring Act also fosters renewables through its net energy metering provisions.

The Commonwealth currently provides several other incentives for the use and manufacture of renewable energy technologies. These include the Solar Photovoltaic

Manufacturing Incentive Grant Program, VHDA loans for the installation of solar and other alternative energy sources, and authorization for local property tax exemptions for solar energy equipment and energy generating equipment used to convert from oil or natural gas to renewable sources. Virginia's income tax credit for renewable energy source expenditures remains in the Code, though it is not available for expenditures made after 1987.

Responding to a question from the September Task Force meeting, staff presented the Task Force with a description of renewable energy programs in all 50 states, including those that are not directly linked to electric utility restructuring (Appendix K). States have implemented a broad range of programs to encourage and promote the use of renewable energy sources. In states that have restructured the electricity industry, some programs have been created or modified, but many are continuations of existing programs. Many states provide loan programs and grant programs to producers of renewable energy. Loan programs may include interest rate subsidies, and grants are sometimes based on outputs. In the area of tax relief, several states provide either income tax credits, property tax relief (to include total or partial exemptions, or valuation of systems at conventional levels), sales tax relief on purchases of renewable energy, or a combination of these. A number of states have industrial recruitment incentives for manufacturers, and three states have demand-side management for renewables. Other types of programs include research and outreach programs and solar and/or wind easements. Some states have construction policies that require renewable energy sources to be used in new buildings if the additional costs would pay for themselves through energy savings over time. Restructuring has caused the development of disclosure requirements as well as the application of systems benefits charges to fund programs. Finally, the most common renewable energy program is net metering, which many states had prior to electric utility restructuring, and that Virginia has included in the Restructuring Act.

I. UTILITY WORKER PROTECTION

Clause (iv) of subsection C of § 56-595 directs the Task Force to examine utility worker protection during the transition to retail competition. The Task Force heard testimony on this issue commencing with its August 16 meeting. The Consumer Environment and Education Task Force under the SJR 91 joint subcommittee began studying this issue during 1998, and heard concerns that industry restructuring could affect electric utility workers adversely.

A representative of the IBEW expressed his concerns for Virginia's electricity workforce. Workload is increasing due to added customer base and layoffs of other electric utility employees, as well as structural changes at generation units to increase efficiency and reliability. The onset of competition will result in the closing of some generation units, with the loss of jobs caused by statutory and regulatory changes affecting a utility's business decisions. It was reported that 11 of the approximately 20 states that have adopted restructuring laws have enacted some form of worker protection. These protective measures include requiring utilities to provide retraining and education of displaced employees, severance and reemployment packages, continuation of employees' licenses and health insurance benefits, and protection of employee jobs in the event of a merger or acquisition of the utility. Five other states have directed studies of the issue, and four states have excluded worker protections.

AEP-Virginia called the attention of the Task Force to the utility's comments from the 1999 study regarding worker protection issues. The utility has worker staffing standards developed through federal and state regulations and collective bargaining agreements. The Task Force was asked to keep the following questions in mind as it considers these issues: Does development of competition in the generation services market, combined with regulation of transportation and distribution, truly require substantial change in existing public policy to expand programs addressing worker protection issues? If so, how should worker protection programs be implemented to be most efficient and effective in meeting these needs? Do adequate regulations exist for programs to address these issues? Do the proposals to fund programs through nonbypassable systems benefit charges recognize that the utility's current rate structure, which is capped during the period provided by the Act, does not now provide for their payment?

The DCEA recommended that Virginia implement a certification program for plant operators under the National Institute for the Uniform Licensing of Power Engineers (NIULPE) and expressed the belief that the NIULPE program would provide plants with safe and efficient operators.

III. CONSIDERATION OF PROPOSED AMENDMENTS TO RESTRUCTURING LEGISLATION

In the course of its initial year of work, the Task Force undertook to identify provisions of the Restructuring Act that needed to be clarified, corrected, or otherwise amended. The process of considering amendments to the Restructuring Act was contemplated by subsection C of § 56-595, which charges the Task Force with annually offering such recommendations as may be appropriate for legislative consideration. In compliance with the chairman's directive that stakeholders allow the Task Force an ample opportunity to review any legislative proposals affecting the Restructuring Act prior to the start of the 2000 Session, proposed amendments were presented during the Task Force's November meeting. Additional amendments to the Restructuring Act, as well as to Senate Bill 1286 (1999), which restructures the Commonwealth's system of taxing electricity, were offered at the Task Force's December meeting. The proposed amendments, which can be viewed at the Task Force's web site, were considered at length during the Task Force's work session held in the State Capitol Building on January 6, 2000.

A. LICENSING OF AGGREGATORS

The Task Force was asked to address two issues relating to aggregation. The Act's aggregation provisions allow customers to band together to negotiate more favorable economic terms. Under § 56-588 of the Act, entities that aggregate are required to be licensed by the Commission. The first issue addresses who should be deemed to be an "aggregator" and thus subject to the licensure requirements. The second issue involves aggregation by state and local units of government.

The Act defines an aggregator as a person licensed by the Commission that purchases, or arranges for the purchase, of electric service as an agent or intermediary for sale to, or on behalf

of, two or more retail customers. Virginia Power, Allegheny Power, ALERT, and the Virginia Retail Merchant's Association offered amendments to re-define "aggregator" and "aggregation." Though worded differently, each of the amendments narrowed the definition of an "aggregator" by excluding a person that arranges or facilitates agreements between retail customers and suppliers under various circumstances.

In response to concerns raised by the Office of the Attorney General that the proposals may eliminate some consumer protections, the Task Force deferred action on this issue until its last meeting on January 19, 2000. By that time, the interested parties had developed a new definition of an aggregator (Appendix L) that includes a person that offers to purchase electric energy or offers to arrange for the purchase of electric energy for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. It specifically excludes a person whose role is limited to furnishing legal services or educational, informational, or analytical services to customers unless paid for such services by an aggregator or supplier. It also excludes default service providers, licensed retail energy suppliers, and retail customers acting in common to issue a request for proposal or to negotiate a purchase by them.

The second issue relating to aggregation involves state and local governments. The Commission's proposed a clarification of § 56-589, to provide that municipalities and other political subdivisions may aggregate intra-governmental and inter-governmental load without being required to be licensed as an aggregator. It also clarifies that the state government is exempt for the aggregator licensure requirements when aggregating the load of its own agencies. The Virginia Municipal League offered an amendment that addressed the aggregation of the loads of two or more political subdivisions in a narrower manner than was proposed by the Commission. The VML's language exempts localities from licensure requirements when they act jointly to negotiate or arrange for themselves agreements for their energy needs directly with licensed suppliers or aggregators.

The Task Force decided at its January 6 meeting to endorse the Commission's proposals applicable to state government aggregation and intra-governmental aggregation by municipalities and other political subdivisions, while endorsing the VML's proposal regarding inter-governmental aggregation by municipalities and other political subdivisions.

B. LICENSING OF SUPPLIERS

Allegheny Power proposed amending § 56-587, which currently requires any person who sells electric energy to any retail customer on and after January 1, 2002, to obtain a license. An exemption exists for the leasing or financing of property used in the sale of electricity to a retail customer. Allegheny Power's proposed amendment would exempt persons who own or lease facilities such as apartment buildings, mobile home parks, or commercial buildings from the supplier licensing requirements when arranging for electric energy supply for the occupants of the building, where the electricity is furnished to the tenants without financial gain to the facility's operator. The Task Force expressed concerns with how it would be determined that electric services were being provided to occupants without financial gain. No motion was made on this proposal.

The proposed change to the Act also included language clarifying that default service providers are not required to be licensed as suppliers; this provision was added to Senate Bill 585 during Senate Commerce and Labor Committee deliberations.

C. METERING AND BILLING

Virginia Power and the State Corporation Commission offered different approaches to legislating the introduction of competition for metering services and billing services. The major point of disagreement involved who would determine when competition for either, or both, of these services would commence: the Commission or the General Assembly.

The Commission proffered amendments to the Act that would have authorized the Commission to determine, before January 1, 2002, whether and when electric metering services and electric billing services may be provided competitively. The determination would be subject to specific guidelines, including requirements that the determinations (i) take into account customer readiness for competition and (ii) not jeopardize the safety, reliability, or quality of electric service.

Virginia Power's proposal provided that retail electric energy customers would have the opportunity to obtain these services from competing providers as determined by the General Assembly, and that competition would not be introduced until it is technologically feasible to do so and reasonable steps have been taken to educate and prepare retail customers for the implementation of competition for such services. The proposal directed the Commission to report to the Task Force, by December 1, 2000, and at least annually thereafter, with recommendations regarding a schedule for implementing competition.

The Task Force perceived merit in portions of both proposals. It directed that elements of both be merged into a draft that mandates competition for these services but reserves to the General Assembly the policy decision on the date of implementation of competition for metering and billing services.

A draft attempting to merge the two proposals was considered at the Task Force's January 19 meeting (Appendix M). As offered for consideration, the draft called for the Commission to recommend to the Task Force, on or before December 1, 2001, whether metering services, billing services, or both, may be provided by licensed persons. The Commission's recommendation would follow notice and an opportunity for hearing and would take into account, among other considerations, customer readiness and the technological feasibility of providing the services on a competitive basis. Members of the Task Force expressed concerns with timing of the commencement of the process of phasing in retail competition, which is scheduled to start on January 1, 2002. Reservations focused on the short time frame between a December 2001 reporting date and the start of customer choice for generation, coupled with the need to develop a plan for introducing competition in metering services, billing services, or both. These concerns were addressed by advancing the due date for the Commission's recommendation to the Task Force from December 1, 2001, to January 1, 2001. In addition, the Commission's recommendations are to include a draft plan for the implementation of competition.

An amendment adopted at the Task Force's January 19 meeting clarified that the requirement that an incumbent electric utility's affiliate undertakes coordination with licensed providers of the competitive services applies only if the affiliate controls a resource that is necessary to the coordination required of the incumbent electric utility.

D. NEGATIVE WIRES CHARGES

The Restructuring Act contemplates that incumbent electric utilities will recover just and reasonable stranded costs through capped rates (under § 56-582) or wires charges (under § 56-583). Wires charges are to be collected from customers who choose suppliers of electric energy, other than the incumbent utility, or are subject to default service, during the capped rate period.

Wires charges are to be established by the Commission upon the commencement of customer choice, and will be subject to adjustment not more frequently than annually. Wires charges are the difference between an incumbent utility's capped unbundled rate for generation and the projected market price for generation, as determined by the Commission. Wires charges are also to include just and reasonable transition costs incurred by the utility. The total of the wires charges, the unbundled charge for transmission and ancillary services, the distribution rates, and the projected market price for generation are not to exceed the utility's capped rate.

When the Restructuring Act was being crafted, it was assumed that the projected market price for generation and other allowable component charges would be less than the capped rate for electric service, with the difference being the wires charge amount. However, as the AEP-Virginia and Virginia Power pilot programs came under scrutiny by the Commission's hearing examiner in late 1999, the possibility arose that the statutory language in the Act could be construed to produce a "negative" wires charge if the capped rate was less than the projected market price for generation and other allowable component charges. In such event, the incumbent utility may be required to provide a credit to customers who opt to purchase electric generation services from a supplier other than their incumbent utility.

The prospect of negative wires charges was brought to the Task Force's attention by AEP-Virginia. Working with the Commission's staff, the utility offered an amendment to § 56-583 that clarified that wires charges would exist only where an incumbent utility's capped unbundled rates for generation exceed the projected market price for generation. The amendment spells out that no wires charge shall be less than zero. The Task Force endorsed the proposed amendment at its January 6 meeting.

E. CONSUMER EDUCATION PROGRAM

The Commission presented the Task Force with the Virginia Energy Choice consumer education plan on December 8, 1999. The Commission also suggested amendments to the Restructuring Act to authorize the Commission to implement its consumer education recommendations (See Part II B of this report). The proposed new § 56-592.1 requires the Commission to establish and implement the program, taking into account the findings and recommendations of the Commission's December report to the Task Force. The new section also

specifically authorizes the use of regulatory tax revenues to finance the consumer education plan. The Task Force endorsed the Commission's proposal at its January 6 meeting.

F. LOCAL ELECTRIC UTILITY CONSUMPTION TAX

Senate Bill 1286 (1999), in addition to converting the state and local gross receipts taxes on electric utilities to consumption-based taxes, also converted the local consumer utility tax on electricity from being based on the cost of the electricity consumed to the amount of electricity consumed. Under § 58.1-3814, local governments were authorized to tax electricity consumers at a rate of up to 20 percent of the monthly charge. However, the rate on residential consumers was capped at $3 per month unless a higher rate had been levied prior to July 1, 1972.

Senate Bill 1286 sought to effect the conversion by requiring that on and after January 1, 2001, the maximum rate of tax on electricity consumption would be one and one-half cent per kWh. To maintain the $3 per month cap on residential consumers, subsection F of § 58.1-3814 provided that the tax would apply only to the first 200 kWh consumed per month.

As local governments began preparing to implement this new system of taxation, problems became apparent. The Virginia Municipal League and Virginia Association of Counties informed the Task Force that § 58.1-3814 required technical amendments in order to give local governments the flexibility needed to accomplish revenue neutrality, to avoid shifting the burden of the tax among classes of consumers, and to clarify collection procedures for both the local portion of the consumption tax and the local consumer utility tax.

Amendments accomplishing these goals were presented to the Task Force at its January 6 meeting. To address the concerns raised by local implementation of the 1999 legislation, the proposal requires that on or before October 31, 2000, any locality imposing a tax on electricity consumers shall amend its ordinance to provide for the conversion of the tax to a kilowatt-hour basis at rates that, to the extent practicable, avoids shifting the amount of the tax among electricity consumer classes and maintains annual revenues. The amendments were endorsed by the Task Force, and were introduced as part of Senate Bill 163.

G. PUBLIC BENEFITS FUND FOR ENERGY EFFICIENCY AND RENEWABLE ENERGY PROGRAMS

At its August meeting the Task Force asked the Consumer Advisory Board to provide recommendations regarding energy efficiency programs and renewable energy programs. The Consumer Advisory Board began its examination of these issues in December 1999, when the SELC and the MDV-SEIA proposed the establishment of a public benefits fund. Under their proposals, all consumers of electricity would pay a non-bypassable systems benefit charge at a rate of one-half mil ($0.0005) per kWh. The proceeds from the charge would be distributed as follows: (i) 40 percent for low-income energy efficiency (weatherization), (ii) 30 percent for renewable energy programs and projects, and (iii) 30 percent for energy efficiency programs and projects. The proposals submitted by the two organizations were very similar, with the only substantive differences relating to the definitions of "emerging renewable energy resources" and "renewable energy system."

Several members of the Consumer Advisory Board raised specific concerns about the public benefits fund proposal, including (i) the absence of criteria for expenditures of funds for the classes of programs, (ii) the failure to provide for the establishment of advisory boards to make funding decisions, and (iii) the amount of funds that will be spent on program administration. Other concerns raised by Board members focused on the broader issue of whether a charge on electricity usage should be assessed to pay for environmental and other societal-benefit programs, and whether it is appropriate to link funding for such programs to the implementation of competition in electricity generation services.

Similar legislative proposals for a public benefits fund were offered for Task Force consideration at its January 6 meeting. The Consumer Advisory Board advised the Task Force that it had serious questions about the proposal and did not recommend its consideration during the 2000 Session. The Board requested that it be allowed to continue its examination of the issues of energy efficiency and renewable energy. Based on these recommendations, the Task Force agreed that the issues should remain with the Consumer Advisory Board.

H. RENEWABLES PORTFOLIO STANDARD

In conjunction with its examination of renewable energy issues, the Consumer Advisory Board had been presented with a proposal from the MDV-SEIA for the establishment of a renewables portfolio standard to be met by Virginia's electricity suppliers. Under the proposal, electric utilities would be required to obtain a certain percentage of their electricity generated from renewable sources. By July 1, 2001, the percentage of electricity sold in Virginia that is derived from renewable energy generating systems must equal the greater of (i) five percent of their power sales or (ii) one percent above the current percentage of electricity sold in Virginia that is derived from renewable energy generating systems. The Commission would be authorized to adopt a credit trading mechanism. Sellers who failed to comply with the renewable portfolio standard regulations would be subject to financial penalties to be set by the Commission. Any moneys collected from the penalties would be added to the renewable energy component of a state-administered Electric Public Benefits Fund.

Advocates of the proposal suggested that the establishment of a portfolio that would encourage development of renewable energy resources. Such a standard should provide for the aggregation of generation from small-scale installation, such as small wind and distributor solar thermal heating, solar thermal electric, and photovoltaic systems.

The Consumer Advisory Board recommended that the legislative proposal for a renewable portfolio standard not be considered during the 2000 Session of the General Assembly, and that the Board be able to continue its examination of this issue. At its January 6 meeting, the Task Force adopted the Consumer Advisory Board's recommendation that the issued be examined further.

I. UTILITY WORKER PROTECTION

The IBEW asked the Task Force to consider legislation that would establish employment-related protection for electric utility workers. The proposed legislation sought to accomplish three things. First, it directed the Commission and the Department of Labor and Industry to develop staffing standards and standards for electric utility worker training, competency, and/or certification. All electric utility work of a permanent nature would be required to be performed by employees who have completed training programs, have demonstrated competency in skill sets for the tasks being performed, and hold a license issued by the Commission or Department. Second, the legislation requires entities that acquire electric power generation assets to employ sufficient workers at the same salaries and benefits as were provided prior to the acquisition. If existing workers are not offered continued employment following such an acquisition, they must be provided a transition plan. Such a plan includes continued health care coverage, early retirement benefits payments, job re-education and retraining, outplacement services and a severance benefit. Finally, the proposal would provide unspecified extended unemployment benefits to any employee of an electric utility company who is terminated as a result of electricity deregulation and is otherwise eligible for unemployment benefits.

The draft legislation was presented to the Task Force on December 8, and was considered on January 9. The Task Force took no action on the proposed legislation.

J. NET ENERGY METERING UNDER THE ELECTRICITY CONSUMPTION TAX

The Restructuring Act provides at § 56-594 that the Commission shall establish a net energy metering program by July 1, 2000. Net energy metering regulations are to establish a system by which certain customers who own and operate small-capacity solar, wind or hydro-powered generating facilities, intended to offset the customer's own electricity requirements, will be able to contract with this distribution company to offset the electricity the customer adds to the power grid against the amount of electricity such customer obtains from the power grid.

The Commission perceived that the 1999 electricity consumption tax legislation (SB 1286) could be construed to require a customer-generator to pay consumption tax on the basis of the gross, rather than the net, amount of electricity supplied from the power grid. The Commission offered an amendment to § 58.1-2900 that provides that the taxable kWh delivered to a customer-generator will mean the amount of electricity supplied from the electric grid, minus the amount of electricity it generates and feeds back to the electric grid. The Task Force adopted the Commission's proposed legislation at its January 6 meeting.

K. TECHNICAL AMENDMENTS

The Commission proposed corrections or clarifications to the Restructuring Act, all of which were ratified by the Task Force on January 6, 2000. The amendments:

- Corrected an error in subdivision D1 of § 56-588 by substituting "an aggregator" for "a supplier."

- Added language to § 56-593 to make clear that private rights of action arise under subsection A of § 56-593.

- Provided that the capped rates established pursuant to rate application made prior to July 1, 2001, will become effective on that date, but such rates will be interim rates until the Commission has completed its investigations of the rate applications. If the interim rates are found to be excessive, they will be subject to refund with interest, as is currently provided with respect to other rate applications.

- Clarified that customers subject to default service are only obligated to pay wires charges during periods that they actually receive default service.

L. STUDY OF LOW-INCOME ENERGY ASSISTANCE PROGRAMS

As it delved into the issue of programs assisting low-income households with energy needs, the Consumer Advisory Board ascertained that the issue encompassed more than electric utility industry restructuring. The complexity of the issues prevented the Board from concluding its examination of this issue prior to the 2000 Session.

In order to continue its study of low-income energy assistance issues encompassing electric utility industry restructuring as well as other energy topics and related social benefit programs, the Board asked the Task Force to recommend a joint resolution to the 2000 Session. The proposed study resolution directs the Consumer Advisory Board to study low-income household energy assistance programs in the Commonwealth. The study will address, but not be limited to, whether Virginia should (i) establish a state policy with respect to the availability of affordable electricity and other sources of energy to all Virginians; (ii) create a new program assisting low-income households with a basic level of electric utility service; (iii) expand existing programs, or establish new programs, assisting low-income households with seasonal energy needs regardless of the energy source; (iv) consolidate existing public programs providing energy assistance for low-income households; (v) coordinate efforts of private, voluntary energy assistance programs with public programs and other private programs; (vi) provide incentives to encourage voluntary contributions to energy assistance programs; and (vii) address the likelihood of continued declines in federal funding for LIHEAP and the Weatherization Assistance Program. The Board's report would be made to the 2001 Session of the General Assembly.

The Task Force recommended that the resolution be supported in the 2000 Session. At their January 19 meeting, the members of the Task Force received a recommendation from the Office of the Attorney General directing the Consumer Advisory Board to include the feasibility of tax incentives and the availability of other funding sources in its study of low-income energy assistance programs (Appendix N). Rather than introduce it as a separate resolution, the Task Force asked that the Attorney General's proposal be incorporated into the resolution that had been agreed upon at the January 6 Task Force meeting.

M. CONSUMER EDUCATION IN NATURAL GAS DEREGULATION LEGISLATION

The 1999 Session of the General Assembly adopted legislation deregulating aspects of both the electric utility industry and the natural gas utility industry. Often overshadowed by the Electric Utility Restructuring Act, Senate Bill 1105 provided for the deregulation of natural gas at the retail level. Though the bill was enacted into law, it provided that plans for conversion to consumer competition would not be filed prior to July 1, 2000, and a sunset clause provided that the legislation would expire on that date. Consequently, the effect of Senate Bill 1105 was limited to two purposes: to direct standing committees of the General Assembly to examine the effect of deregulation on the system of taxation of natural gas utilities, and to allow interested parties to study the legislation in greater detail.

In the course of its examination of the Commission's consumer education plan for electric utilities, the Consumer Advisory Board became aware that the natural gas deregulation legislation did not provide for the development of a similar consumer education plan. The Consumer Advisory Board recommended to the Task Force that such a provision be included in the natural gas deregulation legislation.

The Task Force noted that it lacked the authorization to recommend legislation addressing natural gas deregulation issues. However, it raised no objection to the Consumer Advisory Board's proposal. Under the proposal, the Commission would be required to develop a natural gas consumer education program for retail consumers by December 1, 2000, that addressed (i) opportunities and options in choosing retail suppliers of natural gas and related services; (ii) marketing and billing information; (iii) rights and obligations concerning the purchase of natural gas and related services; and (iv) other information deemed necessary and appropriate. The plan is, to the extent feasible, to be consistent with and complement the consumer education program for retail competition for electricity.

The Task Force suggested that staff incorporate the proposal into appropriate legislation that may be introduced during the 2000 Session.

N. PROJECTED MARKET PRICE FOR GENERATION

Virginia Power spokesperson William G. Thomas brought to the Task Force's attention, during its January 6 meeting, an issue that came to light during the Commission's hearing examiner's review of Virginia Power's pilot program proposal. The issue involves the Commission's calculation of wires charges under § 56-583 of the Act. As noted previously, wires charges are the difference between the capped unbundled rate for generation and the projected market price for generation as determined by the Commission.

The statutory language in § 56-583 is apparently capable of multiple interpretations. The specific example cited involved use of the spot market price of electricity as quoted at an existing power market. Virginia Power and other utilities objected to an interpretation that would not account for the costs of delivering the electricity. A Virginia Power proposal (Appendix O) offered at the January 19 meeting would have defined the projected market price for generation as the net price available to an incumbent electric utility for sale into the market of power not

required to serve its customers. The net price would recognize all associated costs of delivery into the market.

Spokespersons for ALERT and the Virginia Retail Merchants Association objected to the proposed definition of the projected market price for generation. The Commission voiced no objection to the proposal. The Task Force declined to incorporate Virginia Power's proposed amendment into the Restructuring Act, but invited the parties to raise the issue when the Task Force's legislation was before legislative committees during the 2000 Session.

O. CAPPED RATES FOR CERTAIN DISTRIBUTION COOPERATIVES

The Restructuring Act provides that incumbent electric utilities may recover net stranded costs through the use of capped rates or, for consumers that switch to non-incumbent providers of generation services, through wires charges. Stranded costs represent the decline in value of an incumbent electric utilities assets, including electricity purchasing contracts and electricity generating facilities.

Prior to the Task Force's last meeting, concerns were expressed by two distribution cooperatives that the capped rate provisions, under which the cost of their electricity would be fixed during the capped rate period of January 1, 2001, until as late as July 1, 2007. These cooperatives contended that the capped provisions would be inequitable in their application to their member-customers, because these distribution cooperatives did not generate any electricity and are not members of a power supply cooperative. Thus, they have no stranded costs.

Subsection B of § 56-582 provides for several exceptions to the capped rates. For example, the Commission is authorized under the Act to adjust capped rates with respect to cooperatives that were not members of a power supply cooperative (such as Old Dominion Electric Cooperative) to reflect their cost of purchased wholesale power. The two cooperatives sought to expand the existing authorization for the Commission to adjust their rates in order to provide discounts from capped rates to match the cost of providing distribution services.

The Task Force considered the proposal at its January 19 meeting. Commission staff voiced no objection to the proposal, and observed that the Act also contained several provisions allowing exceptions to be made to the capped rate requirements in order to address unique sets of circumstances. The Task Force elected not to incorporate this amendment to the Restructuring Act into its package of legislation for the 2000 Session, and suggested that the amendment be introduced as a separate piece of legislation. It was introduced as Senate Bill 532.

P. OTHER ISSUES BROUGHT FORWARD BY CONSUMER ADVISORY BOARD

The Consumer Advisory Board reported to the Task Force on two additional issues. The first, raised by Board member Jack Greenhalgh, involved aggregation for small consumers. He expressed concerns that the aggregation process provided in the Restructuring Act may not effectively provide market power for residential and small business consumers. In the paper presented to the Consumer Advisory Board at its December 30 meeting, and included in the Board's January 6 report to the Task Force (Appendix P), Mr. Greenhalgh observed that

experience in other states with competition for electric generation shows little success in attracting significant numbers of consumers to switch from their incumbent providers. Consequently, competition has not reduced the cost of electricity for this class of consumers. Additional study, he urged, is need on how to make the aggregation process more effective. Because the Consumer Advisory Board's report to the Task Force's December 8 meeting characterized the issue as having been raised by one member, the Board was asked to advise the Task Force that most of the Board's members share Mr. Greenhalgh's concerns. A majority of the Board's members asked that the following recommendation be conveyed to the Task Force at its January 6 meeting: "During the pilot program, a parallel investigation be undertaken of how the development of aggregation in Virginia and other states is, or is not, facilitating market power for the consumer and small business classes of electricity users. This investigation should include analysis of progress during the pilot program as well as coordination with interested parties and experts from deregulation of other industries."

The Task Force chairman acknowledged that the need for additional examination at the impact of deregulation is a policy issue that the Task Force ought to embrace. The existing provisions of the Restructuring Act charge the Task Force with monitoring the work of the Commission in implementing the Act, which provisions authorize the Task Force to conduct the type of analysis that appears to be envisioned in Mr. Greenhalgh's request.

The second issue brought to the Task Force's attention by the Consumer Advisory Board involves the VASE program. Under the VASE program, the federal Department of Energy has provided Virginia with $2.1 million for demonstration projects relating to the commercialization of alternative energy. The grant, which was one of 11 awarded nationwide, was applied for jointly by BP-Solarex and the state Department of Mines, Minerals and Energy. Consequently, BP-Solarex is the only Virginia company that is eligible for the program's funds. The full $2.1 million has been allocated to projects using solar energy technologies. The Consumer Advisory Board discussed, but did not endorse, a proposal to ask the Task Force to consider continuing and expanding the VASE program on the state level, with funding from the Commonwealth's general fund. The Board will continue to examine this program next year.

IV. ACTION BY THE 2000 GENERAL ASSEMBLY

A. SENATE BILL 585

The Task Force directed at its January 6, 2000, meeting that most of its proposals for amendments to the Restructuring Act be incorporated into an omnibus bill. These amendments encompassed (i) competition for metering services and billing services; (ii) elimination of negative wires charges; (iii) the Commission's consumer education program; (iv) aggregation issues; and (v) technical changes addressing the interim period for certain capped rates, wires charges for default service, aggregator references, and private right of action language.

A draft addressing these topics was placed before the Task Force for consideration at its last meeting on January 19. The Task Force agreed to incorporate an amendment proffered by AEP-Virginia regarding affiliates in the context of metering and billing competition. It also revised the metering and billing language to advance the Commission's report's due date from

December 1, 2001, to January 1 of that year, with one negative note (cast by Delegate Woodrum). The Task Force then endorsed by omnibus bill.

The bill was introduced in the 2000 Session of the General Assembly by Senator Norment as Senate Bill 585 (Appendix Q). The bill was referred to the Senate Committee on Commerce and Labor, where it was amended twice. The first amendment addressed the issue of ascertaining the projected market price for generation. Over objections of ALERT and the Virginia Retail Merchants Association, the Utilities Subcommittee of the Commerce and Labor Committee adopted language (Appendix R) amending subsection A of § 56-583 to require the projected market price for generation to be adjusted for any project cost of transmission, transmission line losses, and ancillary services subject to the jurisdiction of the Federal Energy Regulatory Commission which the incumbent electric utility (i) must incur to sell its generation and (ii) cannot otherwise recover in rates subject to state or federal jurisdiction.

The second subcommittee amendment, offered by Allegheny Power Systems, clarifies that a default service provider is not subject to the licensing requirements imposed on suppliers (Appendix S). The amendment to subsection A of § 56-587 creates an exception for default service providers from the requirement that, as a condition to doing business in the Commonwealth, each person seeking to sell, offering to sell, or selling electric energy to any retail customer on or after January 1, 2002, must obtain a license to do so. An APS spokesman pointed out that under § 56-585, the Commission designates the provider of default service, and in doing so is required to take into account factors necessary to protect the public interest.

The full Commerce and Labor committee reported Senate Bill 585 with the two amendments recommended by its Utilities Subcommittee. The Senate passed the bill without further amendment with one negative vote (and one abstention). The bill was then communicated to the House of Delegates and rereferred to the House Committee on Corporations, Insurance and Banking, where it was reported unanimously. The House of Delegates unanimously passed Senate Bill 585 on February 28, 2000.

B. SENATE BILL 163

At its January 6, 2000 meeting, the Task Force requested that the legislative proposals relating to electric utility taxation be introduced as separate legislation. The resulting legislation, which was patroned by Senator Watkins as Senate Bill 163, included the amendments proposed by the Virginia Municipal League and the Virginia Association of Counties regarding the local consumer utility tax on electric utility service and technical amendments regarding collection of the local portion of the new electricity consumption tax (Appendix T). It also included the Commission's proposal that addressed taxation of net energy metering.

The legislation was required to be filed by the first day of the 2000 Session because of its local fiscal impact. Consequently, it was introduced prior to the Task Force's January 19 meeting. The bill was referred to the Senate Finance Committee. The Committee amended subsection F of § 58.1-3814 to provide that the levy of the local consumer utility tax would be based on the net amount of electricity supplied from the electric grid, in the case of consumers who are eligible customer generators engaged in net energy metering under § 56-594 of the Act.

As amended, Senate Bill 163 was reported from the Finance Committee by a vote of 15-0, with one abstention. The bill was then communicated to the House of Delegates and was rereferred to the Committee on Finance. The Committee reported the bill (23-0) and the House of Delegates passed the bill on March 1, 2000, by a vote of 67-29.

C. SENATE BILL 532

Senate Bill 532 was endorsed by the Task Force at its January 19 meeting (Appendix U). This bill authorizes the State Corporation Commission to adjust the capped rates for any electric cooperative that was not a member of a power supply cooperative on January 1, 1999, or thereafter. The bill, patroned by Senator Watkins, amends § 56-582 to allow the Commission to adjust the capped rates for such cooperatives to match the cost of providing distribution services. This measure passed the General Assembly without a dissenting vote.

D. SENATE JOINT RESOLUTIONS 95 AND 154

Senate Joint Resolution 154 incorporated the provisions of SJR 95 and added the language requested by the Attorney General's Office that directed the Consumer Advisory Board to address whether Virginia should provide incentives to encourage voluntary contributions to energy assistance programs (Appendix V). Options for incentives mentioned in the resolution include tax credits for energy consumers and suppliers and the designation of other funding sources such as penalties or fees assessed against competitive energy providers to pay for energy assistance programs for low-income households. SJR 95, introduced by Senator Norment, was incorporated into SJR 154 by the Senate Committee on Rules on February 14. The resolution passed the Senate on February 15 and the House of Delegates on March 8, 2000.

V. CONCLUSION

The Task Force will continue during 2000 to carry out the duties assigned to it pursuant to § 56-595 of the Restructuring Act. The Task Force extends it gratitude to all interested persons who provided assistance throughout its first year of work.

Respectfully submitted,

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

APPENDIX A

§ 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.

[Other Provisions of the Virginia Electric Utility Restructuring Act (Chapter 411 of the 1999 Acts of Assembly) Pertaining to the Legislative Transition Task Force]

§ 56-577 (Schedule for transition to retail competition)

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.

§ 56-579 (Regional transmission entities):

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.

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

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.

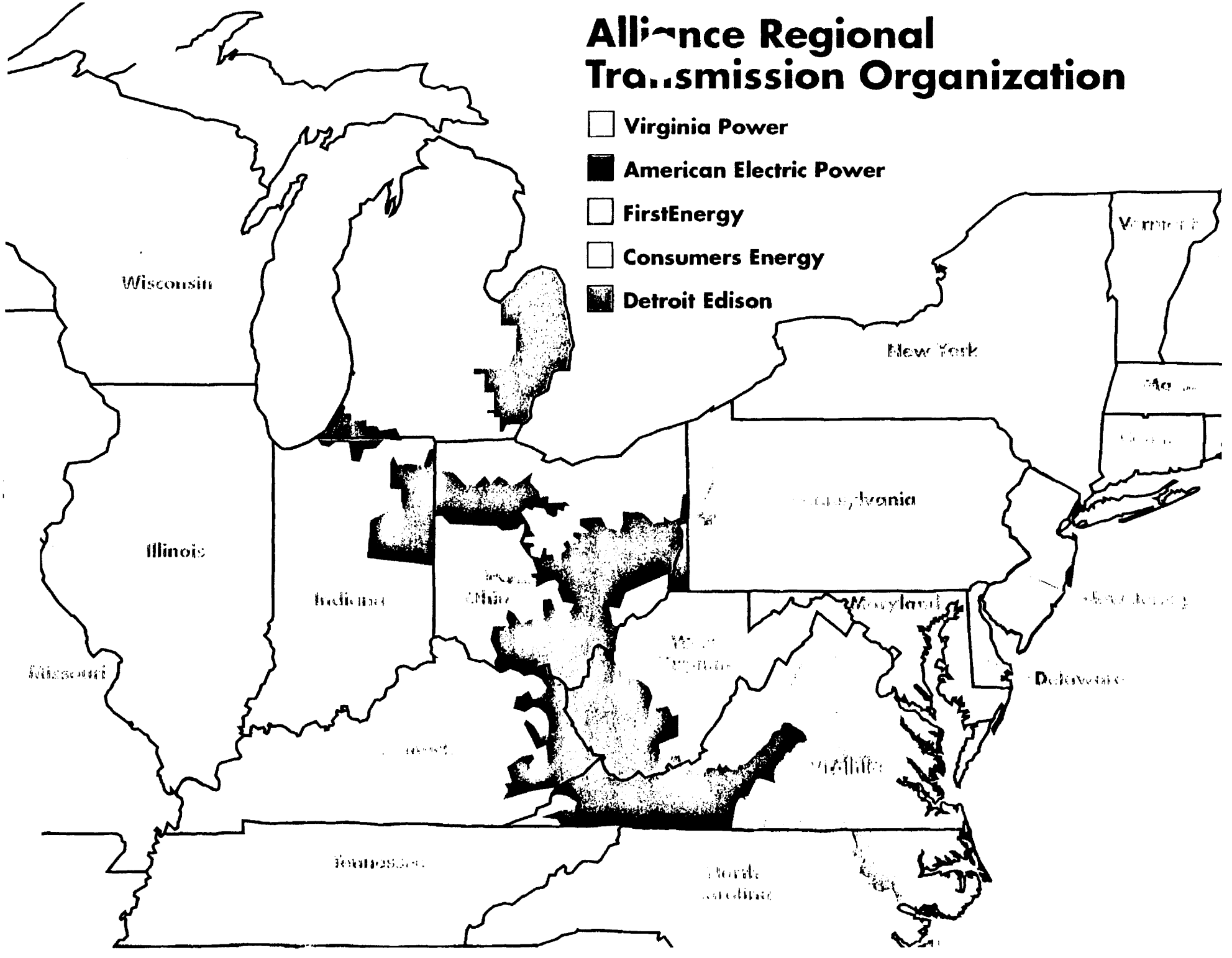
§ 56-585 (Default service):

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.

§ 56-592 (Consumer education and protection):

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.


Alliance Regional
Transmission Organization
Virginia Power
American Electric Power
FirstEnergy
Consumers Energy
Detroit Edison
Wisconsin
Illinois
Indiana
Ohio
New York
Maryland
Delaware
Missouri
Tennessee
North Carolina

APPENDIX B

Alliance RTO members

	Generation Capacity	Control Area Peak Load	Sq. Miles Service Area	Miles of Transmission
AEP	23,900	20,600	45,400	22,000
Consumers Energy	8,000	7,500	27,800	5,300
Detroit Edison	10,300	10,700	7,600	3,000
FirstEnergy	12,000	12,000	13,200	7,000
Virginia Power	17,600	16,300	30,000	6,000
Totals	71,800	67,100	124,000	43,300

Alliance RTO size compared to similar transmission organizations in U.S.

	Gen. Capacity (MW)	Control Area Peak Load	Sq. Miles Service Area	Miles of Transmission
Alliance	**71,800**	**67,100**	124,000	**43,300**
CA ISO	44,500	45,500	124,000	31,000
ERCOT	56,000	54,000	**200,000**	35,200
ISO-NE	23,300	21,400	63,000	8,200
Midwest ISO	66,500	57,500	116,000	40,000
New York ISO	31,000	28,700	48,000	19,000
PJM	56,000	49,500	48,700	8,000

CA ISO – California ISO
ERCOT – Electric Reliability Council of Texas
ISO-NE – ISO New England
PJM – Pennsylvania-New Jersey-Maryland Power Pool

SUMMARY OF STATE ELECTRIC RESTRUCTURING LEGISLATION: UNIVERSAL SERVICE PROVISIONS

Barbara R. Alexander
Consumer Affairs Consultant
15 Wedgewood Dr.
Winthrop, ME 04364
(207) 395-4143
E-mail: barbalex@ctel.net

May, 1999

The following is a state-by-state summary of legislation and state commission policy recommendations and decisions with respect to the need, scope and design of universal service programs as part of the move to retail electric competition. The vast majority of the 20 state initiatives described below have adopted a legislative policy to assure universal service and specifically approved the concept of funding such programs via a non-bypassable charge assessed by the distribution utility. Of the 18 states that have adopted comprehensive legislation, 15 have adopted specific directives to assure universal service or have authorized the public utility commission to create a program and fund it by means of a non-bypassable charge. Other states who seek to implement retail electric choice by means of regulatory authority (New York and Arizona) have continued existing programs or proposed to create new programs, albeit on a small scale in some cases.

For the purposes of this summary, "universal service" programs are defined as programs, policies and services that are intended to assure the affordability and continuation of electric service particularly for households with incomes at or below 150% of federal poverty guidelines. These programs targeted to low-income households are also typically accompanied by the creation of a Provider of Last Resort Service or Default Service for any customer, without regard to income, who does not choose an alternative provider or who cannot obtain service from competitive suppliers at reasonable terms.

1. **California**: The California Electric Restructuring statute (AB 1890, effective September 23, 1996) states: "It is the further intent of the Legislature to continue to fund low-income ratepayer assistance programs, . . . " Section 1(d). The Legislation authorized the Commission to establish a non-bypassable charge to be collected through the distribution company rates on the basis of usage to fund low income energy efficiency

and ratepayer assistance programs. Section 381. A minimum funding level equal to the 1996 authorized spending levels for each utility was established as well. Section 383.

California utilities fund and implement both energy efficiency and rate assistance programs to low income customers through their rate structure. The California CARE program provides a 15% discount on volumetric gas, electric and monthly customer charges to households with incomes at or below 150% of federal poverty guidelines. For electric low income customers these discount costs were approximately $106.9 million in 1996. The energy management programs targeted to low income customers totaled approximately $50 million by investor owned utilities. These programs have a penetration ratio of approximately 56-58% of the eligible low income households.

On February 5, 1997, the California PUC issued its Interim Opinion on Public Purpose Programs--Threshold Issues (D. 97-02-014) to implement the legislative directives concerning California's low income programs. The PUC authorized a rate recovery mechanism equal to the 1996 authorized spending levels for each utility, but did not impose a spending cap. This will allow actual spending to be tracked and recovered in future rate decisions. The Commission specifically reserved the ability to increase program spending based on an analysis of need in the future. The Commission also created an independent statewide administrator to implement these programs statewide through local community organizations in most cases. While initially created to deliver these programs to electric customers, the Commission stated that it would be moving to coordinate the equivalent gas programs with this same approach in the near future.

2. **Pennsylvania.** The Consumer Choice Act (effective January 1, 1997) in Pennsylvania calls on the Public Utility Commission to address the need for a comprehensive Universal Service program for all electric utilities as a necessary element of the move to electric competition. The General Assembly has declared that, "Electric service is essential to the health and well being of residents...; and electric service should be available to all customers on reasonable terms and conditions." Sec. 2802(9). The Commission has determined that it cannot achieve this objective without a comprehensive program that meets the needs of Pennsylvania's most needy and potentially most vulnerable electric consumers.

In considering Restructuring Filings from all electric utilities, the Commission is obligated to "ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory." Section 2804(9). As part of its Restructuring Plan, the utility must submit an "initial plan that sets forth how it shall meet its universal service and energy conservation obligations." Sec. 2804(15). At a minimum the Commission is required by the Consumer Choice Act to continue the "protections, policies and services that now assist customers who are low income." Section 2802(10). The Consumer Choice Act sets forth the major components of a Universal Service Program for low-income customers:

> (1) Electric Distribution companies should continue to be the provider of last resort in order to ensure that electric service is available unless another provider of last resort is approved by the Commission. Sec. 2802(16)
>
> (2) Policies, protections and services that help low-income customers maintain electric service. The term includes customer assistance programs[1], termination of service protections and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs (LIURP), application of renewable resources and consumer education. Sec. 2803

The Act directs that these programs and services will be delivered and funded via the electric distribution companies. The Act also requires that the distribution utilities rely on community-based organizations for the delivery of these programs where that is appropriate. Section 2804(9). These programs must be funded by a "non-bypassable" cost recovery mechanism "...which is designed to fully recover the electric utility's universal service and energy conservation costs over the life of these programs." Sec. 2802(17); 2804(8).

In its final decisions on electric restructuring filings to date the

---

1. Pennsylvania's Customer Assistance Programs or CAPs target bill payment assistance to low income customers based on an evaluation of both household income and energy usage.

Pennsylvania Commission has significantly expanded the funding level for both the Community Assistance Program (bill payment assistance) and the Low Income Usage Reduction Program (energy management programs) and ordered the utilities to track their costs and recover them via a non-bypassable charge added to residential customer bills. For example, PECO Energy (in a settlement approved by the Commission on May 14, 1998), which serves the Philadelphia area, establishes a minimum funding level for universal service programs of $50 million and establishes a separate recovery mechanism for cost incurred in excess of $50 million. The existing discount program for low-income customers will enroll up to 100,000 customers and the discounts will be portable with the customer's selection of a competitive generation supplier. Significant spending increases for universal service programs have been ordered by the Commission for litigated restructuring plan cases: PP&L, Duquesne Light Co., West Penn Power Co., Metropolitan Edison Co, and Pennsylvania Power Co.

3. **Massachusetts:** The Massachusetts Department of Telecommunications and Energy (DTE) has required each electric and gas utility to fund low income discounts or rate reduction programs for low income customers for many years as part of their regular revenue requirement reviews. The recently-enacted electric restructuring legislation (Chapter 164, Acts of 1997, effective November 25, 1997) requires that these programs be continued by the distribution companies "comparable to the low-income discount rate in effect prior to March 1, 1998." (Section 1F(4)) The cost of these programs must be included in the rates charged to all other customers of a distribution company. Further, "Each distribution company shall guarantee payment to the generation supplier for all power sold to low-income customers at said discounted rate." (Ibid.) Eligibility may extend to 175% of the federal poverty guidelines. The distribution companies are required to conduct substantial outreach to obtain a high penetration rate for these programs, including the establishment of an automated program to match customer accounts with lists of recipients of means-tested public benefit programs. Prior to the end of the 7-year transition period, the Department must analyze and make recommendations concerning the affordability of electricity and consider modifications for expansion of the program and specifically must consider whether to modify the discount to adopt a sliding scale discount program (thus providing a better match between usage and income). Low-income customers may obtain default service without additional charge at any time.

The legislation also requires funding for energy conservation programs via distribution company rates for a five-year period at levels that are the highest in any state. Funding starts at 3.3 mills per kWh in 1998 and phases down to 2.5 mills in 2002, totaling about $500 million over this period. Included in this program is a permanent set-aside for low income DSM of .25 mills per kWh or 20% of each utility's residential conservation program. These programs must be coordinated with the local Weatherization Assistance Program agencies. These programs must conform to statewide standards that will be set by the Division of Energy Resources.

4. **New Hampshire:** The New Hampshire electric restructuring legislation calls for, "Programs and mechanisms that enable residential customers with low incomes to manage and afford essential electricity requirements should be included as part of industry restructuring." RSA 374--F:3(V). The New Hampshire PUC's Final Restructuring Order interprets this directive to create a new $13.2 million bill payment assistance, modeled after a Percentage of Income Payment approach.[2] The program will be funded by usage-based rates charged by all distribution utilities.

5. **Rhode Island:** Rhode Island's electric restructuring legislation declares that , "...in a restructured electrical industry the same protections currently afforded to low income customers shall continue." Section 39-1-1, Declaration of Policy. The current programs include special discount rates and Percentage of Income Payment programs. The costs of all these programs must be "...included in the distribution rates charged to all customers." Section 39-2.1.2(b).

6. **Maine:** The Maine restructuring legislation states, "In order to meet legitimate needs of electricity consumers who are unable to pay their electricity bills in full and who satisfy eligibility criteria for assistance, and

---

[2] A Percentage of Income Payment approach targets benefits to low income customers based on their household income and energy usage. Such programs attempt to equalize the percentage of household income required to pay for the customer's total electric bill, usually in the 5-10% range. The median income customer usually pays far less than 5% of their income on electricity. Families receiving financial assistance are often faced with electric bills that exceed 20-25% of their household incomes.

recognizing that electricity is a basic necessity to which all residents of the State should have access, it is the policy of the State to ensure adequate provision of financial assistance." Section 3214. Existing ratepayer assistance programs must continue as a minimum at current expenditure levels, approximately .5% of jurisdictional electric utility revenues. The program costs will be included in distribution rates charged to all customers. Future funding will be set based on "aggregate customer need." Section 3214(2)(B). The Legislation also provides for the possible future funding of these programs by the General Fund (i.e., taxes), at which time the PUC must reduce the funding provided through distribution company rates.

7. **Montana:** The Montana electric restructuring legislation mandates a universal service policy, "The public interest requires the continued protection of consumers through: *** (d) continued funding for public purpose programs for: (i) cost-effective local energy conservation; (ii) low-income customer weatherization; (iii) renewable resource projects and applications; (iv) research and development programs related to energy conservation and renewables; (v) market transformation; and (vi) low income energy assistance." Section 2. These mandates will be funded by revenues equal to 2.4% of each utility's annual retail sales revenue, of which 17% of the fund must be allocated to energy assistance and weatherization. A Transition Advisory Committee will make recommendations for the implementation of a statewide universal service system benefits charge and energy assistance funds prior to 1/99. By 11/98 the Committee must submit recommendations concerning the provision of low income assistance by all energy providers, thus potentially expanding the program from just electric companies to all energy providers in the state.

8. **Oklahoma:** Oklahoma adopted a general restructuring bill in 1997 which called for customer choice by 2002 and authorized the Oklahoma Corporation Commission to adopt recommendations for, among other topics, "Minimum residential consumer service safeguards and protections shall be ensured including programs and mechanisms that enable residential consumers with limited incomes to obtain affordable essential electric service, and the establishment of a default provider or providers for any distribution customer who has not chosen an alternative retail electric energy supplier." Section 4(9). The legislation authorized a distribution access fee to cover the normal costs associated with providing distribution services, and to include social costs. In 1998, the Legislature

adopted SB 888 which addressed many specific issues and programs based on recommendations from the Commission, but delayed final decisions with respect to consumer issues, including a public benefits charge, until a Task Force report is completed in August, 2000.

9. **Nevada:** The Nevada PUC is directed to adopt regulations to implement electric restructuring and must, "Provide effective protection of persons who depend upon electric service." Section 2. The legislation does not specifically require or discuss universal service or low income programs.

10. **Illinois:** The Electric Service Customer Choice and Rate Relief Law of 1997 (HB0362, eff. December 16, 1997) does not offer residential customers the right to choose an alternative supplier until 2002, but rate reductions (15% for the larger utilities) for all residential customers will take effect beginning in August, 1998. The legislation mandates a per customer monthly charge of $.40/month for residential gas and electric customers which will be included in the monthly customer charge billed by distribution utilities. Other flat monthly fees are also specified for all other non-residential customers. This Supplemental Energy Assistance Fund is estimated to raise $76 million annually for energy assistance funding for low-income customers and 10% of this fund is mandated for energy efficiency measures. The funding will be directed to the State's Energy Assistance Program which currently delivers the LIHEAP and federally-funded Weatherization Assistance Programs. In the short term, the funds will be used to primarily supplement the LIHEAP grants, but the long term plan for this funding includes design and implementation of new programs, particularly those targeted to energy efficiency. This funding source is permanent and marks the first significant state funding for low income energy assistance in Illinois.

11. **Connecticut:** Electric restructuring legislation was adopted on April 29, 1998 (Public Act No. 98-28). Among the findings of the General Assembly are that, "The provision of Affordable, safe and reliable electricity is key to the continued growth of this State and to the health, safety and general welfare of its residents..." Furthermore, the legislation specifically authorized "...public policy measures under current law, including, but not limited to, those protecting customers under the winter moratorium and hardship provisions, as well as conservation measures and incentives for using renewable energy sources, should be preserved." Finally, "...a restructured electric market must provide adequate safeguards to assure universal service and customer service protections." Throughout

the legislation the specific customer protection rules relating to winter-based restrictions on termination of service, liberal payment plans, continued service during medical emergency, and others are made applicable to competitive suppliers. If suppliers document a loss of revenue due to compliance with these provisions, it may seek reimbursement from the electric distribution utility who in turn is reimbursed by means of a Systems Benefits Charge. The legislation authorizes a SBC to recover costs for a wide variety of public purpose programs, including existing low income programs, energy management and weatherization programs and the previously described consumer protection rules. The Department of Public Utilities will determine the amount of the charge which must be imposed on all customers in an equitable manner.

12. **West Virginia:** H.B. 4277 (March 14, 1998) requires the Public Service Commission to submit a deregulation plan to the Legislature for its future approval. As part of its consideration of the plan, the PSC is required to secure the involvement of a wide range of interests, including specifically " ...groups representing low income persons and the working poor, including the West Virginia community action directors association..." The Commission must submit findings which determine that the deregulation plan. "Preserves universal electric service at reasonable rates", and " Addresses and maintains adequate protections for low-income customers and gives meaningful consideration to the development of funding mechanisms to protect senior citizens and other persons on fixed incomes, low income persons and the working poor..."

13. **New York:** The New York Public Service Commission is proceeding to implement retail competition without legislation. The Commission has issued generic policy decisions concerning electric competition and has stated its support for universal service and low income programs, but has deferred to the individual utility cases to determine the program design and funding level. The Commission has stated that such programs must remain the responsibility of the distribution companies as part of their overall obligation to provide "last resort" services to all customers. The first restructuring case to reach the Commission, a negotiated settlement with Consolidated Edison and numerous parties, contains a provision that creates a non-bypassable charge to fund low income assistance and energy management programs. As part of the settlement, 10% of the SBC funds must be used for low income energy efficiency programs, estimated at approximately $3 million per year. The Commission approved this

settlement on September 23, 1997 (Case 96-E-0897). On July 2, 1998, the Commission issued an order establishing a Systems Benefit Charge for energy efficiency, research and development, environmental protections and low income programs (Case 94-E-0952). The Commission authorized the collection of a $234.3 million statewide fund to be administered by the New York State Energy Research and Development Authority. Of this amount, 13% is allocated to low income programs and the balance to energy efficiency and research and development activities.

14. New Jersey's Electric Discount and Energy Competition Act (Assembly Bill 16, eff. February 10, 1999) contains a Legislative policy to "Ensure universal access to affordable and reliable electric power and natural gas service." (Section 2(a)(4)). The Act authorizes a Social Benefits Charge to recover the costs of social programs, which the utilities are directed to continue in their current form unless modified by the Board of Public Utilities. The SBC must be recovered from all ratepayers in a non-bypassable charge. These social programs include demand side management programs, nuclear decommissioning, consumer education and manufactured gas plant remediation costs. In addition, the Act also authorizes the Board to establish a Universal Service Fund. The legislation gives the Board discretion to create new or expand current programs ("which social programs shall be provided by an electric public utility as part of the provision of its regulated services which provide a public benefit") and allows for the coordination of programs and funds appropriated for LIHEAP and other tax-supported state financial assistance programs targeted to utility ratepayers.

15. Maryland enacted An Act Concerning Electric Industry Restructuring in April, effective July 1, 1999 (House Bill 703). Section 7-512.1 requires the Public Service Commission to create a Universal Service Program to assist electric customers with an annual income at or below 150% of the federal poverty level. The program will be administered by the Dept. of Human Resources through the Maryland Energy Assistance Program. At a minimum, the program must include bill payment assistance, low-income weatherization and the retirement of arrearages. All customers (and all customer classes) must contribute to the fund by means of a non-bypassable charge included in electric utility bills. For the first three years the program will be funded at a level of $35 million, with the level of need in subsequent years reflected in a Commission recommendation to the Legislature.

16. **Virginia** enacted more detailed electric restructuring legislation in 1999, Senate Bill 1269, Electric Utility Restructuring Act (Chapter 411, effective July 1, 1999). The Legislation includes a rate cap for a time period that varies by utility. Choice will be phased in beginning January 1, 2002 through January 1, 2004. **The bill does not include** any specific authorization for universal service or low income programs.

17. **Arizona's** electric restructuring effort has been marked by significant controversy and legal challenge. In 1996 the Arizona Corporation Commission adopted rules designed to phase in customer choice for the investor owned utilities over which the Commission has jurisdiction. These rules have been subsequently withdrawn and are in the process of revision by a newly appointed majority at the ACC. Meanwhile, the Legislature enacted retail restructuring legislation for the public power districts, over which the ACC has no jurisdiction, in 1998 (H.B. 2663). That legislation does not specifically authorize universal service programs. but the ACC rules under consideration do require utilities to fund such programs by means of a public benefits charge sufficient to fund current low income, DSM, environmental, renewables and nuclear plant decommissioning programs. A Low Income Working Group recommended consensus proposals in 1998.

18. **Delaware** adopted electric restructuring legislation effective March 31. 1999 (House Bill 10). Competition will be phased in beginning in late 1999 with industrial customers and residential customers over an 18-24 month period. A 7.5% rate cut is mandated for Delmarva's residential customers. The legislation authorizes a $.000095 per kWh for a "low income fund", to be administered by the Department of Health and Social Services and used to fund low income fuel assistance and weatherization programs within the Delmarva service territory.

19. **Arkansas** adopted the Electric Consumer Choice Act of 1999 (Senate Bill 791, April, 1999). Choice is mandated for investor owned utilities by January 1, 2002. There is no specific mandate for universal service or low income programs and policies.

20. **New Mexico's** electric restructuring legislation ("Electric Utility Industry Restructuring Act of 1999", Senate Bill 428, March, 1999) declares that, " the public interest requires the continued protection of retail customers through the licensing of electric suppliers, the provision of information to customers regarding electric service, service reliability and quality and the

availability of service for all retail customers" and "residential and small business customers are least likely to benefit from the restructuring of the electric industry and need special protection to help ensure their participation in any benefits of competition." Section 2(A)(7) and (8). The new law authorizes a System Benefits Charge for each distribution utility in an amount of $.0003 per kWh to fund an Electric Industry System Benefits Fund. The Fund will be used for $500,000 for low income energy assistance, $500,000 for consumer education programs, and $4 million to encourage the use of renewable energy technology.

21. Texas adopted electric restructuring legislation in late May, 1999 (SB7, effective September 1, 1999). This legislation requires the PUC to adopt programs to assist low-income customers, which programs must include reduced electric rates and targeted energy management services to be delivered in coordination with existing weatherization programs. The rate reduction must be a minimum of 10% (up to 20% if there is sufficient funding). The Commission must also consider automatic enrollment options based on eligibility of programs delivered by the Dept. of Human Services. Low-income customers are defined as those with a household income of 125% or less of federal poverty guidelines or who receives food stamps or medical assistance. These programs will be funded by a System Benefits Fund (which will also fund customer education programs) paid by all customers. The initial fee must not exceed $.65 per MWH and allocated to customers based on their usage.

ENERGY ASSISTANCE FOR LOW-INCOME HOUSEHOLDS
SERVICE PROVIDER QUESTIONNAIRE RESULTS
Appendix D
November, 1999

Entity	Program Name	Assistance Type	Funding Source(s)	Administration	Assistance Provided (# of customers)	Assistance Provided (dollar amounts)	Unmet Needs
Federally Funded Programs							
Dept. of Social Services	Low-Income Home Energy Assistance Program (LIHEAP)	Bill payment and crisis assistance (heating and cooling)	Federal (DHHS)	Coordinated between state and local DSS agencies	98-99---84,068 h.h.	98-99 $29,379,398.00 97-98 $20,406,965.00 96-97 $23,595,601.00	N/A
Dept. of Housing and Community Development	Weatherization Assistance Program (WAP)	Improvements to homes to make them more energy-efficient	Federal (DOE)	Statewide admin. by DHCD; contracted to sub-grantee organizations	98-99----3,000 aprox.	98-99 $ 6,648,655.00 97-98 $ 4,941,258.00 96-97 $ 5,886,857.00	N/A
Emergency Food and Shelter National Board (EPSP)	Emergency Food & Shelter Program (National Board of American Red Cross, United Way, Salvation Army, United Jewish Comm.)	General emergency assistance, but includes utility assistance (limited to one month's past due bill)	Federal (FEMA)	Local boards provide National Board with eligible agencies, National Board pays local jurisdictions directly	N/A	**99 $ 418,297.00 98 $ 484,641.62	N/A
Investor Owned Electric Utilities							
Allegheny Power	Community Energy Fund	Bill payment assistance and some weatherization	Voluntary customer contributions, with Allegheny 50% match	Community Energy Fund agencies determine eligibility and Allegheny credits accounts	98-99----1,389 bills 97-98----1,403 bills	98-99 $ 154,404.00 97-98 $ 131,505.00	N/A
AEP	Neighbor-to-Neighbor	Bill payment	Voluntary customer contributions solicited November through February, AEP match up to $37,500	Eligibility determined by local DSS agencies. DSS authorizes deductions from neighbor to neighbor account.	98-99----1,396 h.h. 97-98----1,125 h.h. 96-97----1,481 h.h.	98-99 $ 106,648.98 97-98 $ 146,736.77 96-97 $ 135,809.15	N/A

Entity	rogram Name	Assistance Type	Funding Source(s)	Adminis on	Assistance Provided (# of customers)	Assistance Provided (dollar amounts)	Unmet N s
Virginia Power	Energy Share	Crisis bill payment (fuel-neutral) limited to $500 once a season Dec through May	Voluntary contributions from customers admin. costs paid by VP	Administration contracted out to various organizations including Salvation Army and United Way	98-99----6,439 h.h. 18,794 people 97-98----6,336 h.h. 19,229 people 96-97----6,149 h.h. 17,971 people	98-99 $1,282,288.00 97-98 $1,254,601.00 96-97 $1,155,157.00	98-99 752 people 97-98 2,452 people 96-97 2,884 people
Cooperatives							
Northern Virginia	Operation Round Up	Bill payment	Voluntary contributions from customers	Funds given to local charities and community service agencies	98-99------238 h.h.	99(YTD) $ 27,000.00 98 $ 36,000.00 97 $ 24,000.00 96 $ 37,237.00	Funds met all requests received. $14,800.00 additional funds donated to local community org.
Shenandoah Valley	SVEC Energy Assistance	Bill payment	Voluntary customer contributions (admin. costs borne by SVEC)	Donations given to Salvation Army and Shenandoah DSS	N/A	98 $ 6,245.00 97 $ 5,099.00 96 $ 6,867.00	N/A
Utilities							
City of Bristol (municipal electric)	Help Your Neighbor	Bill payment	Voluntary customer contributions (with city match)	N/A	N/A	N/A	N/A
Charlottesville Gas	Charlottesville Gas Assistance Program	Bill payment	Block grants, city funds, citizen donations	Administered by city's utility billing dept. Benefits contingent upon payment match from customer	98-99------147 97-98------158 96-97------162	98-99 $ 32,888.00 97-98 $ 32,827.00 96-97 $ 31,597.00	N/A
City of Harrisonburg (municipal electric)	EnergyShare	Bill payment	Voluntary customer contributions	N/A	N/A	N/A	N//A

Entity	Program Name	Assistance Type	Funding Source(s)	Administration	Assistance Provided (# of customers)	Assistance Provided (dollar amounts)	Unmet Needs
Investor Owned Gas Utilities							
Columbia Gas	HeatShare	Bill payment	Voluntary customer contributions, with Columbia Gas match	Salvation Army	N/A	N/A	N/A
Virginia Natural Gas	Energyshare (not related to Virginia Power)	Bill payment (crisis)	Voluntary customer contributions; VNG match plus provides $10,000.00 in admin. Costs	Salvation Army	N/A	98-99 $ 58,375.56 plus $10,000.00 given to Salvation Army	N/A
Washington Gas	Washington Area Fuel Fund (WAFF)	Bill payment (cut off notice) (maximum of $400.00 per customer per year) Fuel-neutral	Voluntary customer contributions (year-round)	Must be used as last resort, Salvation Army distributes and determines eligibility Jan-June	99--------1,179 98--------1,268 97--------1,126 96--------1,368	99 $303,000.00 98 $287,766.00 97 $293,376.00 96 $335,583.00	After closing date, usually get 20% more requests 50% of assisted are under served
Municipal Gas Utilities							
Arlington County/AMEN	N/A	Bill payment	AMEN and County both contribute funds	County social workers screen referrals, then request made to organ	N/A	N/A	N/A
Brunswick County	State/Local Block Grant Emergency Fund	Bill payment Budget counseling Referral services	SLBG grant money emergency funds came from donations	State/Local Welfare Board determines eligibility local DSS distributes	* 98--------120 97---------99 96--------105	*98 $ 21,841.00 97 $ 17,450.00 96 $ 18,664.00	N/A
Loudoun County/LINK	N/A	Bill payment (cutoff notice)	LINK (nonprofit organization)	County DSS determines eligibility and sends money given by LINK to vendors	N/A	N/A	N/A

Entity	Program Name	Assistance Type	Funding Source(s)	Admir tion	Assistance Provided (# of customers)	Assistance Provided (dollar amounts)	Unmet ds
Manassas City and SERVE, Inc.	Local Energy Assistance Program	Bill payment (directly to vendor) electric, gas, oil, kerosene, deposits	$4000.00--city $1333.00--SERVE	Annual contract between city and SERVE. Program runs 12/1 - 3/31. SERVE determines eligibility based on agreed upon criteria	98----------42 h.h. 159 persons 97----------46 h.h. 172 persons 96----------52 h.h. 187 persons	98 $ 5,349.61 97 $ 5,333.00 96 $ 5,381.17	N/A
Nelson County	Special Welfare Funds	Any emergency including bill payment	Proceeds from sale of donated furniture	Local DSS office	*99---------10 so far 98----------6 97----------9 96----------6	*99 $ 1,567.55 98 $ 3,536.73 97 $ 1,923.75 96 $ 1,148.83	N/A
Radford City	Ministerial Fund	Bill payment ($50.00 for bill with cut off notice)	Donations from local churches	Local DSS office	N/A	N/A	N/A
Roanoke County	Oil Distribution	Oil payments in 100-gallon increments	Donations from oil distributors	Local DSS workers determine eligibility	N/A	N/A	N/A
Spotsylvania County	LIHEAP	see DSS	County supplements federal LIHEAP monies (37.5% of funds come from county)	see DSS	N/A	98 $ 3,076.14 98 $ 7,273.82 98 $ 5,090.52	N/A

* Amount not limited to energy assistance.

** Amount based on 25% of annual allocation.

Energy Assistance for Low-Income Households

APPENDIX E

Charitable Organization Programs

Charity Name	Address	Amount of Assistance Requested	Amount of Assistance Provided
Bainbridge Community Center	1400 Perry Street, Richmond	N/A	Answering machine says: "At this time we have no money for utilities."
Basilica of St. Mary	1000 Holt Street, Norfolk	At least 3 or 4 requests per day.	No funds to provide assistance.
Blessed Sacrament Church	170 Painter Street, Norfolk	No record of requests.	N/A
CARITAS	P.O. Box 25790 Richmond	No record (probably 2-3/wk).	Does not provide utilities assistance.
Catholic Charities of Hampton Roads	4855 Princess Anne Road, Virginia Beach	8--10 calls/day	Try to provide last $50--100 of the bill. Utility assistance for ~73 families in 1998.
The Daily Planet	517 Grace St., Richmond	N/A	No utilities asst.
HELP, Inc.	P.O. Box 4066 Hampton	YTD (inc. rent, but mostly utilities): 297 families,$55,964.67	79 families ($3871.63) Sept. 99 asst.: 6 families ($138.91)
Holy Trinity Church	155 W. Government Ave., Norfolk	More demand than they can fulfill.	Actually provided energy assistance for 146 families in 1998; $5535.00.
OASIS Charitable Ministry	1020 High Street, Portsmouth	Receive at least 10 calls/day. (About 60 active files now)	$250/month, +$1000/yr grant from Richmond diocese + ~$500/yr from other church group disbursements.
PARC, Inc.	P.O. Box 1183, Portsmouth	20-45 calls/day.	Org. contributes ~$2000/mo (1months bill/family if family produces the balance of the bill) ~15-20 families/mo receive asst.
Prison Family Support Services	1 North Fifth Street Suite 400, Richmond	~ 25% of requests are for utilities (20-25/yr)	Does not provide fin. asst. directly, but will help locate community resources.
St. Columbia Ecumenical Ministries, Inc.	2114 Lafayette, Norfolk	Lots of demand.	No funds for assistance.
St. Joseph Church	P.O. Box 2006 Petersburg	N/A	July 1998--June 1999, assisted 355 families/855 individuals.
St. Jude Church	1014 Clay Street, Franklin VA	Requests come through Soc. Serv. (for verification). No current estimate of requests.	Annual average assistance provided ~$1500.
St. Theresa Church	709 Buffalo Street, Farmville	Lots of requests	Asst. usually through Farmville Ministerial Assoc.
William Byrd Community House	224 South Cherry Street, Richmond	~200/mo	353 indiv. undup.(1 time asst.) 448 indiv. dup. (more than 1)

LOW-INCOME ELECTRIC RATE AFFORDABILITY IN VIRGINIA

Funding Low-Income Assistance

Prepared By:

Roger D. Colton
Fisher, Sheehan & Colton
Public Finance and General Economics
34 Warwick Road, Belmont, MA 02478-2841
617-484-0597 *** 617-484-0594 (FAX)
rcolton101@aol.com (E-MAIL)

November 1998

Estimated Cost of Rate Affordability Program
General Use Customers
(50% participation rate)

Poverty Range	1	2	3	4	5	6	7	8
	Total	50% Participation	Income Mid-Point	Low-Income Bill	% of Inc. Pyt	HH Payment	Credit	
							Per HH	Aggregate
$0 - $1999	14,620	7,310	$1,000	$850	5%	$50	$800	$5,848,000
$2000 - $3999	26,875	13,438	$3,000	$850	5%	$150	$700	$9,406,600
$4000 - $5999	68,155	34,078	$5,000	$850	5%	$250	$600	$20,446,800
$6000 - $7999	36,550	18,275	$7,000	$850	6%	$420	$430	$7,858,250
$8000 - $9999	24,295	12,148	$9,000	$850	6%	$540	$310	$3,765,880
$10,000 - $11,999	18,705	9,353	$11,000	$850	6%	$660	$190	$1,777,070
$12,000 - $14,999	14,835	7,418	$13,500	$850	7%	$945	$(95)	$0
$15,000+	11,180	5,590	$15,000	$850	7%	$1,050	$(200)	$0
Total Cost								$49,102,558

NOTES:

Column 1: 215,000 low-income customers distributed in proportion to poverty percent for State.
Column 2: Assumption based on experience with other states and programs
Column 3: Mid-point of income ranges.
Column 4: Explained in text.
Column 5: Percentage of income payment by customer.
Column 6: Column 5 x Column 3.
Column 7: Column 4 - Column 6.
Column 8: Column 7 x Column 2.

Estimated Cost of Rate Affordability Program
Heating
(50% participation rate)

Poverty Range	1	2	3	4	5	6	7	8	9
	Total	50% Participation	Income Mid-Point	Low-Income Bill	% of Inc. Pyt	HH Payment	LIHEAP	Credit	
								Per HH	Aggregate
$0 - $1999	14,620	7,310	$1,000	$400	3%	$30	$180	$190	$1,388,900
$2000 - $3999	26,875	13,438	$3,000	$400	3%	$90	$180	$130	$1,746,940
$4000 - $5999	68,155	34,078	$5,000	$400	3%	$150	$180	$70	$2,385,460
$6000 - $7999	36,550	18,275	$7,000	$400	4%	$280	$180	$0	$0
$8000 - $9999	24,295	12,148	$9,000	$400	4%	$360	$180	$0	$0
$10,000 - $11,999	18,705	9,353	$11,000	$400	4%	$440	$180	$0	$0
$12,000 - $14,999	14,835	7,418	$13,500	$400	5%	$675	$180	$0	$0
$15,000+	11,180	5,590	$15,000	$400	5%	$750	$180	$0	$0
Total Cost									$5,521,259

NOTES:

Column 1: 215,000 low-income customers distributed in proportion to LIHEAP participation for State.
Column 2: Assumption based on experience with other states and programs
Column 3: Mid-point of income ranges.
Column 4: Explained in text.
Column 5: Percentage of income payment by customer.
Column 6: Column 5 x Column 3.
Column 7: Average statewide LIHEAP heating benefit.
Column 8: Column 4 - Column 6 - Column 7.
Column 9: Column 8 x Column 2.

Total Annual Non-Governmental Dollars Needed to Address
Low-Income Electric Needs in Virginia
(million $'s)

	Fuel Assistance	Weatherization	Total
Annual Cost	$54.6 /a/	$10.5 /b/	$65.1

NOTES:

/a/ Assumes a cost of $49.102 million for general use and $5.521 for electric space heating.
/b/ Assumes 0.20 percent of 1995 gross revenues.

Total Annual Cost Apportioned Amongst Customer Classes				
			Customer Class Responsibility	
Customer Class	Total Program Cost	Cost per kWh /a/	Dollars	Percent of Total
Residential	$65,100,000	$0.000765	$25,606,694	39.33%
Commercial	$65,100,000	$0.000765	$25,299,156	38.86%
Industrial	$65,100,000	$0.000765	$14,194,150	21.80%
Total			$65,100,000	99.99%

NOTES:

/a/ It is assumed that the reported number of "customers" refers to accounts and not to "meters."

/b/ The number of electric "customers" provided by (1) *Financial Statistics of Major U.S. Investor-owned Electric Utilities: 1995*, Energy Information Administration, U.S. Department of Energy (December 1996); and (2) *Financial Statistics of Major U.S. Publicly Owned Electric Utilities: 1995*, Energy Information Administration, U.S. Department of Energy (July 1997).

/c/ Industrial customers with loads in excess of 10 mW assumed to be 1.5% of total industrial customer class.

An Accounts Charge as an Alternative Means of Collecting Low-Income System Benefits Charge				
	No. of Accounts	Months in Year	Monthly Meter Chg	Total Revenue
Residential	2,890,609	12	$0.75	$26,015,481
Commercial /a/	368,174	12	$6.00	$26,508,528
Industrial < 10 mW	6,143	12	$180.00	$13,268,880
Industrial > 10 mW	94	12	$400.00	$451,200
Total Budget				$66,244,089

NOTES:

/a/ Includes institutional customers.

APPENDIX G

SECTION 56-590

1. Low-Income Rate Affordability and Energy Efficiency Funding.

A low-income rate affordability program and a low-income energy efficiency program shall be created. The purpose of the rate affordability program is to reduce the cost of electricity for low-income Virginia consumers to a predetermined percentage of total household income. The purpose of the energy efficiency program is to reduce the consumption of electricity by low-income Virginia consumers through energy efficiency improvements.

a. Definitions. For purposes of this subsection,

(i) "Commercial customers" include any business establishment not engaged in transportation or manufacturing or other types of industrial activity, but including school dormitories, hospitals and military barracks and other non-industrial and non-residential customers.

(ii) "Commission" means the Virginia state corporation commission.

(iii) "Consumer" means low-income, end-use consumer.

(iv) "State LIHEAP agency" means the state agency responsible for administering fuel assistance funds provided through the federal Low-Income Home Energy Assistance Program or its successor.

(v) "State weatherization agency" means the state agency responsible for administering low-income weatherization funds through the federal Weatherization Assistance Program or its successor.

(vi) "Industrial customers" include manufacturing industries along with mining, construction, agriculture, fisheries and forestry.

(vii) "Residential customers" include all private residences, whether occupied or vacant, owned or rented, including single-family homes, multifamily housing units and mobile homes, but not including school dormitories, hospitals and military barracks.

b. Eligibility. Consumers living with a household income at or below one hundred fifty percent of the federal poverty level, as determined annually by the United States department of health and human services, shall be eligible to receive assistance under this section.

c. Program Benefits.

(1) Rate Affordability Program. Agencies contracted to operate the program shall qualify each consumer for participation in the rate affordability program and shall notify the utility providing distribution service of the consumer's monthly fixed credit and the duration for which the fixed credit is authorized. The fixed credit shall be that amount necessary to reduce the consumer's total electric bill, based upon the prior year's billing amount, to an affordable percentage of income in accordance with rules adopted by

the state LIHEAP agency. The affordable percentage of income shall be tiered to reflect the ratio of the consumer's household income to the federal poverty level, with greater assistance provided to those at lower poverty levels. A reasonable proportion of rate affordability benefits shall be reserved for crisis intervention assistance.

***Program benefits shall** be distributed as a monthly fixed credit applied toward a consumer's distribution bill for provision of electricity. The company billing the end-use consumer shall subtract the amount of the credit from the amount of the consumer's bill each month. If the fixed credit exceeds the consumer's distribution bill, the excess shall be applied toward the cost of the consumer's competitive electric services. The distribution utility shall bill the appropriate operating agency for the sum of the total amount of fixed credits provided to the consumer and shall be reimbursed for all credited amounts. Only those credits that are authorized in accordance with this subsection shall be reimbursed.*

(2) Energy Efficiency Program. Energy efficiency funding eligibility shall be prioritized based on largest kilowatt hours of annual use. Moneys allocated to the low-income energy efficiency program may be used for any of the following:

(a) Space heating as allowed pursuant to the federal weatherization assistance program.

(b) Non-space heating as determined by the Virginia weatherization assistance program as necessary and appropriate to provide maximum comprehensive cost-effective energy efficiency treatment to low-income households.

(c) Health and safety corrections related to end use energy equipment for heating, cooling and domestic hot water, including adequate electrical service to equipment.

(d) Emergency repairs to space heating systems as determined appropriate by the Virginia weatherization assistance program.

d. The Legislative Transition Task Force, with input from the State Corporation Commission, shall establish a charge sufficient to fund a program budget equal to the sum of the rate affordability budget developed by the state LIHEAP agency pursuant to section (e) below plus the energy efficiency budget developed by the state weatherization agency pursuant to section (f) below, and shall recommend to the General Assembly, no later than December 1, 1999, legislation to establish said charge.

All moneys collected pursuant to this charge shall be remitted to the Treasurer of the Commonwealth. The Treasurer shall make disbursements from this fund as appropriate. The unencumbered or unobligated moneys remaining at the end of

any fiscal year from the appropriations made in subsection ___ shall not revert but shall be available for expenditure during subsequent fiscal years until expended for the purposes for which originally collected.

When determining the annual charge, the ratio of total dollars collected from each customer class to the total dollars collected by all classes shall be reasonably equal to the ratio of total kilowatthours of consumption for each customer class to the total kilowatthours of consumption for all classes.

e. *Rate Affordability Program Administration and Budget.*

(1) *The state LIHEAP agency shall administer the rate affordability program. This administration may include contracting with a statewide third-party nonprofit agency or with local agencies to enroll low-income participants in the program, provide outreach and customer education, notify consumers and answer consumer inquiries, and keep records relating to the numbers of program participants and program expenditures.*

(2) *The state LIHEAP agency shall develop a budget for the programs created in this subsection on an annual basis. The budget shall be based on participation rates from prior years and the level of credits necessary to maintain affordable energy burdens.*

(3) *The level of funding allocated for administration shall not exceed ten percent of the amounts allocated for the total rate affordability funding.*

f. *Energy Efficiency Program Administration and Budget.*

(1) *The state weatherization agency shall administer the energy efficiency program. This administration shall include contracting with local agencies, enrolling low-income participants in the program, providing outreach and customer education, notifying consumers and answering consumer inquiries, and keeping records relating to the numbers of program participants and program expenditures.*

(2) *The state weatherization agency shall develop a budget for the programs created in this subsection on an annual basis. Energy efficiency program expenditures shall be based on the level of funding necessary to deliver adequate energy efficiency as defined in sub-section (c)(2) above to participating households, provided that energy efficiency funding shall not exceed twenty-five percent of total low-income affordability funding.*

(3) *The level of funding allocated for administration shall not exceed ten percent of the amounts allocated for the total rate affordability funding.*

g. *Each distribution utility shall report to the commission annually, the number of end-use accounts in its distribution service territory for the immediately preceding year.*

h. *Low-income rate affordability and energy efficiency assistance shall be distributed statewide without consideration of the source of revenues funding the rate affordability assistance program.*

i. *Every other year, the state LIHEAP agency shall do the following:*
   (1) evaluate the performance and effectiveness of the low-income affordability assistance program through use of an independent third party. Upon completion, the evaluation shall be submitted to the general assembly.
   (2) develop a low-income needs and resources plan for the state which shall include the following:
      (a) a statewide assessment of the need for low-income rate affordability assistance and energy efficiency assistance;
      (b) an identification of the public and private resources available to meet the identified needs; and
      (c) recommendations on how to coordinate the available resources to most effectively address the identified needs, taking into account the difference between short- and long-term effectiveness.
   Upon completion, the plan shall be submitted to the general assembly.

DISCUSSION

The above language sets forth the Council's rate affordability proposal. It imposes a charge that will fund both energy efficiency and rate discounts for low-income consumers. Responsibility for administering the rate affordability program is given to the state LIHEAP agency (i.e., the Department of Social Services). Responsibility for administering the energy efficiency program is given to the state weatherization agency (i.e., the Department of Housing & Community Development).

The Legislative Transition Task Force, with input from the State Corporation Commission, is given the responsibility for developing the mechanism for collecting the funds necessary to fund the rate affordability and energy efficiency programs. The budgets for each program are to be developed annually by the respective administering agencies. It is anticipated that the funding mechanism will involve either an accounts charge or a kWh charge. While a kWh charge would seem to be "fairest" means of collecting such funds, a meters charge would cushion the impact of the charge on large users, including large industrial users. Whatever the funding mechanism, the inter-class responsibility *shall* be reasonably equal to the proportion of that each class' consumption has to total consumption for all classes combined.

The Council's calculations show that a kWh charge of $0.000765/kWh would fund the rate affordability and energy efficiency programs. A monthly accounts charge as follows would generate the equivalent funds while maintaining the required inter-class ratios:

1. 80 cents for residential accounts.
2. six dollars and 25 cents for commercial accounts.
3. Two hundred sixty dollars for industrial accounts with loads at or below ten megawatts.
4. Five hundred dollars for industrial accounts with loads above ten megawatts.

The two funding mechanisms above would generate functionally equivalent budgets. The Council expresses no preference between the two at this time.

State Electric Restructuring Laws -- Provisions Addressing Energy Efficiency and Renewables Programs

	Energy Efficiency		Renewable Energy		
	Efficiency Charge	Weatherization Wires Charge	Wires Charge	Portfolio Standard	Generation Disclosure
Arizona				PUC rule	
Arkansas					
California	√		√		√
Connecticut	√		√	√	√
Delaware	√	√	√		PUC authorized to require
Illinois	√		√		√
Maine	√			√	√
Maryland	√	√		under study	√
Massachusetts	√		√	√	√
Montana	√	√	√		under study
Nevada				√	√
New Hampshire	√		√		√
New Jersey	√		√	√	√
New Mexico		√	√		√
Ohio	√	√			√
Oklahoma					
Oregon	√	√	√		√
Pennsylvania	√	√	√	addressed in individual cases	under study
Rhode Island	√	√	√		√
Texas		√		√	√

\\Dlas1\sysdata\...\Meetings\chart.doc

Selected Provisions of States' Restructuring Legislation
Energy Efficiency and Renewable Energy Programs

Arizona - HB 2663

The PUC's Retail Electric Competition Rules (1996) include a Solar Portfolio Standard.

Arkansas - SB 791

Restructuring bill does not address renewables or energy efficiency programs. Section 23-19-401 provides that the Commission shall evaluate the impact of competition on renewable energy development and on low income and energy efficiency programs.

California - HB 1890

The Public Utility Commission must require each electric corporation to identify separate rate components to fund specified yearly amounts for (i) energy efficiency and conservation activities, (ii) public interest research and development, and (iii) renewable resource technologies. Separate line charges are required to be collected for low income assistance programs.

	Energy Efficiency	Renewable Energy	R & D
$ millions	218	135	62
mills/kWh	1.3	0.8	0.4

California does not have a renewables portfolio standard.

California is developing a label standard to cover generation mix, emissions, and prices.

Connecticut - H.B. 5005

The restructuring act provides for a "conservation and renewable energy charge," consisting of (i) a conservation and load management charge (§ 33) and (ii) a renewable energy investment charge (§ 44). The conservation and load management charge is levied at 0.3 cents (3 mills) per kilowatt-hour. The renewable energy investment charge will be assessed at a rate of not less than one-half of one mill per kWh, increasing to 0.75 of a mill by July 1, 2002 and to 0.1 cents by July 1, 2004.

The bill establishes a Renewables Portfolio Standard that requires a total of 13 percent of the electric energy sold after 2009 to be from renewable sources. Sales from Class I renewables (solar, wind, certain biomass, and fuel cells) must equal .5% per year in 1999, and increases to 3% by 2006 and by an additional 1% per year to 6% by 2009. Sales from Class II renewables (waste to energy, hydropower, and other biomass) must account for five percent by 2000, to increase to seven percent by 2009.

The state also created a Renewable Investment Fund for renewable energy investments.

	Energy Efficiency	Renewable Energy
$ millions	87	22
mills/kWh	3	0.75

Generation disclosure is included in the restructuring bill, without specifics.

The Department of Environmental Protection must develop emission standards for pollutants for generating plants serving the Connecticut market, whether they are located in the state or elsewhere. The standard for a pollutant goes into effect when adopted by three northeastern states having a total population of at least 27 million.

Delaware - Public Act 99-28

The act has public benefits charges for (i) energy efficiency incentive programs and (ii) low-income bill assistance and energy efficiency. There is also a provision for $250,000 from rates to go for customer education.

	Energy Efficiency	Renewable Energy	Low-income (inc. efficiency)
$ millions	1.5	0.25	0.8
mills/kWh	0.18	0.03	0.1

There is no renewable portfolio standard. Generation disclosure is not required by the act, but "may" be instituted by Commission rules.

Illinois - H.B. 362

Renewable Energy Resources Program will be administered by Dept. of Commerce and Community Affairs, to be used for grants, loans and other incentives for investment in renewable energy resources. Report will be made to the General Assembly on the use and potential of renewables. A "Renewable Energy Resources and Coal Technology Development Assistance Charge" will be assessed customers at flat rates of $.05/mo for residential, non-residential and gas customers, and $37.5/month for non-residential electric and gas customers.

Environmental protection: $100 million over 10 years for development of renewable energy resources and coal technology, $10 million in annual funding through surcharge on bills.

Energy Efficiency Trust Fund: As of 1/1/98, this trust fund will consist of the pro-rata share of $3 million based on kWh sales from each supplier.

	Energy Efficiency	Renewable Energy
$ millions	3.0	4.5
mills/kWh*	0.03	0.04

* mills/kWh equivalent includes revenue from both gas and electric

There is no renewable portfolio standard.

All electricity retailers are required to disclose generation mix and emissions.

Maine - HB 568

Each competitive provider must demonstrate that no less than 30 percent of its portfolio of supply sources is derived from renewable resources, starting in March 2000. Renewable resources are defined as total power production capacity of 100 mW or less and relying on fuel cells, tidal power, solar, wind, geothermal, hydroelectric, biomass, or municipal solid waste generators. PUC shall review the 30 percent requirement and make a recommendation for any change to the joint standing legislative committee no later than 5 years after the beginning of retail competition.

Fuel mix and emissions disclosure is required.

Utilities are required to implement energy conservation programs. Funding is provided by a statewide distribution charge of up to 1.5 mills per kWh. This charge is expected to produce $17.2 million per year.

Maryland

The restructuring act includes $34 million per year for a "Universal Assistance Fund" which includes energy efficiency assistance for low-income customers.

A non-bypassable wires surcharge of up to 0.15 mills/ kWh is assessed for general energy efficiency programs.

The Public Service Corporation is required to conduct a study of renewable portfolio standards, due February 1, 2000.

Generation disclosure (fuel mix and emissions disclosure) is required.

Massachusetts - HB 5117

Energy efficiency benefits charge assessed to all but municipal electric company customers for Demand Side Management over five years starting 3/1/98, starting at 3.3 mills per kWh in 1998, and declining to 2.5 mills per kWh by 2002. The charge will generate an estimated $150 million annually.

Renewables will be funded by annual rate averaging 1 mill per kWh. Funds would be deposited in "Massachusetts Renewable Energy Trust Fund." The charge will generate an estimated $50 million annually.

Minimum requirements for retail suppliers for new renewables: 1% of sales by 2003, or within one year of any renewable being within 10% of the avg. spot market price; an additional .5% per year through 2009 (for a total of 5%); and an additional 1% per year thereafter until a date determined by DOER. Hydro and municipal solid waste don't count toward new renewables requirement, but may count toward a portfolio standard to be determined by DOER for all renewables, including existing.

A study was ordered to be conducted by department of revenue on the following tax deduction options: customers purchasing renewable energy in excess of minimum requirements under renewables portfolio standard, could take tax deduction of 50% of above market price. Business customers would get 25% tax deduction. Individual or business purchasing energy efficiency equipment would be eligible for a 20% deduction up to $10,000. Businesses would be eligible for 10% up to $50,000.

Performance standards for fossil fuel plants will be drawn up by EPA with adoption by at least 3 other northeast states. The performance standards for fossil fuel plants must include at least one pollutant by 2003, or earlier if adopted by 3 other states. The state Dept. of Environmental Protection, in conjunction with the A.G. shall promulgate standards for any pollutant determined by the DEP to be of concern to public health, and produced in quantity by electric generation facilities.

Fuel mix and emissions disclosures are required. Member of New England Disclosure Project.

Montana - SB 390

Universal system benefits programs include cost effective local energy conservation, low-income customer weatherization, and renewables. Such programs are paid for with a universal system benefits charge assessed at the meter. Beginning 1/1/99 through 7/1/03, 2.4 percent of each utility's annual retail sales revenue for the calendar year ending 12/31/95, is the minimum annual funding level for total system benefits programs. The charges are expected to generate $14 million.

Customers with loads greater than 1000 kW pay a system benefit program charge equal to the lesser of $500,000, less credits, or .9 mills per kW hour x the customer's kWh purchases, less credits. Credits can be carried forward into future years. Customers are entitled to credits for expenditures on renewable energy or conservation-related activities that are part of internal utility programs or activities. Utilities must submit an annual summary report to PSC and transition advisory committee detailing activities relating to all system benefit programs. On or before 7/1/02, PSC and transition advisory committee shall reevaluate ongoing need for such programs and make future needs recommendation to legislature.

Of the system benefits charges collected, 17 percent must be used for low-income assistance programs, including weatherization. The balance may be used for other benefit programs such as energy conservation and renewables.

Montana does not have a renewables portfolio standard.

The Transition Advisory Committee will address the issue of generation disclosures.

Nevada - A.B. 366

The PUC shall establish portfolio standards for domestic energy that set forth the minimum percentage of the total electricity sold during each calendar year that must be derived from renewable energy resources. The renewable portfolio standards must require 0.2 percent of the total amount of electricity annually consumed by customers in this state as of 1/1/01 to come from renewables. This standard must be increased biannually thereafter by two-tenths of 1 percent of the total annual electric consumption until the standard reaches a total of 1 percent of the total amount of electricity consumed by 2009. The renewable electricity must be derived from not less than 50 percent renewable energy resources (wind, solar, geothermal, and biomass) and be derived from not less than 50 percent solar renewable energy systems. The Commission may establish a system of tradable renewable energy credits. This section does not apply to rural cooperatives.

Reporting requirements are established to ensure that all providers comply with the standards. A vertically integrated electric utility that has 9 percent of its electricity furnished by renewable energy resources on 1/1/97 is deemed to be in compliance until 1/1/05. Between 1/1/05 and 12/31/09, such a utility shall reach a total of one-half of 1 percent of the annual amount of electricity consumed, in annual increments of one-tenth of 1 percent, from solar energy resources. (Section 52, p. 22-23)

Public benefits programs are encouraged, but funding is not provided. The bill does not address energy efficiency programs.

Bills must contain information about price variability and generation mix.

New Hampshire - HB 1392

A non-bypassable, competitively neutral system benefits charge applied to distribution may be used to fund energy efficiency, research and development, and investments in new technologies, as determined by the PUC.

There is no renewables portfolio standard. The act acknowledges that over the long term, renewables can have significant environmental, economic, and security benefits, and that customers should be able to pay a premium for renewables. The bill provides funds to educate consumers on the benefits of renewable energy.

Member of New England Disclosure Project.

New Jersey - Assembly Bill 16

Full benefits charge will be 3.4 mills per kWh, half of which is to pay for new programs, and half is to provide funding for energy efficiency and renewables programs at the same levels as existing demand side management programs. 25 % of new funding must be for renewables. The total for new and existing funding is approximately $235 million/year.

(New funding only)

	Energy Efficiency	Renewable Energy
$ millions	87.5	29.5
mills/kWh	1.35	0.45

Under New Jersey's renewables portfolio standard, by January 2001, 0.5 % is to be from "Class 1"; by January 2006, it increases to 1.0%; and ramps up to 4% by 2012.

Generation disclosure is required for fuel mix and emissions.

New Mexico - SB 428

A benefits charge of 0.3 mills per kWh is required, to fund consumer education, low income energy efficiency (weatherization), and renewable energy promotion. The portion for renewables is estimated to generate $4 million per year.

Suppliers are required to offer renewables, but no portfolio standard is required.

Generation disclosure is required for fuel mix and emissions.

Ohio - SB 3

The Restructuring Law includes a charge for up to $15 million/ year for an "Energy Efficiency Revolving Loan Fund" of 0.1 mills per kWh. There is a separate Universal Service Rider covering both low income bill assistance and efficiency (weatherization) of 0.7 mills per kWh.

	Energy Efficiency	Low income (includes bills assistance and weatherization)
$ millions	15	100.0
mills/kWh	0.1	0.7

Generation disclosure is required for fuel mix and emissions.

There is no renewables portfolio standard.

Oklahoma - SB 500 (amended by SB 888 of 1998)

Restructuring bill does not address renewables or energy efficiency programs. Section 190.4 B 5 requires rates to be unbundled, and specifically provides that charges for public benefit programs whether authorized by statute or Commission, or both, shall be unbundled and appear in line item format on electric bills for all classes of consumers.

Oregon - SB 1149

A three percent public purpose charge, for a period of ten years from the date of direct access for nonresidential customers, is imposed. The bill also requires a one percent charge with no time limit for aluminum plants using over 100 megawatts per year. Sixty-three percent of the funds are earmarked for energy efficiency, 19 percent for renewable energy programs, and 18 percent for weatherization for low income families.

	Energy Efficiency	Low income weatherization	Renewable Energy
$ millions	31.5	9.0	9.5
mills/kWh*	1.0	0.3	0.3

* Equivalent converted from IOU revenues

The bill provides an additional public purpose charge of $10 million (once direct access is available to nonresidential customers) for low income bill assistance. The charge is allocated among consumers, but limited to no more than $500 per month per site. Consumers using one average megawatt in the prior year can earn credits against the charge for qualifying expenditures.

IOUs are to provide residential consumers with a options by October 1, 2001, including at least a market-based rate and a rate reflecting significant new renewable energy resources ("green rate."). There is no renewables portfolio standard.

A generation disclosure requirement includes fuel mix and emissions.

Pennsylvania - HB 1509

Restructuring law requires energy efficiency and low income assistance minimum funding at existing levels prior to deregulation ($10 million and $26 million, respectively). Exact levels are determined in individual utility cases. Energy efficiency funding includes some renewable programs. Twenty percent of the low income funding is for efficiency (weatherization).

	Energy Efficiency	Low income weatherization	Renewable Energy
$ millions	11.0	17	2.0
mills/kWh	0.1	0.12	0.02

Renewables portfolio standards are to be addressed in individual utility restructuring cases.

Generation disclosure will be addressed by a public utility commission working group.

Rhode Island - Chapter 316

Legislation required each distribution company to include a minimum 2.3 mills per kWh charge to fund demand side management and renewables. PUCs were allowed to increase the sums after notice and public hearing. The final spending plans called for charges of 2.6 mils per kWh, of which 2.1 mils are for energy efficiency. The public benefits trust fund is expected to receive about $17 million per year for energy efficiency and renewables.

A separate collection of funds for low-income efficiency programs (weatherization) is funded through rates, not the line charge.

	Energy Efficiency	Renewable Energy
$ millions	14.0	3.0
mills/kWh	2.1	0.5

There is no renewables portfolio standard.

Rhode Island participates in the New England Disclosure Project.

Texas - SB 7

The Restructuring Law requires utilities to administer energy efficiency programs to achieve savings equivalent to ten percent of annual load growth by 2004.

The law includes a renewable portfolio standard requiring 450 mW of new renewables by 2003 and three percent of the state's electricity capacity by 2009. A renewable energy credits trading program is established.

Section 39.903 imposes a system benefits fee of $0.50 per megawatt hour, to fund weatherization, other low-income programs, consumer education, and a school funding loss mechanism. A goal for natural gas usage is also included in the Act.

The PUC is required to develop rules for disclosure of environmental impact of generation sources.

Sources include "Updated Status Report of Public Benefit Programs in an Evolving Electric Utility Industry," American Council for an Energy-Efficient Economy (July 1999); "Comparison of Selected Electric Industry Restructuring Legislation," National Conference of State Legislatures (October 9, 1998).

RENEWABLE ENERGY POLICY OPTIONS

October 7, 1999

Submitted by the Staff of the State Corporation Commission

This memorandum describes options for encouraging the production of renewable energy as part of the implementation of retail electricity competition in Virginia. We focus on the two approaches most widely used in the states that have implemented competition: the Renewables Portfolio Standard and System Benefits Charge.[1] We have not repeated information in the our memorandum on energy efficiency and renewables submitted to the Legislative Transition Task Force on August 16, 1999, another copy of which is enclosed.

I. A Renewable Energy Policy Can Facilitate the Development of Competitive Electricity Markets

Promoting the integration of renewable energy can facilitate the development of competitive electricity markets in at least seven ways:

a. **Supplier diversity**: More and different market participants increase the pressure on the incumbent and more traditional competitors to offer reasonable prices and innovative products.

b. **Product diversity**: Renewable generators tend to offer energy products packaged with other energy conservation products which consumers find desirable. Traditional generators are more likely to offer electricity only. The market benefits from consumers comparing both types of products and forcing competition between them.

c. **Fuel diversity**: Renewable energy investment reduces the market's dependency on a few fuels.[2] Increased diversity in fuel types creates greater competitive pressures on fossil fuel generators and benefits consumers by allowing them to hedge against potentially volatile fossil fuel prices;

d. **New technologies and associated industry infrastructures** increase the ability of the market to quickly respond to changing fuel prices or environmental regulations;

---

[1] Net metering – which may promote a relatively small amount of distributed renewable resources, was adopted by the legislature in SB 1269.

[2] Most merchant power plants now under construction across the country are fueled by natural gas. Virtually the only planned renewable energy facilities are those that are supported by state programs.

e. **Improves system reliability**, if relatively small, decentralized renewable energy facilities are promoted;

f. **Reduced environmental impacts** from reducing the rate of increase in fossil fuel use. Lower environmental impacts on average means that there is more "headroom" for all generators, including fossil fuel generators, to enter the market without unduly affecting the environment; and

g. **Promotes the use of indigenous renewable fuels and related local economic development**. These fuels include biomass (e.g., wood waste or crop fuels, potentially co-fired with coal) and wind power projects. **In particular, good wind resources exist in western Virginia.**[3]

II. Ways to Advance Renewables in Virginia: Brief Policy Descriptions

A. Renewables Portfolio Standard (RPS)

The General Assembly could directly increase the amount of renewable energy serving the state by vesting in each licensed retail seller an obligation to demonstrate that a particular percentage of its total sales in Virginia comes from renewable energy. This concept is called a "portfolio standard" because it sets a standard for the portfolio of fuels used by licensed retail sellers. For example, the legislation might require that each retail seller demonstrate that 5% of its sales come from renewable energy. The state legislation could increase this amount gradually over a period of five to ten years

The retail seller can meet its obligation in two ways: by self-producing the renewable energy or by paying someone else to do it. This latter concept of "paying someone else to do it" is accomplished through a system of tradable credits, wherein the seller can simply purchase credits that represent verified renewable energy production. Possession of the required number of credits would constitute compliance with the standard.

By allowing this trading of the renewables obligation, the RPS relies on the marketplace, rather than regulation, to determine the types and cost of renewables introduced into the market. Each retail seller determines on its own how it will meet its obligation. It may generate its own renewable energy or pay someone else to do it. Allowing the retail seller to pay someone else to do it creates a secondary market in which renewables producers bid for the right to generate renewable power on behalf of the retail seller who holds the obligation. This reliance on the market assures that those who actually produce the renewable energy are the most competent and least cost producers.

---

[3] According to a DOE study, using current technology and excluding unavailable land areas, high wind resource areas in Virginia could produce 12 billion kilowatt-hours annually, an amount equivalent to about 17% of the state's electricity consumption. D.L. Elliott et al., An Assessment of the Available Wind Land Area and Wind Energy Potential in the Contiguous United States, Pacific Northwest Laboratory, August 1991.

Since the market ultimately determines who will produce the renewable energy, and the price for that energy, the regulatory role is limited. The General Assembly (or regulators) determine the amount of each retail seller's obligation, and how that obligation will change over time. Regulators verify renewable energy production and certify the associated credits, verifying that retail sellers possess the required number of credits at the end of each year, and imposing a significant penalty for non-compliance on retail sellers that fall short. The penalty must be sufficiently large to ensure full compliance.

B. System Benefits Charge (SBC)

A SBC is a charge, normally based on the amount of electricity consumed, which is collected by the distribution utility from its customers. The charge generates revenues to support renewable energy programs administered by a state agency. Normally the legislature establishes the amount and general purposes for the charge, while the Commission or other agency determines how to spend the money within those guidelines.

SBC funds can be spent in a variety of ways, including:

1. **Production incentives**. By awarding payments on a per-kWh-produced basis, production incentives reward projects that operate successfully. Incentives can be aimed at supporting the lowest-cost renewable energy resources, or funds can be divided among types of fuels and technologies. They can be used to support new projects or existing projects that are in danger of closing, or both. Incentive programs can be structured in a variety of ways.

2. **Grants to consumers and producers**. A grant of a fixed size may be awarded to consumers who install small, distributed renewable energy systems, or to developers of pre-commercial centralized technologies. Awards made to large projects could be competitively determined. The amount of the grant available to additional projects may decline over time as technology costs fall. (Capital grants are not preferred for large commercial projects because they do not reward projects for performance. Grants are preferred for small projects, because tracking project performance is costly.)

3. **Marketing incentives**. Retail marketers of renewable energy can be supported by payments for every kWh of renewable energy they sell at retail. These incentives primarily defray marketing costs, rather than support renewable energy production, and therefore are not likely to lead to significant, if any, development of new projects. (The "green marketing" subsidy currently underway in California and Pennsylvania primarily involves selling power from existing projects, and therefore do little to increase the supply of renewable energy.)

4. **Consumer education**. These programs are also geared towards promoting the renewables market, by informing consumers about renewable energy products and encouraging them to buy them. This is an indirect method of promoting renewables that, like marketing incentives, involves high retail transaction costs

and is unlikely to foster significant new renewables capacity.

5. **Miscellaneous initiatives**. SBC funds could be used to support a variety of activities aimed at fostering and facilitating renewable energy development, such as assisting local governments in the development of renewable energy siting laws and conducting resource assessment studies. While these methods can facilitate renewable energy development, however, they are unlikely to cause it.

III. Policies Adopted in Other States

A. Renewables Portfolio Standards

1. RPSs have been adopted in seven states -- Connecticut, Maine, Massachusetts, Nevada, New Jersey, Pennsylvania[4] and Texas -- as part of electricity industry restructuring legislation or ensuing regulations.

2. Texas has adopted an RPS that requires 2,000 MW (approximately 3% of electricity sales) of new renewables to be brought on line gradually by 2009.

3. Maryland requires in its 1999 restructuring legislation a feasibility study of an RPS by February 2000.

B. System Benefits Charges

Twelve states -- Arizona, California, Connecticut, Illinois, Massachusetts, Montana, New Jersey, New Mexico, New York, Oregon, Pennsylvania and Rhode Island--have adopted SBCs that either set specific funding levels for renewables or for a range of purposes that include renewables.

IV. Brief Evaluation of Renewables Portfolio Standards and System Benefits Charges

A. RPS

1. Pros

   a. Not a tax; cost blended into overall market prices.
   b. Implemented by the market.
   c. Results certain (assuming high noncompliance penalty).
   d. Renewables "mainstreamed" into the market.

[4] Pennsylvania's legislation authorizes the state's public utility commission to adopt renewables policies on a utility-by-utility basis. An RPS-like requirement has been adopted for four utilities.

e. Announcing a policy to attract new renewables investors is appealing on grounds of economic development

2. Challenges

a. Requires involvement by all retail sellers.
b. May be opposed by those who sell competing fuels
c. Total cost cannot be precisely estimated; however, a maximum possible cost can be applied through a cost cap. This is achieved by guaranteeing that tradable renewable energy credits will be available to electricity retailers for no more than a certain price. Credits may be made available from a designated state or private agency at a certain "capped cost" above the expected marginal cost of credits, but less than the penalty. If a retail seller is unable to purchase the number of credits it needs at or below the capped price, then it could purchase "proxy" credits from the agency. The agency would use the sum of money to purchase credits in the market, lowest prices first, until the funds are expended. A cost cap that is above expected costs should result in the administrator never having to perform this cost cap function.

B. System Benefits Charge

1. Pros

a. Total cost can be precisely defined.
b. Retail sellers not directly affected.
c. Funds can be divided to satisfy various legislative priorities

2. Challenges

a. Cost is explicitly stated on consumer bills.
b. Possible ineffectiveness and inefficiency of fund dissemination programs.
c. Isolates renewables in programs marginal to the market.
d. Results uncertain.
e. Announcing a dollar amount to be spent on renewables less appealing than announcing a state target for renewable energy production.
6. Does not rely on market forces

V. Structuring Renewable Energy Policies Consistent with Competition

Both the RPS and SBC can be designed to work in a competitive electricity industry by applying equally to all competitors and consumers. However, the same good reasons arguing for competition in the electric industry generally support using competition for the *implementation* of these renewable energy policies. Because it is a market standard, the RPS is inherently more attractive on this score. However, we discuss below both concepts in terms of their relationship to competition.

A. System Benefits Charge

It is possible to enlist competitive markets in the expenditure of SBC funds. For example, the production incentives described in section II.B.1 can be awarded through an auction, whereby renewable energy developers compete for a per-kWh incentive, bidding the amount they would require to develop a new project. The amount bid could be (i) the incentive payment required, or (ii) the total payment required where the developer is paid the difference between actual market price and the total payment amount bid.[5]

Though SBC programs can involve competition, government-sponsored competitions almost always impose artificial constraints of various types, which can create inefficiencies. Examples of such constraints are provided in the notes column of the attached table, which compares an SBC production incentive program to an RPS policy.

B. Renewables Portfolio Standard

Built into the design of the RPS is the goal of maximizing reliance on private competitive markets in the delivery of renewables. Because it is a market standard, the RPS avoids the need for the state to collect and distribute funds. Market implementation will result in a degree of competition, efficiency and innovation that is unlikely to be matched by SBC programs that deliver the same amount of renewable energy.

With the RPS, the role of the government is limited to verifying renewable energy production, monitoring compliance by retail sellers, and imposing penalties for noncompliance. The market -- including retail sellers, investors, and renewable energy developers -- determines where projects are built, the type of renewable energy and technologies to use, what price to pay, what the development schedules are, and what the contract terms will be.

One implementation issue will require special thought: whether the RPS should be used to encourage renewables development *in* Virginia only, or whether sellers can meet their obligation

---

[5] Bidding the total payment has two important advantages: (1) if market prices rise, the incentive payments can be reduced, and (2) a known total payment provides much greater certainty to project investors, reducing financing costs and increasing the chance that the project will be built. The disadvantage is that the size of the incentive paid will vary with market price, so when funds are reserved for the project, a conservative estimate must be made which ties up any unused funds until actual payments are made.

by purchasing renewables in other states. Although several states have attached an in-state requirement to their RPS policies, it might be legally risky to require, as part of an RPS, that renewable facilities be located in Virginia, because of potential conflict with the Constitution's Commerce Clause.

Least-cost compliance by retail sellers is encouraged by the flexibility of the tradable credit system: sellers who are most efficient at generating renewable power will produce it (and the associated credits); those who cannot efficiently produce it will purchase credits on the competitive market. Regulatory enforcement focuses on the bottom line: each seller must possess the required number of "credits" at the end of each year. The credit system also avoids the need to "track electrons."

The certainty and stability of the renewables market created by a properly-designed RPS will attract investors and enable long-term contracts for the renewable power industry, which will, in turn, lower renewable power costs.

Finally, and perhaps most importantly, since retail suppliers will be looking to improve their competitive position in the market, they will have an interest in driving down the cost of renewables to reduce their RPS compliance costs. They may do this by lending their own financial resources to a renewables project, by seeking out least-cost renewables applications, or by entering into long-term purchasing commitments. This fosters a "competitive dynamic" that is not achieved with policies that involve direct subsidies to renewable generators without involving the rest of the electric industry.

Key Differences Between RPS and SBC Approaches

Attribute	Renewables Portfolio Standard	Systems Benefits Charge - Production Incentives	Notes
1. Collection & management of public funds?	No. Electricity suppliers comply with standard; cost reflected in overall power price.	Yes. Fee assessed on consumer utility bills; fund managed by public agency.	
2. Role of Administering Agency	Limited. Agency (1) verifies renewable energy production and issues credits to renewable energy producers, (2) ensures compliance by suppliers by counting credits turned in, (3) takes enforcement actions when necessary. (Note that no enforcement actions have been necessary in the federal SO2 trading program because high noncompliance penalties are a sufficient incentive to comply.)	Extensive. Agency (1) develops types of programs, (2) establishes program rules, (3) awards bids and contracts, (4) monitors project development, (5) issues payments, (6) revises program rules, (7) conducts public hearings in relation to above.	After California's restructuring law passed with a SBC in 9/96, the Energy Commission and interest groups spent 18 months developing 5 programs and associated rules. Another 6 months was required to run a bid-selection process. Rule modifications occur regularly. Monitoring the progress of winning project bids will be required for four years. Disbursement of the fund collected over four years will continue for at least nine years. Because some programs are unlikely to be completely successful (e.g., not all winning projects will be completed on schedule), program renewals and revisions will be required.
3. Cost defined?	Maximum cost can be defined through cost cap; actual cost uncertain.	Yes. Fee can be defined and adjusted to meet defined total amount.	
4. Goal defined?	Yes. Defined amount of renewable energy must be achieved (potentially subject to cost cap). The market determines the cost of meeting the goal.	Usually the size of the fund is defined; results depend on successful administration of funds by public agencies.	Under California's SBC, winning bidders for production incentives have until Dec. 2001 to begin producing power -- 32 years after the bid was held. If the projects fail to come on line, they lose the funding and the bidding process begins all over again. With the RPS, a noncompliance penalty is a strong incentive

			for suppliers to ensure that the development of renewable power projects progress and begin operations on time. A project is not cancelled if it is a day late, however.
5. Who selects "winning" renewables projects?	The market determines which projects are developed. Project investments occur based on cost and likelihood of timely development to ensure compliance with RPS.	The agency's rules determine winners.	For example, under California SBC rules, a "new" project was defined to exclude the addition of equipment to an existing project. Under the RPS, if project expansion is the least-cost way to produce more renewable kWh, that investment would be rewarded in the market.
6. Continuous pressure to reduce costs?	Yes. The RPS creates continuous pressure on renewables developers to reduce costs because they must compete in the renewables market established by the RPS over their entire lifetimes.	No. SBC funds are awarded in a one-time competition or other selection process.	With the RPS, renewables projects must continually keep up with the competition, including advanced technologies. SBC funds are likely to be locked-in over many years.
7. Creates cost-reducing market dynamic?	Yes. The RPS creates pressure on both retail suppliers and renewables generators to reduce costs. Retail sellers have an interest in acquiring low-cost renewables because it will improve the seller's competitive position in the market. They will therefore seek to lower the cost of renewables, e.g., by offering their own financing resources, and to integrate renewables into the electric system in the most cost-effective way. These things cannot be achieved by	Only partially. Though SBC funds can be awarded through a one-time competitive process, that process only involves renewables developers.	

	renewable developers alone.		
8. Retail sellers must be involved in policy?	Yes; the renewables obligation is placed on sellers. Sellers can comply by purchasing tradable credits, purchasing renewable power bundled with credits, or owning renewables and generating their own credits.	No. Retail sellers are not affected by SBC policies.	
9. Creates a market for renewables?	Yes.	No.	This has important implications. If renewables must fight their way into the market (e.g., by overcoming institutional resistance, paying transmission prices that penalize intermittent renewables, and paying high financing costs) their costs will be higher. Thus, consumers' SBC money will not buy as much because it must pay, in essence, to overcome those obstacles. By creating a market for renewables and obligating established power companies to acquire renewables, the RPS gives those companies a self-interested reason to help renewables overcome the obstacles facing them in the market (e.g., by offering their own financing resources to lower development costs).

STATE RENEWABLE ENERGY INCENTIVE PROGRAMS

Information from the U.S. Department of Energy *National Database of State Incentives for Renewable Energy* (DSIRE) database

State	Loan Program	Grant Program	Income Tax Relief	Property Tax Relief	Sales Tax Relief	Industrial Recruitment Incentive	DSM for Renew-ables	Renewables Portfolio Standard	State Construction Policies	Disclo-sure	Net Metering	Research and Outreach	SBC	Solar & wind access
Alabama	X		X											
Alaska	X													
Arkansas														
Arizona*	X		X		X	X		X	X					
California	X	X				X				X	X	X	X	
Colorado									X		X			X
Connecticut	X			X		X					X			
Delaware														
Florida**					X		X		X			X		
Georgia														
Hawaii			X						X					
Idaho	X		X								X			
Illinois		X		X						X			X	
Indiana		X		X			X				X			
Iowa	X	X		X	X			X			X	X		
Kansas		X												
Kentucky														
Louisiana														
Maine								X		X	X			
Maryland	X			X	X				X		X			
Mass.		X	X	X	X			X		X	X		X	
Michigan														
Minnesota	X	X	X	X	X			X	X		X			
Mississippi	X													
Missouri	X		X											
Montana			X	X						X			X	
Nebraska	X													X
Nevada				X				X		X	X			
N. H.		X		X						X	X			
New Jersey					X									
New Mexico*											X			
New York		X	X								X	X		
N. Carolina			X	X								X		
N. Dakota			X	X							X			
Ohio			X		X									
Oklahoma											X			
Oregon	X		X	X										
Penn.				X						X	X			

STATE RENEWABLE EN Y INCENTIVE PROGRAMS

Information from the U.S. Department of Energy *National Database of State Incentives for Renewable Energy* (DSIRE) database

State	Loan Program	Grant Program	Income Tax Relief	Property Tax Relief	Sales Tax Relief	Industrial Recruitment Incentive	DSM for Renewables	Renewables Portfolio Standard	State Construction Policies	Disclosure	Net Metering	Research and Outreach	SBC	Solar & wind access
R. Island											X		X	
S. Carolina														
S. Dakota				X										
Tennessee	X													
Texas*			X	X		X			X		X			
Utah			X											
Vermont														
Virginia	X			X		X				X	X			
Washington					X							X		
W. Virginia														
Wisconsin		X		X			X				X			
Wyoming														
Total	15	10	15	18	9	5	3	6	7	9	21	6	5	2

* Arizona, New Mexico and Texas have line extension policies requiring examination of feasibility of renewables as alternative to extending power lines.

** Florida also has demand side management programs for renewables and an equipment certification program under the Solar Energy Standards Act of 1976.

Proposed Amendment to Definition of Aggregator

§ 56-576. Definitions.

As used in this ~~chapter~~:

* * *

"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~~ that, as an agent or intermediary, (i) offers to purchase or purchases electric energy, or (ii) offers to arrange for or arranges for the purchase of electric energy, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § 56-585; (v) activities engaged in by a retail electric energy supplier, licensed pursuant to § 56-587, which are authorized by such supplier's license; and (vi) actions by a retail customer, acting in common with one or more other such retail customers, to issue a request for proposals or to negotiate a purchase of electric energy for the consumption by such retail customers.

* * *

§ 56-588. Licensing of aggregators.

A. As a condition of doing business in the Commonwealth, each person seeking to ~~aggregate electric energy~~ act as an aggregator 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.

§ 56-581. 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~~ B. 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~~ C. 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.

§ 56-581.1. Authority to make services competitive.

A. As used in this section:

1. "Billing services" means services related to billing customers for competitive electric services or billing customers on a consolidated basis for both competitive and regulated services; and

2. "Metering services" means the ownership, installation, maintenance, or reading of electric meters and includes meter data management services.

B. On or before December 1, 2001, the Commission, shall recommend to the Legislative Transition Task Force whether (i) metering services, (ii) billing services, or both, for which competition has not been otherwise authorized by law, may be provided by persons licensed to provide such services. The Commission's recommendation under this subsection as to the appropriateness of and date of commencement of competition may vary by service, type of seller, region, incumbent electric utility and customer group. Such recommendation, which shall be made after notice and an opportunity for hearing, shall:

1. Be consistent with the goal of facilitating the development of effective competition in electric service for all customer classes;

2. Take into account the readiness of customers and suppliers to buy and sell such services;

3. Take into account the technological feasibility of furnishing any such services on a competitive basis;

4. Take into account whether reasonable steps have or will be taken to educate and prepare customers for the implementation of competition for any such services;

5. Not jeopardize the safety, reliability or quality of electric service;

6. Consider the degree of control exerted over utility operations by utility customers;

7. Not adversely affect the ability of an incumbent electric utility authorized or obligated to provide electric service to customers who do not buy such services from competitors to provide electric service to such customers at reasonable rates; and

8. Give due consideration to the potential effects of such determinations on utility tax collection by state and local governments in the Commonwealth.

C. Competition for metering services, billing services, or both, may be implemented concurrently or pursuant to separate schedules as determined by the General Assembly.

D. If, on or before December 1, 2001, the Commission has not recommended that competition is appropriate for (i) metering services, (ii) billing services, or any portion of either service, the Commission shall continue to consider such matters and report thereon to the Legislative Transition Task Force no less frequently than annually until such services are made competitive.

E. Where the General Assembly has made any such metering services or billing services competitive pursuant to subsection C of this section, an incumbent electric utility shall undertake such coordination, with persons licensed to provide such service, as the Commission deems reasonably

necessary to the development of such competition, provided that the reasonable costs of such coordination are recovered by such utility. The foregoing shall apply to an affiliate of an incumbent electric utility if such affiliate controls a resource which is necessary to the development of competition for such service.

F. Any person seeking to sell, offering to sell, or selling services made competitive pursuant to this section shall be subject to the licensure requirements of § 56-587.

G. Upon a determination under subsection C of this section that a service presently provided by an incumbent electric utility should be made subject to competition, the Commission shall adjust the rates for any noncompetititive services provided by such utility so that such rates do not reflect costs associated with or properly allocable to the service made subject to competition.

§ 56-580. Transmission and distribution of electric energy; codes of conduct; competitive services.

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 , transmission or any

services made competitive pursuant to § 56-581.1, 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.

§ 56-585. 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. Such default services, for the purposes of this subsection, shall include the supply of electric energy and all services made competitive pursuant to § 56-581.1. If a distribution electric cooperative, or one or more affiliates thereof, elects or seeks to be a default supplier of another electric utility, then the Commission shall designate the default supplier for that distribution electric cooperative, or any affiliate thereof, pursuant to subsection B.

§ 56-587. Licensure of retail electric energy suppliers and persons providing other competitive services.

A. As a condition of doing business in the Commonwealth each person seeking to sell, offering to sell, or selling (i) electric energy to any retail customer in the Commonwealth, on and after January 1, 2002, or (ii) any service that, pursuant to § 56-581.1, may be provided by persons licensed to provide such service 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. 1. 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) in the case of persons seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth, access to generation and generation reserves; and (iii) adherence to minimum market conduct standards.

2. Any license issued by the Commission pursuant to this section to persons seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth, 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~~ any person 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~~ issued pursuant to this section, 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; (iii) become licensed to furnish any service that, pursuant to § 56-581.1, may be provided by persons licensed to provide such service, or ~~(iii)~~ (iv) own, manage or control any plant or equipment or any part of a plant or equipment used for the generation of electric energy.

§ 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~~ any 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. Whenever pursuant to § 56-581.1 services are made subject to competition, the Commission shall direct the functional separation of such services to the extent necessary to achieve the purposes of this section. Each affected incumbent electric utility shall, by dates prescribed by the Commission, submit for the Commission's approval a plan for such functional separation.

~~C~~D. 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~~E. 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~~ F, 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~~ F.

~~E~~ F. A transaction described in subsection ~~D~~ E 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~~ G 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~~ E 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.

PROPOSED RESOLUTION DIRECTING THE CONSUMER ADVISORY BOARD TO INCLUDE THE FEASIBILITY OF TAX INCENTIVES AND THE AVAILABILITY OF OTHER FUNDING SOURCES IN ITS STUDY OF LOW-INCOME ENERGY ASSISTANCE PROGRAMS.

WHEREAS, the Consumer Advisory Board was established pursuant to the Virginia Electric Utility Restructuring Act ("Restructuring Act") for the purpose of assisting the Legislative Transition Task Force in its work as prescribed in § 56-595 of the Restructuring Act; and

WHEREAS, in August 1999, the Legislative Transition Task Force requested the Consumer Advisory Board to examine, among other issues, energy assistance programs for low-income households; and

WHEREAS, the Consumer Advisory Board has requested that it be allowed to conduct a broad study of low-income household energy assistance programs in the Commonwealth for electricity and other sources of energy, which study shall address incentives to encourage voluntary contributions to energy assistance programs; and

WHEREAS, contributions from energy consumers and suppliers to voluntary energy assistance programs provide a significant amount of assistance to low-income households and should be encouraged; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, that the Consumer Advisory Board be directed to include in its aforementioned study, among other things, the feasibility of tax credits as an incentive for energy consumers and suppliers to fund needed energy assistance programs for low-income households. It is further resolved that the Consumer Advisory Board be directed to study the availability of other funding sources such as any penalties or fees assessed on competitive energy providers.

VIRGINIA ELECTRIC AND POWER COMPANY
PROPOSED AMENDMENT TO THE VIRGINIA ELECTRIC UTILITY RESTRUCTURING ACT
SUBMITTED TO THE LEGISLATIVE TRANSITION TASK FORCE
JANUARY 19, 2000

---

§ 56-576. Definitions.

As used in this chapter:

***

"Projected Market Price for Generation" means the net price available to an incumbent electric utility for the sale into the market of power not required to serve its customers who purchase energy from alternative ***or default*** suppliers. The net price shall recognize all associated costs of delivery into the market to ensure that, in calculating the wires charge that is greater than zero pursuant to §56-583, such electric utility is neutral as to whether a customer receives service from an alternative supplier or default supplier rather than taking service on capped rates.

***

Issue Paper on Consumer and Small Business Market Power for the Consumer Advisory Board

prepared by Jack Greenhalgh
12/30/99

After the last two meetings, I raised an issue to the Chairman of our Committee that I want to bring to the attention of the Committee. I am concerned that the aggregation process provided in Virginia's restructuring legislation to provide market power for consumers and small business may not be effective, as currently structured. In response to my concern, the Chairman submitted an issue paper to the Task Force that I helped prepare. I have not received any indication that the Task Force has decided to look into this issue.

I have been contacted by the Small Business Alliance for Fair Utility Deregulation. They are reacting to the issue paper they received at the Task Force hearing and they are strongly in support of the investigation proposed therein. They are independently seeking to talk to members of the Task Force to urge that the Consumer Advisory Board be tasked with this issue.

During development of legislation for electric utility restructuring, there was serious concern that individual customers and small business might not benefit from the deregulation process. They might even see rate increases when the capped, regulated rates of the transition period end. In this view, large industrial customers will negotiate very favorable rates and this reduction in revenue will be allocated into prices for the less powerful customer and small business class. That would move their rates up. In order to give this class more counter-balancing market power, the restructuring legislation attempts to provide a mechanism to give these classes of users negotiating power through aggregation. I understand that the intent of aggregation is for third party providers to come forward and gather up large numbers of consumers and small businesses and to negotiate on a basis competitive to large commercial or industrial users.

Experience in other states shows little success is attracting significant numbers of consumers and small businesses to shift power sources. Competition itself has not pulled prices down for this class of users. In fact, a significant portion of those electing a new provider are paying more to select a provider with "green" power. Aggregation in other states has not emerged to a level that increases the market power of these users. There is no consistency in what qualifies as "green". There are 21 states and regions with consumer choice that are developing disclosure requirements with little standardization. Variations include content, source of information, reporting periods and labeling format requirements. This creates confusion in the consumer and small business community, if not opportunities for outright deception. I don't believe the

experience to date can be viewed as successful for this class of customer. Achieving success may be dependent on Board's such as this determining what works and what doesn't work and then using that knowledge to influence the process.

Additional study is needed on how to make the aggregation process more effective. Testimony is needed from the SCC, the incumbent utilities, a variety of prospective third party providers as well as from experts on how these issues were/are handled in the deregulation of telecommunications. The same issues may apply to natural gas deregulation. An analysis of results to date in other states would be important. That would include hearing from third party providers working in those states, as well as those that elected not to work in those states. By drawing on the expertise of those involved in the process and learning from other state's efforts, it may be possible to foresee this result and take corrective action now.

We all understand the deregulation is going to happen. The legislation sets a specific time-table. During the transition and pilot program, there are many artificial constraints on prices and process. If the wholesale pricing structure, billing policies and other program parameters established by the incumbent utilities stifle viable third party providers, it may be years before we recognize it isn't working. It may take a year or more to watch the pilot program, hear from interested stakeholders and industry experts before we could determine if additional specific regulatory or legislative action is needed. If legislation is to be proposed, that will add additional significant time. If legislative action might be necessary before the end of the pilot programs, studies to identify these actions should begin now. In fact, requirements might be identified that need to be tested in the pilot program.

The highly structured transition period and pilot programs are limited in scope and geography. They operate under capped rates and are encumbered by stranded cost recovery.These artificial barriers will very likely distort our ability to judge, from the pilot program, the effectiveness of the aggregation process. I believe that simply waiting a few years to see what happens in the pilot program is tantamount to hiding our head in the sand. There is sufficient concern and uncertainty already from California and New England experience to justify a parallel effort to study this issue as it is evolving here and in other states.

When I learned that the Consumer Advisory Board was to be formed, it seemed to me that membership on that Board would be the best place to protect small business interest. I have been active in small business advocacy for some time. I was co-chairman of the Regulation and Paperwork Committee of Virginia's delegation to the White House Conference on Small Business in 1995. I have donated services to other small businesses through the Hampton Roads Small Business Development Center. I am on the Board of Directors of a number of small businesses. I am very skeptical that

simply allowing aggregation by itself will provide the consumer and small business the intended market power.

While I appreciate that there are many differences between industries, there were many special regulations in telecommunications deregulation that were needed to facilitate the development of third party providers. When the long distance telephone industry was deregulated, the FCC established a number of key requirements on the incumbent telephone companies that facilitated the entry of other competing companies. Likewise, there are similar rules favorable to Competitive Local Exchange Carriers in the deregulation of local telephone service. Prospective third party providers can identify if there are comparable requirements in this industry in order to create a viable competitive landscape benefiting consumers and small business.

When the history is written on the deregulation process in Virginia five to ten years from now, perhaps the consensus will be that consumers and small business did poorly in the transition. I believe the question will be asked, "Why didn't the Consumer Advisory Board see this coming? Weren't they supposed to advise the Task Force on these issues? What do you mean, no one asked them?"

If the Task Force does not take action on this issue from the paper already presented by our Chairman, perhaps it is because it was presented as something one member of the Board was concerned about. The implication might be erroneously drawn that the other members were not concerned about it. If other members of the Board share my concern, I recommend that we develop a resolution that can achieve unanimous support requesting that we be assigned this issue for investigation.

Example Resolution:

The Consumer Advisory Board unanimously recommends that, during the pilot program, the Board be directed to undertake a parallel investigation of how the development of aggregation in Virginia and other states is, or is not, facilitating market power for the consumer and small business classes of electricity users. This investigation should include analysis of progress during the pilot program as well as coordination with interested parties and experts from deregulation of other industries.

2000 SESSION

003326508

SENATE BILL NO. 585

Offered January 24, 2000

A BILL to amend and reenact §§ 56-576, 56-580 through 56-583, 56-585, 56-587 through 56-590, and 56-593 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 56-581.1 and 56-592.1, relating to the Virginia Electric Utility Restructuring Act.

Patron—Norment

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-576, 56-580 through 56-583, 56-585, 56-587 through 56-590, and 56-593 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 56-581.1 and 56-592.1 as follows:

§ 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~~ *that, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § 56-585; (v) engaging in activities of a retail electric energy supplier, licensed pursuant to § 56-587, which are authorized by such supplier's license; and (vi) engaging in actions of a retail customer, acting in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy for consumption by such retail customers.*

"Billing services" means services related to billing customers for competitive electric services or billing customers on a consolidated basis for both competitive and regulated electric services.

"Commission" means the State Corporation Commission.

"Cooperative" means a utility formed under or subject to Chapter ~~9 (§ 56-209 et seq.)~~ *9.1 (§ 56-231.15 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.

"Metering services" means the ownership, installation, maintenance, or reading of electric meters and includes meter data management services.

"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.

§ 56-580. 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 *or any* services *made competitive pursuant to § 56-581.1*, 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.~~*B.* 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.~~*C.* 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.

§ 56-581.1. Authority to make services competitive.

A. On or before January 1, 2001, the Commission shall recommend to the Legislative Transition Task Force whether metering services, billing services, or both, for which competition has not been otherwise authorized by law, may be provided by persons licensed to provide such services. The Commission's recommendation under this subsection as to the appropriateness of and date of commencement of competition (i) shall include a draft plan for implementation of competition for metering services and billing services and (ii) may vary by service, type of seller, region, incumbent electric utility, and customer group. Such recommendation and draft plan, which shall be developed after notice and an opportunity for hearing, shall:

1. Be consistent with the goal of facilitating the development of effective competition in electric service for all customer classes;

2. Take into account the readiness of customers and suppliers to buy and sell such services;

3. Take into account the technological feasibility of furnishing any such services on a competitive basis;

4. Take into account whether reasonable steps have been or will be taken to educate and prepare customers for the implementation of competition for any such services;

5. Not jeopardize the safety, reliability or quality of electric service;

6. Consider the degree of control exerted over utility operations by utility customers;

7. Not adversely affect the ability of an incumbent electric utility authorized or obligated to provide electric service to customers who do not buy such services from competitors to provide electric service to such customers at reasonable rates; and

8. Give due consideration to the potential effects of such determinations on utility tax collection by state and local governments in the Commonwealth.

B. Competition for metering services, billing services, or both, may be implemented concurrently or pursuant to separate schedules as determined by the General Assembly.

C. If, on or before January 1, 2001, the Commission has not recommended that competition is appropriate for (i) metering services, (ii) billing services, or (iii) any portion of either service, the Commission shall continue to consider such matters and report thereon to the Legislative Transition Task Force no less frequently than annually until such services are made competitive.

D. Upon enactment of legislation making competitive metering services, billing services, or both, an incumbent electric utility shall undertake such coordination, with persons licensed to provide such service, as the Commission deems reasonably necessary to the development of such competition, provided that the reasonable costs of such coordination are recovered by such utility. The foregoing shall apply to an affiliate of an incumbent electric utility if such affiliate controls a resource that is necessary to the coordination required of the incumbent electric utility by this subsection.

E. Any person seeking to sell, offering to sell, or selling competitive metering services, competitive billing services, or both, shall be subject to the licensure requirements of § 56-587.

F. Upon enactment of legislation making competitive a service presently provided by an incumbent electric utility, the Commission shall adjust the rates for any noncompetitive services provided by such utility so that such rates do not reflect costs associated with or properly allocable to the service made subject to competition.

§ 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. *If such rate application is filed, the rates proposed therein shall go into effect on January 1, 2001, but such rates shall be interim in nature and subject to refund until such time as the Commission has completed its investigation of such application. Any amount of the rates found excessive by the Commission shall be subject to refund with interest, as may be ordered by the Commission.* 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~~ *calculate* wires charges for each incumbent electric utility, effective upon the commencement of customer choice, which shall be the ~~sum (i) of the difference between~~ *excess, if any, of* the incumbent ~~utilities'~~ *electric utility's* capped unbundled rates for generation ~~and~~ *over the* 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, *where there is such excess,* 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. *No wires charge shall be less than zero.*

B. Customers that choose suppliers of electric energy, other than the incumbent *electric* utility, or are subject to *and receiving* 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 *electric* utility to the customer *(i)* during the period from the time ~~it~~ *the customer* chooses a supplier of electric energy other than the incumbent electric utility, *or (ii) during the period from the time the customer is subject to and receives default service* 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.

§ 56-585. 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. *Such default services, for the purposes of this subsection, shall include the supply of electric energy and all services made competitive pursuant to § 56-581.1.* If a distribution electric cooperative, or one or more affiliates thereof, elects or seeks to be a default supplier of another electric utility, then the Commission shall designate the default supplier for that distribution electric cooperative, or any affiliate thereof, pursuant to subsection B.

§ 56-587. Licensure of retail electric energy suppliers and persons providing other competitive services.

A. As a condition of doing business in the Commonwealth, each person seeking to sell, offering to sell, or selling *(i)* electric energy to any retail customer in the Commonwealth, on and after January 1, 2002, *or (ii) any service that, pursuant to § 56-581.1, may be provided by persons licensed to provide such service,* 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. *1.* 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) *in the case of a person seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth,* access to generation and generation reserves; and (iii) adherence to minimum market conduct standards.

2. Any license issued by the Commission pursuant to this section *to a person seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth* 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~~ *any person* 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~~ *issued pursuant to this section*, 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; *(iii) become licensed to furnish any service that, pursuant to § 56-581.1, may be provided by persons licensed to provide such service;* or ~~(iii)~~ *(iv)* 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~~ *act as an aggregator* 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~~ *an aggregator* 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. *Aggregation pursuant to this subdivision shall not require licensure pursuant to § 56-588.*

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. *Aggregation pursuant to this subdivision shall not require licensure pursuant to § 56-588 when such municipalities or other political subdivisions are acting jointly to negotiate or arrange for themselves agreements for their energy needs directly with licensed suppliers or aggregators.*

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. *Aggregation pursuant to this subsection shall not require licensure pursuant to § 56-588.*

§ 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~~ *any* 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. Whenever pursuant to § 56-581.1 services are made subject to competition, the Commission shall direct the functional separation of such services to the extent necessary to achieve the purposes of this section. Each affected incumbent electric utility shall, by dates prescribed by the Commission,

submit for the Commission's approval a plan for such functional separation.

~~C~~*D*. 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~~*E*. 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~~*F*, 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~~*F*.

~~E~~*F*. A transaction described in subsection ~~D~~*E* 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~~*G*. 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~~*E* 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.

§ 56-592.1. Consumer education program; scope and funding.

A. The Commission shall establish and implement a consumer education program in conjunction with the implementation of this chapter. In establishing such a program, the Commission shall take into account findings and recommendations in the Commission's December 1, 1999, report to the Legislative Transition Task Force made pursuant to § 56-592.

B. The program shall be designed to (i) enable consumers to make rational and informed choices about energy providers in a competitive retail market, (ii) help consumers reduce transaction costs in selecting energy suppliers, and (iii) foster compliance with the consumer protection provisions of this chapter, and those contained in other laws of this Commonwealth, by all participants in a competitive retail market.

C. The Commission shall regularly consult with representatives of consumer organizations, community-based groups, state agencies, incumbent utilities, competitive suppliers and other interested parties throughout the program's implementation and operation.

D. Pursuant to the provisions of § 56-595, the Commission shall provide periodic updates to the Legislative Transition Task Force concerning the program's implementation and operation.

E. The Commission shall fund the establishment and operation of such consumer education program through the special regulatory revenue tax currently authorized by § 58.1-2660 and the special regulatory tax authorized by Chapter 29 (§ 58.1-2900 et seq.) of Title 58.1.

§ 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 *of this section* 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 *of this section* 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 *of this section* 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 *of this section* or subsection C of § 56-592.

Official Use By Clerks

Passed By The Senate		**Passed By The House of Delegates**	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

_____ _____

Clerk of the Senate Clerk of the House of Delegates

(SB585)

AMENDMENTS PROPOSED BY THE SENATE COMMITTEE ON COMMERCE AND LABOR

1. Page 5, introduced, line 31, after *zero.*

insert

The projected market prices for generation, when determined under this subsection, shall be adjusted for any projected cost of transmission, transmission line losses, and ancillary services subject to the jurisdiction of the Federal Energy Regulatory Commission which the incumbent electric utility (i) must incur to sell its generation and (ii) cannot otherwise recover in rates subject to state or federal jurisdiction.

2. Page 6, introduced, line 43, after person

insert

except a default service provider

Go to (General Assembly Home)

§56-87. Licensure of retail electric energy suppliers.

As a condition of doing business in the Commonwealth each person, except a default service provider, 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.

Comments:

This amendment clarifies that a default service provider is not subject to supplier licensing requirements. Under §56-585, the Commission designates the provider of default service and, in so designating, shall take into account factors necessary to protect the public interest including qualifications of prospective providers. To require a supplier license in addition to meeting the Commission requirements would serve no purpose.

Other states, such as Maryland, have an exemption to the same effect.

2000 SESSION

003327508

SENATE BILL NO. 163

Offered January 12, 2000

A BILL to amend and reenact §§ 58.1-2900, 58.1-2901, and 58.1-3814 of the Code of Virginia, relating to the taxation of electric energy.

Patron—Watkins

Referred to Committee on Finance

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-2900, 58.1-2901, and 58.1-3814 of the Code of Virginia are amended and reenacted as follows:

§ 58.1-2900. (Effective January 1, 2001) 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.

C. For purposes of this section, "kilowatt hours delivered" shall mean in the case of eligible customer-generators, as defined in § 56-594, those kilowatt hours supplied from the electric grid to such customer-generators, minus the kilowatt hours generated and fed back to the electric grid by such customer-generators.

§ 58.1-2901. (Effective January 1, 2001) 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 *service* provider, the tax shall constitute a debt of the consumer to the Commonwealth, *localities, and the State Corporation Commission.* If any consumer *receives and pays for electricity but* refuses to pay the tax *on the bill that is imposed by § 59.1-2900*, the service provider shall notify the *State Corporation* Commission~~and/or localities~~ of the~~names~~ *name* and~~addresses~~ *address* of such~~consumers~~ *consumer. If any consumer fails to pay a bill issued by a service provider including the tax that is imposed by § 59.1-2900, the service provider shall follow its normal collection procedures with respect to the charge for electric service and the tax, and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for electric service and the tax and (ii) remit the tax portion to the State Corporation Commission and the appropriate locality.* 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 *State Corporation* Commission and~~/or localities~~ *the appropriate locality.*

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.

§ 58.1-3814. 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. *For taxable years beginning on and after January 1, 2001, any tax imposed by a county, city or town on consumers of electricity shall be imposed pursuant to subsections C through H of this section only.*

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~~ *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.~~ *The tax so imposed shall be based on kilowatt hours delivered monthly to consumers, and shall not exceed the limits set forth in this subsection. The service provider shall bill the tax to all users who are subject to the tax and to whom it delivers electricity, and shall remit such tax to the appropriate locality in accordance with § 58.1-2901. Any locality that imposed a tax pursuant to this section prior to January 1, 2001, based on the monthly revenue amount charged to consumers of electricity shall convert its tax to a tax based on kilowatt hours delivered monthly to consumers, taking into account minimum billing charges. The kilowatt hour tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among electricity consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. Current service providers shall provide to localities no later than August 1, 2000, information to enable localities to convert their tax. The maximum amount of tax imposed on residential consumers as a result of the conversion shall be limited to three dollars per month, except any locality that imposed a higher maximum tax on July 1, 1972, may continue to impose such higher maximum tax on residential consumers at an amount no higher than the maximum tax in effect prior to January 1, 2001, as converted to kilowatt hours. For non-residential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received from each class of non-residential consumers in calendar year 1999 for the kilowatt hours used that year. Kilowatt hour tax rates imposed on non-residential consumers shall be based at a class level on such factors as existing minimum charges, the amount of kilowatt hours used, and the amount of consumer utility tax paid in calendar year 1999 on the same kilowatt hour usage. The limitations in this section on kilowatt hour rates for non-residential consumers shall not apply after January 1, 2004, which is the scheduled date of completion of the electric deregulation transition period pursuant to the Virginia Electric Utility Restructuring Act (§ 56-576 et seq.). On or before October 31, 2000, any locality imposing a tax on consumers of electricity shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through H of this section. Notice of such amendment shall be provided to service providers in a manner consistent with subsection B of this section except that "registered agent of the service provider" shall be substituted for "registered agent of the utility corporation." Any conversion of a tax to conform to the requirements of this subsection shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by the locality shall be in effect.*

G. Until the consumer pays the tax to such service provider, the tax shall constitute a debt to the locality. If any consumer *receives and pays for electricity but* refuses to pay the tax *on the bill that is imposed by a locality*, the service provider shall notify the~~localities~~ *locality* of the~~names~~ *name* and~~addresses~~ *address* of such~~consumers~~ *consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by a locality as stated thereon, the service provider shall follow its normal collection procedures with respect to the charge for electric service and the tax, and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for electric service and the tax and (ii) remit the tax portion to the appropriate locality.* 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.

H. As used in this section, "service provider" has the same meaning as provided in subsection E of § 58.1-2901, and "class" of consumers means a category of consumers defined as a class by their service provider.

2000 SESSION

003345416

SENATE BILL NO. 532

Offered January 24, 2000

A BILL to amend and reenact § 56-582 of the Code of Virginia, relating to electric utility restructuring; capped rates.

Patron—Watkins

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-582 of the Code of Virginia is amended and reenacted as follows:

§ 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 *the following:* (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) *with* 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 discounts from capped rates to match the cost of providing distribution services*, and (v) *with* 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.

Official Use By Clerks

Passed By The Senate		Passed By The House of Delegates	
without amendment	☐	without amendment	☐
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

_____ _____

Clerk of the Senate Clerk of the House of Delegates

2000 SESSION

ENROLLED

SENATE JOINT RESOLUTION NO. 154

Directing the Consumer Advisory Board established pursuant to the Virginia Electric Utility Restructuring Act to study low-income household energy assistance programs in the Commonwealth.

Agreed to by the Senate, February 15, 2000
Agreed to by the House of Delegates, March 8, 2000

WHEREAS, the Consumer Advisory Board was established pursuant to the Virginia Electric Utility Restructuring Act for the purpose of assisting the Legislative Transition Task Force in its work as prescribed in § 56-595 of the Restructuring Act and on such other issues as may be directed by the Legislative Transition Task Force; and

WHEREAS, in August 1999, the Legislative Transition Task Force requested the Consumer Advisory Board to examine, among other issues, energy assistance programs for low-income households; and

WHEREAS, the Consumer Advisory Board has held several meetings and collected information regarding existing energy assistance programs for low-income households; and

WHEREAS, existing programs do not adequately address the seasonal energy needs of Virginia's low-income households; and

WHEREAS, the Consumer Advisory Board has begun the process of examining whether a need exists, in a deregulated market, for a program that ensures that low-income Virginians will have access to affordable basic electrical service; and

WHEREAS, many of the other states that have restructured their electric utility industries have implemented, supplemented or continued low-income energy assistance programs as a part of their restructuring legislation; and

WHEREAS, in the course of examining existing energy assistance programs in the Commonwealth, the Consumer Advisory Board observed that the issue of low-income energy assistance is broader in scope than ascertaining the potential effects of deregulated electricity generation rates on Virginia's consumers; and

WHEREAS, the Commonwealth does not currently have a statutory policy regarding the provision of financial assistance to low-income households for their energy needs; and

WHEREAS, the vast majority of governmental funding for low-income energy assistance is provided by the federal government through the Low Income Home Energy Assistance Program (LIHEAP), administered by the Department of Social Services, and the Weatherization Assistance Program, administered by the Department of Housing and Community Development; and

WHEREAS, the level of federal appropriations for these programs has been declining during recent years; and

WHEREAS, legislation recently proposed in Congress would have required states to provide matching funds for federal energy assistance appropriations; and

WHEREAS, some utility service providers, local governments, charitable organizations, religious institutions, and other groups currently administer energy assistance programs; and

WHEREAS, contributions from energy consumers and suppliers to voluntary energy assistance programs provide a significant amount of assistance to low-income households and should be encouraged; and

WHEREAS, neither LIHEAP, the Weatherization Assistance Program, nor other governmental or private voluntary assistance programs limit their benefits to consumers of electricity or any other specific type of energy; and

WHEREAS, there is no single state entity charged with overseeing the provision of public funds to low-income households with energy needs; and

WHEREAS, a system for collecting data about low-income energy assistance needs and the amount of assistance provided, as well as ensuring coordination among the various public and private providers of such assistance, does not currently exist in the Commonwealth; and

WHEREAS, weatherization services are a necessary element of the effective provision of energy assistance to low-income households; and

WHEREAS, the natural gas industry is concurrently moving toward a deregulated environment; and

WHEREAS, developing a recommendation for funding a low-income energy assistance program will require a careful analysis of its effects on all energy consumers, energy providers, and program administrators; and

WHEREAS, because an assessment of the need for a program to assist low-income Virginians in meeting their energy needs requires an examination of issues that extends beyond the scope of the implementation of the Restructuring Act, the Consumer Advisory Board should be charged with conducting a broad examination of whether the Commonwealth should act to help meet the energy needs of its low-income households; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Consumer Advisory Board established pursuant to the Virginia Electric Utility Restructuring Act be directed to study low-income household energy assistance programs in the Commonwealth. The study shall address, but not be limited to, whether Virginia should (i) establish a state policy with respect to the availability of affordable electricity and other sources of energy to all Virginians; (ii) create a new program assisting low-income households with a basic level of electric utility service; (iii) expand existing programs, or establish new programs, assisting low-income households with seasonal energy needs regardless of the energy source; (iv) consolidate existing public programs providing energy assistance for low-income households; (v) coordinate efforts of private, voluntary energy assistance programs with public programs and other private programs; (vi) provide incentives to encourage voluntary contributions to energy assistance programs, including the feasibility of tax credits as an incentive for energy consumers and suppliers to fund needed energy assistance programs for low-income households; (vii) address the likelihood of continued declines in federal funding for LIHEAP and the Weatherization Assistance Program; and (viii) use other funding sources, such as penalties or fees assessed on competitive energy providers, to pay for energy assistance programs for low-income households.

The Division of Legislative Services shall provide staff support for the study. Technical assistance shall be provided to the Consumer Advisory Board by the Department of Social Services, the Department of Housing and Community Development, the Department of Mines, Minerals, and Energy, and the State Corporation Commission, upon request. All other state agencies shall provide assistance to the Board upon request.

The Consumer Advisory Board shall complete its work and submit its findings and recommendations to the Legislative Transition Task Force in time for the Task Force to include such material, and its recommendations with regard thereto, in its report to the Governor and the 2001 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.