REPORT OF THE
LEGISLATIVE TRANSITION TASK FORCE
ESTABLISHED UNDER

The Virginia Electric Utility Restructuring Act

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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EXECUTIVE SUMMARY

The Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia, was enacted by the 1999 Session of the General Assembly. When the Act is fully implemented, consumers in the Commonwealth will be able to purchase electric generation services from the supplier of their choice.

The Restructuring Act was the product of a three-year study by the legislative Joint Subcommittee Studying Electric Utility Restructuring. At the joint subcommittee's recommendation, the Restructuring Act established the Legislative Transition Task Force to work collaboratively with the State Corporation Commission in conjunction with the phase-in of retail competition in electric services.

The Task Force commenced its work in June 1999. Its report to the 2000 Session of the General Assembly (Senate Document 54 of 2000) acknowledges that the General Assembly's responsibilities with respect to implementing retail choice did not end with the passing of the Restructuring Act in 1999. The restructuring of Virginia's electric utilities is understood to be an ongoing endeavor that will require consistent monitoring.

Following the extensive examination of implementation issues during its first year, the Task Force expected its second year of existence to be comparatively uneventful. However, two developments required the Task Force's work this year to match, and in some regards to surpass, the intensity of its 1999 efforts.

First, the State Corporation Commission's Order of October 19, 2000, regarding the functional separation of the generation, distribution, and transmission services of incumbent electric utilities focused the attention of all interested parties on the issue of rates for default service after capped rates expire in July 2007.

The second development has been the heightened scrutiny of electric utility restructuring efforts in light of the price spikes, power shortages, and other problems facing California. While some of the Golden State's misfortunes are attributable to factors unrelated to its restructuring legislation (including the absence of construction of new electricity generation facilities and inclement weather), a large part of California's misfortune is attributable to aspects of that state's restructuring law. For example, prohibitions on long-term power contracts and requirements that power be purchased on the daily spot market conducted by the state's independent system operator are blamed for surging prices of wholesale power. Meanwhile, retail price caps prevent distribution companies from passing along the increase in wholesale electricity costs, which in turn has left two investor-owned utilities teetering at the brink of insolvency.

The Task Force has acknowledged that the 1999 Restructuring Act should not be viewed as engraving in stone every aspect of the deregulation of retail electricity generation services. Instead, it views the Act as a dynamic template that can be fine-tuned to address evolving circumstances and issues raised during the course of the transition to competition. In each of its two years of existence, the Task Force has proposed numerous amendments to the Act, both substantive and technical. Virginia's measured march toward the deregulation of electric

generation has allowed power providers, regulators and other interested parties to alert the Task Force regarding issues in advance of the advent of restructuring, which in turn is expected to allow the Commonwealth to avoid the problems that would have resulted from a hurried rush into deregulation, such as are being observed from California's experience.

The Task Force received testimony advocating more than a dozen legislative amendments affecting Virginia's electric utilities. Of these, eight received the Task Force's endorsement:

- Senate Bill 1420: Omnibus Legislation Addressing Default Service Rates, Functional Separation Issues, Competition for Metering and Billing Services, and Related Matters

The Task Force endorsed legislation that establishes a mechanism for establishing the rates for default service after the capped rate period. The SCC is required to attempt to identify default service providers through competitive bidding. If that process does not produce willing and suitable default service providers, it may require a distributor to provide default service. The SCC is prohibited from regulating, on a cost plus or other basis, the price at which generation assets or their equivalent are made available for default service; however, a distributor may bid to provide default service on such basis. A distributor's default service plan must provide that the procurement of generation capacity and energy will be based on the prices in competitive regional electricity markets. If a plan is not approved, the SCC will establish rates for default services based on prices in competitive regional electricity markets. A "competitive regional electricity market" is defined as a market where competition, not statutory or regulatory price constraints, effectively regulates the price of electricity.

In considering functional separation plans, the SCC will consider the potential effects of transfers of generation assets on the rates and reliability of capped rate service and on default service and the development of a competitive market for retail generation services in Virginia. The omnibus bill contains provisions restricting the ability of an incumbent utility to make further transfers of generation assets without SCC approval.

In order to facilitate the development of a competitive electricity market in Virginia, and thereby avoid the need for default service, the omnibus bill includes provisions requiring the SCC to consider the goals of advancement of competition and economic development in all relevant proceedings. It also requires the SCC to report annually on the status of competition in the Commonwealth and the status of the development of regional competitive markets, and to make its recommendations to facilitate effective competition in the Commonwealth as soon as practical.

The omnibus bill also establishes timetables for the introduction of competitive retail billing and metering services. Providers of electricity distribution services will be allowed to recover their costs directly associated with the implementation of billing or metering competition through a tariff for all licensed suppliers, in a manner approved by the SCC. The rates for any non-competitive services provided by a distributor will be adjusted to ensure that they do not reflect costs properly allocable to competitive metering or billing service. The bill includes amendments to consumption tax provisions to address the fact that billing services may be

provided by competitive providers who are not the same as the company delivering electricity to a consumer.

At the SCC's suggestion, the omnibus bill includes provisions that authorize the SCC to establish competition phase-in plans on a utility-by-utility basis, establish that the provisions of the Act will be applied to any municipal electric utility that is made subject to the Act to the same extent that such provisions apply to incumbent utilities, provide that rates for new services applied for after January 1, 2001, will be treated as capped rates, and clarify that default service will be made available after consumer choice is available to all customers in Virginia. Other provisions of the omnibus bill require the SCC to establish minimum periods, if any, that customers must receive service from their incumbent electric utilities or from default service providers after having obtained service from other suppliers.

- Senate Joint Resolution 467: Study of Generation Siting Procedures

The Task Force endorsed a proposal directing the Task Force to study procedures applicable to the construction of new electricity generation facilities in the Commonwealth. The Task Force is directed to recommend amendments to the Commonwealth's administrative and regulatory procedures as may be appropriate to facilitate the approval of construction of sufficient electricity generation capacity to provide a competitive market for electricity in the Commonwealth as soon as practical, without lessening necessary environmental considerations including siting and air quality impacts.

- House Bill 2469: Income Tax Deduction for Contributions to Energy Assistance Programs

The Task Force endorsed a recommendation of the Consumer Advisory Board calling for the establishment of an individual income tax deduction for contributions to a utility company emergency energy program. The deductions would apply where the utility company is an agent for a charitable organization that assists individuals with emergency energy needs. To be eligible, the contributions must be to an organization that qualifies for charitable contributions under the Internal Revenue Code. The deduction would be available only for taxpayers who do not take a deduction for such contributions on their federal tax return.

- House Bill 2473: Low Income Energy Assistance Program

The Consumer Advisory Board recommended the establishment of a Home Energy Assistance Program. The Task Force endorsed the proposal. The proposal designates the Department of Social Services as the state agency responsible for coordinating state efforts regarding a policy to support the efforts of public agencies, private utility service providers, and charitable and community groups seeking to assist low-income Virginians in meeting their seasonal residential energy needs. The measure also created the Home Energy Assistance Fund to be used to supplement DSS's administration of the Low Income Home Energy Assistance Program (LIHEAP) block grant and to assist in maximizing the amount of federal funds available under LIHEAP and the Weatherization Assistance Program by providing funds to comply with fund matching requirements. It would be funded through contributions under the Neighborhood Assistance Act, donations from individuals, and general fund appropriations. The

Department would be required to coordinate the activities of appropriate state agencies, as well as any non-state programs that elect to participate; provide a clearinghouse for information exchange regarding residential energy needs of low-income Virginians; collect and analyze data regarding the amounts of energy assistance provided, and the extent to which there is unmet need for energy assistance in the Commonwealth; track recipients of low-income energy assistance; develop and maintain a statewide list of available private and governmental resources for low-income persons in need of energy assistance; and report annually on the effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians, including the effect of utility restructuring on low-income energy assistance needs and programs. The legislation as introduced included two related recommendations of the Consumer Advisory Board for funding of the Low Income Energy Assistance Program. First, the Board recommended that the Program be funded in part through contributions from business firms, who would be eligible for $1 million in tax credits under the Neighborhood Assistance Act. Second, the Program would be funded in part through voluntary contributions from individuals under an income tax refund check-off.

- House Bill 2472: Definition of Renewable Energy

The Task Force endorsed a Consumer Advisory Board recommendation that a definition of renewable energy be added to the Restructuring Act. The proposal defined renewable energy as energy that is derived from the sun or other natural processes and is replenishable by natural processes over relatively short time periods. The proposal also identified specific forms of energy as being included within the term "renewable energy." The Task Force amended the proposal to specify that the term includes energy from waste.

- House Bill 2470: Marketing of "Green Power"

At the Consumer Advisory Board's request, the Task Force endorsed a proposal to authorize the SCC to establish criteria pursuant to which providers of electricity may designate certain electricity as "green power." Suppliers of electricity who do not obtain the SCC's designation would be prohibited from labeling their power as "green."

- Senate Bill 896 and House Bill 1935: Expansion of Municipal Utility Service Area

The Task Force unanimously agreed to support a proposal offered by Senator W. Roscoe Reynolds addressing an issue in the City of Martinsville. The amendment to subsection F of § 56-580 clarifies that a municipal electric utility may expand its service territory without becoming subject to the Restructuring Act if the new service area is within the municipality's borders.

- Senate Bill 1257: Eminent Domain Authority Of Public Service Corporations

The Task Force agreed to support a proposed amendment to § 56-579 D in order to clarify that on and after January 1, 2002, public service corporations may no longer file petitions to exercise the right of eminent domain in conjunction with the construction or enlargement of any electric energy generation facility.

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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, 2001

I. INTRODUCTION

The Virginia Electric Utility Restructuring Act establishes the framework through which sales of retail electric generation services will be deregulated. Instead of buying power from regulated regional monopolies, Virginia's consumers will be able to purchase electric generation and related services from the licensed supplier of their choice.

The 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 former Senator Jackson Reasor. The joint subcommittee was charged with determining whether restructuring the retail electricity market in Virginia is feasible and in the public interest. The 1996 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 and schedule for the restructuring of the Commonwealth's electric utilities, and directed 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 with its crafting of comprehensive restructuring legislation. The joint subcommittee's proposal was introduced as Senate Bill 1269. The Restructuring Act was enacted as Chapter 411 of the 1999 Acts of Assembly, and is codified as Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia.

The Restructuring Act creates the Legislative Transition Task Force for the purpose of working 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 by § 56-595 of the Restructuring Act 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 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 members of the Task Force have been appointed to serve until July 1, 2005. The term of the Task Force's existence 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. The Act provides that in no event shall any delay in the implementation of customer choice for all customers extend beyond January 1, 2005.

The Task Force consists of 10 members, of whom six are members of the House of Delegates and four are members of the Senate. The members of the Task Force who had previously served on the joint subcommittee that authored the Restructuring Act are Senator Norment of James City County, chairman; Delegate Woodrum of Roanoke, vice chairman; Senator Stolle of Virginia Beach; Senator Watkins of Chesterfield County; Delegate J. C. Jones of Norfolk; Delegate Kilgore of Scott County; Delegate Parrish of Manassas; and Delegate Plum of Fairfax County. During 2000, two new members joined the Task Force. Senator Saslaw of Fairfax County was appointed to fill the vacancy created by the passing of Senator Holland of Isle of Wight County. Following Eric Cantor's election to the House of Representatives and subsequent resignation from the House of Delegates, Delegate Tata of Virginia Beach was appointed to the Task Force.

The first report of the Task Force, detailing its activities and the recommendations developed during the 1999 interim, was submitted as Senate Document 54 of 2000. While printed copies are available through the General Assembly's bill room (telephone 804-786-6984), the report may be viewed at the Task Force's Internet web site (http://dls.state.va.us/elecutil.htm). The web site also provides access to many of the materials submitted at the Task Force's meetings, as well as links to the text of the Restructuring Act and the annual reports of the Joint Subcommittee Studying Restructuring of the Electric Utility Industry that created the Restructuring Act. The annual report of the joint subcommittee pursuant to Senate Joint Resolution 118 (1996) is Senate Document 28 (1997); the report pursuant to Senate Joint Resolution 259 (1997) is Senate Document 40 (1998); and the report pursuant to Senate Joint Resolution 91 (1998) is Senate Document 34 (1999).

This second report of the Task Force summarizes its work between its meeting on June 13, 2000, and its fifth meeting on January 19, 2001. The report consists of two major parts. The first is an overview of the issues that the Task Force examined during the 2000 interim. The second summarizes the deliberations of the Task Force with respect to proposals for legislation amending the Restructuring Act or affecting related provisions of the Virginia Code.

II. ISSUES EXAMINED BY THE TASK FORCE

A. FUNCTIONAL SEPARATION ORDER

Section 56-590 of the Restructuring Act requires each incumbent electric utility to submit a functional separation plan by January 1, 2001. Plans must be implemented by January 1, 2002. Subdivision B 3 of § 56-590 authorizes the SCC to "impose conditions, as the public interest requires, upon its approval of 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 . . . and, if applicable, during any period the incumbent electric utility serves as a default provider." In general, the Restructuring Act requires functional separation in order to encourage competitors to enter the new market by preventing incumbent utilities, who may continue to provide regulated distribution and transmission services, from favoring their own generation operations.

On October 19, 2000, the State Corporation Commission entered its final order in the matter of the functional separation of the generation, distribution, and transmission services of incumbent electric utilities. The Commissioners split two-to-one on the issue of how incumbent utilities' functional separation plans must address the provision of "generation assets or their equivalent" during any period that they are default service providers. Commissioners Moore and Morrison concluded that the Act obligates the SCC to regulate rates for default service "until the market can provide what default service must provide under this statute: reliable and economic service." Commissioner Miller disagreed, concluding that the Act requires the costs of generation, after rate cap protections have expired, to be set by the market rather than by regulators. In his view, the majority's order is inconsistent with the primary goal of the Act: the development of a competitive market.

The majority noted that this issue is one of the most controversial issues faced in the course of its rulemaking associated with the Restructuring Act. "Sweeping, complex legislation borne of such circumstances is seldom, when first enacted, the model of precision; the Restructuring Act is no exception." The majority would require that, if an incumbent utility does not divest generation assets, the rates for default service may be determined based on traditional ratemaking rules. If the utility's plan provides for the divestment of generation assets, the rates, reliability and capacity from equivalent generation must be comparable to that provided by current generation assets. The majority interpreted the phrase "the incumbent electric utility's generation assets or their equivalent" to mean that the Commission may require that incumbents' generation assets remain available, or that equivalent assets remain available, to support regulated capped rate service and regulated default service.

In addressing the "equivalent generation" issue, the Commission tried to interconnect and harmonize statutory provisions, none of which state specifically that "generation or its equivalent" does or does not encompass price as well as capacity. "The absence of express language has given rise to this controversy," they observed. The majority rejected the assertion that in the context of default service, "equivalency" pertains only to an amount of capacity and not to the price of that capacity. The requirement in subsection B 3 of 56-585 that rates be "fairly compensatory" was characterized by the majority as a reaffirmation of the basics of

regulated rates found in Chapter 10 of Title 56. "Fairly compensatory" is deemed to refer to the requirement of § 56-235.2 that public utilities recover their actual cost of service and a fair rate of return on their rate base used to service jurisdictional customers. Under § 56-249.6, utilities may recover prudently-incurred purchased power costs. The Commission cannot fulfill its statutory obligation under § 56-585 to determine rates and promote "reliable and economic" default service, according to these two Commissioners, unless it also requires incumbent electric utilities filing functional separation plans to have in place generation assets, or their equivalent, sufficient to fulfill the incumbents' price and capacity obligations established under § 56-585.

Commissioner Miller dissented from adoption of the portions of the functional separation regulations designated as 20 VAC 5-202-40 B 6 g, h, and i, noting that "there is no ambiguity in the Restructuring Act with respect to the pricing of electric energy beyond July 1, 2007. One of the central tenets of the Act is that the open marketplace is to be, in the future, the 'regulator' of prices paid by consumers for electric energy." He disagreed that §§ 56-585 and 56-590 give the Commission the authority to control the costs of incumbent utilities' generation assets used to support default service. If the language of § 56-590 justifies the imposition of cost controls on generation assets, it "was truly a strange way to phrase that principle."

He acknowledged that the Commission has limited authority to regulate the retail rates charged for default service under §§ 56-585 B 3 and C. As under traditional retail rate regulation, the Commission may disallow costs of power under a contract that had been imprudently procured. But in the absence of a finding of imprudence, the SCC has no power to control the costs of the basic goods and services that were purchased for the public service. The Act does not, in his view, give the Commission the power to regulate the costs of resources that make up part of the expense of serving default customers.

The dissenting Commissioner reached his conclusion on grounds that the Act's emphasis on deregulation is controlling: "Given the clear dependence placed on the competitive market by the Act, a cost component cannot reasonably be grafted onto the 'assets remain available' concept in the absence of some clear indication that the General Assembly intended this reading, of which I find none." Continuing cost of service regulation of generation assets, the dissenting Commissioner asserted, would be contrary to public policy for three reasons: potential competitors will not enter Virginia because their rates are effectively "capped" by lower-than-market default rates; the dearth of competitive suppliers will self-perpetuate the need for the default option, long past the end of the capped rate period; and a competitive market would not develop in Virginia, thereby frustrating the overall goal of the Act -- competition.

While the Commissioners disagreed on the question of whether price and capacity are contained within the meaning of "generation or its equivalent," all agreed to give the General Assembly the opportunity in the 2001 legislative session to undertake a direct and thorough review of this controversial issue and to address whether, and to what extent, default service customers should have generation price protection following the termination or expiration of capped rates under the Act. As noted in Part III of this report, the Task Force examined this issue in detail and recommended amendments to the Restructuring Act that rejected both the majority's and minority's opinions.

Though almost all of the attention paid to the functional separation order focused on rate regulation of default service, it addressed other relevant issues. One issue relevant to the Task Force involves the collection by the SCC of information for its use in monitoring utilities' recovery of stranded costs. As originally proposed, 20 VAC 5-202-40 B 6 would have required that incumbent electric utilities provide the fair market value of generation assets, even if they intend to transfer these assets at book value. Incumbent utilities opposed the requirement on grounds that, to the extent that transfers to functionally separate units will be made at book value, a market valuation is unnecessary. Some incumbents and independent power producers opposed a related requirement in proposed 20 VAC 5-202-40 B 6 that would have required incumbent electric utilities to provide a year-by-year fair market valuation of long-term power contracts.

The Task Force is required by § 56-595 to monitor whether the recovery of stranded costs under § 56-584 has resulted in or is likely to result in the over-recovery or under-recovery of just and reasonable net stranded costs. The Commission concluded that information regarding (i) the fair market value of generation assets at the time of their sale or transfer and (ii) the fair market value of long-term power contracts on a year-to-year basis, is critical to the Task Force's duty to assess stranded cost recovery. The Commission concluded that while it is required to assist the Task Force in monitoring stranded cost recovery, it "will defer to the Task Force to determine as soon as possible, by resolution or some other specific directive to the Commission, whether it will want this information for its use in monitoring utilities' recovery of stranded costs."

Final rule 20 VAC 5-202-40 B 6 c provides that information regarding the fair market valuation of generation assets and purchase power contracts will be required by the Commission "if and when the Task Force directs the Commission to obtain that information for its use pursuant to the Task Force's obligations under § 56-595 of the Act." Though a quorum of Task Force members were not present when the issue was raised, the members in attendance at its January 5, 2001, meeting concurred that the Task Force will want information regarding the fair market valuation of generation assets and power contracts for use in monitoring utilities' recovery of stranded costs.

B. CONSUMER ADVISORY BOARD ACTIVITIES

The Act directs the establishment of a Consumer Advisory Board. The Board is directed to assist the Legislative Transition 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. In its first year, William Lukhard was elected chairman and Otis Brown was elected 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 serves as liaison between the Task Force and the Consumer Advisory Board.

At the Task Force's December 13 meeting, the Consumer Advisory Board presented its report to the Task Force. The Board's report is attached as Appendix A.

In its 12 meetings over the past two years, the Consumer Advisory Board has developed recommendations in areas of assisting low-income consumers in meeting their energy needs, energy efficiency, and renewable energy. The Board understands that the major thrust of deregulation is to establish a competitive market in which residential and small business consumers will benefit. The Board also recognizes that the General Assembly would be reluctant to enact legislation generating revenue through mechanisms that would increase the cost of electricity, and that current information indicates a potential lack of general fund revenues to fund new programs.

Pursuant to Senate Joint Resolution 154 (2000), the Board has examined low-income energy assistance for all sources of energy. The Board recommended that the Task Force endorse the following actions addressing energy assistance needs for low-income Virginians:

- Codifying a state policy supporting the efforts of public agencies, private utility service providers, and charitable and community groups seeking to assist low-income Virginians in meeting their seasonal residential energy needs and designating the Department of Social Services (DSS) as the state agency responsible for coordinating these efforts.

- Establishing an office within DSS to be responsible for statewide coordination of all state and federally funded energy assistance programs, as well as any non-state programs that wish to participate.

- Establishing a dedicated special fund as a repository for funds from various sources to enhance existing sources of funds for low-income energy assistance efforts.

- Creating an income tax refund check-off for donations to the energy assistance program.

- Providing a special incentive for donations by business firms to the fund through an expansion of the Neighborhood Assistance Act, with the $1,000,000 in tax credits earmarked for contributions to the special fund.

- Making contributions to energy assistance programs tax deductible for non-itemizers.

Much of the debate over programs to encourage the development of renewable energy sources and improvements in energy efficiency involved their costs. Board members generally endorsed the goals such programs seek to advance. However, members questioned whether utility customers should bear the costs through their bills, or whether all taxpayers should bear these costs through the general fund. The goal of preserving Virginia's status as a state with inexpensive electricity was consistently recognized. The Board adopted the following recommendations dealing with energy efficiency and renewables:

- Adopting a definition of renewable energy sources that includes those that are derived from the sun or other natural processes and are replenishable by those sources over relatively short time periods.

- Requiring the SCC to establish guidelines for competitive service providers marketing their energy as "green." Non-qualifying electricity providers will be barred from using the "Green Power" label.

- Adopting a tax credit for the purchase and installation of equipment that generates electricity from solar energy or uses solar energy to heat or cool a structure or provide hot water.

- Designating the Department of Mines, Minerals and Energy to develop consumer education programs about energy efficiency, including usage-reduction techniques, energy-efficient equipment available, and weatherization services.

The Board also asked the Task Force to study, or to direct the Board to study, 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.

C. STATUS OF RESTRUCTURING NATIONALLY

1. Federal Legislation

At the Task Force's June 13, 2000, meeting Senator Watkins observed that legislation under consideration by Congress can potentially undo much of Virginia's Restructuring Act. At that meeting, concerns were expressed that the pending S. 2098, known as the Electric Power Market Competition and Reliability Act, could be amended to preempt the current authority of states with respect to a number of restructuring issues. The Task Force agreed that its chair should request Senator Murkowski of Alaska, Chairman of the Senate Committee on Energy and Natural Resources, to ensure that S. 2098 does not abrogate any of the provisions of Virginia's Restructuring Act or otherwise preempt the existing powers of the Commonwealth with respect to the provision of electric utility service. A copy of Senator Norment's letter to Senator Murkowski is attached as Appendix B.

Senator Murkowski's S. 2098 was but one of many items of legislation introduced in Congress in recent years addressing the deregulation of the electric utility industry. Comprehensive electric restructuring legislation was introduced in the 106th Congress by, among others, Representative Barton of Texas (H.R. 2944), the Clinton administration (S. 1047 and H.R. 1828), and Senators Gramm and Schumer (S. 2886) as well as by Senator Murkowski. A chart summarizing these bills is attached as Appendix C.

In the Senate, Senator Murkowski's S. 2098 failed when members of the Senate Energy and Natural Resources Committee were unable to break a deadlock on two issues: extending Federal Energy Regulatory Commission (FERC) jurisdiction to include transmission bundled with retail sale, and a federal mandate on the use of renewable energy sources in generation. Opponents of expanding FERC jurisdiction to the transmission component of "bundled" retail services involved related questions of whether federal law should require transmission to be unbundled, and whether states should have jurisdiction over retail bundled or unbundled

deliveries of electricity over transmission lines with FERC maintaining jurisdiction over wholesale sales.

Faced with a stalemate over these issues in Senator Murkowski's comprehensive restructuring bill, the Senate Committee reported Senator Slade Gorton's Electric Reliability 2000 Act (S. 2071) on June 21, 2000. This bill passed the full Senate on June 30, 2000. However, the House of Representatives took no action on the bill. The bill was aimed at providing relief to bulk power markets, which were shaken by price spikes in western states. It would create an industry self-regulatory organization to develop and enforce mandatory reliability standards, with FERC oversight. The standards only concern the operational security of the bulk power system. It provides for the establishment of a single national electric reliability organization (ERO), subject to FERC approval and oversight, to make sure the ERO and its affiliated regional reliability entities operate effectively and fairly. The ERO would have authority to develop, implement, and enforce compliance with standards for the reliable operation of only the interstate bulk power system. The reliability standards established by the ERO would be mandatory on all owners, users and operators of the interstate bulk power system.

FERC would have been authorized to immediately adopt interim mandatory reliability standards. North American Electric Reliability Council and its individual regional reliability councils may file with FERC those existing reliability standards they propose to be mandatory in the interim before the new ERO is approved by FERC and it establishes reliability standards. The federal government will not preempt state enforcement action, provided that the state rules are consistent with ERO standards. The ERO may delegate authority to implement and enforce standards to an affiliated regional reliability entity, similar to the current regional reliability councils.

The legislation was modeled on the Securities and Exchange Commission's oversight of self-regulatory organizations in the securities industry (the stock exchanges and the NASD). The wholesale power system has operated for 35 years under various voluntary agreements with utilities. The bill's advocates allege that fundamental changes in the electric power industry are making this voluntary system inadequate. Firms that once cooperated are now competitors, and violations of voluntary reliability rules are alleged to have increased.

In the House of Representatives, H.R. 2944 was reported by the Commerce Committee's Subcommittee on Energy and Power in November 1999. In June 2000, Committee Chairman Tom Bliley released a discussion draft that would give FERC a stronger regulatory role in transmission issues. It would also put the interstate transmission grid under uniform national rules, in order to address concerns that the respective jurisdiction of federal and state regulations over the interstate transmission system is unclear and that one-third of the transmission system operated by state and municipal utilities, coops, and federal utilities is unregulated. The discussion draft called for a requirement that all transmission utilities unbundle transmission from other components in the retail sale of electricity.

When the House Commerce Committee convened its scheduled mark-up session on H.R. 2944 on July 13, 2000, Congressman Bliley announced that he was still working to reach a

consensus. By late July, it was reported that final attempts to pass comprehensive restructuring legislation had died.

Though the question of FERC jurisdiction in transmission regulation was a major stumbling block to the development of a consensus, it was not the only critical difference among approaches to comprehensive restructuring legislation. Other major areas of disagreement included:

- Allowing states to require reciprocity as a condition of access to another state's electric markets.
- Inclusion of environmental provisions.
- Public benefits funds, funded by wires charges, for matches with state programs.
- Setting a date certain for national implementation of electric restructuring.
- The role FERC and regional bodies are to play in siting transmission expansions, and the extent to which they may exercise the power of eminent domain.
- Grandfathering state programs; for example, H.R. 2944 would grandfather state restructuring laws, provided they address consumer protection, interconnection, aggregation, and net metering issues.

In addition to the federal proposals discussed above, numerous other restructuring bills were introduced in the 106th Congress. They include:

- H.R. 2734 (Rep. Brown) Community Choice for Electricity Act of 1999
- H.R. 971 (Rep. Walsh) Electric Power Consumer Rate Relief Act of 1999
- H.R. 1138 (Rep. Stearns) Ratepayer Protection Act
- H. R. 2645 (Rep. Kucinich) Electricity Consumer, Worker and Environmental Protection Act
- H.R. 2569 (Rep. Pallone) Fair Energy Competition Act of 1999
- H.R. 1587 (Rep. Stearns) Electric Energy Empowerment Act of 1999
- H.R. 2050 (Rep. Largent) Ratepayer Protection Act/Electric Consumers' Power to Choose Act
- H.R. 667 (Rep. Burr) The Power Bill
- S. 1284 (Sen. Nickles) Electric Consumer Choice Act

- S. 282 (Sen. Mack) Transition to Competition in the Electric Industry Act
- S. 1047 (Sen. Murkowski) Public Utility Holding Company Act of 1999/Comprehensive Electricity Competition Act
- S. 516 (Sen. Craig) Electric Utility Restructuring Empowerment and Competitiveness Act of 1999

2. Developments in Other States

The inability of Congress to enact comprehensive restructuring legislation may have been due in part to concerns with electricity markets in California and other states that enacted consumer choice legislation. Media coverage of the retail price surges in San Diego in the summer of 2000 brought the public's attention to the potential pitfalls of imprudent approaches to restructuring. Though they did not receive as much attention, Wyoming and New York also identified potential restructuring problems during that summer.

The media have focused attention on two separate but related aspects of California's problems with deregulation. Last summer, the doubling or trebling of the retail prices of electricity in the service territory of San Diego Gas & Electric gained news coverage. The retail price surges were the result of the fact that SDG&E was the first incumbent utility that was found to have recovered its stranded costs. As a result, price caps on the utility as a provider of last resort service were lifted. California's deregulation law capped standard-offer power rates for five years or until the utility recovered its stranded costs. When the price caps were lifted in SDG&E's territory, the retail prices rose as surging wholesale prices were passed through to consumers.

The other, more recently-arising, problem with California's deregulation results from the financial burden on distribution utilities forced to sell power to consumers at capped rates that are far below the wholesale market price paid by such utilities. The wholesale price at which electricity can be purchased by distribution utilities is often set daily by the regional power exchange. When the five-year rate cap period expires or when their stranded costs are recovered, the utilities can pass on to consumers the market price for wholesale power. The National Conference of State Legislatures reported that from May 2000 through January 2001, California's major utilities had incurred nearly $12 billion in losses. (State Legislature, March 2001, p. 15). Though California has built only about 600 MW of new power plants over the past decade, demand for new power has grown by more than 6,000 MW. The NCSL's Matthew Brown attributed the dearth of new construction to uncertainties in the market brought about by the debate over restructuring: "The 1994 announcement that major charges were afoot in the way that companies bought and sold electricity put a stop to much of the financial capital flowing in the electric industry to build power plants. Even some of the new generation that the state commission had said was needed to be built in the early 1990s was stopped dead in its tracks when the debate about restructuring got serious." Id. at p. 17.

Howard Spinner of the SCC has provided information indicating that California is not the only restructuring state that experienced price increases in 2000. In New York, residential customers of Consolidated Edison who had not switched power providers experienced a 40

percent increase in their bills in July 2000 compared to July 1999, for the same amount of consumption. In Montana, price caps remain in effect for small customers until at least mid-2002. However, larger customers who have switched to competing suppliers experienced marked price increases that created economic dislocations.

The effect of these developments on states that had not enacted restructuring legislation has been to slow the push for deregulation. In November 2000, the North Carolina Public Utilities Commission staff recommended that the state pursue a limited deregulation plan under which large industrial customers could chose their electricity provider while the market for power sales to small business or residential consumers would remain regulated. The PUC staff's recommendation that the legislative panel move slowly with restructuring was prompted by concerns with California's experience. Oregon had adopted a similar approval where deregulation is being phased in for residential and small business customers.

In January 2001, the Study Commission on the Future of Electric Services in North Carolina decided to defer making a recommendation on deregulation to the state's legislature. The panel had intended to recommend that competition begin in 2006. Instead, it asked for studies, to be completed in the summer of 2001, on how consumers would be protected in a competitive market. (Raleigh News-Observer, January 25, 2001)

According to David K. Owens of the Edison Electric Institute, California's experience is slowing the pace of state restructuring activity: Alabama is no longer considering restructuring; Nevada has delayed restructuring; and Arkansas, New Mexico and Oklahoma are considering delays.

The state cited as most successfully managing the transition to competition is Pennsylvania. Dominion Virginia Power spokesperson Eva Teig Hardy informed the Task Force at its January 19, 2001, meeting that annual savings for consumers resulting from deregulation would be $3 billion annually.

The Task Force's meeting of December 13, 2000, featured two presentations from outside experts focusing on many of the issues affecting the restructuring of the electric utility industry nationwide. Craig McDonald of Navigant Consulting, Inc., of Bala Cynwyd, Pennsylvania, briefed the Task Force on the status of active retail electric competition, pricing issues in California, and the status of current wholesale and retail electricity prices.

Five states -- California, Pennsylvania, Rhode Island, Massachusetts, and New York -- have provided a significant number of retail customers access to competitive supply for longer than one year. In California, 2.2 percent of customers with 14.1 percent of usage have switched suppliers. In Pennsylvania, 10 percent of customers (9.5 percent of residential customers), with 21.2 percent of load have switched suppliers. However, the load served by competitive suppliers in Pennsylvania decreased from 8,321 MW in April 2000 to 5,509 by July 2000.

To most observers, California's restructuring approach appeared to be working well prior to last summer. However, retail markets were not successful in obtaining new customers, as evidenced by the fact that fewer than three percent of all customers changed suppliers. In

addition, no new plants were coming on line, though significant new plants were being proposed. From February through July 2000, wholesale market prices rose more than six-fold. The monthly average unconstrained power exchange price rose from approximately $25 in April 2000 to almost $170 in July 2000.

Mr. McDonald noted that in response to California's trouble last summer, an aggressive push is underway to streamline the power plant siting process from a year to six months. In addition, the state adopted a 6.5 cent/kWh maximum supply cost for SDG&E customers rolled back to June 1, 2000, which has prompted the utility to file to recover the cost of $390 million in refunds to customers.

As of early December, Southern California Edison and Pacific Gas & Electric faced $6 billion of unrecovered power costs not passed on to customers. Southern California Edison filed for relief that would end the rate freeze and authorize rate increases. As the year ended, the utilities were threatened with bankruptcy, the legislature was reviewing the restructuring laws, and consumers were facing ongoing stage 2 emergencies and rolling blackouts.

Mr. McDonald attributed the high prices in California to competitive market forces, market design problems, and sellers of power with market power acting in a manner that raised market-clearing prices. Market forces affecting power production costs in California include rises in natural gas prices and NOx credits, lower-than-expected hydroelectric production in Northwestern states due to low rainfall, and unusual weather. While reserve margins were forecast to be 13.5 percent for the summer of 2000, the industry faced unusually high temperatures and increased demand, up 13 percent in California over 1999. New generation (672 MW) had failed to match the growth in demand (5,522 MW) over the past five years.

Market design problems with California's stab at restructuring are numerous. Utilities were required to produce and sell all of the power through the power exchange, which created an impediment to the use of forward contracts and other risk management strategies. Some sellers are alleged to have "gamed" the system by exporting power to the Pacific Northwest in response to low hydroelectric output. Utilities were strongly encouraged to divest their generation assets. Finally, the price paid to all sellers for electric power was set at the highest market-clearing price.

While the abusive exercise of market power has been alleged, Mr. McDonald noted that it is difficult to prove that suppliers withheld power from the market in order to drive up prices for available electricity. Unplanned power plant outages were higher that expected. Studies of bidding behavior have thus far not provided conclusive evidence than high prices were due more to exercises of market power than from the influence of higher production costs.

On November 1, 2000, FERC issued an order to help California by removing the requirement that investor-owned utilities buy and sell into the power exchange, redesigning the bidding process for the power exchange, and changing the governance of the independent system operation and the power exchange.

With respect to the relationship of wholesale and retail prices, Mr. McDonald noted that several factors have recently produced markets where the wholesale price exceeds the retail price. The resulting negative retail margin has led many competitors to withdraw from markets and caused many of their customers to return to the provider of last resort. He expressed confidence that, over time, the introduction of new generation capacity will lower wholesale prices. Commodities markets tend to experience volatility and cyclical pricing, and electricity is not expected to be any different. Electricity's unique attributes, including the inability to store supply, instantaneous demand for customers' seasonal spikes in demand, and the frequent need for short-notice shut-downs lead to a delicate supply-demand balance. The electricity market is complicated by local opposition to power plant siting, which may impair the market's ability to increase supply to keep pace with growth in demand. The ability of electricity generators to build anywhere will tend to foster the direction of capital to locales where plant construction is comparatively inexpensive and faces less opposition.

Mr. McDonald predicts that, notwithstanding the California conundrum, the restructuring of the electric industry is likely to continue across the nation. New generation may be needed to reduce wholesale prices. Based on the experience of other industries, retail competition for electricity should be viable. He acknowledged the tension between wishing to dampen dramatic swings in standard offer residential prices and the fact that allowing the market to set the price for power is the best way to foster the development of a competitive market.

At the December 13, 2000, meeting David K. Owens, Executive Vice President of the Edison Electric Institute, addressed the prospects for federal restructuring legislation. The most significant issues to be addressed are market power, transmission, consumer protection, and reliability. Mr. Owens agreed that much of the problem with California's power prices is attributable to rules that banned long-term fixed cost contracts. This facet of California's restructuring law prevented utilities from hedging costs and has restricted them to purchasing load on the volatile short-term spot market. Environmental constraints were also allotted some responsibility. Utilities were required by California's restructuring law to sell into and buy from the power exchange for a period of five years. He also cited the fact that utilities were encouraged, if not required, to divest ownership of generation facilities.

California's actual rate of growth in demand of between 5.3 percent and 21 percent far outstripped the forecasted rate of 2.3 percent. The capability of California to import power from other states was limited, totaling only 12,000 MW out of peak demand of 45,000 MW. Rises in the cost of natural gas have added 1.5 cents per kilowatt-hour to electric power costs. In addition, the state law requiring certain generators to purchase pollution allowances has added to electricity prices, as soaring costs of NOx allowances added 3.6 cents per kilowatt hour to electric power costs.

Echoing Mr. McDonald's analysis of the causes of California's problems, Mr. Owens cited a FERC staff report on market conditions in California identified three factors contributing to high prices: (i) competitive market forces, including a scarcity of power relative to demand and increased power production costs; (ii) market rules, including a lack of forward contracting, significant underscheduling, the single-price auction system, and limited demand responsiveness; and (iii) the opportunity for, and possible exercise of, market power.

FERC's recent actions in response to California's problems focus on bringing temporary price stability through modifying wholesale power purchase rules, while addressing longer-term reforms such as managing transmission congestion and ensuring adequate reserve margins. Differences both in the restructuring laws of Virginia and California and in such factors as reliance on natural gas, environmental policies, and plans to build generation and transmission capacity led Mr. Owens to the conclusion that the Commonwealth may avoid the problems facing California.

Mr. Owens cautioned that the reliability of the nation's power transmission system is being tested. Transmission capacity is declining relating to its load. Investments in transmission have declined by an average of $115 million per year since 1975. As a result, transmission congestion is up 140 percent in 1999-2000. The biggest barrier to transmission expansion is siting issues, especially local opposition. Uncertainty in the regulatory environment, especially as to industry structure and regulatory rules in areas such as FERC jurisdiction and the role of independent system operators (ISOs) in setting rates, also pose barriers. Mr. Owens concluded that proper electric power market design will lead to lower electric prices, new technology developments, and more options for consumers.

3. Virginia Electricity Reliability Summit

Shortly after the Task Force's June 13 meeting, Energy Secretary Bill Richardson and Richmond Mayor Timothy M. Kaine hosted the Virginia Electricity Reliability Summit at Virginia Commonwealth University's School of Engineering. The June 19, 2000, meeting was moderated by Edward L. Flippen of McGuire Woods. Panelists included representatives of an investor-owned utility, a corporation, labor interests, a large consumer, and an energy conservation organization.

Congressman Tom Bliley of Richmond presented the Summit's keynote address. He noted that the House Commerce Committee held 34 hearings and heard from more than 350 witnesses on issues related to electric utility restructuring since 1995. The enactment of federal restructuring legislation is necessary to keep pace with the changes occurring in Virginia and elsewhere. He stressed the need for greater reliability and competition on the interstate transmission grid. Only Congress can eliminate the regulatory uncertainty that is currently stifling investment in electricity markets. He observed that in the preceding week, Detroit experienced a major blackout when distribution lines serving portions of that city went down. In California, a heat wave caused a utility to call for rolling blackouts affecting 35,000 customers. The theme of his remarks was that the elimination of regulatory uncertainty and unleashing competition will spur the expensive investments in power plans and transmission lines that are need to improve system reliability. Congressman Bliley's remarks are attached as Appendix D.

Federal Energy Secretary Richardson remarked that Virginia "seems to be in good shape," but is at risk if neighboring states have problems. He echoed the concern that few companies are investing in power plants because of uncertainty as to the future of electric power markets. SCC Chairman Hullihan Moore observed that while the reserve margins of investor-owned utilities have declined from 25 percent to 13 percent over the past five years, Virginia still

compares favorably to its neighbors. One area of concern is the Eastern Shore, which faced problems last year. However, new units scheduled to come on line by July 1, 2000, were expected to alleviate the shortages faced in previous years.

D. COMPETITION FOR METERING AND BILLING SERVICES

Electricity bills and meters often are an electric service provider's most direct contact with customers. Advocates of competition for metering and billing services assert that competition for these services will lead to diverse pricing and billing options that can help stimulate competition in the retail electricity market. The 2000 Session of the General Assembly amended the Restructuring Act to require the SCC to recommend to the Task Force whether competitive metering services, billing services, or both, should be provided by licensed providers. Section 56-581.1 further directed the SCC to address the appropriateness of, and commencement date for, the competitive provision of these services. The SCC's recommendations were required to include a draft plan for the implementation of competition. The recommendations and draft plan, which were due by January 1, 2001, were to be developed consistent with eight criteria enumerated in subsection A of § 56-581.1.

The SCC filed its recommendations and draft plan on October 10, 2000, and held a public hearing on its cases (PUE000346) on November 1, 2000. SCC staff presented the recommendations and draft plan on retail electric billing and metering services to the Task Force at its meeting on January 5, 2001. The full report, dated December 12, 2000, may be viewed at the SCC's Internet web site at www.state.va.us/scc/caseinfo/reports.htm.

The SCC's report proposes authorizing licensed competitive suppliers of electric energy, or competitive service providers ("CSPs"), to offer and coordinate the provision of billing service to retail customers under three options: (i) separate billing by each retail service provider; (ii) consolidated billing by the consumer's incumbent electric utility, or local distribution company ("LDC"); and (iii) consolidated billing by the consumer's CSP. The SCC recommended that options (i) or (ii) be implemented January 1, 2002, and that option (iii) be implemented no later than January 1, 2003. Municipal electric utilities and electric cooperatives shall be exempt from requirements that they support the CSP consolidated billing option, as long as they do not offer competitive electric energy supply to customers in the service territory of other incumbent electric utilities.

Under this proposal, the electricity consumption tax sections of the Virginia Code (§ 58.1-2901 et seq. and 58.1-3814) would need to be amended due to the fact that a CSP, rather than the LDC, may be authorized or required to issue consolidated bills to assess, collect and remit state and local consumption taxes. The SCC also recommended (i) that the General Assembly clarify which costs related to competitive billing services should be recovered by incumbent utilities, and (ii) that incumbent utilities coordinate with licensed service providers, provided that the reasonable costs of such coordination are recovered by the utility. The SCC noted that this provision has generated questions. For example, a utility asserted that the costs of enrolling and switching customers, load profiling, and transferring consumption data to CSPs are reasonable costs of coordination. The SCC noted that, as such costs would be incurred by utilities in the course of interaction with CSPs regardless of whether billing services are made

competitive, they may be beyond the scope of the intent of the cost recovery provision of subsection D of § 56-581.1.

Section 56-581.1 requires the SCC to "adjust the rates for noncompetitive services provided by each utility so that such rates do not reflect costs associated with or properly allocable to the services made subject to competition." The SCC asked that the General Assembly further clarify the SCC's authority to calculate competitive billing service costs and to determine the appropriate method of cost recovery.

The SCC did not recommend immediate action regarding competition for metering services. Legislative action should be deferred pending further study. Comments indicate that the issue is complex and controversial, and positions advanced by interested parties varied widely. In those states that have adopted competitive metering, there is very little market development. The SCC noted, however, that if the General Assembly presently desires to enable transition to competition for metering services, it could authorize the SCC to approve incumbent utility competitive metering service plans upon findings that such plans satisfy the eight criteria enumerated in subsection A of § 56-581.1.

E. OTHER RESTRUCTURING ACTIVITIES

Section 56-595 of the Restructuring Act directs the Task Force to monitor the work of the SCC in implementing the Act, receiving such reports as the SCC may be required to make pursuant to the Act, including reviews, analysis, and impact on consumers of electric utility restructuring programs of other states. The Task Force received reports on the status of implementation of the Act from the SCC at its June 13 and December 13 meetings.

Rather than decreasing the SCC's workload, the deregulation of the electric utility industry has increased the burden on the Commission and its staff. The number and complexity of proceedings conducted by the Commission in 2000 reflects the agency's commitment to transitioning the electric generation sector from regulated monopolies to market competitors, in accordance with the template provided by the 1999 Restructuring Act.

1. Pilot Program Proceedings

The SCC issued an order approving Dominion Virginia Power's retail access pilot program, named Project Current Choice, on April 28, 2000. Phase I of the pilot involved up to 35,580 residential and commercial participants, and 255,000 kW of load for commercial and industrial customers, in the Richmond area. Phase II, implemented in Northern Virginia in the last quarter of 2000, added another 35,500 residential and commercial participants. The order also established the method by which a projected market price for generation, for use in setting wires charges, is to be calculated. Historical price data from the PJM Interconnect will be used in determining the projected market price. The "price to compare" reflects the price customers currently pay a utility, so pilot participants can effectively compare offers from competitive suppliers. The price to compare includes the projected market price for generation and transmission costs. Using their usage history and the price to compare, customers can calculate the savings that might be achieved by switching to a competitive service provider.

The SCC issued an order setting the price to compare for participants in Dominion Virginia Power's Project Current Choice on June 9, 2000. The price to compare differs among different classes of customers. For an average residential customer in the Richmond area, the price to compare is 5.117 cents/kWh. For other classes of customers, the average annual prices to compare are 3.688 cents/kWh for industrial, 4.159 cents/kWh for large commercial, 4.574 cents/kWh for medium commercial, and 4.714 cents/kWh for small commercial services. However, each customer's price to compare varies based on usage patterns. Each volunteer participating in the pilot program is sent its particular "price-to-compare" data. In addition to a competitive supplier's offered price, customers must also pay a regulated distribution charge, a wires charge, and taxes. The annualized average price to compare for various rate schedules under the Dominion Virginia Power pilot program is attached as Appendix E.

David Koogler, Project Manager with Dominion Virginia Power, described the incumbent utility's rollout of Project Current Choice at the Task Force's June 13 meeting. The pilot program will cease upon the implementation of retail choice under the Restructuring Act in January 2002. As the sponsor of the pilot program, the utility is responsible for consumer education associated with the pilot program. However, upon the start of statewide competition in 2002, the SCC will assume responsibility for consumer education efforts.

Project Current Choice has two goals: to test procedures and systems, and to create consumer awareness and interest. Mr. Koogler stressed that expectations for the pilot need to be realistic and that the success of the pilot will not be measured by the number of customers who switch to competitor suppliers.

An update on Virginia's electric pilot programs at the Task Force's December 13 meeting noted that 18,276 of the 38,108 volunteers for Phase I (Richmond Area) of Dominion Virginia Power's Project Current Choice had switched to a competitive service provider. Of the 24 large commercial customers selected by lottery to participate in the pilot, four (with 25.3 percent of available kWh) switched providers, and two of the four large industrial customers (with 41.4 percent of available kWh) switched providers.

Separate proceedings were undertaken by the SCC with respect to AEP-Virginia's pilot program. Projected market prices are to be determined using TVA and Cinergy hub prices. Rather than focusing on specific regions, AEP's pilot is offered throughout their service territory. The pilot program was to be open to as many as 22,000 customers at its inception, and to another 22,000 customers on March 1, 2001. The SCC's order approving AEP-Virginia's pilot program (Case No. PUE980814) was issued on June 15, 2000.

On August 17, 2000, the SCC released information on the market price for generation for AEP-Virginia's pilot program. For eligible residential customers, the projected market price is 4.45 cents/kWh. The projected average market price is higher than the Company's current average cost of generating electricity for its own customers of 3.67 cents/kWh.

Rappahannock Electric Cooperative's application for approval of an electricity retail access pilot program was approved by the SCC on July 28, 2000 (Case No. PUE000088).

Participation in REC's pilot is limited to approximately 900 customers to be selected from volunteers among 2,000 randomly selected residential customers. The SCC has established the projected market price for generation for REC's pilot: for residential customers, the annual average price is 4.766 cents/kWh; for small commercial customers, it is 4.363 cents/kWh; and for large industrial customers, it is 3.684 cents/kWh.

The SCC, by order entered May 26, 2000, established rules governing the operation of both electric and natural gas pilot programs, applicable to competitive service providers, local distribution companies, and aggregators. The rules impose internal controls governing relationships between competitive service providers and affiliated local distribution companies. The rules allow a 10-day rescission period for contacts with competitive service providers, and address partial payments by customers.

The success of any of the pilot programs, as well as for electric utility restructuring, will hinge on the ability to attract competitive service providers to the fledgling markets. Appendix F shows the status of CSPs and aggregators who had applied for licensure as of July 26, 2000, for both the electricity and natural gas pilot programs. The SCC maintains a current list of alternative energy suppliers at the Energy Choice web site (www.yesvachoice.com/ supplierlist.htm).

2. Net Metering

Section 56-594 of the Restructuring Act required the SCC to establish, by regulation, a program to begin no later than July 1, 2001, that affords eligible customer-generators the opportunity to participate in net energy metering. The SCC's net metering rules became effective May 25, 2000. The rules provide for a single meter for customer-generators and a single rate for energy added to or withdrawn from the power grid. They also require net metering customers to notify their local distribution company and energy service provider before interconnecting.

3. Electric Cooperative Affiliates Furnishing Non-Utility Services

The SCC, by order issued June 29, 2000, in Case No. PUA000028, promulgated rules pursuant to Virginia Code §§ 56-231.34:1 and 56-231.50:1. These rules govern the conduct of utility consumer service cooperatives and utility aggregation cooperatives, in order to promote effective and fair competition between their affiliates and other entities engaged in the same or similar unregulated businesses. The regulations prohibit cost-shifting and subsidies between a cooperative and its affiliate, establish codes of conduct detailing permissible relations between a cooperative and its affiliates, and prohibit cooperatives from discriminating against nonaffiliated entities.

4. Functional Separation Plans

As discussed above, the SCC issued its order establishing rules for the functional separation of incumbent electric utilities (Case No. PUA000029) on October 19, 2000. Delmarva Power & Light Company (Case PUE000086) and Allegheny Power (Case No. PUE000280) filed cases for approval of plans to functionally separate, by divesting their

generation facilities, prior to the adoption of SCC's regulations in October. The SCC's final order approving the Delmarva Power & Light Company functional separation plan was issued on June 29, 2000. An order approving Allegheny Power's transfer of its generation assets to an affiliate was entered by the SCC on July 11, 2000.

Virginia's other investor-owned utilities filed functional separation plans in accordance with the Restructuring Act's deadline of January 1, 2001. The remarks of William G. Thomas on behalf of Dominion Virginia Power dated December 13, 2000, relating to the utility's functional separation plan, are attached as Appendix G. Under this plan, the utility's generation assets would be transferred to Dominion Generation Company. Dominion Virginia Power would then become only a distribution company that would purchase all the power used by its customers in Virginia. Under the plan, the electricity from its plants will be sold into the wholesale market rather than to Virginia Power's present retail electricity customers. A public hearing on the plan has been scheduled for October 10, 2001.

5. Regional Transmission Entities

In Case No. PUE990349, the SCC addressed participation of incumbent electric utilities in regional transmission entities (RTEs). A final order adopting rules for RTE participation was entered on July 19, 2000. The rules are precipitated by §§ 56-577 and 56-579 of the Restructuring Act, which require incumbent electric utilities to join or establish RTEs by January 1, 2001. Such utilities are also required to seek SCC authorization for transfers of their transmission assets to the RTEs. In promulgating the rules, the SCC noted that incumbent electric utilities are required by FERC Order 2000 to file information with FERC concerning plans to join a regional transmission organization (RTO) by January 1, 2001 (or January 15, 2001, for utilities who are members of a RTO that complies with FERC Order 888's Independent System Operator principles). The SCC concluded that the Commonwealth's actions pertaining to RTEs are not preempted by federal law. The SCC's regulations establish elements of RTE structures be applied in determining whether to authorize transfer of ownership or control of transmission assets to an RTE.

The SCC's order required Virginia's five investor-owned electric utility companies to submit applications by October 16, 2000, for transferring ownership or control of transmission assets to an independent operator. The date coincided with the October 15, 2000, date established by FERC for utilities to announce their plans for joining an RTO.

The Task Force received testimony last year that Virginia's largest electric utilities would belong to the Alliance Regional Transmission Organization. The Alliance RTO is comprised of American Electric Power Service Corporation, Consumers Energy Company, Detroit Edison Company, First Energy Corp., Dominion Virginia Power, and Commonwealth Edison. Ameren Corp., Illinois Power, Northern Indiana Public Service, and Dayton Power are expected to join the Alliance RTO. A map of the service territories of these utilities is attached as Appendix H.

On June 3, 1999, the Alliance companies filed an application to FERC for approval of the Alliance RTO. This proposal would permit transmission owners to either divest their transmission assets to the RTO or to transfer control of such facilities to the RTO. This concept

would enable transmission owners (and any transmission user) to individually own up to five percent of the voting stock of Alliance RTO. Such transmission owners could potentially control 25 percent of the voting stock. This voting block could be increased if other divesting utilities join the RTO. Additionally, divesting owners could obtain a non-voting ownership interest in the entity that would manage the day-to-day operations of the RTO.

The SCC, the Virginia Committee for Fair Utility Rates, the Attorney General's Office, and others intervened in the Alliance's FERC filing in July, 1999. The parties raised significant concerns regarding whether the proposed ownership interests of transmission owning utilities would prevent independent and non-discriminatory operation of the RTO. They questioned whether the Alliance's proposed pricing policies were consistent with the FERC's prohibition regarding the "pancaking" of transmission rates. They also questioned whether the geographic configuration of the RTO would serve as a detriment to effective competition, noting that the Alliance RTO has been described as a "toll-gate" between mid-western and eastern power markets.

Glen B. Ross of Dominion Virginia Power briefed the Task Force on the status of the Alliance RTO on January 5, 2001. He reported that on December 20, 1999, FERC issued an order conditionally approving the Alliance RTO and directing that certain proposals be modified. The FERC found that the Alliance did not meet Order No. 888's independence standard since, among other things, the Alliance members' ownership of up to 25 percent of the RTO's stock at formation could give members effective control of the RTO. FERC also found that the proposed pricing proposal violated a fundamental tenet of its Order 2000. FERC noted concerns regarding the configuration of the RTO. Rather than supporting a regional market based on historical trading patterns, the Alliance would perpetuate the existing situation where the Alliance members separate the buyers and sellers that constitute the predominant west-east trading patterns.

On February 17, 2000, Alliance members made a partial compliance filing in response to the FERC's conditional approval order. In this filing, the Alliance members attempted to provide further support for its original proposal to allow divesting transmission owners to have a five percent voting interest in the RTO. They also modified a number of other proposals in response to FERC's directives.

On May 18, 2000, FERC issued an order finding that the Alliance members had not adequately addressed the independence issues. FERC specified that the aggregate voting interest of divesting transmission owners could not exceed 15 percent. The compliance order reserved judgement with regard to the configuration issue. The Alliance members then developed a revised pricing proposal and made an additional compliance filing in September, 2000. Mr. Ross reported that the Alliance RTO is on track to meet the December 15, 2001, deadline under Order No. 2000 that RTOs be up and running.

6. Consumer Education Program Activities

Virginia Code § 56-592.1, added to the Restructuring Act in 2000, directs the SCC to establish and maintain a consumer education program in conjunction with implementation of the

Act. The SCC has established an Internet web site (www.yesvachoice.com) to furnish information about energy choice for both electricity and natural gas. The web site contains links to utility-maintained customer choice programs, and provides information to suppliers interested in providing services in Virginia. The SCC also maintains a toll-free telephone number (1-800-YES-2004) to provide information regarding utility restructuring.

At the December 13, 2000, meeting of the Task Force, the SCC reported the establishment of the Virginia Energy Choice Education Advisory Committee, consisting of 15 representatives of consumers, utilities, and an energy marketer. The members of the Advisory Committee are listed in Appendix I.

7. Electric Utility Merger Activity

The SCC has also been reviewing merger activity involving electric utilities. Recent utility merger activities in the Commonwealth include:

- The merger of Dominion Resources and Consolidated Natural Gas Company, which was approved by SCC December 22, 1999. The merged entity was required to divest CNG's Virginia-based local distribution company, Virginia Natural Gas.

- AGL Resources received SCC approval on July 28, 2000, to purchase Virginia Natural Gas from Dominion Resources. VNG will function as a separate subsidiary of AGL.

- PowerGen and LG&E received SCC approval in July 2000 to merge. LG&E subsidiary Kentucky Utilities Corp. operates as Old Dominion Power Company in Virginia.

- NiSource (based in Indiana) and Columbia Energy Group received SCC approval in July 2000 to merge. NiSource will acquire control of subsidiary Columbia Natural Gas of Virginia.

- American Electric Power merged with Central and South West Corp. FERC approved the merger in March 2000.

The merger activity in Virginia tracks events occurring nationally. Since the passage of the Energy Policy Act of 1992, which opened the U.S. electric power industry to the start of competition, corporate combinations have become widespread. Investor-owned electric utilities have sought to improve their position in the increasingly competitive electric power industry. Since 1992, investor-owned utilities have been involved in 26 mergers. As of December 1999, an additional 16 mergers were pending approval. By 2000, the 10 largest investor-owned electric utilities will own an estimated 51 percent of investor-owned electric utility-held generation capacity, and the 20 largest will own an estimated 73 percent.

In addition to mergers within the electricity industry, investor-owned electric utilities are merging with or acquiring natural gas companies, contributing to convergence of the two

industries. Combining energy marketing expertise, improving access to natural gas supply, and expanding products and services are reasons most often mentioned for mergers with gas companies.

Influenced predominantly by state-level electricity industry restructuring programs that emphasize the unbundling of generation from transmission and distribution services, and in some cases by a desire to exit the competitive power generation business, investor-owned electric utilities are divesting power generation assets in unprecedented numbers. From late 1997 through September 1999, investor-owned electric utilities have divested about 17 percent of total U.S. electric utility generation capacity. Most of the sold capacity has been acquired by nonutility power producers that are subsidiaries of utility holding companies.

As a result of mergers and divestitures over the past few years, the organizational structure of the electric power industry is changing. The traditional role of the electric utility as a provider of electric power is giving way to the expanding role of nonutilities as providers of electric power. Additions to capacity by utilities are decreasing while additions by nonutilities are increasing. In the period 1985-1991, utilities were responsible for 62 percent of the industry's additions to capacity. That figure dropped to 48 percent in the period 1992-1998. The nonutility share of net generation rose from nine percent (286 million MWH) in 1992 to 11 percent (406 MWH) in 1998. (U.S. DOE, Energy Information Administration, "The Changing Structure of the Electric Power Industry 1999: Mergers and Other Corporate Combinations," December 1999)

8. Future SCC Proceedings

The SCC reported to the Task Force that, in addition to continuing its involvement with the aforementioned activities, it envisions several major new proceedings in 2002. Working groups have been established to assist in the development of permanent rules for competition and the development of rules for competitive billing, metering, or both. As the January 1, 2002, commencement date for consumer choice approaches, the SCC will develop a plan for the phase-in of competition. The SCC will also address the implementation of its rules regarding regional transmission entities and functional separation of investor-owned utilities in cases to be heard during 2002.

III. DELIBERATIONS AND RECOMMENDATIONS

When the General Assembly enacted the Restructuring Act in 1999, it acknowledged that its work was not complete. Its creation of the Task Force and the Consumer Advisory Board illustrate the recognition that as the Act is implemented, the legislation would need occasional fine-tuning to address unanticipated issues. As in the previous year, the Task Force assumed the role of gatekeeper for any legislation affecting utility industry restructuring.

Commencing with its December 5, 2000 meeting, the Task Force reviewed proposals for amendments to the Restructuring Act. Several of the proposals were incorporated into omnibus legislation backed by the Task Force. Of the other proposals brought before the Task Force, some proceeded as stand-alone bills, with or without the support of the Task Force.

A. OMNIBUS BILL -- SENATE BILL 1420

Senate Bill 1420 incorporates the major policy initiative of the Task Force in the 2000 interim. The major focus of this omnibus legislation is to address the SCC's order establishing functional separation rules, with particular emphasis on the rules addressing pricing for default service after the capped rate period. Though the catalyst for Senate Bill 1420 was the SCC's decision affecting default service and functional separation, amendments to the Act were also recommended that were intended to improve the likelihood that by July 1, 2007, the market for electric generation service in Virginia will be sufficiently competitive that there will be no need for default services when the capped rate period expires.

Under the Task Force's recommended omnibus bill, the SCC is required to attempt to identify default service providers through competitive bidding. If that process does not produce willing and suitable default service providers, it may require a distributor to provide default service. The SCC is prohibited from regulating, on a cost plus or other basis, the price at which generation assets or their equivalent are made available for default service; however, a distributor may bid to provide default service on such basis. A distributor's default service plan must provide that the procurement of generation capacity and energy will be based on the prices in competitive regional electricity markets. If a plan is not approved, the SCC will establish rates for default services based on prices in competitive regional electricity markets. A "competitive regional electricity market" is defined as a market where competition, not statutory or regulatory price constraints, effectively regulates the price of electricity.

In considering functional separation plans, the SCC will consider the potential effects of transfers of generation assets on the rates and reliability of capped rate service and on default service and the development of a competitive market for retail generation services in Virginia. The omnibus bill contains provisions restricting the ability of an incumbent utility to make further transfers of generation assets without SCC approval.

In order to facilitate the development of a competitive electricity market in Virginia, and thereby avoid the need for default service, the omnibus bill includes provisions requiring the SCC to consider the goals of advancement of competition and economic development in all relevant proceedings. It also requires the SCC to report annually on the status of competition in

the Commonwealth and the status of the development of regional competitive markets, and to make its recommendations to facilitate effective competition in the Commonwealth as soon as practical.

The omnibus bill also establishes timetables for the introduction of competitive retail billing and metering services. Providers of electricity distribution services will be allowed to recover their costs directly associated with the implementation of billing or metering competition through a tariff for all licensed suppliers, in a manner approved by the SCC. The rates for any non-competitive services provided by a distributor will be adjusted to ensure that they do not reflect costs properly allocable to competitive metering or billing service. The bill includes amendments to consumption tax provisions to address the fact that billing services may be provided by competitive providers who are not the same as the company delivering electricity to a consumer.

At the SCC's suggestion, the omnibus bill includes provisions that authorize the SCC to establish competition phase-in plans on a utility-by-utility basis, establish that the provisions of the Act will be applied to any municipal electric utility that is made subject to the Act to the same extent that such provisions apply to incumbent utilities, provide that rates for new services applied for after January 1, 2001, will be treated as capped rates, and clarify that default service will be made available after consumer choice is available to all customers in Virginia. Other provisions of the omnibus bill require the SCC to establish minimum periods, if any, that customers must receive service from their incumbent electric utilities or from default service providers after having obtained service from other suppliers.

1. Development of Omnibus Bill

As noted in Part II of this report, responding to the SCC's order establishing functional separation rules for investor-owned utilities proved to be the most important issue addressed by the Task Force during the 2000 interim. At the December 13 meeting, representatives of Dominion Virginia Power, AEP-Virginia, and the Alliance for Lower Electricity Rates Today ("ALERT") informed the Task Force that they and representatives of the Attorney General's Office were working to reach a compromise, but had not reached a mutually agreeable solution. The Task Force encouraged them to continue their efforts.

When the Task Force next met on January 5, 2001, interested parties continued negotiations during the course of the meeting. Though draft legislation addressing issues of default services pricing and competition for metering and billing services was circulated at the meeting, the Task Force did not consider its specific terms. By the close of the meeting, the members of the "stakeholder group," including Dominion Virginia Power, Old Dominion Electric Cooperative, the Alliance for Lower Electricity Rates Today (ALERT), the Attorney General's Office, AEP-Virginia, Allegheny Power, and the Committee for Fair Utility Rates, announced that the issues brought to them had been resolved and that they would provide the Task Force with recommended legislation in the upcoming week.

The Task Force next met on January 12, during the first week of the 2001 Session. The agenda included a review of the second revised final draft of legislation advocated by the

stakeholder group. Task Force members noted their concerns to the second revised final draft legislation. A copy of the second revised final draft is available at the Task Force's web site at http://dls.state.va.us/groups/elecutil/01_12_01/FunctionalSeparation.htm. Reservations were expressed to language in the stakeholder group's draft that reflected an effort to change the responsibilities and duties of the Task Force. The chairman observed that while the Task Force's approach has been to encourage stakeholder groups to work collaboratively, it was never suggested that the Task Force would abdicate its responsibilities.

SCC staff shared their concerns regarding the second revised draft of the legislation with the Task Force. A copy of the staff's January 11, 2001, memorandum is attached as Appendix J. Major areas of concern included the constitutionality of the pricing of default service, the application of the Utility Transfers Act to generation divestiture, and the enforceability of the prohibition on further resale or transfer of the divested generation assets.

The Task Force held its final meeting on January 19, 2001, at which time Dominion Virginia Power spokesman William G. Thomas presented the fifth revised final draft of the omnibus legislation. A copy of the draft is available through the Task Force's web site at http://dls.state.va.us/groups/elecutil/01_19_01/revdraft2.pdf. Mr. Thomas noted that the stakeholder group that crafted the compromise is composed of representatives of the same players that crafted the Restructuring Act two years previously.

The fifth revised final draft addressed several of the concerns identified in the SCC staff's January 11, 2001, memorandum. The stakeholder group provided the Task Force members with a memorandum dated January 18, 2001 (Appendix K), noting how the SCC staff's concerns were either addressed or were deemed to be unfounded. SCC staff continued to voice reservations with aspects of the stakeholder group's proposal. A copy of the SCC staff's January 18, 2001, memorandum, raising additional issues regarding default service and utilities' voluntary divestiture of generation assets, is attached as Appendix L.

Stakeholder group representatives addressed the SCC staff's concerns in the course of the January 19 meeting. Judith W. Jagdmann of the Attorney General's Office concluded that the latest draft of the stakeholder group's proposal provided adequate protection for Virginia consumers. For example, if there did not exist a regional competitive market that could be examined for purposes of determining default rates, she opined that the SCC would be authorized to take expert testimony from economists to determine what would be a competitive market price for generation if such market were to exist. Ms. Jagdmann and Senator Stolle also concluded that the threat of an unconstitutional taking of utilities' property through the establishment of confiscating rates was unfounded. Edward Flippen and former SCC Solicitor General Stewart Farrar testified that existing provisions in the Virginia Code provide adequate precedent for defining a competitive market as one where competition is an effective regulator of the price for services. Examples cited by Mr. Farrar include §§ 56-235.5 and 56-481.2.

Senator Watkins raised concerns about the effect of the new bidding process for default service providers under § 56-585 on the proposed provisions in § 56-590 that would prohibit regulation on a cost-of-service basis. The Task Force endorsed a clarification stating that the restriction on the SCC's authority to regulate prices for default services on a cost-of-service basis

does not affect the ability of a distributor to voluntarily offer to provide default service on any basis.

The Task Force closed its January 19 meeting by endorsing the introduction of the omnibus legislation in the 2001 Session, which incorporates most of the substantive recommendations of the stakeholder group presented in the fifth revised final draft. The Task Force then scheduled a meeting for January 26, 2001, to consider SCC staff comments on the legislation and a proposal by Delegate Woodrum that would postpone the introduction of competition by one year.

The Task Force's omnibus bill was introduced by Senator Norment as Senate Bill 1420 on January 19, 2001. A discussion of major elements of the omnibus bill, including amendments made in committee, follows. A copy of Senate Bill 1420 as it passed the General Assembly is attached as Appendix M.

2. Default Service Rates

Senate Bill 1420 originated as the response of the stakeholder group and the Task Force to the SCC's order adopting rules for functional separation plans. The most contentious aspect of that order involved default service pricing by investor-owned utilities. As previously noted, two Commissioners ruled that default service should be priced on the basis of cost of services. Opponents countered that if Virginia regulates rates based on cost of service, competition will not develop. The third Commissioner concluded that the market should set default service rates. Opponents countered that such an approach would cause rates to be set by an unregulated monopoly. While the correctness of either position could be debated, the stakeholder group concluded that neither offered the best public policy. They proposed, and the Task Force agreed to, an alternative approach: if after the capped rate period the SCC must designate default service providers, the price of the default service shall be based on competitive market prices rather than traditional cost-of-service rate regulation.

Section 56-585 of the Restructuring Act, as enacted in 1999, provided that the SCC may require an incumbent electric utility, if a billing provider is not designated as a default service provider, to provide default service at rates that are fairly compensatory to the utility and that reflect the cost of energy prudently procured, including energy provided for the competitive market. It further stated that rates for default service may be set using any rate method that promotes the public interest.

The stakeholder group proposed to amend § 56-585 to require that the SCC shall periodically conduct bidding processes and, upon a finding that the public interest will be served, designate willing and suitable providers of default service. If the bidding process fails to result in designation of a default service provider, the SCC may require a distributor to provide such services. The rates for default service after the capped rates expire, scheduled for July 1, 2007, shall be based upon competitive market prices for electric generation services.

The stakeholder group also proposed that a distributor who is designated to provide default service may submit to the SCC a plan for procuring electric generation services necessary

to meet its default service provider obligations. The SCC will approve the distributor's plan if the Commission determines that the procurement of generation capacity and energy under the plan is based on the prices of capacity and energy in competitive regional electricity markets. The SCC may modify a distributor's plan only with the concurrence of the distributor or it may reject the plan. If a plan is not approved, the SCC will establish rates for the generation component of default services based on the prices of capacity and energy in competitive regional electricity markets. In implementing these provisions, the SCC also shall consider default service customers' need for rate stability and protection from unreasonable rate fluctuations.

The January 18, 2001, fifth revised final draft of the stakeholder group's proposal added a provision providing that, in determining competitive regional electricity markets and rates for default service, the SCC shall consider the liquidity and transparency of such markets, whether competition is an effective regulator of prices in such markets, the wholesale or retail nature of such markets, the reasonable accessibility of such markets to the RTE to which the distributor belongs, and other factors it finds relevant.

The proposed amendments to § 56-585 also specify that an electric co-op's rates for providing default service in its service territory shall be the co-op's capped rates during the capped rate period and shall be based upon the co-op's prudently incurred cost thereafter.

These suggestions were included in Senate Bill 1420 as introduced. The bill was amended in the Senate Committee on Commerce and Labor during the 2001 Session to add, among other things, provisions specifying that (i) a competitive regional electricity market means a market in which competition, and not statutory or regulatory price constraints, effectively regulates the price of electricity and (ii) in establishing default service generation rates, the SCC, if it cannot identify regional electricity markets where competition is an effective regulator of rates, shall establish such rates for a distributor by setting rates that would approximate those likely to be produced in a competitive regional electricity market. In doing so, the SCC is required to take into account, in addition to the factors listed in subdivision C 4 a of § 56-585, such additional factors as it deems necessary to produce such proxy rates.

3. Functional Separation

Section 56-590, as originally enacted, provided that the SCC may condition its approval of an incumbent electric utility's plan for functional separation on such utility's commitment to make generation assets, or their equivalent, available for electric service during the capped rate period and for any period that the incumbent electric utility serves as a default service provider.

With regard to the functional separation of an incumbent electric utility's generation, transmission, and distribution services, the stakeholder group sought a clarification that would allow generation assets to be transferred to an unregulated affiliate, while the SCC may not condition its approval of such transfers on the price at which the assets are made available for default service prices. The SCC may, however, require that the equivalent of such assets be made available for electric service during any period the distributor serves as a default provider.

The stakeholder group's amendments provide that any election to make the "equivalent" of an incumbent electric utility's generation assets available for capped rate service or for default service shall be made by the incumbent electric utility and be subject to SCC approval based on adequately meeting the public interest. Any generation asset sold, transferred, or otherwise disposed of by the incumbent electric utility with SCC approval shall not be further sold, transferred, or otherwise disposed of without additional SCC approval during the capped rate period and, if applicable, during any period the utility serves as default provider.

As introduced in Senate Bill 1420, the SCC shall have no authority to regulate, including on a cost of service basis, the price at which generation assets or their equivalent are made available for default service purposes. The fifth revised final draft specifically provided that the SCC's authority to regulate the price of default service shall be consistent with the pricing provisions applicable to a distributor prior to § 56-585. Senate Bill 1420 also includes language addressing Senator Watkins' concern that the restriction on the SCC's authority to regulate prices for default service shall not affect the ability of a distributor to offer to provide said service in any competitive bidding process on a cost plus basis or any other basis.

The language of § 56-590 in Senate Bill 1420 was amended in the Senate Committee on Commerce and Labor to require the SCC, in exercising its responsibilities under §§ 56-590 and 56-90, to consider the potential effects of a transfer on rates and reliability of capped rate service and default rate service, and the development of a competitive market in Virginia for retail generation services. The inability to determine default service prices at the time of its consideration of a transfer shall not be grounds for SCC denial of approval of a transfer proposed by an incumbent electric utility.

4. Gaming the System

Section 56-577 of the Restructuring Act establishes the schedule for transition to retail competition for electric generation services. At the December 13, 2000, meeting, Mark Tubbs, representing Virginia's electric cooperatives, alerted the Task Force members to the problem of consumers who elect to leave their incumbent supplier during periods of low prices and then return to capped rate service during periods of high prices. It was suggested that if a customer who has switched suppliers wishes to come back to his former supplier, he must stay with the incumbent for a period of at least 12 months. The cooperative's proposed amendment is attached as Appendix N.

Bill Stephens of the SCC's Division of Energy Regulation observed that the "gaming" issue is a legitimate source of concern, and it is not addressed by the application of wires charges. The market price for generation services is determined by the SCC annually, and reflects an average price over the course of a year. Consequently, there may be times during the year when switching to a competitor will result in lower generation costs even after wires charges are added to the competitor's price of generation.

The stakeholder group's proposal included language amending § 56-577 to limit consumers' ability to take advantage of the system by switching back and forth to CSPs. The proposed amendment to the section, which was included in Senate Bill 1420, provides that by

January 1, 2002, the SCC shall promulgate regulations regarding minimum periods, if any, that customers shall be obligated to receive service from their incumbent electric utilities or from default service providers after having obtained service for a period of time from other competitive suppliers of electric generation services.

5. Competition for Metering and Billing

Section 56-581.1 was added to the Restructuring Act in 2000 upon the recommendation of the Task Force. As noted in Part II of this report, this section directed the SCC to recommend whether to implement competition for billing services, metering services or both. The SCC's report to the Task Force recommended that legislation be enacted in the 2001 Session establishing a schedule for billing service competition. The SCC also recommended that metering service competition be studied further before its implementation is scheduled.

The advancement of competition was labeled by Ralph L. "Bill" Axselle, speaking on behalf of ALERT, as "the ultimate safety net." The this end, the stakeholder group included in its proposal the SCC's recommended timetable for competition for billing services, and advanced the SCC's recommended timetable for the start of competition for metering services. Senate Bill 1420 includes language providing that beginning January 1, 2002, distributors will be required to offer consolidated billing service to suppliers, aggregators, and retail customers, and licensed suppliers and aggregators will be permitted to bill customers separately for their services, subject to requirements established by the SCC. Beginning January 1, 2003, licensed suppliers and aggregators may offer consolidated billing service to distributors and retail customers. The SCC may delay implementation of competitive billing services to retail customers for up to one year if necessary to resolve issues of billing accuracy timeliness, quality, consumer readiness, or adverse effects on competition.

The SCC is required to approve the provision of competitive metering services by licensed providers for large industrial and large commercial customers of investor-owned distributors beginning January 1, 2002, and for residential and small business customers of investor-owned distributors beginning January 1, 2003, as determined to be in the public interest and consistent with specified criteria, including consumer and technical readiness, safety, reliability, and quality. Upon the reasonable request of a distributor, the SCC shall delay the provision of competitive metering services in such distributor's service territory until January 1, 2003, for large industrial and large commercial customers, and after January 1, 2003, for residential and small business customers. By establishing a schedule for the provision of competitive metering services, the Task Force's recommendation rejects that portion of the SCC's recommendation. The SCC's recommended amendment to the Act addressing competitive metering and billing services is attached as Appendix O.

The stakeholder group proposed authorizing the SCC to promulgate rules and regulations necessary to implement competitive billing and metering services, including licensing requirements for billing and metering service providers. Incumbent electric utilities are required to coordinate with licensed billing and metering providers.

Questions were raised by Senator Watkins regarding the recommended legislation's provisions for recovery of a utility's costs. As recommended by the Task Force, the SCC is required to allow a utility to recover its costs directly associated with the implementation of billing or metering competition through a tariff for all licensed suppliers, but not those costs that would be incurred in any event as part of restructuring. The SCC is required to determine the most appropriate method for recovering such costs. The SCC also is required to adjust the rates for any non-competitive services provided by a distributor so that the rates do not reflect costs associated with, or properly allocable to, the competitive service.

Municipal electric utilities will not be required to provide consolidated billing services to licensed suppliers, aggregators or retail customers. Municipal electric utilities and cooperatives will not be required to coordinate the provisions of billing services. However, these exemptions shall not apply if the municipal utility or cooperative offers competitive electric energy supply to retail customers in the service territory of any other Virginia incumbent electric utility. The SCC, nevertheless, may permit any cooperative or municipal electric that pursues such competitive activity to maintain the exemption upon a demonstration of good cause. The SCC may approve the provision of competitive metering services by licensed providers for large industrial and large commercial customers of a cooperative after January 1, 2002, and for residential and small business customers of a cooperative on or after July 1, 2003.

The inclusion of provisions providing for billing by persons other than the provider of electric services prompted amendments to several Code sections regarding the electricity consumption tax. Sections 58.1-2901, 58.1-2902, and 58.1-3814 are amended to substitute the phrase "provider of billing services" for "service providers," and to define providers of billing service to the person who bills a consumer for electric service rendered or, if there is multiple billing for such services, as the person delivering electricity to the consumer.

Betty Long and C. Flippo Hicks spoke on behalf of the Virginia Municipal League and Virginia Association of Counties against the proposal for competitive billing services. Local governments have found that converting to the taxation system required by deregulative legislation is very competitive. The Task Force was urged to use caution and delay any legislation changing the rules applicable to billing for electricity consumption taxes for a year.

6. SCC Recommendations Included in the Omnibus Bill

Senate Bill 1420 included several amendments to the Restructuring Act proposed by the SCC staff. At the Task Force's December 13, 2000, meeting, the SCC introduced several concepts for consideration. At the following meeting, the Task Force considered six issues, of which four were endorsed for inclusion in the omnibus bill.

The first suggestion adopted by the Task Force authorized the SCC to establish phase-in plans for full competition on a utility-by-utility basis. Clarifying that this approach, as opposed to phasing in competition between January 1, 2002, and January 1, 2004, on a regional basis, was viewed as assisting the SCC in its implementation of the Act. The amended language in subdivision A 2 a of § 56-577 was included in Senate Bill 1420.

The second proposal amends § 56-580 to clarify the SCC's authority to apply the provisions of the Restructuring Act to municipal electric utilities that are made subject to the Act, to the same extent that such provisions are also applicable to incumbent electric utilities. As originally enacted, subsection F of § 56-580 provided that the Restructuring Act does not apply to any municipal electric utility unless (i) the municipality opts to have the Act apply or (ii) the municipal utility sells, offers to sell or seeks to sell electricity outside of the area served by the municipality as of July 1, 1999. The Act did not spell out how the Act would apply to such municipalities that became subject to the Act. The proposed amendment to subsection F of § 56-580 provides that as a municipal electric utility is made subject to the Act, then the provisions of the Act applicable to incumbent electric utilities shall also apply to such municipal electric utility, mutatis mutandis.

The third SCC proposal addresses new rates filed after January 1, 2001. The Restructuring Act is unclear as to whether rates for new types of services applied for after that date are to be treated as approved rates. The example offered by the SCC staff involved the provision of service to a new customer to whom existing tariffs do not apply. The proposed amendment to § 56-582 clarified that such new rates would, upon filing, be treated as a capped rate. The language included in Section A of § 56-582 provides that the SCC is establishing rates for new services, may use any rate, method that promotes the public interest and that is fairly compensatory to any utilities requesting such rates.

The final SCC amendment endorsed by the Task Force clarifies that default service is to be made available commencing with the date customer choice is available to all retail customers throughout the Commonwealth. The amended language is included in Subsection A of § 56-585 of the omnibus bill.

7. Other Provisions

The omnibus bill includes two other provisions advocated by the stakeholder group. First, the stakeholder group's proposal includes a new § 56-596 captioned "Advancing competition." This section, which was included in amended form in Senate Bill 1420, requires the SCC, in all relevant proceedings, to take into consideration the goals of advancement of competition and economic development in the Commonwealth. In addition, the SCC shall report annually to the Task Force and the Governor on the status of competition in the Commonwealth, the status of the development of competitive markets, and its recommendations to facilitate effective competition in the Commonwealth as soon as practical. This report shall include any recommendations of actions to be taken by the General Assembly, SCC, electric utilities, suppliers, generators, distributors and regional transmission entities that it considers to be in the public interest. The recommendations shall include actions regarding the supply and demand balance for generation services, new and existing generation capacity, transmission constraints, market power, suppliers licensed and operating in the Commonwealth, and the shared or joint use of generation sites.

Senate Bill 1420 also includes an enactment clause specifying that the provisions of clause (iii) of subdivision B 3 of § 56-590 (which specify that generated assets sold, transferred or otherwise disposed of by an incumbent electric utility shall not be further sold, transferred or

otherwise disposed of without SCC approval) shall not apply to any sale, transfer or disposal of an incumbent electric utility's generation assets that was approved by the SCC pursuant to subsection B 3 of § 96-590 as it was in effect prior to the effective date of the omnibus bill (July 1, 2001). This enactment is intended to ensure that the restrictions imposed by the amended provision of the Act will not apply to an incumbent electric utility, such as Allegheny Power, that obtained approval of its functional separation plan by the SCC prior to the proposed amendments to the Act encompassed in the omnibus bill.

The stakeholder group's fifth revised final draft included certain recommendations that were not included in the omnibus Senate Bill 1420. These provisions would have (i) provided that the Task Force is established to seek to ensure effective competition in the Commonwealth as soon as practical; (ii) extended the term of the Task Force from July 1, 2005, to December 31, 2008; (iii) requested the Task Force to report annually to the General Assembly and the Governor on the status of competition in the Commonwealth and its recommendations to facilitate effective competition in the Commonwealth as soon as practical, including any recommendations of actions to be taken by the General Assembly, SCC, electric utilities, suppliers, generators, distributors, and regional transmission entities it considers to be in the public interest. The stakeholder group also proposed that the Task Force recommend modifications in state administrative and regulatory procedures it determines appropriate to facilitate the approval of construction of new electric generation facilities. This suggestion ultimately served as the basis for Senate Joint Resolution 467.

B. STUDY OF GENERATION SITING PROCEDURES - SENATE JOINT RESOLUTION 467

The Task Force recognizes that California's electricity woes are attributable in no small part to the lack of construction of new generation facilities. The stakeholder's group urged that steps be taken to streamline the procedures applicable to the construction of electricity generation facilities. An adequate supply of electricity is viewed as critical to the development of a competitive market for electric generation services.

Though the stakeholder's group proposed that a study of these issues be codified in the Restructuring Act, the Task Force preferred that the issue be addressed by a joint resolution. Senate Joint Resolution 467 (Appendix P), introduced by Senator Norment, directs the Task Force to study procedures applicable to the construction of new electricity generation facilities in the Commonwealth. The Task Force is asked to recommend any amendments to the Commonwealth's administrative and regulatory procedures as may be appropriate to facilitate the approval of construction of sufficient electricity generation capacity to provide a competitive market for electricity in the Commonwealth as soon as practical, without lessening necessary environmental considerations including siting and air quality impacts. The Task Force is requested to report its findings and recommendations by November 30, 2001, to the Governor and the 2002 Session of the General Assembly.

C. CONSUMER ADVISORY BOARD LEGISLATIVE PACKAGE

Chairman William Lukhard presented the Consumer Advisory Board's report to the Task Force at its December 13, 2000, meeting. Seven legislative proposals to implement the Board's recommendations were reviewed by the Task Force on January 5, 2001.

1. Income Tax Deduction for Contributions to Energy Assistance Programs

The Board recommended a Virginia individual income tax deduction for contributions to a utility company emergency energy program. (Appendix Q) The deductions would apply where the utility company is an agent for a charitable organization that assists individuals with emergency energy needs. To be eligible, the contributions must be to an organization that qualifies for charitable contributions under § 170(C) of the Internal Revenue Code. Examples of eligible programs include the Energy Share and Neighbor-to-Neighbor programs. The deduction would be available only for taxpayers who do not take a deduction for the contributions on their federal tax return, because charitable contributions deducted on the taxpayer's federal return ultimately pass through to the state income tax return. The deduction would apply to taxable years beginning on or after January 1, 2002.

The Task Force endorsed the recommendation. The proposal was introduced by Delegate Plum as House Bill 2469. The Department of Taxation's fiscal impact statement noted that while the revenue impact of the bill cannot be determined, it is likely to be fairly modest. The bill was passed by indefinitely in the House Finance Committee by a vote of 22-1.

2. Establishment of Low Income Energy Assistance Program

Senate Joint Resolution 154 of the 2000 Session (Appendix R) was introduced with the endorsement of the Task Force. The resolution directed the Consumer Advisory Board to study low-income household energy and the programs in the Commonwealth. The Board was directed to address, among other things, whether Virginia should (i) establish a state policy with respect to the availability of affordable electricity and other sources of energy to all Virginias; (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 assisted on competitive energy providers, to pay for energy assistance programs for low-income households.

Several of these issues were specifically addressed in the Consumer Advisory Board's recommendation that Virginia establish the Home Energy Assistance Program. (Appendix S) The measure designates the Department of Social Services as the state agency responsible for

coordinating state efforts regarding a policy to support the efforts of public agencies, private utility service providers, and charitable and community groups seeking to assist low-income Virginians in meeting their seasonal residential energy needs. The measure would also create the Home Energy Assistance Fund to be used to supplement DSS's administration of the LIHEAP Block Grant and to assist in maximizing the amount of federal funds available under LIHEAP and the Weatherization Assistance Program by providing funds to comply with fund matching requests. It would be funded through contributions under the Neighborhood Assistance Act, donations from individuals, and general fund appropriations.

In administering the Home Energy Assistance Program, DSS would be required to:

- Coordinate the activities of state agencies, as well as any non-state programs that elect to participate, that are directed at alleviating the seasonal residential energy needs of low-income Virginians, including needs for weatherization assistance services;

- Provide a clearinghouse for information exchange regarding such residential energy needs for low-income Virginians, which clearinghouse will provide information regarding the extent to which the Commonwealth's efforts in assisting low-income households are adequate, are cost-effective, and are not duplicative of similar services provided by utility service providers, charitable organizations, and local governments;

- Collect and analyze data regarding the amounts of energy assistance provided, categorized by fuel type, and the extent to which there is unmet need for energy assistance in the Commonwealth;

- Track recipients of low-income energy assistance in Virginia based on data provided by program administrators;

- Develop and maintain a statewide list of available private and governmental resources for low-income Virginians in need of energy assistance; and

- Report annually on the effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians, which report shall also address the effect of the restructuring of the electric and gas industries on low-income energy assistance needs and programs.

The proposal also authorized DSS to assume responsibility for administering all or any portion of any private, voluntary low-income fuel assistance program upon the application of the administrator thereof, on such terms as the Department and such administrator shall agree and in accordance with applicable law and regulations.

The Board's proposal received the recommendation of the Task Force. Delegate Plum introduced House Bill 2473, which incorporated the proposal and other recommendations of the Board regarding funding the program through Neighborhood Assistance Act contributions and tax return check-offs. As the bill passed the General Assembly, the responsibilities of DSS in

administering the program were limited to administering distributions from the fund and reporting annually as to effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians. The proposed funding through income tax return check-offs and Neighborhood Assistance Act donations were also removed from the bill.

3. Neighborhood Assistance Act Tax Credits for Business Contributions to Program

The Consumer Advisory Board recognized that the proposed programs for low-income assistance will cost money, and that designating a funding source that neither drained general fund revenues or increased the cost of electricity could be difficult. To avoid these pitfalls, the Board recommended that the new programs be funded in part through contributions from businesses by offering tax incentive under the Neighborhood Assistance Act (Appendix T). The proposal earmarked $1 million of the amount of tax credits under the program. Contributions would be eligible for a tax credit equal to 45 percent of the amount of their donations, with a maximum credit of $175,000, and a minimum credit of $400, per year. Contributions for energy assistance would be earmarked for the proposed Home Energy Assistance Fund.

The Task Force recommended enactment of this proposal. The purposes of the proposal were incorporated into House Bill 2473, which established the Home Energy Assistance Program and Fund. The programs were removed from House Bill 2473 during the 2001 legislative session.

4. Income Tax Refund Check-Off for Voluntary Contributions to Home Energy Assistance Fund

The Consumer Advisory Board proposed that the Home Energy Assistance Program be funded in part through voluntary contributions from individuals under an income tax refund check-off (Appendix U). The proposal, which tracks similar existing check-off provisions, allows persons entitled to a state tax refund, at the time the return is filed, to designate all or part of their refund amount to be paid into the Home Energy Assistance Fund to be used to assist low-income Virginias in meeting seasonal residential energy needs.

The Task Force recommended the proposal, and it was incorporated into House Bill 2473 as introduced. The measure was removed from the bill in the House Finance Committee during the 2001 Session.

5. Definition of Renewable Energy

The Consumer Advisory Board recommended that a definition of renewable energy be added to the Restructuring Act (Appendix V). Defining the term was viewed as a means of ensuring that its use in consumer education programs and marketing efforts would be uniform and consistent with approved goals. The proposal, which was based on Massachusetts legislation, defines renewable energy as energy that is derived from the sun or other natural processes and is replenishable by natural processes over relatively short time periods. The provision then identifies specific forms of energy as being included within the term "renewable energy."

An amendment was sought that would add energy derived from waste to the list of renewable energy sources. The Task Force then postponed making any recommendation on the proposal until its January 12, 2001, meeting. At that time, the Task Force enclosed the proposal with the "waste to energy" amendment, subject to any additional clarifications that may be needed in committee.

Delegate Plum introduced the proposal in the 2001 Session as House Bill 2472. The bill was amended in the House Committee on Corporations, Insurance and Banking to delete the provision defining renewable energy as energy derived from the sun or natural process and replenishable by natural processes over a relatively short time period. The amended bill was approved by the General Assembly.

6. Marketing of "Green Power"

The Consumer Advisory Board asked the Task Force to endorse proposed legislation that would authorize the SCC to establish criteria pursuant to which providers of electricity may designate certain electricity as "green power." (Appendix W) Though the proposal did not establish criteria for the green power designation, it directed the SCC to consider information on fuel mixes collected from generators. Suppliers who do not obtain the SCC's designation would be prohibited from labeling their product as "green" power.

The proposal was intended to foster the market for electricity generated from environmentally-benign sources by establishing controls over its marketing. By assuring consumers that power labeled as "green" does in fact meets certain criteria, consumers would know that the claims of marketers purporting to sell less-polluting power would be verifiable. When the proposal came before the Task Force on January 5, 2001, Alden Hathaway of the Environmental Resources Trust objected to it on grounds that some national entities have established their own standards for marketing "green power." The Task Force postponed action on the proposal until its January 12 meeting. At that time the Board's proposal was endorsed by the Task Force, with assurance from Delegate Plum that he would work with interested parties to address their concerns about duplicate standards.

Delegate Plum introduced the proposal as House Bill 2470. The SCC's fiscal impact statement noted that it may be virtually impossible to confirm that marketing information is valid. The bill was stricken at the patron's request in the House Committee on Corporations, Insurance and Banking.

7. Tax Credit for Investments in Solar Equipment

The Consumer Advisory Board's seventh recommendation for legislation would establish individual and corporate income tax credits for the purpose and installation of equipment that either (i) generates electricity from solar energy or (ii) uses solar energy to heat or cool a structure or provide hot water. (Appendix X) The tax credit would equal 15 percent of the cost of purchasing and installing eligible equipment, up to $1000, which credit must be taken in the year it is installed and purchased. The equipment must provide at least 10 percent of the

building's energy needs, and be approved as eligible by the Department of Mines, Minerals and Energy.

When the proposal was first heard by the Task Force, a fiscal impact statement had not been prepared. When the proposal came back before the Task Force on January 12, the Department of Taxation estimated that the proposal would reduce general fund revenues by about $200,000 annually. The Task Force discussed the proposal, but declined to take formal action on it.

Delegate Plum introduced the proposal as House Bill 2474. The bill, as amended to sunset the credit in 2006, was approved by the House of Delegates but failed in the Senate Finance Committee.

D. CLEAN AND EFFICIENT ENERGY TAX INCENTIVES

Senator Mary Margaret Whipple presented a proposed package of tax incentives for clean and efficient energy at the Task Force's December 13, 2000, meeting. (Appendix Y) The incentives in her package consist of (i) a corporate income tax credit in an amount equal to 0.85 cents for each kilowatt of electricity produced from certain renewable energy resources (wind and biomass); (ii) an individual and corporate income tax credit for the costs of photovoltaic and solar water heating property; (iii) exemptions from the sales and use tax for certain appliances meeting federal Energy Star® efficiency requirements, and for heat pumps, air conditioners, and natural gas water heaters meeting specified performance measures; and (iv) a 50 percent reduction in the motor vehicle sales and use tax for purchasing or retrofitting motor vehicles that run on clean special fuels. The income tax credits would be effective in taxable year beginning on and after January 1, 2001.

In the absence of information regarding the proposal's effect on the Commonwealth's tax revenues, the Task Force deferred action to January 5, 2001. The Tax Department reported at that time that it was not able to estimate the proposal's total revenue impact. It was estimated that the two income tax credits would cause a revenue decrease of $300,000 in fiscal years 2002 and 2003. The decrease in sales and use tax revenue attributable to the Energy Star® appliance exemption could be as high as $6 million in fiscal year 2002 and $6.8 million in fiscal year 2003.

At the January 5, 2001 meeting, Steve Kalland of MD-DE-VA Solar Energy Industries Association offered alternative legislation for an income tax credit that borrowed elements of Senator Whipple's and the Consumer Advisory Board's solar equipment tax credits (Appendix Z). The Task Force took no action on Mr. Kalland's proposal.

Based on its fiscal impact, Senator Whipple's bill was viewed by the Task Force as having little or no chance of passage in 2001. The members agreed to endorse the proposal in concept, amended by the addition of a provision extinguishing the measure in three years, and tempered with the observations that the current economic times are not receptive to such a proposal. In addition, the Task Force observed that the revenue committees of the General Assembly are the appropriate bodies to address its fiscal impact. Senator Whipple introduced the proposal as Senate Bill 792. The bill was not reported from the Senate Committee on Finance.

E. SELF-REGULATION BY DISTRIBUTION COOPERATIVES

Former Senator Jackson Reasor, who chaired the joint subcommittee that crafted the Restructuring Act from 1996 through 1999, presented the Task Force on December 13, 2000, with a recommendation of the Virginia, Maryland and Delaware Association of Elective Cooperatives that would provide for the self-regulation of utility consumer services cooperatives. (Appendix AA) The proposal would authorize Virginia's consumer-owned, not-for-profit electric distribution cooperatives to elect self-regulation with respect to various aspects of financing transactions, terms and conditions, service and rates relating to the provision of electric service. Currently, the SCC regulates these activities. Such self-regulation may occur only following notice to the members and a subsequent affirmative vote of a supermajority of the members. Any cooperative whose members affirmatively choose to self-regulate may revert back to Commission regulation through a similar referendum process. Any cooperative whose membership chooses to impose self-regulation will still have an obligation to serve the public within its certificated service territory. Additionally, the capped rates for electric service and the default service provisions of the Restructuring Act will continue to apply to all electric cooperatives regardless of self-regulation status. The proposal was described as analogous to the existing self-regulation by telephone cooperatives.

According to information provided to the Task Force, more than two-thirds of states allow for optional self-regulation by electric cooperatives (Appendix BB). After much discussion of the proposal's implications, action was deferred to the next meeting. At the January 5, 2001, meeting, Mark Tubbs, representing Virginia's electric cooperatives, reported that he had met with many stakeholders and that they were continuing to work on issues. A major concern was the relationship between self-regulated cooperatives and their affiliates. Bear Island Paper Company, a major consumer of one cooperative, expressed reservations about access to a complaint resolution process, and concerns that rates continue to be nondiscriminatory. Members viewed the proposal as a major policy shift in Virginia that required a more thorough examination than available time would permit. The Task Force concluded that it would not be prudent for the legislation to go forward at this time.

At the January 12, 2001, meeting, it was reported that distribution cooperative self-regulation legislation would be introduced with the request it be referred to the Task Force for study. Delegate Kilgore introduced a re-written cooperative self-regulation proposal in the 2001 Session as House Bill 1940. The bill was passed by in the Corporations, Insurance and Banking Committee. The co-chairmen of the committee referred the proposal to the Task Force for possible consideration during 2001.

F. CAPPED RATES FOR LOCAL GOVERNMENTS

Section 56-582 of the Restructuring Act establishes capped rates, effective January 1, 2002, through July 1, 2007, for each service territory of every incumbent electric utility. However, the rates charged by electric utilities to its governmental customers historically have not been subject to SCC regulation. Howard Dobbins, representing local governments in AEP-Virginia's service territory, asked the Task Force at its January 5, 2001, meeting to amend the

Act to provide that the rates in effect on January 1, 2001, shall continue as capped rates through January 1, 2007 (Appendix CC).

AEP representative Barry Thomas objected to the proposal on grounds that Mr. Dobbins' proposal was an attempt to lock in a short-term contact rate. The rates currently charged by the utility to its governmental customers have been set by negotiated contracts scheduled to expire July 2002. He observed that the parties have time to negotiate a new contract rate for power over the next year. The Task Force declined to endorse the proposal, noting that the Restructuring Act should not be used as a tool in price negotiations.

Delegate Morgan Griffith introduced by request House Bill 2853, which would have enacted the local government capped rate proposal. The bill failed in the House Committee on Corporations, Insurance and Banking, though its co-chairs wrote to Senator Norment requesting that the Task Force study the issue presented by the bill prior to the 2002 Session.

G. EXPANSION OF A MUNICIPAL UTILITY'S SERVICE AREA WITHIN ITS CITY

Senator W. Roscoe Reynolds informed the Task Force of an issue arising in the City of Martinsville. The city operates a municipal electric utility within its boundaries, but a portion of the city had been served by AEP-Virginia. The utility and the municipality are willing to transfer the authority to provide electric service within that portion of the city to the municipality's utility. However, § 56-580 provides that a municipal electric utility may become subject to the Act if it directly or indirectly sells electric energy to any customer outside the geographic area that was served by the municipality on July 1, 1999.

The members at the January 5, 2001, meeting unanimously agreed that the intent of subsection F of § 56-580 was to make municipal electric utilities subject to the Restructuring Act only if they expanded their service territory beyond their corporate boundaries. Accordingly, the Task Force endorsed a proposal presented by Senator Reynolds and Carter Glass (Appendix DD).

Legislation implementing the proposal was introduced as Senate Bill 896 and House Bill 1935. Both measures were enacted by the 2001 Session of the General Assembly.

H. INTERCONNECTION OF CERTIFICATED SERVICE TERRITORIES

Mark Tubbs, representing Virginia's electric cooperatives, alerted the Task Force at the January 5, 2001, meeting to issues that arise when a distribution service area is transferred by an investor-owner electric utility to a cooperative. One area of concern involves which entity is to be the provider of default service for the transferred area. Another issue involves the capped rate to be applied in the transferred area. A proposal was circulated for review (Appendix EE). Mr. Tubbs noted that the parties were attempting to negotiate a compromise, and that many issues remain unresolved. Regardless of the outcome of the parties' negotiations, Mr. Tubbs noted that it may be an issue for the Task Force to take under advisement for future analysis.

I. ADJUSTMENTS TO PROJECTED MARKET PRICE FOR GENERATION

Michel A. King of Old Mill Power appeared before the Task Force at its January 5, 2001, meeting, on behalf of the Virginia Reservable Energy Industry Association (VREIA). His proposal, a copy of which is attached as Appendix FF, would amend subsection A of § 56-583 to provide that the projected market price for generation shall be adjusted for any fuel costs recovered by the incumbent electric utility pursuant to § 56-249.6.

Mr. King's proposal was intended to address an issue involving incumbent utilities that make off-system sales of their displaced generation into the open market. These sales allow utilities to recover the fuel costs associated with the sale of the displaced generation. Thus, according to Mr. King, the utilities are recovering the fuel costs associated with such off-system sales. He asserted that his proposal would prevent "double dipping" by utilities through stranded cost recovery mechanisms.

The SCC's Bill Stephens advised the Task Force that the Restructuring Act allows the SCC to establish the market price for generation once per year. There will be times during the year when the actual market price part for the generation exceeds the annual average market price set by the SCC. If the projected market price set by the SCC were allowed to fluctuate with actual market price, as proposed by Mr. King, marketers seeking certainty may be deterred from entering Virginia's power market. Based on this information and the lack of any compelling reason to change the current law, the Task Force declined to support the VREIA's proposal.

J. EMINENT DOMAIN AUTHORITY OF PUBLIC SERVICE CORPORATIONS

Charles M. Guthridge, representing Tenaska Virginia Partners, L.P., requested the Task Force's support for a proposal amendment to § 56-579 of the Restructuring Act (Appendix GG). Subsection D of this section currently provides that on and after January 1, 2002, the right of eminent domain may not be exercised in conjunction with the construction or enlargement of any electric energy generation facility.

Mr. Guthridge noted that the current language is subject to conflicting interpretations because it does not state what action triggers the exercise of the eminent domain right. It was proposed that the applicable language be re-written to prohibit the filing of a petition to exercise such right on or after January 1, 2002. The Task Force gave tacit approval to the proposal.

Senator Norment introduced the proposal in the 2001 Session as Senate Bill 1257. The bill passed the General Assembly without a dissenting vote.

K. OTHER PROPOSALS OFFERED BY SCC

In addition to the four recommended amendments to the Restructuring Act offered by the SCC that were agreed to by the Task Force and incorporated into the omnibus legislation, the Task Force declined to recommend two proposals.

At the December 13, 2001 meeting of the Task Force, SCC staff raised the issue of the treatment of line extension credits. The staff suggested that it may be appropriate to clarify the effects of the Restructuring Act's capped rate provisions on line extension credits that are currently provided under utility tariffs for new residential and commercial customers. Currently, AEP, Virginia Power, Delmarva Power and the Southside, Rappahannock, and Old Dominion electric cooperatives have tariffs that provide new electricity customers credits against the cost of providing utility line extensions. The credits are calculated by multiplying the customer's likely annual revenue from fully bundled electric service to the company by a fixed number of years. (Appendix HH illustrates examples involving residential customers).

The issue identified by the SCC staff is whether, when full competition begins, line extension credits should be calculated on the basis of revenue from bundled electric service, or solely on the basis of distribution service. This issue is likely to arise when a utility's new customers are eligible to shop for competitive suppliers on and after January 1, 2002. Utilities may contend that in applying line extension tariffs during the capped rate period, customer revenues should be calculated on the basis of distribution only (and not fully bundled service), since these new customers could shop for generation services.

SCC staff offered two options for the Task Force's consideration. Under the first option, line extension credits would reflect all revenues, including revenues expected to be produced by capped generation rates. The second option would limit such credits to revenue expected to be produced by distribution rates only. (Appendix II). The Task Force decided to defer any action in this issue for the present time.

The second proposal offered by the SCC staff addressed rate discounts by cooperatives during the capped rate period. The question raised was whether capped generation rates that are reduced by rate reduction riders filed after January 1, 2001, are to be treated thereafter as capped rates. At least one distribution cooperative that is a member of Old Dominion Electric Cooperative (ODEC) reportedly intends to file a rider to reduce its rates after January 1, 2001, pursuant to § 56-581. However, § 56-582 B does not allow the Commission to adjust capped rates for ODEC members except as to the recovery of fuel costs. The SCC asked whether during the capped rate period, cooperatives and other incumbent utilities can raise and lower their rate cap. SCC staff appeared before the Task Force on January 5, 2001, with proposed language that would address the issue (Appendix JJ). The proposed amendment to subsection B of § 56-582 would allow the SCC to adjust the capped rates of cooperatives that are members of ODEC in connection with discounts from capped rates to match the cost of providing distribution service. The Task Force declined to endorse the proposal.

IV. CONCLUSION

The Legislative Transition Task Force recognizes that the successful implementation of the Restructuring Act is vitally important to all Virginians. One need only observe the ongoing crisis in California's electricity industry to conclude that the deregulation of electrical power generation can be risky. However, the members of the Task Force remain confident that critical differences between circumstances here and in California will allow Virginia to implement retail competition for electric generation services in a manner that can avoid disruptions.

Some of the circumstances faced by California, including inclement weather, dependence on increasingly-expensive natural gas, transmission constraints, and the failure to construct adequate generation facilities, are not directly related to that state's electric utility restructuring legislation. However, a large share of California's woes has been attributable to features of its restructuring law. For example, the prohibitions on long-term power contracts and requirements that power be purchased on the daily spot market conducted by the state's independent system operator have been blamed in part for the surging prices of wholesale power. Virginia's Restructuring Act does not share these aspects of California's law that are being blamed for the explosion of wholesale power costs in that state.

Moreover, Virginia's measured phasing-in of deregulation is intended to allow the SCC and the General Assembly to adjust the Restructuring Act in order to address matters that may not have been adequately covered by the original 1999 legislation. The General Assembly has acknowledged that the Restructuring Act is a dynamic template that can be fine-tuned to address evolving circumstances and issues raised during the course of the transition to competition. The measured march toward deregulation of electric generation has allowed power providers, regulators and other interested parties to alert the Task Force regarding issues in advance of the advent of restructuring. This process in turn is expected to allow the Commonwealth to avoid the problems that would have resulted from a hurried rush into deregulation.

As this process evolves, the Task Force has attempted to fill the critical role of monitoring the Act's implementation and suggesting amendments to the full General Assembly. Over the past year, the Task Force has diligently worked with a broad spectrum of interests in crafting what it hopes is a viable compromise to the issues raised by the SCC's functional separation order of October 19, 2000. Due in part to the interrelationships affecting other aspects of the Restructuring Act, the bill also incorporates provisions addressing competition for metering services and billing services, durational requirements on customers who switch to competitive service providers in order to curb "gaming the system," and other matters.

The members of the Task Force applaud the effort of members of the stakeholder group in crafting what all hope will be a workable solution to a difficult issue. The Task Force also appreciates the diligent efforts of the members of the Consumer Advisory Board over the past two years in developing recommendations addressing the critical issues of low-income energy assistance, renewable energy, and energy efficiency.

The Task Force looks forward to continuing its work in overseeing the effective implementation of the Restructuring Act during the coming year.

Respectfully submitted,

Senator Thomas K. Norment, Jr., Chairman
Delegate Jerrauld C. Jones
Delegate Terry G. Kilgore
Delegate Harry J. Parrish
Delegate Kenneth R. Plum
Senator Richard L. Saslaw
Senator Kenneth W. Stolle
Delegate Robert Tata
Senator John Watkins

Delegate Clifton A. Woodrum, Vice Chairman of the Task Force, dissents from the report. His dissenting statement is attached.

DISSENTING STATEMENT OF DELEGATE CLIFTON A. WOODRUM

I respectfully dissent from the conclusion of this report.

I would have preferred to delay the process of transition to deregulation for one year. At the very least the General Assembly should have authorized the State Corporation Commission to delay the functional separation of generation, transmission and distribution by the incumbent utilities.

The deregulated market place is currently in turmoil. The problems with deregulation are *not* confined to California but are present in almost every state where deregulation has been attempted. For instance, in Pennsylvania, which was depicted during the 2001 session by one of its representatives as a veritable utopia of robust competition and consumer benefits, we find problems that are acute – though unacknowledged. According to the Consumer Federation of America, Pennsylvania's rates are now 9% *above* the national average. Well over half of the competitors have exited the market and one of the largest incumbent generators has filed for a rate increase citing "....continuing price volatility in the competitive electric generation market...."

In Virginia, transmission constraints, the market power of the incumbent utilities, the lack of competitive alternatives and inadequate generation reserves dedicated to serving our citizens are legitimate concerns that have not been adequately addressed.

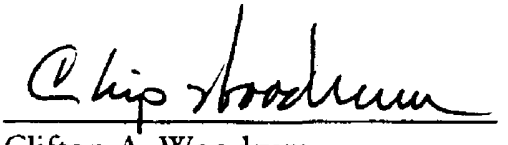
Virginia is the only state in the southeast that has insisted on forging ahead with deregulation. Our sister states in the region have adopted a more prudent "wait and see" approach in order to properly protect their citizens.

This is a summary of my reasons for disagreeing with the report.

I believe that we are about to venture into the unknown – unguided and ill prepared.

I can only hope that I am wrong.

Respectfully submitted:



Clifton A. Woodrum

Roanoke, Virginia
May 1, 2001

REPORT OF THE CONSUMER ADVISORY BOARD TO THE LEGISLATIVE TRANSITION TASK FORCE OF THE VIRGINIA ELECTRIC UTILITY RESTRUCTURING ACT DECEMBER, 2000

I. INTRODUCTION

The Virginia Electric Utility Restructuring 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 on other issues as may be directed by the Task Force. The seventeen-member Board is required to be appointed from all classes of consumers and with geographical representation. William Lukhard chairs the Board and Otis Brown serves as vice chairman. Delegate Kenneth Plum served as liaison between the Task Force and the Consumer Advisory Board.

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. This report sets forth the Board's recommendations on each of these three issues.

In 1999, the Consumer Advisory Board met five times. It received testimony on low-income energy assistance, energy efficiency and renewable energy programs in Virginia and other states. Advocates for these programs stressed the need for protection of the environment through renewable energy programs, reduction of energy usage through programs encouraging energy efficiency, and providing assistance to low-income consumers in meeting their energy needs.

Following the receipt of this information, the members of the Board attempted to determine whether they were in agreement regarding any recommendations that could be presented to the Task Force prior to the 2000 Session. After much discussion, the consensus of the Consumer Advisory Board was to advise the Task Force that the members of the Board still had concerns regarding the issues under study, and to ask that the Board be permitted to continue its study in 2000. The Board specifically asked for authorization to expand the scope of its study of low-income energy assistance programs beyond electricity to address all sources of energy. The Task Force recommended a resolution to that effect, which was passed by the 2000 Session as Senate Joint Resolution 154. With regard to the other issues, the Task Force encouraged the Consumer Advisory Board to continue its efforts to develop recommendations addressing renewable energy and energy efficiency programs.

In 2000, the Board held seven meetings. In addition, it appointed a subcommittee, chaired by Vice Chairman Otis Brown, to develop recommendations on renewable energy and energy efficiency. The subcommittee met twice, presented its recommendations to the Board on November 16, and the Board agreed to the subcommittee's recommendations.

In all of its deliberations the Board remained cognizant of several broad parameters affecting its current recommendations. The Commonwealth is in a transition period and the

issues deliberated and recommendations implemented do need to be monitored. Further study during this transition period seems appropriate. The major thrust of deregulation is to establish a competitive market, but one in which residential and small business consumers will benefit. Electric service today is a necessity, not a luxury, used predominantly in meeting basic needs such as lighting, heating, hot water, cooking, and refrigeration. The Board also recognizes that the General Assembly would be reluctant to enact legislation generating revenue through mechanisms that would increase the cost of electricity, and that current information indicates a potential lack of general fund revenues to fund new programs during the remainder of the 2000-2002 biennium.

II. LOW-INCOME ENERGY ASSISTANCE

A. Consumer Advisory Board Study

Senate Joint Resolution 154 (2000) directed the Board to examine low-income energy assistance for all sources of energy. Specifically, the Board was directed to address 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 Board received a great deal of information on each of these issues in the course of its work this year. The Board first examined existing low-income energy assistance programs in Virginia. While an exact total of current expenditures to help low-income Virginians meet their energy needs is unknown, staff has estimated that the total of expenditures by federal, state, and privately-funded programs in 1999 was approximately $38 million.

The largest program assisting low-income Virginians is the federal Low-Income Home Energy Assistance Program (LIHEAP). This provides crisis assistance (such as paying a cutoff notice or providing space heaters), bill payment assistance, and, when funds are available, cooling assistance to low-income families. Individuals are eligible if they have a total household income at or below 130 percent of the federal poverty guideline. The program is funded by the federal government, is administered by the Department of Social Services, and has provided over $29 million in assistance to Virginia's low-income families in the past year.

Other federal programs include the Weatherization Assistance Program (WAP) and the Emergency Food and Shelter National Board Program. Weatherization services include

insulation, air and duct sealing, appliance base load reduction, installation of energy-efficient lighting, and other services to reduce a household's energy burden. The WAP is primarily federally-funded, and is administered by the Department of Housing and Community Development. The program accomplishes the weatherizing of approximately 2,100 homes per year. WAP funding for last year totaled over $6.6 million.

The Emergency Food and Shelter Program provides a variety of assistance to families in crisis, including energy assistance. The most common energy crisis assistance provided is assistance with utility bill payments, limited to one month's past due bill. Funding is provided through Federal Emergency Management Agency appropriations. In 1999, $359,437 was provided to Virginia for energy assistance under the program.

Virginia's investor-owned utility companies also operate programs providing assistance to low-income consumers. The programs are funded by voluntary contributions of the utility's customers, stockholders, employees and business partners. Sometimes, funds are matched by utilities. Utilities may also contribute the administrative and marketing services needed to implement the program. Many localities and charitable groups also have programs that provide energy assistance to those in need. Voluntary contribution programs in Virginia provided $2 million in assistance in the past year.

Determining the adequacy of this amount of assistance is difficult and the results of any attempt to do so are incomplete. 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, (ii) lack of data on household energy burdens, (iii) lack of consistent criteria for program eligibility, (iv) lack of a definition of "need" for energy assistance, and (v) the question of whether to direct assistance at usage of electricity or all energy sources. A number of approaches to measuring unmet need may be considered, including responses to a survey of low-income energy assistance providers, Weatherization Assistance Program waiting lists, LIHEAP Crisis Assistance programs requests, households receiving LIHEAP Fuel Assistance Program benefits, amount of LIHEAP fuel assistance benefit per household, and the effect of LIHEAP fuel assistance benefits on energy burden. However, many of these program administrators do not keep sufficient records of this data, and 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. The Board also heard anecdotal evidence from a number of advocacy groups that there are needs for low-income energy assistance that are not being met, but actual amounts cannot be identified.

Most of the states that have passed legislation to restructure the electric utility industry have included provisions for low-income utility assistance programs as a part of their restructuring legislation. These states have adopted a variety of approaches to providing assistance to low-income residents with their electricity and gas payments. Types of "long-term" energy assistance programs, as compared to crisis assistance programs, include: (i) low-income rate discount programs, (ii) percentage of income payment plans (PIPPs), (iii) payment restructuring programs, (iv) arrearage forgiveness programs, (v) bill assistance programs, and (vi) weatherization assistance programs. Many state assistance programs pre-dated electric industry restructuring. Consequently, the rationale for addressing low-income programs through

restructuring legislation may simply be to retain the status quo, though perhaps with funding provided through a systems benefit charge rather than the rate structure.

While the actions taken by other states to finance low-income assistance programs in conjunction with electric industry restructuring may be of interest to the Commonwealth's policymakers, staff cautioned the Board that (i) no two states have adopted identical approaches; (ii) provisions of restructuring laws that address low income issues tend to continue approaches implemented prior to restructuring; and (iii) the variety of factors, such as the cost of electric power, which energy sources are included, and the stage of a state's implementation of its restructuring, combine to reduce the probative value of comparisons among other states and to Virginia. Most of the states that have restructured thus far have tended to be those with high electricity rates. The existence of high rates may explain why they had previously adopted rate assistance programs for low-income households. This issue may benefit from a study of the correlation between electricity rates and benefit programs in states prior to restructuring.

A major reason stated for providing low-income energy assistance is an anticipated lack of competitive choice for low-income customers. Higher rates, negative policy changes regarding consumer protection (termination protection, credit policies, collection practices, payment practices and understandable billing), and redlining of low-income neighborhoods and demographic groups have all been cited as reasons for needing programs to assist low-income consumers with their energy burden. 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.

Items (iv) and (v) of SJR 154 direct the Board to examine the consolidation of existing public programs and coordination among public and private programs. The Board was advised that electric utility industry restructuring is leading to the centralization of administration of low-income assistance programs in several states. Advocates for low-income persons in several states have taken advantage of the upheaval of gas and electric industry restructuring to push for statewide independent administration of utility low-income bill assistance programs, citing a variety of factors favoring centralization. They allege that utilities have a self-interest in maintaining maximum billings and maximum usage, and, in some cases, existing organizations (such as LIHEAP or WAP offices) are in place that can provide statewide coverage and are closer to the customers to be served. With a centralized office to administer low-income programs, funds could be collected statewide from all customers, and then targeted to the areas with greatest need, rather than using utility-specific funding and service territories. In some cases, statewide administration of utility programs is mandated or fostered by industry restructuring legislation. LIHEAP officers have been urged to examine the linkage between public and private programs, and assess whether these current linkages provide opportunities for program integration, minimized conflict among programs, and the potential increase in the delivery of direct dollars of benefits resulting from program linkages.

Item (vi) of SJR 154 directs the Board to look at incentives for voluntary contributions to low-income programs, including tax credits. The Department of Taxation presented the Board with an overview of tax credits and the decisions required in structuring a new credit. The desired activity must be defined accurately, so that the credit may be implemented in the exact

way it was intended. Policy decisions must be made regarding refundability versus carrying forward, and whether an aggregate cap on credits is necessary. Finally, tax credits should be structured so that if a deduction or credit for the same contribution is taken on the federal return, it cannot be taken again at the state level, since the federal deduction or credit will apply at the state level already.

SJR 154 also directs the Consumer Advisory Board to look at the use of fees and penalties as funding sources for low-income programs. A number of programs in Virginia are funded through license fees or civil penalties. The Board examined fees and penalties created by the Restructuring Act. Competitive service providers and aggregators are both required to be licensed under the act, and pay a license fee, but the Restructuring Act does not fix any penalty amounts, and the SCC only has the authority given in Title 12.1 to impose and collect fines for violations. To use civil penalties to fund low-income programs, the Restructuring Act would have to be amended to give the Commission the authority to assess civil penalties, and direct those funds away from the General Fund toward a specific fund for low-income programs.

B. Consumer Advisory Board Recommendations

1. A state policy on the availability of affordable energy to all Virginians. The Board considered whether to include language in the Code of Virginia affirmatively stating the Commonwealth's policy toward low-income programs. Since blanket policy statements placed in the Code without programs supporting them do not generally hold much import, the Board decided to discuss its recommendations for low-income programs first, and then draft language stating the policy reflected by those programs. The Board proposed the following language: "The General Assembly declares that it is the policy of this Commonwealth to support the efforts of public agencies, private utility service providers, and charitable and community groups seeking to assist low-income Virginians in meeting their seasonal residential energy needs. To this end the Department of Social Services is designated as the state agency responsible for coordinating state efforts in this regard."

2. Centralization of administration. The Board agreed that administration of low-income programs should to be centralized. The Board recommends the establishment of an office within the Department of Social Services to be responsible for statewide coordination of all state and federally-funded energy assistance programs, as well as any non-state programs that wish to participate. Currently, any coordination among state-administered programs and private or local programs is voluntary. This measure would require DSS to coordinate the benefits provided among public providers, track recipients of assistance, and collect and analyze data regarding the need for assistance. The administration of the Weatherization Assistance Program would remain with DHCD, but DSS would coordinate information and any additional funding with DHCD for this program. DSS would also administer funding for low-income energy assistance, and report to the Governor and General Assembly on the effectiveness of current programs in the Commonwealth. Administrators of private, voluntary programs would have the option of turning over their administrative duties and funds to DSS.

3. Expansion of existing low-income programs and addressing declines in LIHEAP funding. The Board agreed that state funding was needed to supplement current

programs in Virginia. It recommended establishing a dedicated special fund as a repository for funds from various sources to enhance existing, largely federal, sources of funds for low-income energy assistance efforts. To generate moneys for this fund, the Board recommended the following: (i) creating an income tax refund check-off; (ii) creating a special incentive for donations by business firms to the fund, through an expansion of the Neighborhood Assistance Act. Businesses contributing to the special fund could be eligible for a tax credit of 45 percent of their gift. The cap on the total amount of tax credits under the Act would increase from $8,000,000 to $9,000,000, with the $1,000,000 increase being earmarked for contributions of money to the special fund. Over $2.2 million would be generated in contributions if the full $1 million in credits were taken.

4. Incentives to encourage voluntary contributions to energy assistance programs, including tax credits. Currently, a tax deduction may be taken on an individual's federal tax return for contributions to qualified voluntary utility programs, and the deduction is carried through to the state tax return. However, the deduction is only available to taxpayers who itemize their returns. The possibility of a tax credit for these contributions was discussed, but if individuals who itemize can already take a deduction from gross income, a credit on the amount of tax liability for those who do not itemize would create a disparity in benefit among taxpayers. The Board decided to recommend the creation of a tax deduction for individuals who do not itemize their returns, providing an incentive to individuals to contribute or increase contributions to private, voluntary energy assistance programs.

C. Policy Considerations Not Recommended

1. Fees and penalties as funding sources. The Board considered amending the Restructuring Act to authorize the SCC to assess civil penalties for violations of the Act and direct their payment into a Special Fund to assist low-income energy assistance programs, but decided not to recommend using these penalties as funding sources for low-income programs. The Board concluded that these sources would only produce small amounts of funds, would not be a reliable source of revenue, and administrative costs would be relatively high compared to the funds generated.

2. Consumption tax as a funding source. The Board also considered designating a portion of the revenue from the consumption tax on electricity and natural gas to support low-income programs, but, recognizing the impact on state and local revenues, the Board decided not to recommend any such measure at this time.

3. Low-Income Usage Reduction Program. The Association of Energy Conservation Professionals proposed a program to supplement the Weatherization Assistance Program beginning January 1, 2001 and continuing for a minimum of five years or longer through the transition years of competitive retail choice as determined by the Legislative Transition Task Force. The Program is to be funded with a Residential Meters/Account Assessment Charge in the amount of 15 cents per month, to be incorporated into the existing base customer service charge. The Board examined this proposal but no motion was made to recommend that the proposal move forward at this time.

4. Creation of a new program assisting with basic electric service. The Board did not address one element of SJR 154, determining whether Virginia should create a new program assisting with basic level of electric service for low-income consumers. The consensus was that deciding this issue was premature, since deregulation has not yet begun, and that the Board may wish to examine it further as restructuring progresses.

III. ENERGY EFFICIENCY AND RENEWABLE ENERGY PROGRAMS

A. Consumer Advisory Board Study

The issues of energy efficiency and renewable energy programs were examined by the Consumer, Environment and Education Task Force under the joint subcommittee that studied electric utility restructuring. The Restructuring Act acknowledged that these issues needed further analysis as Virginia began the process of restructuring its electric utility industry. Consequently, the Restructuring Act directs the Task Force to study these issues. As previously noted, the Task Force delegated to the Consumer Advisory Board the task of developing recommendations on these issues.

In the course of its two years of studying these two issues, the Consumer Advisory Board received the testimony of numerous interested parties. Dick Williams of the State Corporation Commission presented the Board with a history of energy efficiency programs in Virginia. The two major types of energy efficiency initiatives, conservation and load management, are collectively referred to as Demand-Side Management (DSM). The mid-1990s showed a great increase in DSM programs, including financing for energy efficiency measures, standby generation, curtailable service, water heater wrap programs, low income weatherization, field testing for new technologies, promotion of high efficiency heating and cooling systems, and a number of other programs. However, DSM programs have seen a sharp decline in recent years. The restructuring of the electric industry with an emphasis on cost minimization has led to this decline, since the long-term benefits of DSM programs are not seen for a number of years. The advent of new, efficient, low-cost gas-fired turbines has also led to a reduced interest in pursuing DSM programs, because allocating resources to building this form of generation provides more of a cost benefit than spending resources on long-term DSM projects. Thus, utilities are not allocating resources to encourage energy efficiency programs for use by residential and small business consumers.

Steve Walz of the Department of Mines, Minerals and Energy presented an update on renewable energy programs in Virginia. The Virginia Alliance for Solar Electricity (VASE) program includes a $2.4 million grant from the federal government to help support the early manufacturing costs for new thin-film solar-photovoltaic panel technology. This is matched in part by the Solar Manufacturing Incentive Grant (SMIG), which encourages manufacturers of solar photovoltaic panels to locate in Virginia. The Restructuring Act provides for net energy metering, to support development of distributed solar, small hydroelectric, and wind electrical generating systems in Virginia. DMME is also working with Virginia Tech and PV4VA to participate in the U.S. DOE Million Solar Roofs program, and federal funds have also been used to install solar lighting and radio transmission systems in six of Virginia's state parks. Virginia is involved in the Southeastern Regional Biomass program encouraging the use of animal wastes

and biofuels, and a number of state universities have research programs to help in renewable energy development.

Dr. Michael Von Spakovsky of Virginia Tech presented the Board with a detailed description of the issues involved in energy efficiency and renewables, and their relationship to restructuring. He explained that a flexible utility system is needed that encourages both long- and short-term research and development and remains open to new technologies, improvements in energy efficiency, and changing consumer needs. The rules governing the electricity industry should encourage the emergence of new, innovative firms and restrict the market power of established ones wherever that power tends to inhibit competition. Competition requires that consumers have relevant information so that they can make informed decisions. When the competitive market seems unlikely to meet society's environmental goals, minimum environmental standards should be imposed to ensure that environmental goals do not take a back seat to a competitive energy market. Finally, policymakers will need to help remove hidden biases toward conventional technologies in order for renewable energy and energy-efficiency firms to be able to establish their own markets.

A number of small power producers spoke to the Board about the future of renewable energy sources in a restructured market. Currently, the federal Public Utility Regulatory Policy Act (PURPA) requires utilities to purchase certain power generated from qualifying independent power producers, but there is a great deal of support at the federal level for repealing PURPA. This could inhibit the use of renewable energy sources because utilities concerned about profits will use cheaper, less environmentally-friendly sources of energy. Emerging technologies supported by the state should include energy derived from the sun, the wind, the earth's heat, falling water, biomass, waste-to energy, and fuel cells. This support for renewables is needed to offset the competitive advantage of current subsidies for nuclear and fossil fuels generation.

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. Restructuring legislation enacted in many 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. Several speakers stressed that the advent of restructuring was an appropriate time to bolster existing programs, or implement new programs, because the lifting of rate regulations will draw the curtain on existing efforts in these areas that have been fostered by the General Assembly and rate regulators.

Much of the debate over programs to encourage the development of renewable energy sources and improvements in energy efficiency involved their costs. Board members generally endorsed the goals such programs seek to advance. However, many members felt constrained by the question of whether utility customers should bear the costs through their bills, or whether all taxpayers should bear these costs through the general fund. The goal of preserving Virginia's status as a state with inexpensive electricity was consistently recognized. The Board developed a

number of recommendations that were appropriate for immediate action. A number of other potential recommendations under consideration were deferred because Virginia is still in the very early stages of the restructuring process. The Consumer Advisory Board plans to assist the Task Force, as it desires, in further consideration of these issues during the move to competition in Virginia as well as monitoring actions taken in other states on these issues.

B. Consumer Advisory Board Recommendations

1. Defining of "Renewable Energy." The Restructuring Act directs the SCC to establish standards for marketing information to be furnished by providers of competitive sources, including fuel mix and emissions data. The Act may foster the purchase of electricity generated from renewable sources by designating certain sources as "renewable," and allowing suppliers of energy generated from these sources to market their power as "renewable." After initial discussion, the Board defined "renewable energy" to include solar, wind, hydro, geothermal, biomass, waste-to-energy, and nuclear. The Board then reexamined its actions and recommends the Restructuring Act be amended to include the following: "Renewable energy sources are those which are derived from the sun or other natural processes. They are also replenishable by those sources over relatively short time periods. They include sunlight, wind, falling water, sustainable biomass, wave motion, tides, and geothermal energy. They do not include coal, oil, natural gas or nuclear power."

2. Defining "Green Power." Many competitive service providers market their energy as "Green Power," meaning the generation of such power is less harmful to the environment than traditional, fossil fuel sources of energy. Since the SCC is directed by the Restructuring Act to develop marketing standards, the Board recommends that the SCC be required to establish guidelines for competitive service providers marketing their energy as "green." Non-qualifying electricity providers will be barred from using the "Green Power" label, subject to the enforcement provisions of the Act.

3. Investment Incentives. Incentives to make investments in renewable energy can be provided in the forms of loans, grants, and tax credits or deductions. They provide financial incentives to electricity consumers to invest in projects and equipment that use renewable energy sources to generate electricity (such as photovoltaic panels) or avoid the purchase of electricity (such as passive solar water heating). The Board recommends the enactment of a tax credit for the purchase and installation of equipment that (i) generates electricity from solar energy or (ii) uses solar energy to heat or cool a structure or provide hot water. The amount of the credit would be 15 percent of the cost of purchasing and installing eligible equipment, capped at $ 1,000 per year. The credit is nonrefundable, and any unused tax credit may be carried over for the next five succeeding taxable years or until the full credit is utilized, whichever occurs sooner. The equipment must provide a minimum of 10 percent of the building's energy needs, and must be approved by the Department of Mines, Minerals, and Energy. The parameters of the credit are intended to target the incentive to residential and small business consumers of electricity.

4. Consumer education about energy efficiency. In the context of restructuring, many groups have expressed concern that electricity prices for residential and

small commercial consumers may rise, and that utilities may reduce their efforts to educate consumers about energy efficiency. This proposal would provide for a state-sponsored education program concurrent with restructuring to help consumers understand ways in which they can reduce their energy burden. The Board recommended designating the Department of Mines, Minerals and Energy to develop consumer education programs about energy efficiency, including (i) usage-reduction techniques, (ii) energy-efficient equipment available, and (iii) weatherization services. DMME would report its preliminary recommendations for development of this plan July 1, 2001, and then work to implement the program beginning in 2002. DMME has indicated that they have identified a funding source for development of the plan, and would not need an appropriation at this time.

C. Policy Considerations Not Recommended

1. Renewable Portfolio Standard. A renewable energy portfolio standard (RPS) requires that any company selling electricity in a competitive market include some amount of renewable energy as part of its portfolio of generating sources. The portfolio standard is designed to be competitively neutral, in that it imposes an equal obligation on any company selling electricity in the state. The standard helps to diversify the state's energy supply by creating initial market demand to help make environmentally-benign energy industries viable. However, utilities' costs in complying with the RPS may be passed on to consumers. The standard takes some of the purchasing decisions away from the market, when the Restructuring Act is premised on the elimination of government mandates controlling the generation of power. The Board voted not to recommend adopting a portfolio standard at this time.

2. Production Incentives. Incentives can be provided to reward the production of power from renewable sources. By providing incentives based on the amount of renewable power added to the power grid, the cost of such power to consumers can be made more competitive. Incentives may be granted to electric utilities and small generators. The Board considered a tax credit for electricity generators who produce power from renewable sources. This proposal would have provided an incentive similar to the coal tax credit, but for those sources designated as "renewable." Concern about the potential cost of this credit to taxpayers in Virginia led the Board not to recommend it at this time.

3. Government Purchase Programs. Government purchase programs fall into two categories: State construction requirements and direct purchases of renewable energy. State construction policies aim to provide additional energy savings during the life of a building through initial investments in renewable energy and energy conservation applications. The purchase of energy from renewable sources is intended to increase both the market demand for and awareness of alternative energy sources. Buildings may include schools, universities, community colleges, state office buildings, and public housing. The Board felt that the state's policy toward its own energy use was the prerogative of state government, and outside the purview of the Board, and voted not to recommend any government purchase programs.

4. Office of Energy Management. The Board's Subcommittee on Energy Efficiency and Renewable Energy worked to develop recommendations addressing the issues surrounding energy efficiency and renewables as they relate to the overall concept of

deregulation of electricity. A preliminary recommendation was that an office be established to serve as an overall program coordinator for all energy-related programs and activities. The Subcommittee declined to recommend location and structure of the office until further study and evaluation could be completed. The office would be responsible for, among other things, assisting in stimulating, encouraging, and promoting energy efficiency, demand-side management, and renewable energy sources; encouraging the development of uniform state polices, programs and services for energy efficiency, demand management and renewable energy sources; receiving information from the public, providers of service and other interested parties on the state of the overall energy management within the Commonwealth; coordinating with federal energy efficiency and renewables programs; and reporting to the Governor and the General Assembly on the conditions of energy management and any pertinent recommendations regarding policies, programs, and services. A citizen board should be established to advise the office, its size and composition to be determined at a later date. The Subcommittee will continue to develop this recommendation. A more detailed plan of action will be submitted to the Consumer Advisory Board after more thorough study and consultation with appropriate state officials and interested parties.

5. Public Benefits Fund. Both the Southern Environmental Law Center and MDV-SEIA proposed the establishment of a public benefits fund, under which all consumers of electricity would pay a non-bypassable wires charge at a rate of one-half mill ($0.0005) per kWh. The proceeds from the charge would be distributed as follows: (i) 40 percent for low-income energy efficiency (weatherization), (i) 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 are very similar, with the only substantive differences relating to the definitions of "emerging renewable energy resources" and "renewable energy system." The Board did not endorse these measures in 1999, and took no action on them in 2000. If, during the transition to competition, the Board finds that there are additional needs not being met, the Board may reconsider these proposals at that time.

IV. CONCLUSION

The Consumer Advisory Board extends its appreciation to the Task Force for the opportunity to represent Virginia's consumers in monitoring the implementation of electric utility restructuring. The recommendations included in this report are intended to protect the interests of consumers during the transition to a deregulated market, including assisting low-income consumers in meeting their energy needs, educating consumers about energy efficiency, and implementing protections for the environment.

Though the Board acknowledges that its authority is limited to those issues that the Task Force refers to it, the Board wishes to revisit an issue of concern to its members. Last year, the Board brought before the Task Force the issue of aggregation for small consumers. The Board's chairman has previously reported to the Task Force on this issue, and that study of the issue was endorsed by the full Consumer Advisory Board. The Board wishes to renew its recommendation that, during the term of the pilot programs, 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. Further justification for the need to begin this investigation now is provided in Attachment A. The Board strongly recommends that the Legislative Transition Task Force or the Consumer Advisory Board conduct the study.

The Board stands willing to continue to assist the Task Force, as it may direct, in its work in ensuring the successful implementation of restructuring.

Respectfully submitted,

William Lukhard, Chairman
Otis Brown, Vice Chairman
James Copp
Beth Doughty
Oswald Gasser
Robert Goldsmith
Jack Greenhalgh
Ann Hedgpeth
Jack Hundley
The Rev. J. Fletcher Lowe
Linda Sharpe-Anderson
Donald F. Sullivan
Jimmie G. Trent
Steve Walker
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Quentin E. Wilhelmi

CONSUMER ADVISORY BOARD

REPORT TO THE LEGISLATIVE TRANSITION TASK FORCE

ATTACHMENT A

Experience in other states in restructuring of the electricity industry is showing that benefits being realized are primarily for industrial and large commercial customers. The Consumer Advisory Board is concerned that residential customers and small businesses may not benefit from the current approach to the restructuring process. Depending more on national generation and transmission capacity than regional capacity, it is very possible residential and small business users will experience rate increases when the capped, regulated rates of the transition period end. In those states with more advanced deregulation programs, a tiny percentage of consumers and small business have elected new providers. Competition itself has not pulled prices down for this class of users. In fact, a significant portion of the small number electing a new provider are paying more to select a provider with "green" power. In some areas, a consumer's revolt is emerging. The backlash from early problems in restructuring has resulted in 29 states notifying FERC of their desire to be exempt from the restructuring process. The Governor of California has threatened to reverse the deregulation process in that state.

Restructuring legislation attempts to provide a mechanism to give these classes of users negotiating power through aggregation. We understand the intent of aggregation is for these competitors 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. Aggregation in other states has not emerged to a level that increases the market power of these users. If the wholesale pricing structure, billing policies and other program parameters established by the incumbent utilities stifle viable aggregators, it may be years before we recognize it isn't working. By drawing on the expertise of those involved in the process and learning from other state efforts, it may be possible to foresee this result and take corrective action earlier.

Additional study is needed to identify if changes are needed in the next few years to make the aggregation process more effective. During the pilot program and the initial period of competition following that program, the Consumer Advisory Board proposes that it be authorized to accumulate and evaluate testimony from the SCC, the incumbent utilities, a variety of prospective aggregators as well as from experts on how these issues have been handled in the deregulation of telecommunications. An on-going monitoring of results to date in other states would be conducted. That would include hearing from aggregators working in those states, as well as those that elected not to work in those states.

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. It will take time to address these issues and to process any resulting recommendations to the SCC and the Task Force. If legislation is to be proposed, that will add additional significant time. If legislative action may be necessary before the end of the pilot programs, studies to identify these actions should begin now.

SENATE OF VIRGINIA

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COMMITTEE ASSIGNMENTS:
AGRICULTURE, CONSERVATION AND NATURAL RESOURCES
COMMERCE AND LABOR
COURTS OF JUSTICE
PRIVILEGES AND ELECTIONS

June 13, 2000

The Honorable Frank Murkowski
Chairman, Senate Committee on Energy and Natural Resources
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Murkowski:

The 1999 Session of the Virginia General Assembly enacted the Virginia Electric Utility Restructuring Act (Chapter 23 of Title 56 of the Code of Virginia). The Act, which was the product of three years of study by a legislative joint subcommittee, established the framework for the implementation of retail choice in electric generation services commencing in January 2002. The Act also established the Legislative Transition Task Force, comprised of four members of the Senate and six members of the House of Delegates, to work collaboratively with the State Corporation Commission in conjunction with the phase-in of retail competition within Virginia.

The Legislative Transition Task Force is monitoring your Senate Bill 2098, referred to as the Electric Power Market Competition and Reliability Act, with great interest. We have been advised that Senate Committee on Energy and Natural Resources has scheduled a mark-up session on this bill for June 14, 2000. We have also been told that proposed amendments would preempt the current authority of states with respect to a number of issues.

On behalf of the members of the Task Force, I am writing today to urge you and your fellow members of the Energy and Natural Resources Committee to ensure that Senate Bill 2098 does not abrogate any of the provisions of Virginia's Electric Utility Restructuring Act or otherwise preempt the existing powers of the Commonwealth with respect to the provision of electric utility service. The members of the Task Force are opposed to any federal legislation that would either fail to grandfather, or only temporarily grandfather, actions taken by Virginia and other states to deregulate the electric utility industry.

The Task Force is not opposed to federal electric restructuring legislation. However, we believe that Virginia, as well as other states that have enacted deregulation legislation that addresses their unique circumstances, should be allowed to continue implementing consumer choice in electric utility services, free from concerns that changes at the federal level may abrogate our efforts.

Your support is greatly appreciated.

Sincerely,

Thomas K. Norment, Jr. /fdm

Thomas K. Norment, Jr.
Member, Senate of Virginia

TKN, JR./fdm

APPENDIX C: Comparison of Federal Electric Utility Restructuring Bills

ISSUE	H.R. 2944 (Barton as introduced)	Administration/ DOE S. 1047 (Murkowski) H.R. 1828 (Bliley)	S. 2098 (Murkowski Draft)
Jurisdiction	Preserves State authority to require retail electric competition or to require the unbundling of transmission and local distribution service for delivery directly to retail consumers; FERC exclusive jurisdiction over unbundled retail transmission; FERC denied jurisdiction over bundled retail sales of electricity (including any component thereof) subject to State regulation; FERC authority to determine which facilities are used for transmission (FERC-jurisdictional) and local distribution (State-jurisdictional); extends FERC jurisdiction to cooperatives, municipals, PMAs, TVA etc., but provides exemptions.	FERC jurisdiction over unbundled retail transmission; mandates open access by Jan. 1, 2003; States may opt out of open access mandate; States may impose reciprocity; State authority over stranded costs except where a State "lacks such authority."	Preserves State commission jurisdiction over bundled retail sales, unbundled local distribution and unbundled retail sales of electric energy; FERC exclusive jurisdiction over unbundled transmission services, including unbundled retail service; FERC authority to determine which facilities are used for transmission (FERC – jurisdictional) and local distribution (State – jurisdictional); preserves State authority to impose charges to support public benefit programs; FERC authority over siting of transmission [See also FERC Transmission Authority]
Reliability	FERC required to approve the formation of and oversee an ERO to prescribe and enforce mandatory reliability standards; includes savings clause for State authority over reliability of local distribution facilities; [NERC draft with variations] directs FERC to establish regional advisory bodies [NARUC Language].	FERC required to approve the formation of and oversee an ERO to prescribe and enforce mandatory reliability standards; establishes a DOE board to investigate major bulk-power system failure. [NERC draft with Modifications]	FERC required to approve the formation of and oversee an ERO to prescribe and enforce mandatory reliability standards [NERC draft]; includes State savings clause to protect State authority to ensure reliability, adequacy and safety [NARUC language]; includes regional advisory bodies [NARUC language].
Transmission Organizations	Encourages voluntary RTO; FERC must approve RTO that meets certain standards; one or more transmitting utilities may constitute an RTO; RTO must be independent (5 percent or less voting interest in RTO) of market participants; FERC may not require changes to RTO or comparable transmission organization approved by FERC or in Operation prior to enactment; Congress authorizes formation of interstate compacts for	Grants FERC authority to establish an entity for independent operation, planning, and control of interconnected transmission facilities and require a utility to relinquish control over operation of its transmission facilities to an ISO; encourages regional agreements facilitating coordination among States with regard to siting and planning of facilities and provides for FERC approval	Encourages the voluntary formation of RTOs.

	regional transmission siting.	of such agreements	
Public Benefits/ Universal Service	State may impose charges on delivery of electric energy for public purpose programs; expresses Sense of Congress that States should ensure universal service to all consumers.	Creates a $3 billion Public Benefits Fund for low-income assistance, energy, efficiency programs, consumer education, and development of emerging technologies; will be funded by a transmission fee, not to exceed one mill/kWh and DOE's collection of a 1.5 cents/kWh charge to generators for purchase of renewable portfolio standard credits; the fund would be a matching fund with States; State required to consider assuring that its low-income residential consumers have service comparable to its other residential consumers and that all retail electric suppliers in the State share equitably any costs necessary to provide such service.	Preserves State authority to impose charges to support universal service and public benefit programs or other programs.
"Right to Know"	FTC to issue rules for disclosure to retail consumers price, quality, other charges, generation source, emissions; requires FTC to consult with FERC, DOE, and EPA; States may prescribe additional laws that "are not inconsistent with" FTC requirements.	Suppliers of power must provide to customers information regarding price, terms, conditions, and type of generation sources as well as emission characteristics; DOE is authorized to establish a database to help residential electric consumers compare the offers of various retail electric suppliers.	Preserves State authority to require suppliers of power to provide public interest information.
Renewables/ Environment	Establishes renewable energy production incentive of 1.5 cents per kwh to small hydroelectric (less than 30 MW), solar, wind, biomass, and geothermal technologies; preserves State authority to require a renewable portfolio standard.	Creates Renewable Portfolio System (RPS) mandating that sellers use, as a generation source, a percentage of non-hydro-electric renewable technology. The RPS would increase to 7.5 percent in 2010 and sunsets in 2015. Sellers unable to reach requirements may purchase credits.	Preserves State authority to impose a charge to fund environmental programs, renewable energy programs, energy efficiency programs, energy conservation programs or other programs.
Grand-fathering	State law regarding consumer protection, interconnection, aggregation and net metering enacted prior to or within 3 years of the date of enactment grandfathered; nothing in the bill preempts, overrides, or requires any changes to State retail access plans if such plans address matters within State jurisdiction.	No provision.	Contains savings clause to protect existing State retail access programs.

PUHCA	Repeals PUHCA 12 months after enactment; FERC and States access to books and records; FERC shall promulgate rule to exempt holding companies from certain requirements, and upon its own motion, from Federal books and records requirements.	Repeals PUHCA 18 months after enactment. FERC and States granted access to utilities' books and records.	Repeals PUHCA 12 months after enactment; FERC and States granted access to a utility's books and records; authorizes FERC to exempt holding companies from Federal books and records requirements.
PURPA	Prospectively repeals PURPA while preserving existing contracts; FERC to issue regulations preempting State authority over recovery of PURPA contract costs.	Repeal prospectively the "must buy" provision; existing contracts would be preserved.	Prospectively repeals mandatory purchase requirement; FERC to issue regulations preempting State authority over recovery of PURPA contract costs.
Regional Entities	Grants Congressional consent for State to form regional transmission siting compacts or agencies; FERC determines whether these compacts meet requirements; establishes FERC-jurisdictional electric reliability organizations and affiliated regional reliability entities [See also Reliability and Transmission Organizations].	See Reliability and Transmission Organizations.	See Reliability and Transmission Organizations.
Net Metering	Requires retail electric suppliers to provide net metering services; savings clause for State requirements consistent with section; allows State to impose cap on amount of net metering.	Suppliers must make net metering available to any retail electric consumer; service is limited to generation capacity of 20 kW or less and is fueled solely by a renewable energy source.	No provision but preserves State authority to impose net metering provisions pursuant to State law.
Market Power	No Provision	Authorize FERC, upon petition by a State to require generators to submit a plan mitigating market power which FERC can accept or modify; modification may include mandatory divestiture; FERC merger review over generation-only companies and holding companies clarified.	No provision but preserves State authority to impose market power provisions pursuant to State law.
FERC Transmission Authority	Extends FERC jurisdiction to cooperatives, municipals, PMAs, TVA etc., but provides for exemptions [See also Jurisdiction and Transmission Organizations].	FERC open access rules apply to municipal and cooperative systems, TVA and PMAs.	Provides FERC authority to determine which facilities are used for transmission (FERC - jurisdictional) and local distribution (State - jurisdictional). [See Also Jurisdiction and Reliability.]
Date Certain	No provision.	States that do not "opt-out"	No provision.

Mandate		must have open retail markets by 1/01/2003	
Stranded Costs	States may impose a charge to recover transition costs; authorizes FERC to address recovery of stranded wholesale costs.	States determine the amount of recoverable stranded costs; FERC given "back-up" authority for recovery if State lacks authority; States must consider reducing cost recovery from a consumer producing energy on-site by a fuel cell or a combined heat and power; distributed power or renewable power facility.	Preserves State authority to impose a charge for recovery of stranded costs; non-binding "Sense of the Congress" that utilities are entitled to full recovery of wholesale and retail stranded costs.
Siting	Grants Congressional consent for States to form regional transmission siting compacts or agencies.	Congressional consent given for the establishment of regional transmission planning agencies (See also Transmission Organizations)	Establishes transmission expansion process for planning and siting transmission facilities; RTO, or other entity, may submit plan for FERC review and approval; FERC shall issue certificate of public convenience and necessity that authorizes applicant to construct new facilities, and confers right of eminent domain.
Reciprocity	No provision.	Permits a State regulatory authority to prohibit the sale of electric energy from a distribution utility that does not allow retail open access to the consumers of a distribution utility that does	Allows States to prohibit retail sales into competitive retail markets by utilities that are not open to competition (i.e. "soft reciprocity").
Consumer Protection	FTC to issue rules to protect consumer privacy; FTC to issue rules against slamming and cramming [See also "Right to Know"].	Prohibits "slamming" and "cramming." (See also "Right to Know")	No provision but preserves State authority to impose consumer protection provisions.

STATEMENT OF THE HONORABLE TOM BLILEY BEFORE THE DEPARTMENT OF ENERGY VIRGINIA ELECTRICITY RELIABILITY SUMMIT

JUNE 19, 2000

It is a pleasure to be here today. I want to thank Secretary Richardson for inviting me and holding this summit. For quite some time we have worked together to raise the importance of electricity restructuring and the issue of electricity reliability to the American public. I also appreciate the participation of everyone else here today. Your attendance shows your concern about these issues.

The issues we will consider today and how we ultimately deal with them can have far-reaching and long-lasting impacts. Over the next few weeks, Congress will act to encourage modernization of the electricity grid. It will get the framework right for grid access and fair competition. The reliability of electricity markets will be improved. I

want to enact workable federal legislation that benefits Americans and safeguards the system.

In 1995, the Commerce Committee began a serious effort to find ways to adapt current law to meet new market conditions. Our efforts to modernize and bring greater competition to the electric utility sector are good for consumers. Since 1995, the Committee has held 34 hearings and heard from over 350 witnesses on the issues related to electric utility restructuring. One of those hearings was held here in Richmond, where we heard from Virginians about the need for a reliable and efficient electricity industry. The goal I stated at that hearing three years ago remains the same: "I want a competitive system that preserves reliability, protects the environment and allows all consumers access to lower costs."

That goal is now within reach. Last year the Virginia Legislature passed legislation that will allow Virginia electricity consumers to

choose their own power suppliers. Another 24 States have passed similar legislation. Now we must enact Federal legislation to keep pace with all the changes occurring in Virginia and elsewhere.

Almost two weeks ago, I released a Discussion Draft designed to achieve greater reliability and competition on the interstate transmission grid. That Discussion Draft recognizes that only Congress can eliminate the regulatory uncertainty that is currently stifling investment in electricity markets. Only Congress can ensure a competitive and open interstate transmission grid to which all buyers and sellers of electricity have equal access. More importantly, if Congress passes legislation to open the transmission grid, all consumers will benefit from the stability it brings. Consumers will see lower prices, improved customer service, more choices, and a renewed focus on innovation.

If we are successful in passing electric utility restructuring

legislation not only will the system be more reliable but, the electricity industry will be transformed in way that is hard to imagine today. New technologies will reduce the costs and increase the options for residential, commercial and industrial consumers. Federal electricity legislation will improve the adequacy of interstate power flow.

That means folks who generate power can be sure the power can get from the generation plant to the customer. Part of the reliability problem today is that the power can't flow from the generator to the customer. This "adequacy" problem is what the Committee is addressing. Efficient appliances and cutting back on your "AC" are good ways to handle a power shortage. But these are not solutions to America's current reliability problem.

Two reliability related events occurred across the country this past week. First, on Tuesday distribution lines that supply all Detroit

municipal buildings, including government buildings, schools, and low-income housing, and a hospital went down causing a major black-out which took several days to restore. Beginning on Wednesday, a heat wave in California caused a utility to call for rolling blackouts affecting 35,000 customers at a time in order to keep the grid from suffering a widespread failure. If the upcoming summer continues to be abnormally hot, more of these situations are expected to occur

Congress is on the brink of addressing these issues. I am confident that clarifying the governance of the interstate transmission grid is the right place to start.

As in the telecommunications industry, once workable comprehensive federal legislation was enacted, innovation flourished. The black rotary phone of yesterday is long forgotten. Telephone consumers now have digital phones with voice mail, call

waiting, text messaging, and can get real time stock quotes while walking down the street. Those services are more affordable than ever and the options seem unlimited. Consumers can save money on phone services according to usage or with a flat rate for both local and long-distance calling.

Similarly, as competition in electricity becomes more of a reality, the electricity sector is beginning to "re-tool". Fuel cell developers are working hard to develop products that will allow consumers to generate their own electricity using just a fraction of the energy used to generate electricity at today's centralized power plants. Centralized power plants are becoming more efficient and cleaner. Companies that produce electricity from renewable sources are finally gaining access to consumers who would like to buy such products. Widespread application of technologies that give consumers the ability to read their own meter in real time over their

home computer is not very far away. In the future consumers will be able to buy electricity from the supplier of their choice tailored to their own particular situation rather than being forced to buy the only package offered from the monopoly allowed to serve their street.

Now you may ask what does that have to do with reliability. Investment in new power plants and transmission lines and other electricity technologies has been lagging. Utilities and others have been reluctant to make expensive investments in power plants because they do not know if they can get their power to consumers. The rules of the road are unclear and can often be gamed by transmission owners to keep competitors out. Eliminating regulatory uncertainty and unleashing competition will spur these investments.

All these new opportunities and products will have a direct relationship on American consumers and American competitiveness.

Giving consumers what they want, at a price they can afford to pay will open markets, increase America's global competitiveness by lowering prices for America's hottest commodity -- electrical power.

Today, Secretary Richardson and I are here together. I am listening to what Virginians think about reliability of their electric system and the need for Federal electric utility restructuring legislation. Now is the time for Federal legislation to make a big difference on the reliability situation for America. It is not too late to make a difference for this summer, this winter, next summer, and well into the future. We cannot afford to delay any longer.

APPENDIX E:
Virginia Power Pilot Program "Price to Compare" Fact Sheet

Rate Schedule	Avg. Market Price for Generation	Transmission & Ancillary Services	Average Price to Compare
Residential (RS)			
Winter	4.170 ¢/kWh	.351 ¢/kWh	4.521 ¢/kWh
Summer (June-Sept.)			
Under 800 kWh	5.179 ¢/kWh	.351 ¢/kWh	5.530 ¢/kWh
Over 800 kWh	7.271 ¢/kWh	.351 ¢/kWh	7.622 ¢/kWh
Annualized	4.766 ¢/kWh	.351 ¢/kWh	5.117 ¢/kWh
Small Commercial (GS-1)			
Annualized	4.438 ¢/kWh	.276 ¢/kWh	4.714 ¢/kWh
Medium Commercial (GS-2)			
Annualized	4.289 ¢/kWh	.285 ¢/kWh	4.574¢/kWh
Large Commercial (GS-3)			
Annualized	3.912 ¢/kWh	.247 ¢/kWh	4.159 ¢/kWh
Large Industrial (GS-4)			
Annualized	3.457 ¢/kWh	.231 ¢/kWh	3.688 ¢/kWh
Churches (C)			
Annualized	4.615 ¢/kWh	.186 ¢/kWh	4.801 ¢/kWh

Source: State Corporation Commission, June 9, 2000

Competitive Service Providers/Aggregators
Applications for Licensure
(Updated 07/26/00)

Commission Assigned Case No.	Date Filed	Status/ Date Licensed	Company Name Address	Contact Information	LDC Pilot Programs VP=Virginia Power APCO=Appalachian Power REC=Rappahannock Elec. Coop * WGL=Washington Gas CGV=Columbia Gas of Va.	Customer Class(es) R=Residential C=Commercial I=Industrial	Services Provided
PUE000344 Complete 000640001	6/19/00 Owens	Pending	Pepco Energy Services 2000 K Street NW, Suite 750 Washington, DC 20006 www.pepco-services.com	Manuel Vera (202)454-1013 e-mail: mvera@pepcoenergy.com	VP, APCO, WGL, CGV, REC	R, C, I	Aggregation and various other energy services (see application)
PUE000345 Complete 000640031	6/19/00 Maddox	Pending	Old Dominion Electric Coop. d/b/a Cooperative Energy 4201 Dominion Boulevard Glen Allen, VA 23060	Customer Service (877)747-0592 Ed Tatum (804)968-4007 e-mail: etatum@odec.com	VP, APCO, REC	R, C, I	
PUE000352 Complete 000710093	7/5/00 Ballsrud	Pending	CNG Retail Services Corp d/b/a Dominion Retail Services One Chatham Ctr, Ste. 700 Pittsburgh, PA 15219	Kimberly Kujbus (412)316-7059 e-mail: kimberly_kujbus@dom.com	VP	R, C	Electric & natural gas
PUE000 Incomplete 000710046	7/5/00 Maddox	Pending	Dominion Energy Direct Sales 120 Tredegar St. Richmond, VA 23219	Steve Baum (804)273-4249 e-mail: steve_baum@dom.com	VP, APCO, REC	C, I	Energy consulting
PUE000351 Complete 000710053	7/5/00 Owens	Pending	DTE Energy Marketing, Inc. 101 N. Main Street, Ste. 300 Ann Arbor, MI 48104 www.dteenergy.com	Karen Mitchell (734)887-2245 e-mail:	VP, APCO	C, I	Electric
PUE000 Incomplete 000720038	7/6/00 Ballsrud	Pending	Washington Gas Energy Svcs 950 Herndon Pkwy, Ste. 280 Herndon, VA 20170-5531	Laura Shaw (703)904-1335 e-mail: llshaw@erols.com	WGL, CGV, VP, APCO	R, C, I	Electric & natural gas

*Rappahannock Electric Cooperative's pilot program is awaiting Commission appro

Competitive Service Providers/Aggregators
Applications for Licensure
(Updated 07/19/00)

Commission Assigned Case No.	Date Filed	Status/ Date Licensed	Company Name Address	Contact Information	LDC Pilot Programs VP=Virginia Power APCO=Appalachian Power REC=Rappahannock Elec. Coop.* WGL=Washington Gas CGV=Columbia Gas of Va.	Customer Class(es) R=Residential C=Commercial I=Industrial	Services Provided
PUE000 000720297	7/14/00 Ballsrud	Pending	essential.com, Inc. 1 Burlington Woods Drive Burlington, MA 01803 www.essential.com	Scott Sherman (781)229-4540 (888)746-4983	WGL, CGV, VP, APCO	R, C	Electric & natural gas
PUE000 000740001	7/20/00 Ballsrud	Pending	Allegheny Energy Supply Co. Roseytown Road RR 12, Box 1000 Greensburg, PA 15601	Lennie B. Davis (724)853-3732 (888)232-4642	APCO, VP	R, C, I	Electricity

*Rappahannock Electric Cooperative's pilot program is awaiting Commission approval.

Remarks of William G. Thomas
Dominion Virginia Power
Before the Legislative Transition Task Force
December 13, 2000

Good morning, Mr. Chairman and members of the task force.

My name is Bill Thomas, and I represent Dominion Virginia Power. I'd like to spend a few moments this morning giving you an update on the functional separation plan that the company filed last month with the State Corporation Commission. As you know, the Virginia Electric Utility Restructuring Act requires all incumbent electric utilities to file such plans with the Commission by January 1.

We believe that our plan will advance the Restructuring Act's goals of promoting fair competition...guarding against discriminatory behavior...and fostering a vigorous competitive retail electric supply market in the Commonwealth.

The intent of the plan is to protect the interests of Virginia's electric consumers, both during and after the transition to retail competition.

- It fulfills the Restructuring Act's requirements for the separation of the company's generation and delivery assets and functions. The Act views this separation as a necessary step to prevent discriminatory dealings and promote the development of a healthy competitive market.
- At the same time, it protects the reliability of Dominion Virginia Power's generating stations and the integrity of the company's distribution and transmission systems.
- It guarantees that customers purchasing electricity through capped rate and default service have adequate supplies of power. This is accomplished through a Power Purchase Agreement between Dominion Generation – which will own, operate and maintain the generating facilities under our functional separation plan – and Dominion Virginia Power, which will continue to own, operate and maintain the distribution and transmission facilities.

- It provides for full and uninterrupted funding of the program – required by federal law – to assure that our nuclear plants are decommissioned in a safe and orderly manner at some point in the future – hopefully the distant future.
- And it uses sound, established statistical methods to determine fair and reasonable annual fuel factors during the capped years of 2002 through 2007.

Additionally, the intent of the plan is to conform to the Restructuring Act's requirement that competitive market forces determine all retail electric energy prices in the Commonwealth after the end of the capped rate period – now scheduled for July 1, 2007.

Other stakeholders in the restructuring process share this view of the Act's intent. We believe the members of the task force also share this view.

However, we believe it is time to clarify that intent with specific language through an amendment to the Restructuring Act.

The State Corporation Commission itself is divided on the issue of default pricing after the capped rate period. In October, a majority called for default rates based on the traditional cost-of-service method.

The majority opinion took the view that "under the Act, regulated rate protection for default service customers continues until the General Assembly decides to eliminate or alter its provision." In our opinion, this is contrary to legislative intent.

In dissent, one of the Commissioners warned that cost-based default rates would inject intolerable uncertainty into the future of Virginia's competitive energy market...threaten the development of competition...and jeopardize future electric reliability.

We concur. So do other stakeholders in the restructuring process. Cost-based rates would deter investors who want to build new generating facilities in Virginia. Spurred by prospects of competition, more than 7,000 megawatts of new capacity are under construction or planned in the Commonwealth. This capacity is vital

to the success of retail competition...and to ensuring a supply of electricity capable of meeting the needs of a growing state.

But the plans could come to a halt if investors face cost-based default rates and conclude they do not have a reasonable opportunity to earn a profit. Cost-based default rates would effectively re-regulate generation – and work against the goals of the Act.

Fortunately, all three members of the Commission in October recognized the need to clarify this issue. They provided for it in the order by delaying until April 1, 2001 requirements that utilities submit certain information that could be used to calculate cost-of-service default rates. That date, of course, is well after the Assembly is scheduled to adjourn.

And the majority opinion went on to say that "such legislative action would put to rest this controversy and thus send a clear, unambiguous signal...concerning the exact nature of Virginia's competitive electricity market following the conclusion of capped rates."

From our perspective, action to clarify this in the 2001 session is absolutely critical.

To that end, a group of stakeholders are working toward a mutually acceptable proposal for clarifying the Restructuring Act and solving the default pricing problem. We hope to be able to present our suggestions to the task force soon.

And we hope the 2001 session will take the opportunity to provide additional clarity to the Act and reinforce its intent that all retail rates be based on competitive market factors after the end of the capped rates.

Meanwhile, we will work with the Commission to secure approval of our company's functional separation plan. We are confident this plan will protect the public interest during the Commonwealth's transition to competition. We are confident that it will promote the development of a vigorous retail market that can benefit all consumers. We also believe it will ensure the continued

safe, efficient and reliable operation of the distribution, transmission and power generation systems.

But those goals may well be compromised if any effort is made to override the Act's intent that competitive market forces set all retail electric energy prices after the end of the capped rate period. Dominion Virginia Power strongly believes that any effort to circumvent this mandate would have dangerous consequences for the competitive market...the Commonwealth...and all retail electric consumers.

I'd be happy to answer any questions you may have.

AllianceRTO

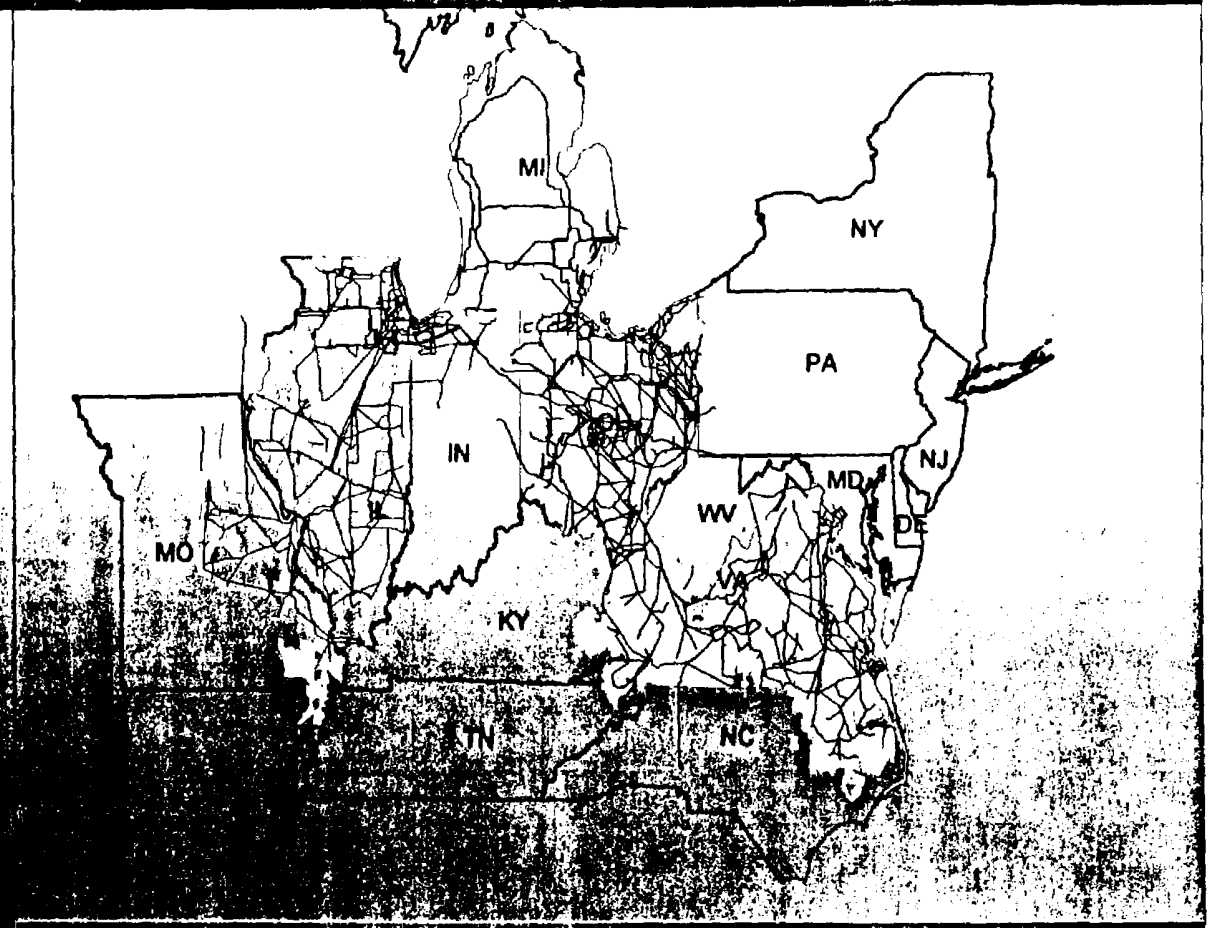
Alliance Companies

Current Members:

- American Electric Power
- Consumers Energy
- Detroit Edison
- FirstEnergy
- Dominion Virginia Power
- Commonwealth Edison

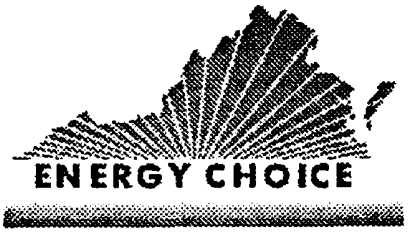
Expected to Join:

- Ameren Corp.
- Illinois Power
- Dayton Power & Light
- Northern Indiana Pub Service



New or Expected Members | Original Members

The Alliance is gaining momentum.



Virginia Energy Choice Education Advisory Committee

Consumers

John Dudley, Senior Assistant Attorney General, Office of the Attorney General

Dr. Irene Leech, President, Virginia Citizens Consumer Council

Mary Hale Madge, State Legislative Committee, AARP

Dale Masten, President, Virginia Retail Merchants Association

Willie Schmidt, Extension Agent, Virginia Cooperative Extension

James W. Speer, Staff Attorney, Virginia Poverty Law Center

Susan Rubin, Legislative Specialist in Public Affairs, Virginia Farm Bureau Federation

Energy Marketer

Thomas Butler, Director of Marketing, Dominion Retail

Utilities

Bryan Batson, Dir., State Regulatory Affairs, AGL Resources Inc. (Virginia Natural Gas)

Virginia Board, Director of Community Affairs, Dominion Virginia Power

Rhonda Curtis, Manager of Customer Services and Public Relations, Rappahannock Electric Cooperative

Alice Haithcock, Assistant Vice President, Member Services Virginia, Maryland and Delaware Association of Electric Cooperatives

Dale Moore, Dir. of Rates, Regulatory Affairs & Financial Planning, Roanoke Gas Co.

John Shepelwich, Corporate Communications Manager, AEP-Virginia

Mindy Williams, Public Affairs Area Manager, Washington Gas

January 11, 2001

MEMORANDUM

From: Virginia State Corporation Commission Staff

To: John Dudley, Esq., Office of the Attorney General
Edward Flippen, Esq., and Paul Hilton, Virginia Power.
Daniel Carson and Anthony Gambardella, Esq., AEP
Bill Axselle and Reggie Jones, Esqs., ALERT
Louis Monacell and Ed Petrini, Esqs., Virginia Committees
Mark Tubbs and Jim Guy, Esq., Virginia's electric cooperatives
Chris LaGow, Esq., Allegheny Power Systems

Re: Your proposed draft addressing default service; utilities' voluntary divestiture of generation assets; and competitive metering and billing; further comments.

Yesterday (January 10), we met with all of you to discuss the above-referenced draft following its dissemination this past Monday. We found the meeting very helpful in improving our understanding of your mutual intentions expressed in the draft. As you know, yesterday was our first opportunity to sit down with you to review and discuss the changes to the Restructuring Act you all have proposed. As a follow-up to that meeting, we are sending you this brief memo to summarize several key comments and concerns we raised and discussed with you. This letter is not designed to indicate support for or opposition to the draft. Instead, we are simply identifying practical issues related to the Commission's potential responsibilities in implementing the legislation, if the same is adopted by the General Assembly.

This memo will focus on your proposed revisions to the Restructuring Act's default service provisions in 56-585 and the functional separation provisions in 56-590. We will re-cap our comments and concerns expressed at yesterday's meeting concerning the following areas:

1. Default service reliability.
2. Default service pricing.
3. Constitutionality of pricing of default service.
4. Generation divestiture and the Commission's application of the Utilities Transfers Act.
5. Generation divestiture and the proposed bar to the re-sale of divested generation assets.

Background and Overview.

As we understand your proposal concerning default service, the Commission would first solicit bids for that service on or before January 1, 2004 (proposed § 56-585 B 2). If the Commission is unable to find willing and suitable bidders for default service,

then the Commission may require a "distributor" to do so (i.e., the incumbent utilities' functionally separated distribution company) under proposed § 56-585 B 3 with the rates for such service established under § 56-585 C.

If a distributor is required to provide default service, then the Commission (under proposed 56-585 C 2) conducts a proceeding, upon notice and opportunity for hearing, to establish the rates, terms and conditions for the distributor's default service. However, the generation components of such rates must be separately priced based upon (i) a generation procurement plan submitted by the incumbent, or (ii) "prices for generation capacity and energy in competitive regional markets"—the latter being determined by the Commission subject to criteria described below. As we understand it from your collective comments, a distributor's generation procurement plan might be submitted as a part of an incumbents' functional separation plan.[1] As we noted in our comments to all of you yesterday, however, approving such a procurement plan as part of a functional separation filing that must be concluded by January 1, 2002 may be problematic. It would be difficult if not impossible for the Commission in 2001 to determine or project competitive regional markets in 2007, much less project any such market's prices.

Under the proposed language in § 56-585 C 3 (as reflected in your amendments to this subdivision received this afternoon), the Commission is required to approve the incumbent's proposed generation procurement plan if it is "adequately based upon prices of capacity and energy in competitive regional electricity markets." As we understand from your comments, these markets must be *bona fide* markets; that is, markets with published prices, reasonably accessible to the distributor.[2] You advised us, however, that the inability of any such market to furnish *all* of a distributor's default generation requirements would not disqualify it as a "competitive regional electricity market." In any event, however, the Commission must either approve or reject the distributor's generation procurement plan as submitted. If the Commission proposes modifications to the plan, the distributor must agree to them (56-585 C 3).

If the Commission rejects a distributor's generation procurement plan, or if a distributor simply chooses not to file a procurement plan with the Commission for default service, *then* (under 56-585 C 2) the Commission establishes that distributor's default service generation rate with reference, once again, to competitive regional electricity markets, using criteria identical to that applicable to distributors' plans for default service generation procurement, i.e., liquidity, price transparency and reasonable accessibility of such markets to the RTE to which the distributor belongs.

The draft makes corresponding amendments in 56-590 to effectively declare that (i) the sole means by which default rates will be determined is in accordance with 56-585, and, (ii) the Commission cannot treat default service rates under 56-585 as cost-based for

[1] That possibility is contemplated in the language of proposed 56-585 C 3s' references to plans filed in advance of the distributor's provision of default service.

[2] In fact, the proposed language in 56-585 C 3 requires that the Commission when determining what regional market or markets to use as a yardstick, must consider among other relevant factors "the liquidity and price transparency of such markets and the reasonable accessibility of such markets to the RTE to which the distributor belongs."

purposes of applying 56-90 of the Utilities Transfers Act.[3] Additional amendments to 56-590 permit the Commission to bar the further re-sale or transfer of generation assets divested by an incumbent electric utility for the duration of the capped rate period or during any period in which the incumbent serves as the default provider (proposed 56-590 B 3 (iii).

With the foregoing as background, we offer the following comments relating to the Commission's potential obligations to implement these changes to the Act if and when adopted by the General Assembly.

Comments and Concerns

1. Default service reliability.

When we discussed the draft yesterday, it was clear under the language then under consideration that when the Commission reviews a distributor's proposed plan for default service generation procurement under proposed 56-585 C 3, the Commission could consider reliability, safety and other key considerations pursuant to 56-585 B 1. The draft was then unclear as to whether the requirements in 56-585 B 1 were applicable to a distributor only with respect to 56-585 C 3.

We note that in amendments to the draft we received today, 56-585 C was amended to add a reference to 56-585 B 1 with respect to Commission-determined rates, terms and conditions for default service. However, we note a corresponding amendment deleting the reference to 56-585 B 1 in 56-585 C 3. These amendments simply do not address the issue clearly. We are concerned about the Commission's authorization under your proposed language to require a distributor to provide safe and reliable default service under 56-585 B 3.

Recommendation: If it is the intent of the General Assembly to have the Commission seek to ensure safe and reliable default service under 56-585, then we believe that such an intent should be made manifest in amendments to 56-585 B 3 by inserting on line 3 thereof, after "to provide," the words "in a safe and reliable manner."

2. Default Service Pricing.

a. Wholesale versus retail market. The draft language does not state whether the Commission must look to the wholesale or the retail market in assessing either (i) the appropriateness of default rate pricing proposed in any distributor's default service generation procurement plan, or (ii) in establishing a default rate for a distributor based upon prices yielded by reference to that market. We believe the Commission should be given legislative direction on this issue.

[3] 56-90 requires that the Commission determine, in reviewing any proposed sale or transfer of utility assets that any such proposed transfer will not impair "adequate service to the public at just and reasonable rates."

Recommendation: While none of you took a definitive position on this issue yesterday, we gathered from your comments that the Commission might look at both competitive wholesale and retail markets in making these determinations. If that is the intention of the General Assembly, we would recommend that the draft expressly provide the Commission that authority.

b. Market Accessibility. While the proposed language in 56-585 C 2 states that the benchmark competitive regional market utilized by the Commission be reasonably accessible to the RTE to which the distributor belongs, no guidance is offered by that language concerning a key "accessibility" issue: whether such a market must be one that could satisfy all of the distributor's default service load. From our conversation yesterday, we conclude that at least one Virginia utility could not obtain all of its requirements from another market. We believe that clarifying this issue now could eliminate future controversies over the appropriate interpretation of this provision.

Recommendation: During our conversations concerning this question yesterday, some of you suggested that the Commission could utilize competitive regional markets as a default service pricing benchmark for a distributor, even if that distributor was unable to obtain all of its default service load requirements from that market. If that is your proposal, we would recommend that the Commission authority to do so be explicitly stated in the provisions of proposed 56-585 C 2 and C 3.

c. Defining "competitive" in the phrase "competitive regional electricity markets." Closely related to items a and b above is the issue of determining the meaning of the word "competitive." While we did not discuss this issue directly yesterday, on further consideration the definition of "competitive" is crucial to the Commission's application of the *competitive* regional electricity market concept in establishing a benchmark for a distributor's default service plan, or a rate for a distributors' default service in the absence of an approved plan. Without definition, the Commission cannot determine whether the prices of a market simply open to competition will suffice, or if the General Assembly will intend that such a market be effectively competitive—that is, whether competition in that other market is an effective regulator of rates.

Recommendation: We would recommend that the draft incorporate a definition of "competitive" in order to furnish the Commission direction in establishing benchmark prices or default rates linked to competitive regional electricity market. One possible definition of a competitive market would be a market in which competition is determined to be an effective regulator of rates.[4] We would also propose that the Commission receive direction concerning how to apply the competitive regional market concept, in the event that, by the time needed to set rates for 2007, no market can be found that conforms to (i) criteria expressed in 56-585 C 2 and 56-585, and (ii) any definition of competitiveness.

[4] In Virginia's Insurance Code (38.2-1906), for example, the General Assembly directs the Commission to permit certain insurance rates to be set by the market if competition is an effective regulator of rates.

d. Frequency of setting default service prices based on competitive regional markets. The proposed language does not specify how frequently the Commission can or must reestablish a distributor's default service rate, once the Commission has set it initially. When we raised this question yesterday, there appeared to be consensus among you that the frequency of any such adjustments should be established on a utility-by-utility basis.

Recommendation: If it is your intent that the General Assembly authorize the Commission to adjust a distributor's price for default service based on competitive regional markets at intervals to be determined by the Commission on a utility-by-utility basis, then we would recommend amendments to 56-585 C 2 and 56-585 C 3 stating so.

3. Constitutionality of default service pricing mechanism.

As we discussed yesterday, the proposed revisions to 56-585 would allow this Commonwealth, through authority delegated to this Commission, to require a distributor to provide default service (56-585 B), and also to limit the price the distributor may charge for that service by reference to prices for energy and capacity yielded by competitive regional electricity markets (56-585 C). As we expressed to you yesterday, we are concerned that if the distributor's prudent costs incurred to generate or buy the electricity required to meet its default service load obligations exceed (by a sufficient amount) the default service price set by the Commission (a price set without regard to costs because 56-585 expressly excludes costs from default service ratemaking) for that distributor, the distributor might claim that imposing such a price limit is an unconstitutional taking.

As we discussed further, the unconstitutional taking issue also arises if a distributor's prices are set with reference to a competitive regional market from which that distributor cannot obtain all, or even a substantial part of the electric generation it will require to serve its default load. As we discussed, at least one Virginia utility is likely to fall into that category due to transmission import constraints. Thus, even if the Commission properly establishes a default rate with reference only to a competitive regional market and without regard to the utility's costs, if that default rate is or becomes substantially lower than the distributor's costs to generate or obtain that generation, then such a rate could be subject to attack by the distributor as an unconstitutional taking.

Recommendation. While we have no specific recommendations for purposes of averting the potential unconstitutional taking problem, we note that in 56-582, the capped rate provision contains (whether by intent or otherwise), a constitutional safety valve regarding the takings issue. In that provision, the Commission is authorized to adjust an incumbent's capped rates on the basis of "financial distress of [a] utility beyond its control."[5] This current provision governing capped rates may provide some useful guidance in addressing the unconstitutional taking issue discussed above.

[5] 56-582 B (iii).

4. Generation divestiture and the Commission's application of the Utilities Transfers Act.

It was our impression following an extensive conversation about this issue yesterday, that in the proposed amendments to 56-590 B (adding subdivision B 5, and amending subsection H), your collective intent was that the Commission should not consider rates in general, and "just and reasonable" rates in particular in considering a transfer under 56-590 and 56-90. In response, we requested that such an intent be manifest in express statutory language so that the legislative direction on this issue would be clear and beyond dispute. Moreover, and at your collective request, we prepared statutory language amending your proposed 56-595 B 5, to articulate what we then believed to be your intent. The language we furnished all of you was as follows:

> § 56-590 B 5
>
> In exercising its authority under ~~Notwithstanding~~ the provisions of this section ~~or~~ and under § 56-90, the Commission shall have no authority to regulate, including on a cost of service basis, the price at which generation assets or their equivalent are made available for default service purposes, nor to consider the effect of any proposed transfer of such generation assets upon rates for Virginia consumers. Rates for the provision of default service by a distributor shall be determined consistent with the provisions of §56-585.

However, we were subsequently advised yesterday afternoon by several of you, including Mr. Flippen, Mr. Dudley, and Mr. Petrini, that the language above did not accurately capture your collective intent. Moreover, upon further discussion and clarification, we now understand that the intent of § 56-590 B 5 as presently drafted is simply to state the following: the Commission cannot, when establishing default generation prices under 56-585 of the Restructuring Act, consider cost-of-service based rate-setting methodologies, 56-90 notwithstanding. In all other respects, the Commission's authority under the Transfers Act is unabridged.

Recommendation. We would recommend the addition of clarifying language concerning this issue to the end of 56-590 B 5 as follows: "Provided, however, under 56-90 and 56-590, the Commission may consider the impact of any proposed generation asset transfers on rates for Virginia's electricity consumers."

5. Bar to further resale or transfer of divested generation assets.

We discussed, at length, your proposal to bar the further sale or transfer of incumbents' divested generation assets (56-590 B 3 (iii)). As we advised you then, it is unclear to us under what authority the Commission would act to bar such further transfer or re-sale. If, for example, the assets are transferred to an unregulated, wholesale generation company, the Commission may be without authority to prohibit that company

from further disposing of those assets. We understand that some of you believe that conditioning the initial transfer upon the purchaser agreeing to that condition provides a basis for enforcement. We are unable to find a legal basis for that argument.

More importantly, however, the issue of enforceability is probably eclipsed by an even larger issue. Once transferred, the regulation of these generation assets and their output become matters of federal jurisdiction. Therefore, it seems to us that any attempt by the Commission to impose barriers to the assets' further re-sale would be of no legal effect. Jurisdiction over the assets' production would also belong to the federal agencies.

These are our principal comments concerning your draft. Again, thank you for meeting with us yesterday.

MEMORANDUM

TO: Legislative Transition Task Force

FROM: Electric Utility Restructuring Stakeholders (Stakeholders)*

DATE: January 18, 2001

RE: Proposed Draft Legislation

Thank you for the opportunity to respond to the Virginia State Corporation Commission Staff's memo to the Stakeholders dated January 11, 2001. That memo raises several issues and makes certain recommendations with respect to five separate issues addressed in the proposed legislation amending portions of the Virginia Electric Utility Restructuring Act. This memo contains our response to the Staff's recommendations. For clarity, we have identified each of the five issues and quoted the relevant portions of the Commission Staff's discussion of its recommendations prior to our responses.

1. Default Service Reliability

Staff's Recommendation: If it is the intent of the General Assembly to have the Commission seek to ensure safe and reliable default service under § 56-585, then we believe that such an intent should be made manifest in amendments to § 56-585.B.3 by inserting on line 3 thereof, after "to provide," the words "in a safe and reliable manner."

Response: We agree with this recommendation. As Staff recommended, we have inserted the words "in a safe and reliable manner" in § 56-585.B.3, line 3, after "to provide."

2. Default Service Pricing

a. Wholesale versus retail market

Staff's Recommendation: While none of you took a definitive position on this issue yesterday, we gathered from your comments that the Commission might look at both competitive wholesale and retail markets in making these determinations. If that is the intention of the General Assembly, we would recommend that the draft expressly provide the Commission that authority.

Response: We agree with this recommendation. To provide the Commission the authority to look at both competitive wholesale and retail markets, we have inserted as a

* The Stakeholders are: ALERT, Office of the Attorney General, Virginia Committee for Fair Utility Rates, Allegheny Power, American Electric Power, Old Dominion Electric Cooperative, and Virginia Power.

new § 56-585.C.4.(iii) the words "the wholesale or retail nature of such markets, as appropriate."

b. Market accessibility

Staff's Recommendation: During our conversations concerning this question yesterday, some of you suggested that the Commission could utilize competitive regional markets as a default service pricing benchmark for a distributor, even if that distributor was unable to obtain all of its default service load requirements from that market. If that is your proposal, we would recommend that the Commission authority to do so be explicitly stated in the provisions of proposed § 56-585.C.2 and C.3.

Response: We do not believe any changes to § 56-585.C.2 and C.3 are necessary. Our proposal is as stated in § 56-585.C.4. Under that provision, "the Commission shall consider . . . the reasonable accessibility of such markets to the RTE to which the distributor belongs."

c. Definition of the term "competitive" in the phrase "competitive regional electricity markets"

Staff's Recommendation: We would recommend that the draft incorporate a definition of "competitive" in order to furnish the Commission direction in establishing benchmark prices or default rates linked to competitive regional electricity market. One possible definition of a competitive market would be a market in which competition is determined to be an effective regulator of rates.[1] We would also propose that the Commission receive direction concerning how to apply the competitive regional market concept, in the event that, by the time needed to set rates for 2007, no market can be found that conforms to (i) criteria expressed in 56-585.C.2 and 56-585, and (ii) any definition of competitiveness.

Response: We have considered Staff's recommendation and have included a new factor "whether competition is an effective regulator of prices in such markets" -- to be considered by the Commission in determining competitive regional electricity markets for purposes of § 56-585.C. That factor is stated in § 56-585.C.4.(ii). Further, to clarify the Commission's authority with respect to the criteria for determining competitive regional electricity markets and default service rates, we have added the term "rates for default service" in § 56-585.C.4., and have included a new § 56-585.C.4.(v) which expressly requires the Commission to consider any such other factors it finds relevant. The added language makes it clear that the Commission has the discretion to consider other factors, as it deems appropriate, to define regional competitive markets and for determining default rates. Thus, the Commission may look at other factors it considers relevant in determining a competitive regional market price if a competitive regional market does not exist.

[1] In Virginia's Insurance Code (38.2-1906), for example, the General Assembly directs the Commission to permit certain insurance rates to be set by the market if competition is an effective regulator of rates.

d. Frequency of setting default service prices based on competitive regional markets.

Staff's Recommendation: If it is your intent that the General Assembly authorize the Commission to adjust a distributor's price for default service based on competitive regional markets at intervals to be determined by the Commission on a utility-by-utility basis, then we would recommend amendments to 56-585 C 2 and 56-585 C 3 stating so.

Response: We agree with Staff's recommendation and have amended § 56-585.C to recognize such authority. Specifically, the words "periodically, for each such distributor," have been added after the words "the Commission shall" in § 56-585.C.

3. Constitutionality of Default Service Pricing Mechanism

Staff's Recommendation: While we have no specific recommendations for purposes of averting the potential unconstitutional taking problem, we note that in 56-582, the capped rate provision contains (whether by intent or otherwise), a constitutional safety valve regarding the takings issue. In that provision, the Commission is authorized to adjust an incumbent's capped rates on the basis of "financial distress of [a] utility beyond its control."[2] This current provision governing capped rates may provide some useful guidance in addressing the unconstitutional taking issue discussed above.

Response: We believe the Commission's ratemaking authority under the Virginia Constitution, and the U.S. Constitution and Title 56 of the Code of Virginia, provides the Commission with the authority to adjust retail rates to prevent an unconstitutional taking. The Commission possesses the same authority to adjust rates for default service in a similar manner. The risks are the same as they currently are in any retail rate case. The "financial distress" safety valve in § 56-582.B(iii) was appropriate because rates are capped and cannot be adjusted except in the limited circumstances set forth in § 56-582. That is not the case for default service rates after July 1, 2007.

4. Generation Divestiture and the Commission's Application of the Utilities Transfers Act

Staff's Recommendation: We would recommend the addition of clarifying language concerning this issue to the end of 56-590 B 5 as follows: "Provided, however, under 56-90 and 56-590, the Commission may consider the impact of any proposed generation asset transfers on rates for Virginia's electricity consumers."

Response: We agree that the language in § 56-590.B.5 needs clarification. We, however, propose a different change from Staff. It is not our intent to change the Commission's authority under the Transfers Act, except to the extent necessary to eliminate any conflict between the just and reasonable standard in § 56-90 (which the Commission has often interpreted to mean rates based on cost of service) and the competitive market price standard in § 56-585. To eliminate such conflict, proposed § 56-590.B.5 has been changed to read as follows:

[2] 56-582 B (iii).

[5. In exercising its authority under] the provisions of this section ~~[or]~~ [and under] § 56-90, the Commission shall have no authority to regulate, including on a cost of service ~~[bases]~~ [basis], the price at which generation assets or their equivalent are made available for default service purposes~~[, and rates for the provision of default service by a distributor shall be determined consistent with the provisions of]~~[. The Commission's authority to regulate the price of such service shall be consistent with the pricing provisions applicable to a distributor pursuant to] § 56-585.

5. Bar to Further Resale or Transfer of Divested Generation Assets

We do not have a response to Staff's general comments under paragraph 5 of its memo except to state that nothing in the proposed legislation would add to or subtract from the Commission's authority to approve generation asset transfers in Virginia, except to the extent amending language in § 56-590.B.5 eliminates the conflict between § 56-90 and § 56-585 discussed above. In all other respects, the authority of the Commission under the Utility Transfers Act remains the same. The proposed language in § 56-590.B.3(iii) is an added safeguard to make it absolutely clear that any generation asset sold, transferred, or otherwise disposed of by any incumbent electric utility during the capped rate period or during any period a distributor serves as a default provider shall not be further disposed of by an acquiror without Commission approval.

Draft legislation incorporating the changes discussed above is attached. Again, thank you for the opportunity to respond to Commission Staff's memo and recommendations.

#50122

January 18, 2001

MEMORANDUM

From: Virginia State Corporation Commission Staff

To: John Dudley, Esq., Office of the Attorney General
Edward Flippen, Esq., and Paul Hilton, Virginia Power.
Daniel Carson and Anthony Gambardella, Esq., AEP
Bill Axselle and Reggie Jones, Esqs., ALERT
Louis Monacell and Ed Petrini, Esqs., Virginia Committees
Mark Tubbs and Jim Guy, Esq., Virginia's electric cooperatives
Chris LaGow, Esq., Allegheny Power Systems

Re: Further Commission Staff comments concerning your proposed draft addressing default service and utilities' voluntary divestiture of generation assets.

This memo will provide additional Commission Staff comments concerning the draft you furnished to and discussed with the Staff on Tuesday afternoon (1/16) and had posted to the Legislative Transition Task Force's web site on Wednesday (1/17).

As we have emphasized at our meetings with you on January 10 and on January 16 (and as we have advised the LTTF members), the Commission's sole agenda concerning this draft is to advocate for clarity. We have no policy position on the merits, and simply want to ensure that with respect to the Commission's role in implementing any legislation the General Assembly may adopt concerning the issues addressed in your draft, the Commission's authority and obligations are clear.

We want to express our appreciation for your request to meet this past Wednesday to discuss the latest changes to the draft—some of which were made in response to questions we raised in our memorandum to all of you dated January 11. While several of the changes were helpful (e.g., clarifying that the Commission can take into consideration both wholesale and retail markets in establishing the so-called shadow market benchmark), the major questions we raised concerning the Commission's authority and responsibility under this proposed regime remain unanswered in this draft. These questions are as follows:

1. What is the definition of "competitive" in the phrase that drives your entire proposal: "competitive regional electricity market?" We note that you have incorporated reference to competition as an effective regulator of rates in the factors the Commission can *consider* in determining such markets under proposed 56-585 C 4 (ii), but doing so does not define the word "competitive." Unless this critical word is defined in statute, determining its meaning will fall to the Commission, likely guaranteeing protracted, contentious debate among the parties to establish that meaning during Commission proceedings to establish utilities' default rates. In all probability, that very debate will

only serve to guarantee the issue's return to the General Assembly for further consideration. We strongly urge you to work with the LTTF to develop that definition today.

2. What does the Commission do if it finds no competitive regional electricity markets on which to base default service pricing? Regardless of how defined, if the Commission cannot find "competitive regional electricity markets" on which to benchmark or price default generation services under your shadow market proposal (as required and assumed under 56-585 C 2 and C3), how can the Commission (i) approve a utility's default service "plan," or (ii) establish a utility's default rates in the absence of a plan?

We raised this question with you in both meetings and discussed it in our January 11 memorandum because your draft provides no answer and therefore no direction to the Commission. Moreover, the issue remains unanswered in your latest draft, and we view that omission as (i) an invitation to stakeholders and interested parties to attempt to litigate their way to an answer before the Commission, and (ii) potentially leaving the Commission unable to set rates at all. Such an approach could result in the issue's return to the General Assembly for further consideration with no default rates established in the meantime (regardless of statutory deadlines requiring them). The Commission urges you to address this matter in your proposal.

3. Must a regional electricity market be capable of meeting a distributor's entire default load in order to quality as an "accessible" competitive regional market to be utilized by the Commission under 56-585 C 4 (iv)? As we have emphasized to all of you, no guidance is offered by that language concerning whether such a market must be one that could satisfy all of a distributor's default service load. We understand that at least one Virginia utility could not obtain all of its requirements from another market. We believe that clarifying this issue now could eliminate future controversies over the appropriate interpretation of this provision.

4. What happens if the Commission can and does establish a default service rate under your shadow market concept that results in a default service price benchmark substantially lower than a utility's cost to generate or purchase generation for its default service load? We have expressed our concerns that to deny a utility such costs might constitute an unconstitutional "taking" of the utility's property. As we understand it, your view is that a "takings" issue is unlikely to arise.

A distributor under such circumstances, you have advised us, could simply (i) invoke the emergency rate relief provisions of 56-245 (which are based on costs), or (ii) seek an adjustment to its default rates on the basis that its generation or power purchase costs are evidence of current prices in the competitive regional electricity market.

First of all, we are unable to find any language in 56-585 C authorizing the Commission to consider the utility's power generation or power purchase costs in providing relief from the default price, a price set exclusively with regard to competitive

regional electricity markets.[1] Indeed, you have made clear that a major purpose of your proposed amendments is to limit the Commission's consideration of utilities' actual costs in setting default rates. Secondly, the suggestion that utilities may regularly seek adjustments to their Commission-established default prices (putting in evidence their actual costs) suggests the potential for frequent default service rate cases, their timing corresponding to movements in wholesale electricity prices.

If it is the General Assembly's intent to permit distributor emergency rate relief from default service rates under the provisions of 56-245, the legislation must be clarified in 56-585 C to say so. The current language provides no authority for the Commission to consider anything other than the competitive market in establishing default prices. We would also recommend that the General Assembly establish some parameters concerning the frequency of cases to adjust default service rates[2]

5. If any utility proposes to sell or transfer its generation assets, to what extent can the Commission consider the rate impact of such sales or transfers when approving or disapproving them under 56-90 of the Utility Transfers Act? More specifically, when examining an incumbent's divestiture application filed as part of its functional separation plan (or even thereafter), for purposes of applying 56-90 does the Commission consider (i) reliability only, or (ii) reliability *and* the impact of any such divestiture(s) on (a) the ability of the incumbent to deliver capped rates at the rates established pursuant to 56-582, and (b) the ability of the incumbent to deliver default service at rates established under 56-585? Your proposed amendments to 56-590 while referencing 56-90, do not provide an answer to that question. The Commission needs to know what your proposed amendments are designed to do relative to its authority under 56-90. This issue is at the heart of the Commission's split decision concerning its functional separation rules and must be addressed in this legislation.

6. If (under 56-90) the Commission *must* consider capped and default rate impacts when reviewing a utility's proposal to sell or transfer generation, is the Commission required during its functional unbundling proceedings this year, to project prices for energy and capacity in competitive regional electricity markets on and after 2007? More specifically, with respect to the Commission's application of 56-90 to determine the impact of any proposed generation sale or transfer during the capped rate period, as a practical matter how does the Commission take into account that the relevant competitive regional electricity markets in question are those existing after 2007. We find no answer to this question in your current draft. Nevertheless, it is a question critical to the Commission's review of any functional separation plan in 2001 that contains proposed generation sales or transfers.

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[1] As an aside, however, we would note that were the Commission able to provide such emergency rate relief under 56-245, such authority would effectively result in default prices set with regard to competitive markets functioning as a price floor, and not as a price ceiling.

[2] Under current law, utilities can institute general rate cases only once in every twelve month period (except for emergency rate relief under 56-245, and except as further modified by the capped rate provisions of 56-582).

7. Where is the authority under state or federal law for the State Corporation Commission to bar the further re-sale of divested generation assets, following their initial transfer from incumbent utilities to entities whose rates are not regulated by the State Corporation Commission? Commission discretion to require this resale bar is proposed in your amendments to 56-590 B 3 (iii). As we stated in our January 11 memorandum, we understand that some of you believe that conditioning the initial transfer upon the purchaser agreeing to that condition provides a basis for enforcement. We are unable to find a legal basis for that argument.

We conclude that once transferred, the regulation of these generation assets and their output become matters of federal jurisdiction. Therefore, it seems to us that any attempt by the Commission to impose barriers to the assets' further re-sale would be of no legal effect. Even if generation purchasers were willing to agree to any such re-sale restriction, the Federal Energy Regulatory Commission cannot be ousted from its jurisdiction in this manner. Jurisdiction over the assets' production would also belong to the federal agencies.

This concludes our comments concerning your most recent draft. We understand that you are providing a memorandum to the LTTF summarizing your responses to our January 11 memorandum. In order to keep that body up-to-date on the Commission's comments and concerns regarding the most current draft, we will furnish the LTTF members and their staff copies of this memo concurrent with sending it to you.

2001 SESSION
ENGROSSED

010214508

SENATE BILL NO. 1420

Senate Amendments in [ ] — January 24, 2001

A BILL to amend and reenact §§ 56-577, 56-580, 56-581.1, 56-582, 56-585, 56-590, 58.1-2901, 58.1-2902, and 58.1-3814 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 23 of Title 56 a section numbered 56-596, relating to the Virginia Electric Utility Restructuring Act; competition for electric services; default service; functional separation; collection of taxes on consumption of electricity.

Patrons Prior to Engrossment—Senators Norment, Saslaw, Stolle and Watkins; Delegate: Plum

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-577, 56-580, 56-581.1, 56-582, 56-585, 56-590, 58.1-2901, 58.1-2902, and 58.1-3814 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 23 of Title 56 a section numbered 56-596, as follows:

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

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

1. On or before January 1, 2001, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579.

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

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

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

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

4. On and after January 1, 2004, all retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth.

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

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

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

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

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

D. The Commission shall promulgate such rules and regulations as may be necessary to implement

the provisions of this section.

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

§ 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, 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. *If an electric utility owned or operated by a municipality as of July 1, 1999, is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.*

§ 56-581.1. Competitive retail electric billing and metering.

A. ~~On or before~~ *Effective* January 1, ~~2001~~ *2002*, ~~the Commission~~ *(i) distributors* shall ~~recommend to the Legislative Transition Task Force whether metering services,~~ *offer consolidated* 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,~~ *to licensed suppliers, aggregators, and retail customers, and (ii) licensed suppliers and aggregators shall be permitted to bill all retail customers separately for services rendered on and after the first regular meter reading date after January 1, 2002, subject to conditions, regulations, and licensing requirements established by the Commission.*

B. Effective January 1, 2003, licensed suppliers and aggregators may offer consolidated billing service to distributors and retail customers for services rendered on and after the first regular meter reading date after January 1, 2003, subject to conditions, regulations, and licensing requirements established by the Commission.

C. Upon application by a distributor or upon its own motion, the Commission may delay any element of the competitive provision of billing services to retail customers for the period of time necessary, but no longer than one year, to resolve issues arising from considerations of billing accuracy, timeliness, quality, consumer readiness, or adverse effects upon development of competition in electric service. The Commission shall report any such delays and the underlying reasons therefor to the Legislative Transition Task Force within a reasonable time.

D. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section in a manner that is consistent with its Recommendation and Draft Plan filed with the Legislative Transition Task Force on December 12, 2000, to facilitate the development of effective competition in electric service for all customer classes, and to ensure reasonable levels of billing accuracy, timeliness, and quality, and adequate consumer readiness and protection. Such rules and regulations shall include provisions regarding the licensing of persons seeking to sell, offering to sell, or selling competitive billing services, pursuant to the licensure requirements of § 56-587.

E. The Commission shall approve the provision of competitive metering services by licensed providers for large industrial and large commercial customers of investor-owned distributors on or after January 1, 2002, and for residential and small business customers of investor-owned distributors on or after January 1, 2003, as determined to be in the public interest by the Commission. Such approvals 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*; and*

9. Ensure the technical and administrative readiness of a distributor to coordinate and facilitate the provision of competitive metering services for its customers.

~~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.~~

Upon the reasonable request of a distributor, the Commission shall delay the provision of competitive metering service in such distributor's service territory until January 1, 2003, for large industrial and large commercial customers, and after January 1, 2004, for residential and small business customers.

F. The Commission shall promulgate such rules and regulations as may be necessary to implement the authorization related to competitive metering services provided for in subsection E. Such rules and regulations shall include provisions regarding the licensing of persons seeking to sell, offering to sell, or selling competitive metering services, pursuant to the licensure requirements of § 56-587.

~~D~~*G.* ~~Upon enactment of legislation making competitive metering services, billing services, or both, an~~ *An* incumbent electric utility shall ~~undertake such coordination,~~ *coordinate* with persons licensed to

provide ~~such service~~ *competitive metering service, billing services, or both*, 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.~~

H. Notwithstanding the provisions of § 56-582, the Commission shall allow a distributor to recover its costs directly associated with the implementation of billing or metering competition through a tariff for all licensed suppliers, but not those that would be incurred by such utilities in any event as part of the restructuring under this Act. The Commission shall also determine the most appropriate method of recovering such costs through a tariff for such licensed suppliers; however, such method shall not unreasonably affect any customer for which the service is not made competitive.

~~F~~ *I.* ~~Upon enactment of legislation making competitive a service presently provided by an incumbent electric utility, the~~ *The* Commission shall adjust the rates for any noncompetitive services provided by ~~such utility~~ *a distributor* so that such rates do not reflect costs associated with or properly allocable to the service made subject to competition. *Such adjustment may be accomplished through unbundled rates, bill credits, the distributor's tariffs for licensed suppliers, or other methods as determined by the Commission.*

J. Municipal electric utilities shall not be required to provide consolidated billing services to licensed suppliers, aggregators or retail customers. Municipal electric utilities and utility consumer services cooperatives shall not be required to undertake coordination of the provision of consolidated or direct billing services by suppliers and aggregators; however, the exemptions set forth in this subsection shall not apply if any such municipal electric utility or utility consumer services cooperative, or its affiliate, offers competitive electric energy supply to retail customers in the service territory of any other Virginia incumbent electric utility. The Commission may permit any municipal electric utility or utility consumer services cooperative that pursues such competitive activity to maintain such exemption upon application to the Commission demonstrating good cause for relief. In addition, upon petition by a utility consumer services cooperative, the Commission may approve the provision of competitive metering services by licensed providers for large industrial and large commercial customers of such cooperative on or after January 1, 2002, and for residential and small business customers of such cooperative on or after January 1, 2003, as determined to be in the public interest by the Commission consistent with the criteria set forth in subsection E.

§ 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. 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. *Such capped rates shall also include rates for new services where, subsequent to January 1, 2001, rate applications for any such rates are filed by incumbent electric utilities with the Commission and are thereafter approved by the Commission. In establishing such rates for new services, the Commission may use any rate method that promotes the public interest and that is fairly compensatory to any utilities requesting such rates.*

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~~ *56-231.33*. 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 any time 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.

§ 56-585. 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~~ *availability throughout the Commonwealth* of customer choice for all retail customers *as* established pursuant to § 56-577. For purposes of this chapter, "default service" means service made available under this section to retail customers who (i) do not affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.

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

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

2. May *periodically, as necessary, conduct competitive bidding processes under procedures established by the Commission and,* upon a finding that the public interest will be served, designate one or more willing *and suitable* providers to provide one or more components of such services, in one or more regions of the Commonwealth, to one or more classes of customers; ~~and~~

3. ~~In the absence of a finding~~ *To the extent that default service is not provided pursuant to a designation* under subdivision 2, may require ~~an incumbent electric utility or distribution utility~~ *a distributor* to provide, *in a safe and reliable manner,* one or more components of such services, or to form an affiliate to do so, in one or more regions of the Commonwealth, at rates ~~which are fairly compensatory to the utility and which reflect any cost of energy prudently procured, including energy procured from the competitive market~~ *determined pursuant to subsection C and for periods specified by the Commission*; however, the Commission may not require ~~an incumbent electric utility or distribution utility~~ *a distributor*, or affiliate thereof, to provide any such services outside the territory in which such ~~utility~~ *distributor* provides service*; and*

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

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

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

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

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

4. [a.] For purposes of this subsection, in determining whether regional electricity markets are competitive and rates for default service, the Commission shall consider (i) the liquidity and price transparency of such markets, (ii) whether competition is an effective regulator of prices in such markets, (iii) the wholesale or retail nature of such markets, as appropriate, (iv) the reasonable accessibility of such markets to the regional transmission entity to which the distributor belongs, and (v) such other factors it finds relevant. [As used in this subsection, the term "competitive regional electricity market" means a market in which competition, and not statutory or regulatory price constraints, effectively regulates the price of electricity.] [b. If, in establishing a distributor's default service generation rates, the Commission is unable to identify regional electricity markets where competition is an effective regulator of rates, then the Commission shall establish such distributor's

default service generation rates by setting rates that would approximate those likely to be produced in a competitive regional electricity market. Such proxy generation rates shall take into account: (i) the factors set forth in subdivision C. 4. a., and (ii) such additional factors as the Commission deems necessary to produce such proxy generation rates.]

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

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

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

§ 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 any incumbent electric utility's plan for functional separation, including requirements that (i) the incumbent electric utility's generation assets or, *at the election of the incumbent electric utility and if approved by the Commission pursuant to subdivision 4 of this subsection,* their equivalent ~~remain~~ *are made* available for electric service during the capped rate period as provided in § 56-582 and, if applicable, during any period the ~~incumbent electric utility~~ *distributor* 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~~ *distributor* serves as a default provider*; and (iii) any such generation asset sold, transferred, or otherwise disposed of by the incumbent electric utility with Commission approval shall not be further sold, transferred, or otherwise disposed of during the capped rate period and, if applicable, during any period the distributor serves as default provider, without additional Commission approval.*

4. If an incumbent electric utility proposes that the equivalent to its generation assets be made available pursuant to subdivision 3 of this subsection, the Commission shall determine the adequacy of such proposal and shall approve or reject such proposal based on the public interest.

5. In exercising its authority under the provisions of this section and under § 56-90, the Commission shall have no authority to regulate, on a cost-of-service basis or other basis, the price at which generation assets or their equivalent are made available for default service purposes. Such restriction on the Commission's authority to regulate, on a cost-of-service basis or other basis, prices for default service shall not affect the ability of [~~an incumbent electric utility~~ *a distributor*] *to offer to provide, and of the Commission to approve if appropriate the provision of, such services in any*

competitive bidding process pursuant to subdivision B 2 of § 56-585, on a [~~*cost-of-service*~~ *cost plus*] *basis or any other basis. The Commission's authority to regulate the price of default service shall be consistent with the pricing provisions applicable to a distributor pursuant to § 56-585.* [*In addition, the Commission shall, in exercising its responsibilities under this section and under § 56-90, consider, among other factors, the potential effects of any such transfer on: (i) rates and reliability of capped rate service under § 56-582, and of default service under § 56-585, and (ii) the development of a competitive market in the Commonwealth for retail generation services. However, the Commission may not deny approval of a transfer proposed by an incumbent electric utility, pursuant to subdivisions 2 and 4 of subsection B, due to an inability to determine, at the time of consideration of the transfer, default service prices under § 56-585.*]

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.

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.

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 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 F.

F. A transaction described in subsection 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.

G. ~~Nothing~~*Except as provided in subdivision B. 5. of § 56-590, 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 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.

§ 56-596. Advancing competition.

A. In all relevant proceedings pursuant to this Act, the Commission shall take into consideration, among other things, the goals of advancement of competition and economic development in the Commonwealth.

B. By September 1 of each year, the Commission shall report to the Legislative Transition Task Force and the Governor information on the status of competition in the Commonwealth, the status of the development of regional competitive markets, and its recommendations to facilitate effective competition in the Commonwealth as soon as practical. This report shall include any recommendations of actions to be taken by the General Assembly, Commission, electric utilities, suppliers, generators, distributors and regional transmission entities it considers to be in the public interest. Such recommendations shall include actions regarding the supply and demand balance for generation services, new and existing generation capacity, transmission constraints, market power,

suppliers licensed and operating in the Commonwealth, and the shared or joint use of generation sites.

§ 58.1-2901. Collection and remittance of tax.

A. The ~~service~~ provider *of billing services* 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 *of billing services*, 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 § 58.1-2900, the ~~service~~ provider *of billing services* shall notify the State Corporation Commission of the name and address of such consumer. If any consumer fails to pay a bill issued by a ~~service~~ provider *of billing services* including the tax that is imposed by § 58.1-2900, the ~~service~~ provider *of billing services* 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 *of billing services*, the taxes collected shall be deemed to be held in trust by such provider until remitted to the State Corporation Commission and the appropriate locality.

When determining the amount of tax to collect from consumers of an electric utility that is a cooperative which purchases, for the purpose of resale within the Commonwealth, electricity from a federal entity that made payments during such taxable period to the Commonwealth in lieu of taxes in accordance with a federal law requiring such payments to be calculated on the basis of such federal entity's gross proceeds from the sale of electricity, the ~~service~~ provider *of billing services* shall deduct from each of the respective tax amounts calculated in accordance with § 58.1-2900 an amount equal to the calculated tax amounts multiplied by the ratio that the total cost of the power, including facilities rental, supplied by said federal entity to said cooperative for resale within the Commonwealth bears to said cooperative's total operating revenue within the Commonwealth for the taxable period. The State Corporation Commission may audit the records and books of said cooperative to verify that the tax imposed by this chapter has been correctly determined and properly remitted.

B. A ~~service~~ provider *of billing services* shall remit monthly to the Commission the amount of tax paid during the preceding month by the ~~service provider's~~*provider of billing services'* 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 *and "provider of billing services" means the person who bills a consumer for electric services rendered. If both the service provider and another person separately and directly bill a consumer for electricity service, then the service provider shall be considered the "provider of billing*

services."

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

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

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

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

B. The Commission shall notify ~~all service providers~~ *each provider of billing services, as defined in subsection E of § 58.1-2901,* collecting the tax on consumers of electricity of any change in the electric utility consumption tax relating to the special regulatory tax not later than the first day of the second month preceding the month in which the revised rate is to take effect.

§ 58.1-3814. 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.) of this title, 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 J 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 (§ 58.1-2600 et seq.) of this title, 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 answering point as defined in § 58.1-3813.1.

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 of this title.

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.1. Any county, city or town may impose a tax on consumers of electricity provided by electric suppliers as defined in § 58.1-400.2.

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 *of billing services* shall bill the tax to all users who are subject to the tax and to whom it ~~delivers~~*bills for* electricity *service*, 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~~*The current* service ~~providers~~ *provider* 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 nonresidential 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 nonresidential consumers in calendar year 1999 for the kilowatt hours used that year. Kilowatt hour tax rates imposed on nonresidential 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 nonresidential 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 J 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 *of billing services*" 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.

2. 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.

G. Until the consumer pays the tax to such ~~service~~ provider *of billing services*, 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 *of billing services* shall notify the locality of the name and address of such consumer. If any consumer fails to pay a bill issued by a ~~service~~ provider *of billing services*, including the tax imposed by a locality as stated thereon, the ~~service~~ provider *of billing services* 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 *of billing services*, the taxes shall be deemed to be held in trust by such ~~service~~ provider *of billing services* until remitted to the localities.

H. Any county, city or town may impose a tax on consumers of natural gas provided by pipeline distribution companies and gas utilities. The tax so imposed shall be based on CCF delivered monthly to consumers and shall not exceed the limits set forth in this subsection. The pipeline distribution company or gas utility shall bill the tax to all users who are subject to the tax and to whom it delivers gas and shall remit such tax to the appropriate locality in accordance with § 58.1-2905. 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 gas shall convert to a tax based on CCF delivered monthly to consumers, taking into account minimum billing charges. The CCF tax rates shall, to the extent practicable: (i) avoid shifting the amount of the tax among gas consumer classes and (ii) maintain annual revenues being received by localities from such tax at the time of the conversion. Current pipeline distribution companies and gas utilities shall provide to localities not 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 CCF. For nonresidential consumers, the initial maximum rate of tax imposed as a result of the conversion shall be based on the annual amount of revenue received and due from each of the nonresidential gas purchase and gas transportation classes in calendar year 1999 for the CCF used that year. CCF tax rates imposed on nonresidential consumers shall be based at a class level on such factors as existing minimum charges, the amount of CCF used, and the amount of consumer utility tax paid and due in calendar year 1999 on the same CCF usage. The initial maximum rate of tax imposed under this section shall continue, unless lowered, until December 31, 2003. Beginning January 1, 2004, nothing in this section shall be construed to prohibit or limit any locality from imposing a consumer utility tax on nonresidential customers up to the amount authorized by subsection A.

On or before October 31, 2000, any locality imposing a tax on consumers of gas shall duly amend its ordinance under which such tax is imposed so that the ordinance conforms to the requirements of subsections C through J of this section. Notice of such amendment shall be provided to pipeline distribution companies and gas utilities in a manner consistent with subsection B except that "registered agent of the pipeline distribution company or gas utility" 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.

I. Until the consumer pays the tax to such gas utility or pipeline distribution company, the tax shall constitute a debt to the locality. If any consumer receives and pays for gas but refuses to pay the tax that is imposed by the locality, the gas utility or pipeline distribution company shall notify the localities of the names and addresses of such consumers. If any consumer fails to pay a bill issued by a gas utility or pipeline distribution company, including the tax imposed by a locality, the gas utility or pipeline distribution company shall follow its normal collection procedures with regard to the charge for the gas and the tax and upon collection of the bill or any part thereof shall (i) apportion the net amount collected between the charge for gas service and the tax and (ii) remit the tax portion to the appropriate locality. After the consumer pays the tax to the gas utility or pipeline distribution company, the taxes shall be deemed to be held in trust by such gas utility or pipeline distribution company until remitted to the localities.

J. For purposes of this section:

"Class of consumers" means a category of consumers served under a rate schedule established by the pipeline distribution company and approved by the State Corporation Commission.

"Gas utility" has the same meaning as provided in § 56-235.8.

"Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

"Service provider" ~~has~~*and "provider of billing services" have* the same ~~meaning~~ *meanings* 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.

2. That the provisions of clause (iii) of subdivision B. 3. of § 56-590 of the Code of Virginia shall not apply to any sale, transfer or disposal of an incumbent electric utility's generation assets that was approved by the Commission pursuant to such subdivision as it was in effect prior to the effective date of this act.

Official Use By Clerks

Passed By The Senate		**Passed By The House of Delegates**	
with amendment	☐	with amendment	☐
substitute	☐	substitute	☐
substitute w/amdt	☐	substitute w/amdt	☐

Date: _____ Date: _____

_____ _____

Clerk of the Senate Clerk of the House of Delegates

APPENDIX N: "Gaming the System" Proposed Legislation

RECOMMENDATION OF ELECTRIC COOPERATIVES

§ 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. 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~~ *56-231.33*. 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 any time 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. *Any customer that requests capped rate services from the incumbent electric utility after a period of receiving services from one or more suppliers of electric energy other than the incumbent electric utility shall be subject to a twelve-month customer retention period. During such twelve-month customer retention period, the customer shall receive electric service only from the incumbent electric utility. A customer returning to the incumbent electric utility after receiving electric service from another supplier shall pay the capped rate for electric energy as established in accordance with this section.*

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.

Commission shall ensure that any such approval is in the public interest and will not inhibit the development of effective competition within the service territory of the applicant.

D. [Option 1] Incumbent electric utilities shall be permitted to recover net, additional costs attributable solely to such utilities' implementation of competitive billing under this section. The Commission shall determine the method or methods by which utilities may recover any such costs.

[Option 2] Incumbent electric utilities shall be permitted recover billing costs attributable to such utilities' implementation of this chapter. The Commission shall determine the method or methods by which utilities may recover any such costs

E. Upon application of any incumbent electric utility, the Commission may delay the implementation of any provision of this section, but no implementation date established hereunder shall be delayed for more than one year. Any such delay authorized shall be interposed solely for the purposes of resolving issues related to billing accuracy, timeliness or quality; consumer readiness; or adverse effects on the development of competition in electric service. The Commission shall, within a reasonable amount of time, report any such delays and the reasons therefore to the Legislative Transition Task Force.

F. The Commission shall promulgate rules and regulations to carry out the provisions of this section.

§ 58.1-2901. (Applicable for tax years beginning on and after 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 § 58.1-2900, the service provider shall notify the State Corporation Commission of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider including the tax that is imposed by § 58.1-2900, 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 the appropriate locality.

When determining the amount of tax to collect from consumers of an electric utility that is a cooperative which purchases, for the purpose of resale within the Commonwealth, electricity from a federal entity that made payments during such taxable period to the Commonwealth in lieu of taxes in accordance with a federal law requiring such payments to be calculated on the basis of such

federal entity's gross proceeds from the sale of electricity, the service provider shall deduct from each of the respective tax amounts calculated in accordance with § 58.1-2900 an amount equal to the calculated tax amounts multiplied by the ratio that the total cost of the power, including facilities rental, supplied by said federal entity to said cooperative for resale within the Commonwealth bears to said cooperative's total operating revenue within the Commonwealth for the taxable period. The State Corporation Commission may audit the records and books of said cooperative to verify that the tax imposed by this chapter has been correctly determined and properly remitted.

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. Such term shall mean suppliers of retail generation services furnishing their retail customers consolidated bills under the provisions of § 56-581.1:1, and, in such event, such suppliers shall be solely responsible for billing, collecting and remitting the taxes provided herein.

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.

SENATE JOINT RESOLUTION NO. 467

Requesting the Legislative Transition Task Force to study procedures applicable to the construction of new electricity generation facilities in the Commonwealth.

Agreed to by the Senate, February 22, 2001
Agreed to by the House of Delegates, February 21, 2001

WHEREAS, the Legislative Transition Task Force was established pursuant to § 56-595 of the Code of Virginia to work collaboratively with the Commission in conjunction with the phase-in of retail competition within the Commonwealth; and

WHEREAS, an adequate supply of electricity is critical to the development of a competitive market for electric generation services in Virginia; and

WHEREAS, the procedures applicable to the construction of electricity generation facilities affect the length of time required to build new generation capacity; and

WHEREAS, the siting of electricity generation facilities is often the source of controversy involving competing public objectives; and

WHEREAS, the effects of emissions from electricity generation facilities on air quality are often cited as a major concern in their siting; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Legislative Transition Task Force be requested to study procedures applicable to the construction of new electricity generation facilities in the Commonwealth. The Legislative Transition Task Force shall recommend amendments to the Commonwealth's administrative and regulatory procedures as are appropriate to facilitate the approval of construction of sufficient electricity generation capacity to provide a competitive market for electricity in the Commonwealth as soon as practical, without lessening necessary environmental considerations including siting and air quality impacts.

Technical assistance shall be provided to the Legislative Transition Task Force by the State Corporation Commission, the Secretary of Commerce and Trade, and the Secretary of Natural Resources. All agencies of the Commonwealth shall provide assistance to the Legislative Transition Task Force for this study, upon request.

The Legislative Transition Task Force shall complete its work in time to submit its findings and recommendations by November 30, 2001, to the Governor and the 2002 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

APPENDIX Q: Individual Income Tax Deduction for Contributions to Energy Assistance Programs

RECOMMENDATION OF CONSUMER ADVISORY BOARD

§ 58.1-322. Virginia taxable income of residents.

A. The Virginia taxable income of a resident individual means his federal adjusted gross income for the taxable year, which excludes combat pay for certain members of the Armed Forces of the United States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications specified in this section.

B. . . . [Unchanged]

C. . . . [Unchanged]

D. In computing Virginia taxable income there shall be deducted from federal adjusted gross income:

[1 through 10 -- Unchanged]

11. For taxable years beginning on and after January 1, 2002, the total amount an individual actually contributed in funds to (i) a utility company emergency energy program if the utility company is an agent for a charitable organization that assists individuals with emergency energy needs and contributions to such charitable organization can be identified as a "charitable contribution" under § 170(c) of the Internal Revenue Code or (ii) the Home Energy Assistance Fund established in Chapter 22 (§ 63.1-336 et seq.) of Title 63.1. A deduction shall not be allowed under this subdivision if the individual has claimed a deduction for such amount on his federal income tax return.

E. There shall be added to or subtracted from federal adjusted gross income, as the case may be, the individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined under § 58.1-361.

F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as transitional modifications.

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.

APPENDIX S: Establishment of Low-Income Energy Assistance Program

RECOMMENDATION OF CONSUMER ADVISORY BOARD

CHAPTER 22.
HOME ENERGY ASSISTANCE PROGRAM.

§ 63.1-336. Definitions.

As used in this chapter, unless the context requires otherwise:

"Department" means the Department of Social Services.

"Energy assistance" includes fuel assistance and weatherization assistance.

"Fuel assistance" means benefits in the form of any material or substance used for home heating, including but not limited to electricity, oil, kerosene, natural gas, liquefied petroleum gas, wood or coal and provided under the Virginia Fuel Assistance Program established in accordance with the Low-income Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35).

"Fund" means the Home Energy Assistance Fund established pursuant to this chapter.

"Program" means the Home Energy Assistance Program established pursuant to this Chapter.

§ 63.1-337. Policy of Commonwealth; Department of Social Services designated agency to coordinate state efforts.

The General Assembly declares that it is the policy of this Commonwealth to support the efforts of public agencies, private utility service providers, and charitable and community groups seeking to assist low-income Virginians in meeting their seasonal residential energy needs. To this end the Department of Social Services is designated as the state agency responsible for coordinating state efforts in this regard.

§ 63.1-338. Home Energy Assistance Fund.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Home Energy Assistance Fund. Moneys in the Fund shall be used:

1. To supplement the assistance provided through the Department's administration of the federal Low Income Home Energy Assistance Program Block Grant; and

2. To assist the Commonwealth in maximizing the amount of federal funds available under the Low Income Home Energy Assistance Program and the Weatherization Assistance Program by providing funds to comply with fund matching requirements.

B. The Fund shall be established on the books of the Comptroller. The Fund shall consist of:

1. Contributions to the Fund by business firms pursuant to the Neighborhood Assistance Act (§ 63.1-320 et seq.);

2. Donations and contributions to the Fund, including contributions designated on individual income tax refunds pursuant to § 58.1-346.16; and

3. Such moneys as shall be appropriated by the General Assembly.

C. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be

used solely for the purposes set forth in this chapter. The State Treasurer shall make expenditures and disbursements from the Fund on warrants issued by the Comptroller upon written request signed by the Commissioner of Social Services. No part of the Fund may be used to pay the Department's administrative expenses.

§ 63.1-339. Home Energy Assistance Program established.

A. The Department shall establish and operate the Home Energy Assistance Program. In administering the Program, it shall be the responsibility of the Department:

1. To administer the federal Low Income Home Energy Assistance Program within the Commonwealth in accordance with applicable law and regulations;

2. To coordinate the activities of the Department, the Department of Housing and Community Development, the Department of Mines, Minerals and Energy, and other agencies of the Commonwealth, as well as any non-state programs that elect to participate, that are directed at alleviating the seasonal residential energy needs of low-income Virginians, including needs for weatherization assistance services;

3. To provide a clearinghouse for information exchange regarding such residential energy needs for low-income Virginians, which clearinghouse shall provide information regarding the extent to which the Commonwealth's efforts in assisting low-income are adequate, are cost-effective, and are not duplicative of similar services provided by utility service providers, charitable organizations, and local governments;

4. To collect and analyze data regarding the amounts of energy assistance provided, categorized by fuel type, and the extent to which there is unmet need for energy assistance in the Commonwealth;

5 To track recipients of low-income energy assistance throughout the Commonwealth, based on data provided by program administrators;

6. To administer distributions from the Fund;

7. To develop and maintain a statewide list of available private and governmental resources for low-income Virginians in need of energy assistance;

8. To provide technical assistance upon request to local and private administrators of low-income energy assistance programs; and

9. To report annually to the Governor and General Assembly on the effectiveness of low-income energy assistance programs in meeting the needs of low-income Virginians, which report shall also address the effect of the restructuring of the electric and gas industries on low-income energy assistance needs and programs.

B. The Department is authorized to assume responsibility for administering all or any portion of any private, voluntary low-energy fuel assistance program upon the application of the administrator thereof, on such terms as the Department and such administrator shall agree and in accordance with applicable law and regulations. If the Department assumes administrative responsibility for administering such a voluntary program, it is authorized to receive funds collected through such voluntary program and distribute them through the Fund.

§ 63.1-340. Responsibilities of local departments.

Local departments of welfare or social services may, to the extent that funds are available, promote interagency cooperation at the local level by providing technical assistance, data collection and service delivery.

§ 63.1-341. Authority to receive and grant funds.

Subject to rules and regulations of the Board of Social Services and to the availability of state or federal funds for services to low-income households in need of seasonal fuel assistance, the Department of Social Services is authorized:

1. To receive state and federal funds for such services;

2. To disperse funds to vendors of energy services or through grants to local, public or private nonprofit agencies to provide energy assistance service programs for low-income households; and

3. To develop and implement grant mechanisms for funding such local services.

§ 63.1-342. Application of Administrative Process Act.

Actions of the Department relating to the review, allocation and awarding of benefits and grants shall be exempt from the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.) pursuant to subdivision B 4 of § 9-6.14:4.1. Decisions of the Department shall be final and not subject to review or appeal.

§ 63.1-343. Confidentiality of information.

Except in accordance with proper judicial order or as otherwise provided by law, any employee or former employee of the Department shall not divulge any information acquired by him in the performance of his duties with respect to the income or assistance eligibility of any individual or household obtained in the course of administering the Program. The provisions of this section shall not be applicable to (i) acts performed or words spoken or published in the line of duty under law; (ii) inquiries and investigations to obtain information as to the implementation of this chapter by a duly constituted committee of the General Assembly, or when such inquiry or investigation is relevant to its study, provided that any such information shall be privileged; or (iii) the publication of statistics so classified as to prevent the identification of any individual or household.

APPENDIX T: Neighborhood Assistance Act Tax Credits for Businesses Contributing to Home Energy Assistance Fund

RECOMMENDATION OF CONSUMER ADVISORY BOARD

§ 63.1-321. Definitions.

As used in this chapter:

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to impoverished people.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of impoverished people or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or scholarship assistance to an individual who is impoverished.

"Energy assistance" means a contribution of money to the Home Energy Assistance Fund established pursuant to Chapter 22 (§ 63.1-336 et seq.) of this title to provide assistance to impoverished people in meeting their seasonal residential energy needs.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of impoverished people.

"Impoverished people" means people in Virginia approved as such by the State Board of Social Services. Such approval shall be made on the basis of generally recognized low income criteria used by federal and state agencies.

"Job training" means any type of instruction to an individual who is impoverished that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Neighborhood assistance" means providing community services, education, energy assistance, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance for impoverished people, and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of §§ 501 (c) (3) and 501 (c) (4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 U.S.C. § 2701 et seq.), or any housing authority as defined in § 36-3. With respect to contributions for energy assistance, such term means the Department of Social Services as administrator of the Home Energy Assistance Program established pursuant to Chapter 22 (§ 63.1-336 et seq.) of this title.

"Professional services" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal

authorization and shall include, but shall not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants and attorneys-at-law.

§ 63.1-323. Proposals; regulations; tax credits authorized; amount for programs.

A. Any neighborhood organization may submit a proposal to the Commissioner of Social Services or his designee requesting an allocation of tax credits for use by business firms making donations to the neighborhood organization. The proposal shall set forth the program to be conducted by the neighborhood organization, the impoverished people to be assisted, the estimated amount to be donated to the program and the plans for implementing the program.

B. The State Board of Social Services is hereby authorized to promulgate regulations for the approval or disapproval of such proposals by neighborhood organizations and for determining the value of the donations. Such regulations shall contain a requirement that an annual audit be provided by the neighborhood organization as a prerequisite for approval. Such regulations shall provide for the equitable allocation of the available amount of tax credits among the approved proposals submitted by neighborhood organizations. The regulations shall also provide that at least ten percent of the available amount of tax credits each year shall be allocated to qualified programs proposed by neighborhood organizations not receiving allocations in the preceding year; however, if the amount of tax credits for qualified programs requested by such neighborhood organizations is less than ten percent of the available amount of tax credits, the unallocated portion of such ten percent of the available amount of tax credits shall be allocated to qualified programs proposed by other neighborhood organizations.

C. If the Commissioner of Social Services or his designee approves a proposal submitted by a neighborhood organization, the organization shall make the allocated tax credit amounts available to business firms making donations to the approved program. A neighborhood organization shall not assign or transfer an allocation of tax credits to another neighborhood organization without the approval of the Commissioner of Social Services or his designee.

D. The total amount of tax credits granted for programs approved under this chapter for each fiscal year shall not exceed ~~eight~~ nine million dollars; however, (i) $2,750,000 shall be allocated to education programs conducted by neighborhood organizations and (ii) one million dollars shall be allocated for contributions by business firms for energy assistance. Such allocation of tax credits to education programs shall constitute the minimum amount of tax credits to be allocated to education programs. However, if the amount of tax credits requested by neighborhood organizations for qualified education programs is less than $2,750,000, the balance of such amount shall be allocated to other types of qualified programs. Tax credits shall not be authorized after fiscal year ~~2002~~ 2007.

E. The requirements of subsections A, B, and C shall not apply to the allocation of tax credits for energy assistance. For purposes of administering the tax credits allocated for energy assistance pursuant to subsection D, the Home Energy Assistance Program administered by the Department of Social Services shall be deemed to be the neighborhood organization receiving the allocated tax credit amount. The Department shall make the allocated tax credit amounts available to business firms making donations for energy assistance. The provisions of §§ 63.1-325, 63.1-325.1, and 63.1-325.2 shall not apply to contributions for energy assistance.

APPENDIX U: Income Tax Refund Check-Offs for Voluntary Contributions to Home Energy Assistance Fund

RECOMMENDATION OF CONSUMER ADVISORY BOARD

§ 58.1-346.16. Voluntary contribution to Home Energy Assistance Fund.

A. For all taxable years beginning on or after January 1, 2002, any individual eligible to receive a tax refund pursuant to § 58.1-309 may designate at the time of filing his return a specified dollar amount of such refund, not less than one dollar, to the Home Energy Assistance Fund established pursuant to § 63.1-338, such funds to be used to assist low-income Virginians in meeting seasonal residential energy needs.

B. All moneys collected pursuant to subsection A, and through voluntary payments by taxpayers designated on state income tax returns for deposit to the Home Energy Assistance Fund over refundable amounts, shall be deposited into the state treasury.

C. The Tax Commissioner shall determine annually the total amount collected pursuant to subsection A, and through voluntary payments by taxpayers designated on state income tax returns for deposit to the Home Energy Assistance Fund over refundable amounts, and shall report the same to the State Treasurer, who shall credit that amount to the Home Energy Assistance Fund.

APPENDIX V: DEFINITION OF RENEWABLE ENERGY

RECOMMENDATION OF CONSUMER ADVISORY BOARD

§ 56-576. Definitions.

As used in this chapter:

. . .

"Renewable energy" means energy that is derived from the sun or other natural processes and is replenishable by natural processes over relatively short time periods. "Renewable energy" includes energy derived from sunlight, wind, falling water, sustainable biomass, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas or nuclear power.

. . .

APPENDIX W: MARKETING OF "GREEN POWER"

RECOMMENDATION OF CONSUMER ADVISORY BOARD

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

[Subsections A through F unchanged]

G. The Commission shall establish criteria pursuant to which providers of electricity generation services may receive authorization from the Commission to designate certain electricity offered for sale as Green Power. In defining what constitutes Green Power, the Commission shall consider the information on fuel mixes of electricity generators that the Commission is required to collect pursuant to this Act. The designation of certain electricity as Green Power shall provide consumers thereof with assurance that the Commission has confirmed that the provider's marketing information has been substantiated as valid. No provider of electricity generation services shall market electricity as Green Power unless it has been authorized by the Commission to use such designation.

APPENDIX X: TAX CREDIT FOR INVESTMENTS IN SOLAR EQUIPMENT

RECOMMENDATION OF CONSUMER ADVISORY BOARD

§ 58.1-436.1. Tax credit for investment in solar equipment.

A. For taxable years beginning on and after January 1, 2002, a taxpayer shall be allowed a credit against the taxes imposed by § 58.1-320 or § 58.1-400 in an amount equal to fifteen percent of all expenditures paid or incurred by such taxpayer for purchasing and installing equipment that (i) generates electricity from solar energy or (ii) uses solar energy to heat or cool a structure or provide hot water; however, a credit under this section shall be allowed only if the Department of Mines, Minerals, and Energy has certified to the Tax Commissioner that the equipment for which the tax credit is applied provides a minimum of ten percent of the energy needs of the structure in which it is installed. Such credit shall be available only in the taxable year that the purchase and installation of the equipment is completed.

B. The amount of credit allowed to any taxpayer under this section with respect to the purchase and installation of any equipment shall not exceed $1,000, and a taxpayer shall not be eligible for a credit under this section with respect to the purchase and installation of more than one equipment system in any taxable year. Only one such credit shall be permitted for each such expenditure. In determining such expenditures, the labor of the taxpayer shall not be included.

C. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

D. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess may be carried over for credit against income taxes in the next five taxable years until the total amount of the tax credit has been taken.

APPENDIX Y: Proposal for Clean and Efficient Energy Tax Incentives

RECOMMENDATION OF SENATOR WHIPPLE

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-609.1 and 58.1-2402 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 58.1-439.12:1, 58.1-439.12:2, and 58.1-2423.2, as follows:

§ 58.1-439.12:1. Tax credit for producing electricity from certain renewable sources.

A. As used in this section, unless the context clearly requires otherwise:

"Qualified energy resources" means the same as that term is defined by Internal Revenue Code § 45.

"Qualified Virginia facility" means a facility located in the Commonwealth that uses qualified energy resources to produce electricity.

B. For taxable years beginning on and after January 1, 2001 but before January 1, 2010, any corporation shall be allowed a credit against the tax imposed by Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 in an amount equal to 0.85 cents for each kilowatt of electricity produced during the taxable year (i) from qualified energy resources at a qualified Virginia facility and (ii) sold by the corporation to a person other than a related person, within the meaning of Internal Revenue Code § 45.

C. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year may be carried over for credit against the corporation's income taxes until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the credit arose. If a corporation that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such corporation shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

D. A corporation that claims the credit pursuant to this section may not use such production of electricity as the basis for claiming any other credit or grant provided under the Code of Virginia.

§ 58.1-439.12:2. Photovoltaic and solar energy tax credit.

A. As used in this section, unless the context clearly requires otherwise:

"Photovoltaic property" means solar energy property that uses a solar photovoltaic process to generate electricity and that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department of Mines, Minerals and Energy.

"Solar energy property" means equipment that uses solar energy (i) to generate electricity; (ii) to heat or cool a structure or provide hot water for use in a structure; or (iii) to

rovide solar process heat. Solar energy property does not include a swimming pool, hot tub, or any other storage medium that has a function other than storage.

"Solar water heating property" means solar energy property that, when installed in connection with a structure, uses solar energy for the purpose of providing hot water for use within the structure and meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department of Mines, Minerals and Energy.

B. For taxable years beginning on and after January 1, 2001, any individual and corporation shall be allowed a credit against the tax imposed by Article 2 (§ 58.1-320 et seq.) of Chapter 3 of Title 58.1 and Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1, respectively, for the costs of photovoltaic property and solar water heating property placed in service during the taxable year. The credit allowed under this section shall be in an amount equal to fifteen percent of the total installed cost of photovoltaic property and solar water heating property but shall not exceed an aggregate total of:

1. $2,000 for each system of photovoltaic property; and

2. $1,000 for each system of solar water heating property.

C. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year may be carried over for credit against the individual's or corporation's income taxes until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the property is placed in service. If an individual or corporation that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such corporation shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

D. To claim the credit authorized under this section, the individual or corporation shall apply to the Department of Mines, Minerals and Energy, which shall determine the amount of eligible costs and issue a certificate thereof to such individual or corporation. The individual or corporation shall attach the certificate to the Virginia tax return on which the credit is claimed.

E. An individual or corporation who claims the credit pursuant to this section may not use the costs of such photovoltaic property or solar heating property as the basis for claiming any other credit or grant provided under the Code of Virginia.

§ 58.1-609.1. Governmental and commodities exemptions.

The tax imposed by this chapter or pursuant to the authority granted in §§ 58.1-605 and 58.1-606 shall not apply to the following:

1. Fuels which are subject to the tax imposed by Chapter 22 (§ 58.1-2200 et seq.) of this title. Persons who are refunded any such fuel tax shall, however, be subject to the tax imposed by this chapter, unless such taxes would be specifically exempted pursuant to any provision of this section.

2. Motor vehicles, trailers, semitrailers, mobile homes and travel trailers.

3. Gas, electricity, or water when delivered to consumers through mains, lines, or pipes.

4. Tangible personal property for use or consumption by the Commonwealth, any political subdivision of the Commonwealth, or the United States. This exclusion shall not apply to sales and leases to privately owned financial and other privately owned corporations chartered

by the United States. Further, this exemption shall not apply to tangible personal property which is acquired by the Commonwealth or any of its political subdivisions and then transferred to private businesses for their use in a facility or real property improvement to be used by a private entity or for nongovernmental purposes other than tangible personal property acquired by the Advanced Shipbuilding and Carrier Integration Center and transferred to a Qualified Shipbuilder as defined in the third enactment of Chapter 790 of the 1998 Acts of the General Assembly.

5. Aircraft subject to tax under Chapter 15 (§ 58.1-1500 et seq.) of this title.

6. Motor fuels and alternative fuels for use in a commercial watercraft upon which a fuel tax is refunded pursuant to § 58.1-2259.

7. Sales by a government agency of the official flags of the United States, the Commonwealth of Virginia, or of any county, city or town.

8. Materials furnished by the State Board of Elections pursuant to §§ 24.2-404 through 24.2-407.

9. Watercraft as defined in § 58.1-1401.

10. Tangible personal property used in and about a marine terminal under the supervision of the Virginia Port Authority for handling cargo, merchandise, freight and equipment. This exemption shall apply to agents, lessees, sublessees or users of tangible personal property owned by or leased to the Virginia Port Authority and to property acquired or used by the Authority or by a nonstock, nonprofit corporation that operates a marine terminal or terminals on behalf of the Authority.

11. Sales by prisoners confined in state correctional facilities of artistic products personally made by the prisoners as authorized by § 53.1-46.

12. Tangible personal property for use or consumption by the Virginia Department for the Blind and Vision Impaired or any nominee, as defined in § 63.1-142, of such Department.

13. From July 1, 1995, through June 30, 2000, tangible personal property for use or consumption by any community diversion program or successor program as established in accordance with the provisions of Article 2 (§ 53.1-180 et seq.) of Chapter 5 of Title 53.1.

14. Tangible personal property sold to residents and patients of the Virginia Veterans Care Center at a canteen operated by the Virginia Veterans Care Center Board of Trustees established pursuant to § 2.1-744.1.

15. Tangible personal property for use or consumption by any nonprofit organization whose members include the Commonwealth and other states and which is organized for the purpose of fostering interstate cooperation and excellence in government.

16. Tangible personal property purchased for use or consumption by any soil and conservation district which is organized in accordance with the provisions of Article 3 (§10.1-506 et seq.) of Chapter 5 of Title 10.1.

17. Energy efficient appliances and commodities as provided in this subdivision:

a. Clothes washers, room air conditioners, and standard size refrigerators that meet or exceed the applicable energy star efficiency requirements developed by the United States Environmental Protection agency and the United States Department of Energy;

b. A fuel cell that (i) generates electricity and heat using an electrochemical process; (ii) has an electricity-only generation efficiency greater than thirty-five percent; and (iii) has a generating capacity of at least two kilowatts;

c. A natural gas heat pump that has a coefficient of performance of at least 1.25 for heating and at least 0.70 for cooling;

d. An electric heat pump hot water heater that yields an energy factor of at least 1.7;

e. An electric heat pump that has a heating system performance factor of at least 7.5 and a cooling seasonal energy efficiency ratio of at least 13.5;

f. A central air conditioner that has a cooling seasonal energy efficiency ratio of at least 13.5; and

g. An advanced natural gas water heater that has an energy factor of at least 0.65.

§ 58.1-2402. Levy.

A. There is hereby levied, in addition to all other taxes and fees of every kind now imposed by law, a tax upon the sale or use of motor vehicles in Virginia, other than (i) vehicles with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more, or (ii) a sale to or use by a person for rental as an established business or part of an established business or incidental or germane to such business.

There shall also be levied a tax upon the rental of a motor vehicle in Virginia, without regard to whether such vehicle is required to be licensed by the Commonwealth. However, such tax shall not be levied upon a rental to a person for re-rental as an established business or part of an established business, or incidental or germane to such business.

The amount of the tax to be collected shall be determined by the Commissioner by the application of the following rates against the gross sales price or gross proceeds:

1. Three percent of the sale price of each motor vehicle sold in Virginia. If *such vehicle is manufactured, converted, or retrofitted to use clean special fuels, as defined in § 58.1-2101, as a source of propulsion, the tax shall be one and one-half percent of the sale price of each motor vehicle sold in Virginia; if* such motor vehicle is a manufactured home as defined in § 36-85.3, the tax shall be three percent of the sale price of each such manufactured home sold in this Commonwealth; if such vehicle is a mobile office as defined in § 58.1-2401, the tax shall be two percent of the sale price of each mobile office sold in this Commonwealth.

2. Three percent of the sale price of each motor vehicle *or one and one-half percent of the sale price of such motor vehicle if the motor vehicle is manufactured, converted, or retrofitted to use clean special fuels, as defined in § 58.1-2101, as a source of propulsion,* or three percent of the sale price of each manufactured home as defined in § 36-85.3, or two percent of the sale price of each mobile office as defined in § 58.1-2401, not sold in Virginia but used or stored for use in this Commonwealth. When any such motor vehicle or manufactured home is first used or stored for use in Virginia six months or more after its acquisition, the tax shall be based on its current market value.

3. Four percent of the gross proceeds from the rental in Virginia of any motor vehicle, except those with a gross vehicle weight rating or gross combination weight rating of 26,001 pounds or more.

4. In addition to the tax levied pursuant to subdivision A 3, a tax of four percent of the gross proceeds shall be levied on the rental in Virginia of any daily rental vehicle, whether or not such vehicle is required to be licensed in the Commonwealth.

5. The minimum tax levied on the sale of any motor vehicle in the Commonwealth shall be thirty-five dollars, except as provided by those exemptions defined in § 58.1-2403.

For purposes of applying the reduced tax rate on motor vehicles as provided in subdivisions 1 and 2, a hybrid gasoline/electric powered motor vehicle shall be deemed to use clean special fuels as a source of propulsion.

B. A transaction taxed under subdivision A 1 shall not also be taxed under subdivision A 2, nor shall the same transaction be taxed more than once under either subdivision. A motor

vehicle subject to the tax imposed under subdivision A 3 shall be subject to the tax under either subdivision A 1 or A 2 when it ceases to be used for rental as an established business or part of an established business, or incidental or germane to such business.

C. Any motor vehicle, trailer or semitrailer exempt from this tax under subdivision 1 or 2 of § 58.1-2403 shall be subject to the tax, based on the current market value when such vehicle is no longer owned, rented or used by the United States government or any governmental agency, or the Commonwealth of Virginia or any political subdivision thereof. Further, any motor vehicle, trailer or semitrailer exempt from the tax imposed by this chapter under subdivision 11 of § 58.1-2403 or §§ 46.2-663 through 46.2-674 shall be subject to the tax, based on the current market value, when such vehicle is subsequently licensed to operate on the highways of this Commonwealth.

D. Any person who with intent to evade or to aid another person to evade the tax provided for herein, falsely states the selling price of a vehicle on a bill of sale, assignment of title, application for title, or any other document or paper submitted to the Commissioner pursuant to any provisions of this title or Title 46.2, shall be guilty of a Class 3 misdemeanor.

E. Effective January 1, 1997, any amount designated as a "processing fee" and any amount charged by a dealer for processing a transaction, which is required to be included on a buyer's order pursuant to subdivision 10 of § 46.2-1530, shall be subject to the tax.

§ 58.1-2423.2. Refund for vehicles using clean special fuels.

If a motor vehicle is converted or retrofitted to use clean special fuels, as defined in § 58.1-2101, within six months after the date of titling in the Commonwealth, the vehicle owner shall be entitled to a refund of one-half of the motor vehicle sales and use tax paid at the time of titling.

The claim for refund shall be in such form as the Commissioner shall prescribe and shall include documentation to verify that conversion of the motor vehicle took place within six months after the date of titling in the Commonwealth. It shall be filed with the Commissioner within twelve months from the date of payment of the tax.

For purposes of this section, a hybrid gasoline/electric powered motor vehicle shall be deemed to use clean special fuels.

2. That the Tax Commissioner and the Commissioner of the Department of Motor Vehicles shall promulgate regulations, in consultation with the Department of Mines, Minerals and Energy as needed, in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.), for purposes of carrying out the provisions of this Act.

3. That the Tax Commissioner, the Commissioner of the Department of Motor Vehicles, and the Director of the Department of Mines, Minerals and Energy, in consultation with manufacturers, retailers, local government officials and other interested groups, shall develop voluntary labeling and public information materials to identify products eligible for the tax incentives provided under this Act.

RECOMMENDATION OF THE MD-DC-VA SOLAR ENERGY INDUSTRIES ASSOCIATION

COMBINING THE CAB AND SEN. WHIPPLE PROPOSALS

VA STATE TAX CREDIT FOR INVESTMENTS IN SOLAR EQUIPMENT

§ 58.1-436.1. Tax credit for investment in solar equipment.

A. As used in this section, unless the context clearly requires otherwise:

"Photovoltaic property" means solar energy property that uses a solar photovoltaic process to generate electricity and that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department of Mines, Minerals and Energy.

"Solar thermal energy property" means equipment that meets applicable performance and quality standards and certification requirements in effect at the time of acquisition of the property, as specified by the Department of Mines, Minerals and Energy and uses solar energy (i) to heat or cool a structure or provide hot water for use in a structure; or (ii) to provide solar process heat. Solar energy property does not include a swimming pool, hot tub, or any other storage medium that has a function other than storage.

B. For taxable years beginning on and after January 1, 2001, any individual and corporation shall be allowed a credit against the tax imposed by Article 2 (§ 58.1-320 et seq.) of Chapter 3 of Title 58.1 and Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1, respectively, for the costs of photovoltaic property and solar thermal energy property placed in service during the taxable year. The credit allowed under this section shall be in an amount equal to fifteen percent of the total installed cost of photovoltaic property and solar thermal energy property but shall not exceed an aggregate total of:

1. $2,000 for each system of photovoltaic property; and

2. $1,000 for each system of solar thermal energy property.

C. The amount of credit allowed pursuant to this section shall not exceed the tax imposed for such taxable year. Any credit not usable for the taxable year may be carried over for credit against the individual's or corporation's income taxes until the earlier of (i) the full amount of the credit is used or (ii) the expiration of the fifth taxable year after the taxable year in which the property is placed in service. If an individual or corporation that is subject to the tax limitation imposed pursuant to this subsection is allowed another credit pursuant to any other section of the Code of Virginia, or has a credit carryover from a preceding taxable year, such corporation shall be considered to have first utilized any credit allowed that does not have a carryover provision, and then any credit that is carried forward from a preceding taxable year, prior to the utilization of any credit allowed pursuant to this section.

D. To claim the credit authorized under this section, the individual or corporation shall apply to the Department of Mines, Minerals and Energy, which shall determine the amount of eligible costs and issue a certificate thereof to such individual or corporation. The individual or corporation shall attach the certificate to the Virginia tax return on which the credit is claimed.

E. An individual or corporation who claims the credit pursuant to this section may not use the costs of such photovoltaic property or solar thermal energy property as the basis for claiming any other credit or grant provided under the Code of Virginia.

F. For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or Limited Liability Company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

G. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess may be carried over for credit against income taxes in the next five taxable years until the total amount of the tax credit has been taken.

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RECOMMENDATION OF ELECTRIC COOPERATIVES

DISTRIBUTION COOPERATIVES SELF-REGULATION

A BILL to amend and reenact §§ 56-6, 56-35, 56-36, 56-55, 56-76, 56-231.15, 56-231.33, 56-232, 56-256, 56-578, 56-580, 56-581, 56-582, and 56-585 of the Code of Virginia, and to amend the Code of Virginia by adding in Chapter 9.1 of Title 56 an article numbered 3, consisting of sections numbered 56-231.53 through 56-231.55, relating to utility consumer services cooperatives; self regulation.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-6, 56-35, 56-36, 56-55, 56-76, 56-231.15, 56-231.33, 56-232, 56-256, 56-578, 56-580, 56-581, 56-582, and 56-585 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 9.1 of Title 56 an Article numbered 3, consisting of sections numbered 56-231.53 through 56-231.55, as follows:

§ 56-6. Remedies of persons aggrieved by public service corporation's violation of law.

Any person or corporation aggrieved by anything done or omitted in violation of any of the provisions of this or any other chapter under this title, by any public service corporation chartered or doing business in this Commonwealth, shall have the right to make complaint of the grievance and seek relief by petition against such public service corporation before the State Corporation Commission, sitting as a court of record. If the grievance complained of be established, the Commission, sitting as a court of record, shall have jurisdiction, by injunction, to restrain such public service corporation from continuing the same, and to enjoin obedience to the requirements of this law, and the Commission, sitting as a court of record, shall also have jurisdiction, by mandamus, to compel any public service corporation to observe and perform any public duty imposed upon public service corporations by the laws of this Commonwealth, subject as to any matter arising under this section to the right of appeal to the Supreme Court by either party as of right in the mode prescribed by law; but nothing in this section shall be construed to confer any power upon the Commission which is forbidden to the courts by § 56-429. The provisions of this section shall not apply to utility consumer services cooperatives subject to self regulation in accordance with Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of this title.

§ 56-35. Regulation of public service companies.

The Commission shall have the power, and be charged with the duty, of supervising, regulating and controlling all public service companies doing business in this Commonwealth, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies. The provisions of this section shall not apply to utility consumer services cooperatives subject to self regulation in accordance with Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of this title.

§ 56-36. Inspection of books and documents; special reports; rules and regulations to prevent unjust discrimination.

The Commission shall also have the right at all times to inspect the books, papers and documents of all public service companies doing business in this Commonwealth, and to require from such companies, from time to time, special reports and statements, under oath, concerning their business. It shall keep itself fully informed of the physical condition of all railroads of the Commonwealth, as to the manner in which they are operated, with reference to the security and accommodation of the public, and shall, from time to time, make and enforce such requirements, rules and regulations as may be necessary to prevent unjust or unreasonable discrimination by any public service company in favor of, or against, any person, locality, community, connecting line, or kind of traffic in the matter of car service, train or boat schedule, efficiency of transportation or otherwise, in connection with the public duties of such company. The provisions of this section shall not apply to utility consumer services cooperatives subject to self regulation in accordance with Article 3 (§§ 56-231.53 et seq.) of Chapter 9.1 of this title.

§ 56-55. Definitions.

The term "public service company" when used in this chapter shall mean every person, firm, corporation or association, or their lessees, trustees or receivers, other than a municipal corporation, now or hereafter engaged in business in this Commonwealth as a public utility and subject to regulation as to rates and service by the State Corporation Commission under the provisions of Chapter 10 (§ 56-232 et seq.) of this title; however, the term shall not include and the provisions of this chapter shall not be deemed to refer to common carrier railroad companies, the issuance of the stocks and securities of which are under regulation by the Interstate Commerce Commission. The term "public service company" shall not include and the provisions of this chapter shall not be deemed to refer to any utility consumer services cooperative that is self-regulated in accordance with the provisions of Article 3 (§§ 56-231.53 *et seq.*) of Chapter 9.1 of this title.

The term "total capitalization" as used in § 56-65.1 shall mean total common stockholders' equity (common stock, additional paid-in capital and retained earnings), preferred stock, and total debt (long- and short-term debt) as shown on the utility's books.

The terms "securities" and "loan" as used in §§ 56-68 and 56-75 shall include every obligation, written or otherwise, the issuance of, or entry into, which is required to be approved or validated by this chapter.

§ 56-76. Definitions.

The term "public service company" when used in this chapter shall mean every person, firm, corporation or association, or their lessees, trustees or receivers, other than a municipal corporation, now or hereafter engaged in business in

this Commonwealth as a public utility and subject to regulation as to rates and service by the State Corporation Commission under the provisions of Chapter 10 (§ 56-232 et seq.) of this title and, subject to the conditions specified therein, such companies as specified by the Commission pursuant to subsection C of § 56-77; however, the term shall not include and the provisions of this chapter shall not be deemed to refer to transportation companies subject directly or indirectly to the control of the Interstate Commerce Commission. For purposes of this chapter, the term "public service company" shall not include and the provisions of this chapter shall not be deemed to refer or apply to any utility consumer services cooperative that is self-regulated in accordance with the provisions of Article 3 (§§ 56-231.53 *et seq.*) of Chapter 9.1 of Title 56 of the Code of Virginia.

The term "affiliated interest" when used in this chapter shall mean and include the following:

1. Every corporation, partnership, association, or person owning or holding directly or indirectly ten percent or more of the voting securities of any public service company engaged in any intrastate business in this Commonwealth.

2. Every corporation, partnership, association, or person, other than those specified in subdivision 1 hereof, in any chain of successive ownership of ten percent or more of voting securities, the chain beginning with the holder or holders of the voting securities of such public service company.

3. Every corporation, partnership, association, or person ten percent or more of whose voting securities are owned by any person, corporation, partnership, or association owning ten percent or more of the voting securities of such public service company or by any person, corporation, association, or partnership in any such chain of successive ownership of ten percent or more of voting securities.

4. Every corporation, partnership, association, or person with which such public service company has a management or service contract.

5. Every corporation in which two or more of the corporate directors are common to those of such public service company, or which is managed or supervised by the same individual, group or corporation.

6. Every corporation or person which the Commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of such public service company even though such influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section.

7. Every person or corporation which the Commission may determine as a matter of fact after investigation and hearing is actually exercising such substantial influence over the policies and action of such public service company in conjunction with one or more other corporations or persons with which or whom they are so connected or related by ownership or blood relationship or by action in concert that when taken together they are affiliated with such public service company within the meaning of this section even though no one of them alone is so affiliated.

But no such person or corporation shall be considered as affiliated within the meaning of this section if such person or corporation shall not have had transactions or dealings other than the holding of stock and the receipt of dividends thereon with such public service company during the two-year period next preceding.

§ 56-231.15. Definitions.

The following terms, whenever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

"Acquire" means and includes construct, or acquire by purchase, lease, devise, gift or the exercise of the power of eminent domain, or by other mode of acquisition.

"Affiliate" means a separate affiliated or subsidiary corporation or other separate legal entity.

"Board" means the board of directors of a cooperative formed under or subject to this article.

"Commission" means the State Corporation Commission of Virginia.

"Cooperative" means a utility consumer services cooperative formed under or subject to this article or a distribution cooperative formed under the former Distribution Cooperatives Act (§ 56-209 et seq.).

"Energy" means and includes any and all forms of energy no matter how or where generated or produced.

"Federal agency" means and includes the United States of America, the President of the United States of America, the Tennessee Valley Authority, the Federal Administrator of the Rural Utility Service, the Southeastern Power Administration, the Federal Energy Regulatory Commission, the Securities and Exchange Commission, the Federal Communications Commission and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

"HVACR" means heating, ventilation, air conditioning and refrigeration.

"Improve" means and includes construct, reconstruct, replace, extend, enlarge, alter, better or repair.

"Law" means any act or statute, general, special or local, of this Commonwealth.

"Member" means and includes each natural person signing the articles of incorporation of a cooperative and each person admitted to membership therein pursuant to law or its bylaws.

"Municipality" means any city or incorporated town of the Commonwealth.

"Obligations" means and includes bonds, interim certificates or receipts, notes, debentures, and all other evidences of indebtedness either issued by, or the payment of which is assumed or contractually undertaken by, a cooperative.

"Patronage capital" includes all amounts received by a cooperative from sales of electric power or electric distribution services, or both, to members in excess of the cooperative's cost of furnishing electric power or distribution services, or

both, to members and such other margins as determined by the board of directors.

"Person" means and includes natural persons, firms, associations, cooperatives, corporations, limited liability companies, business trusts, partnerships, limited liability partnerships and bodies politic.

"Propane or fuel oil equipment" means equipment and related systems to store or use propane or fuel oil products.

"Regulated utility services" means utility services that are subject to regulation as to rates or service by the Commission.

"System" means and includes any plant, works, system, facilities, equipment or properties, or any part or parts thereof, together with all appurtenances thereto, used or useful in connection with the generation, production, transmission or distribution of energy or in connection with other utility services.

"Traditional cooperative activity" means any business, service or activity in which cooperatives in Virginia have traditionally engaged and that is incidental to and substantially related to the electric utility business conducted by a cooperative on or before July 1, 1999, provided that traditional cooperative activity does not include any program to (i) buy or maintain an inventory of HVACR equipment or household appliances; (ii) install or service any such equipment or household appliances for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service; (iii) sell HVACR equipment or household appliances to customers metered and billed on residential rates; (iv) sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing other traditional cooperative activities; (v) sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale; or (vi) serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are other traditional cooperative activities.

"Utility services" means any products, services and equipment related to energy, telecommunications, water and sewerage.

§ 56-231.33. Adequate service; rates.

Regulated utility services offered by a cooperative shall be reasonably adequate, subject to the regulations of the Commission, as provided in § 56-231.34; provided, however, that services offered by utility consumer services cooperatives that are self-regulated in accordance with Article 3 (§§ 56-231.53 *et seq.*) of Chapter 9.1 of this title are not subject to such Commission regulation. The charge made by any such cooperative for any regulated utility service rendered or to be rendered, either directly or in connection therewith, shall be nondiscriminatory, reasonable and just, and every discriminatory,

unjust or unreasonable charge for such regulated utility service is prohibited and declared unlawful. Reasonable and just charges for service within the meaning of this section shall be such charges as shall produce sufficient revenue to pay all legal and other necessary expenses incident to the operation of the system, and shall include but not be limited to maintenance cost, operating charges, interest charges on bonds or other obligations, to recover such stranded costs and transition costs as may be authorized in this title, to provide for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as reasonable reserves and funds for making replacements and also for the payment of any taxes that may be assessed against such cooperative or its property, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such cooperative property in a sound physical and financial condition to render adequate and efficient service and additional amounts that must be realized by the cooperative to meet the requirement of any rate covenant with respect to coverage of principal of and interest on its debt contained in any indenture, mortgage, or other contract with holders of its debt, provided that any such indenture, mortgage or other contract must have been approved by the Commission pursuant to Chapter 3 (§ 56-55 et seq.) of this title. Any rate for regulated utility services that is too low to meet the foregoing requirements shall be unlawful.

ARTICLE 3 – SELF REGULATION

§ 56-231.53. Definitions.
As used in this article:
"Board" means the board of directors of a cooperative formed under or subject to this Article 1 of this chapter.
"Commission" means the State Corporation Commission of Virginia.
"Cooperative" means a utility consumer services cooperative formed under or subject to Article 1 of this chapter or a distribution cooperative formed under the former Distribution Cooperatives Act (§ 56-209 et seq.).
"Member" means any person that holds any class of membership in a cooperative.
"Person" means and includes natural persons, firms, associations, cooperatives, corporations, limited liability companies, business trusts, partnerships, limited liability partnerships and bodies politic.
"Referendum" means a referendum of the members in accordance with § 56-321.54.
"Self-regulating cooperative" means a cooperative that has elected self-regulation in accordance with this article.
"Self-regulation" means regulation by the board of a cooperative that has complied with the provisions of this article, rather than by the Commission, with respect to rates, service and other matters described in this article.

§ 56-231.54 Self-regulation.

A. After July 1, 2001, within 45 days of the adoption by the board of a cooperative of a resolution recommending self-regulation, or within 45 days of the submission to the cooperative of a petition recommending self-regulation and signed by one percent or more of the members, the cooperative shall publish notice of a referendum for self regulation. The notice of referendum will pose the following question: "Shall the members of [name of cooperative], through the board, regulate the rates and services of the cooperative as set out in Va. Code §§ 56-231.53 - _____, and terminate the regulation of such rates and services by the State Corporation Commission of Virginia?"

B. The notice will set forth the time and place of an annual or special meeting , in accordance with Article 1 of this chapter and the bylaws of the cooperative, at which the referendum will be held. Notwithstanding any contrary provision in the charter or bylaws of the cooperative, the board may elect to accept mailed ballots on the referendum, and in such case, a mailed ballot will be included with the notice.

C. If two thirds of the votes cast on a referendum are affirmative, then the referendum shall pass.

D. Within 30 days of the passage of a referendum for self-regulation, the cooperative shall certify to the commission, the adoption of self-regulation by the cooperative.

E. Notwithstanding any other provision of law or regulation, upon certification of self-regulation, a cooperative will be exempted from §§ 56-6.56-36, 56-40, 56-55 through 56-75, 56-76 through 56-87, 56-231.34, 56-233.1, 56-234, 56-234.2 through 56-234.5, 56-235, 56-235.1 through 56-235.4, 56-236, 56-231.1, 56-237, 56-237 through 56-240, 56-242 through 56-245, 56-247.1 through 56-249, 56-249.2 through 56-249.7 and 56-265.

F. Notwithstanding §§ 56-90, 56-231.33, 56-580, 56-585, or any other provision of law, the Commission shall not regulate the rates or service of a self-regulating cooperative.

G. Notwithstanding §§ 56-231.33 or any other provision of law, the Commission shall not regulate under Chapter 3 of this title any security or loan of a self-regulating cooperative.

H. Notwithstanding self-regulation, § 56-231.34:1 and § 56-231.34:2 shall apply to a self-regulating cooperative. For the purposes of applying § 56-231.34:1 and § 56-231.34:2 to a self-regulating cooperative, "Regulated utility services" shall mean utility services that were subject to regulation as to rates or service by the Commission, as of January 1, 2001.

I. Notwithstanding anything in this article, a self-regulating cooperative shall continue to be a public service corporation with the rights and duties assigned to public service corporations in §§ 56-2, 56-18, 56-19, 56-41.1, 56-43, 56-46.1, 56-46.2, 56-49, Chapter 5 of Title 56 (§§ 56-88 through 56-92), 56-236.2, 56-249.1, Chapter 10.1 of Title 56 (§§ 56-265.1 through 56-265.9), Chapter 10.3 of Title 56 (§§ 56-265.14 through 56-265.32), 56-576, 56-56-577, 56-578, 56-581, 56-581.1, 56-582, 56-583, 56-585, 56-587, 56-588, 56-590, and 56-592.

§ 56-231.55 Resumption of Commission regulation.

A. A cooperative that has elected self-regulation shall publish notice of a referendum for re-regulation within 45 days after the adoption by the board of a cooperative of a resolution recommending re-regulation, or after the submission to the cooperative of a petition recommending re-regulation and signed by one percent or more of the members. The notice of referendum will pose the following question: "Shall the State Corporation Commission regulate the rates and services of [name of cooperative] and terminate the regulation of such rates and services by the members of the cooperative acting through the board?"

B. The notice will set forth the time and place of an annual or special meeting , in accordance with Article 1 of this chapter and the bylaws of the cooperative, at which the referendum will be held. Notwithstanding any contrary provision in the charter or bylaws of the cooperative, the board may elect to accept mailed ballots on the referendum, and in such case, a mailed ballot will be included with the notice.

C. If two thirds of the votes cast on a referendum are affirmative, then the referendum shall pass.

D. Within 30 days of the passage of a referendum for re-regulation, the cooperative shall certify to the commission, the adoption of re-regulation by the cooperative.

E. Within 60 days of certification of reregulation, a cooperative will file temporary rates, and a rate application, along with such supporting exhibits as shall be necessary for the Commission to resume regulation of the rates and services of the cooperative.

§ 56-232. Public utility and schedules defined.

The term "public utility" as used in §§ 56-233 to 56-240 and 56-246 to 56-250 shall mean and embrace every corporation (other than a municipality), company, individual, or association of individuals or cooperative, their lessees, trustees, or receivers, appointed by any court whatsoever, that now or hereafter may own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages or for the production, transmission, delivery, or furnishing of heat, chilled air, chilled water, light, power, or water, or sewerage facilities, either directly or indirectly, to or for the public.

But the term "public utility" as herein defined shall not be construed to include any corporation created under the provisions of Title 13.1 unless the articles of incorporation expressly state that the corporation is to conduct business as a public service company. Notwithstanding any provision of law to the contrary, no person, firm, corporation, or other entity shall be deemed a public utility or public service company, solely by virtue of engaging in production, transmission, or sale at retail of electric power as a qualifying small power producer using renewable or nondepletable primary energy sources within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617) and not exceeding 7.5 megawatts of rated capacity, nor solely by virtue of

serving as an aggregator of the production of such small power producers, provided that the portion of the output of any qualifying small power producer which is sold at retail shall not be sold to residential consumers. No qualifying small power producer, within the meaning of regulations adopted by the Federal Energy Regulatory Commission, shall be deemed a public utility within the meaning of Chapter 7 (§ 62.1-80 et seq.) of Title 62.1. The term "public utility" as herein defined shall not be construed to include any chilled water air-conditioning cooperative serving residences in less than a one square mile area, or any company which is excluded from the definition of "public utility" by subdivision (b) (4) or (b) (8) of § 56-265.1. No utility consumer services cooperative who has elected self-regulation in accordance with Article 3 (§§ 56-231.53 *et seq.*) of Chapter 9.1 of this title shall be deemed a public utility subject to the provisions of this chapter.

Subject to the provisions of § 56-232.1, the term "schedules" as used in §§ 56-234 through 56-245 shall include schedules of rates and charges for service to the public and also contracts for rates and charges in sales at wholesale to other public utilities or for divisions of rates between public utilities, but shall not include contracts of telephone companies with the state government or contracts of other public utilities with municipal corporations or the federal or state government, or any contract executed prior to July 1, 1950.

§ 56-256. Powers of corporations generally; rights, powers, privileges and immunities, etc.

Every corporation organized for the purpose of: (1) constructing, maintaining, and operating an electric railway, or works, (2) supplying and distributing electricity for light, heat, or power, (3) producing, distributing, and selling steam, heat, or power, or compressed air, (4) producing, distributing and selling gas made of coal or other materials, (5) furnishing and distributing a water supply to any city or town, or (6) piping cold air outside of its plant, or (7) constructing and maintaining any public viaduct, bridge or conduit, shall, in addition to the powers conferred upon corporations generally, have all the rights, powers, privileges, and immunities, and be subject to all the rules, regulations, restrictions, pains, and penalties prescribed by §§ 56-458, 56-459 to 56-462, 56-466, 56-467 and 56-484, which sections shall apply to, and as far as practicable, operate upon the corporations mentioned in this section, unless otherwise provided. Notwithstanding the definition of "public utility" contained in § 56-232, any utility consumer services cooperative who has elected self-regulation in accordance with Article 3 (§§ 56-231.53 *et seq.*) of Chapter 9.1 of this title shall have all the rights, powers, privileges, and immunities, and be subject to all the rules, regulations, restrictions, pains, and penalties prescribed by §§ 56-458, 56-459 to 56-462, 56-466, 56-467 and 56-484.

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

A. All distributors shall have the obligation to connect any retail customer, including those using distributed generation, located within its service territory

to those facilities of the distributor that are used for delivery of retail electric energy, subject to Commission rules and regulations and approved tariff provisions relating to connection of service.

B. Except as otherwise provided in this chapter, every distributor shall provide distribution service within its service territory on a basis which is just, reasonable, and not unduly discriminatory to suppliers of electric energy, including distributed generation, as the Commission may determine. The distribution services provided to each supplier of electric energy shall be comparable in quality to those provided by the distribution utility to itself or to any affiliate. The Commission shall establish rates, terms and conditions for distribution service under Chapter 10 (§ 56-232 et seq.) of this title except for distribution services provided by a utility consumer services cooperative who has elected self-regulation in accordance with Article 3 (§§ 56-231.53 *et seq.*) of Chapter 9.1 of this title.

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

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

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

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

1. Expand the capacity of transmission systems;

2. File applications and tariffs with the Federal Energy Regulatory Commission (FERC) which (i) make transmission systems capacity available to retail sellers or buyers of electric energy under terms and conditions described by the Commission and (ii) require owners of generation capacity located in the

Commonwealth to bear an appropriate share of the cost of transmission facilities, to the extent such cost is attributable to such generation capacity;

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

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

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

§ 56-580. 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, 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. Such authority shall not extend to distribution services provided by a utility consumer services cooperative who has elected self-regulation in accordance with Article 3 (§§ 56-231.53 *et seq.*) of Chapter 9.1 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, subject to the provisions of Article 3 (§§ 56-231.53 *et seq.*) of Chapter 9.1 of this title, 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. 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.

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.

§ 56-582. 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. 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 any time 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. If the capped rates are continued after January 1, 2004, a utility consumer services cooperative who has elected self-regulation in accordance with Article 3 (§§ 56-231.53 *et seq.*) of Chapter 9.1 of this title may adopt 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.

§ 56-585. 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. Notwithstanding subsections A through D of this section, a utility consumer services cooperative who has elected self-regulation in accordance with Article 3 (§§ 56-231.53 *et seq.*) of Chapter 9.1 of this title, shall establish and regulate its own default rates, and the Commission shall have no authority to determine or regulate such rates. If a distribution electric cooperative, or one or more affiliates thereof, elects or seeks to be a default supplier in the service territory of another electric utility, then the Commission shall designate the default supplier for the service territory of that distribution electric cooperative, or any affiliate thereof, pursuant to subsection B.

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STATE REGULATION OF ELECTRIC CO-OPS SURVEY COMPILATIONS

AS OF NOVEMBER 2000

	Rate Regulated[1] (y = yes, n = no, o = optional, p = partial)	If Yes[2] (f = full, s = streamlined)	Terms & Conditions of Service	Safety	Facility Siting[3]	Territorial Issues	Financing	Other[4]	Did Restructuring Change Status?[5]	If regulation optional – how many in, how many out? State law citation?
Alabama	N		N	N	N	N			-----	
Alaska	O	F	Y	Y		Y				6 in / 10 out AK 42.05.711(h) (1980)
Arizona	Y	F/S	Y	Y	Y	Y	Y	Y	Y	
Arkansas	Y	F/S	Y	Y	Y	Y			Y[6]	
California	N		Y	Y	N	Y			N	
Colorado	O		N	N	Y/N	Y		Y		1 in / 22 out 1 CRS 40-9.5-103.104 (1983)
Connecticut	*No Co-ops*	*In*	*Connecticut*							
Delaware	Y		Y	Y	Y	Y			N	
Florida	N[7]		N	Y	Y	Y			-----	
Georgia	O[8]		P	N	CN	Y	Y			
Idaho	N		N	N	N	N			----	
Illinois	N		N	N	Y	Y			P	
Indiana	O		O	O	N	Y			----	4 Dist. co-ops & 1 G&T in / 35 Dist. co-ops & 1 G&T out IC 8-1-13.3 (1995)

[1] "Optional" means co-ops have the right under state law to opt into or out of state regulation. "Partial" means the state has some oversight authority over co-op rates, but not the specific ability to set rates.

[2] This question asks whether rate regulation of co-ops is the same as or similar to regulation of IOUs, or if there is a streamlined process.

[3] In California, South Dakota, and Texas, the state has regulatory authority over siting of 115 kV and higher lines. In New Mexico, the regulatory authority has jurisdiction over transmission and "major" generation, and notification to the Commission is required for any construction within one mile of another utility. In Wyoming, the PSC has jurisdiction over siting of large-scale facilities. In Colorado and Wisconsin, the G&Ts are regulated for new construction, but not the distribution co-ops.

[4] Other areas where states exercise jurisdiction over co-ops include: sale of assets (Arizona); complaints (Maine, Iowa, Wisconsin); certificates of need, IRPs, state PURPA (Minnesota); interest paid on deposits (Nevada); diversification activities (New Mexico); long-term forecasts (Ohio); adequacy of service (South Dakota); stray voltage investigations (Wisconsin); and mergers and reorganizations (Wyoming).

[5] In those states that have adopted restructuring, the current regulatory status of co-ops generally will not change unless the co-op becomes a competitive retail supplier and seeks to provide services to customers outside its service territory. In that case, the co-op first must be certified or licensed by the state to be a competitive supplier. As a competitive supplier serving customers outside its service territory, the co-op would then also be subject to all the rules established by the PSC that apply to all other competitive suppliers. As noted above, in Arkansas the G&T will no longer be state regulated as to rates when retail choice begins.

[6] Arkansas distribution systems may increase rates up to 10% without Commission approval. The G&T is fully regulated, however, this will end with retail competition.

[7] Florida has jurisdiction over co-op rate structure: the rate relationship between various customer classes, but not the rate charged for utility service.

[8] EMCs in Georgia are required to file rate revisions with the PSC to make sure they aren't "unreasonably discriminatory," but the PSC does not set rates.

STATE REGULATION OF ELECTRIC CO-OPS SURVEY COMPILATIONS

AS OF NOVEMBER 2000

	Rate Regulated (y = yes, n = no, o = optional, p = partial)	If Yes (f = full, s = streamlined)	Terms & Conditions of Service	Safety	Facility Siting	Territorial Issues	Financing	Other	Did Restructuring Change Status?	If regulation optional – how many in, how many out? State law citation?
Iowa	O		Y	Y	Y	Y			----	1 in / 36 out -- Iowa St. 476.1a
Hawaii	No Co-ops	In	Hawaii							
Kansas	O[9]	S	Y	Y	Y	Y			----	3 in / 26 out KSA 66-104(1) (1992)
Kentucky	Y	S	Y	Y	Y	Y			----	5 TVA co-ops not subject to PSC jurisdiction
Louisiana	Y	F	Y	N	N	Y			----	
Maine	Y	F	Y	Y	Y	Y		Y	N	
Maryland	Y	F	Y	Y	Y	Y			N	
Massachusetts	No Co-ops	In	Massachusetts							
Michigan	Y	S	Y	Y	Y	Y			N	
Minnesota	O		N	N	Y	Y		Y	----	1 in / 44 out
Mississippi	N		Y	Y	Y	Y			----	
Missouri	N		N	Y	N	Y			----	
Montana	N		N	N	N	Y			N	
Nebraska	N		N	N	Y	Y	N			
Nevada	N		N	N	N	Y		Y	N	
New Hampshire	P		N	N	Y	Y	N		N	
New Jersey	N		N	N	Y	Y			P	
New Mexico	Y	S	Y	N	Y	Y	Y	Y	N	
New York	Y[12]	F	Y	Y	N	N			N	

[9] In Kansas, distribution cooperatives serving less than 10,000 customers may elect to opt out of state regulation. One cooperative, Midwest Energy, exceeds that number. The two G&Ts are fully regulated and do not have the ability to opt out.

[10] Rate regulation of co-ops in Kentucky is streamlined only for wholesale flow-through adjustments, and for all rate decreases. Otherwise, all distribution rate increases are subject to the full regulatory process.

[11] In New Mexico, a distribution co-op must file a notice of a proposed change in rates with the Commission. After 15 days the co-op then notifies its members of the proposed rate change via publication in the statewide magazine. Thirty days after that the co-op files a tariff and supporting documentation at the Commission. A 20-day clock begins to run, during which any co-op member may protest the rate filing. If there are no protests, the rates go into effect ten days after the 20-day protest period, or a total of 75 days after first filed. If there is a protest a full-blown rate proceeding takes place. Since its merger with Tri-State, the G&T is no longer state regulated.

[12] Distribution co-ops in New York are regulated by the New York Power Authority (NYPA), not the Public Service Commission.

STATE REGULATION OF ELECTRIC CO-OPS SURVEY COMPILATIONS

AS OF NOVEMBER 2000

	Rates Regulated (y=yes, n=no, o=optional, p=partial)	If Yes ((f=full, s=streamlined)	Terms & Conditions of Service	Safety	Facility Siting	Territorial Issues	Financing	Other	Did Restructuring Change Status?	If regulation optional – how many in, how many out? State law citation?
North Carolina	N		Y	N	N	Y			-----	
North Dakota	N		N	N	Y	Y			-----	
Ohio	N		N	N	Y	Y		Y	N	
Oklahoma[13]	O	S	Y	N	N	Y			P	24 in / 2 out
Oregon	N		N	Y	Y	Y			N	
Pennsylvania	N		N	N	N	Y			N	
Rhode Island	*No Co-ops*	*In*	*Rhode Island*							
South Carolina	N		N	N	N	Y			-----	
South Dakota	N		N	Y	Y	Y		Y	-----	
Tennessee[14]	N		N	N	N	N			-----	
Texas	N		N	N	Y	Y			Y	
Utah	N		Y	Y	Y	Y			-----	
Vermont	Y	F	Y	Y	Y	Y	Y		N	
Virginia[15]	P	S				Y			N	
Washington	N		N	N	N	Y			-----	
West Virginia	Y	S	Y	Y	Y	Y			N	
Wisconsin	N		N		P	Y		Y	-----	
Wyoming	Y	F	Y	Y	Y	Y	Y	Y	-----	

[13] Oklahoma distribution co-ops may increase rates up to 3% without Commission approval.

[14] All cooperatives in Tennessee now are regulated by the Tennessee Valley Authority. The TVA also regulates some co-ops in Alabama, Mississippi, Kentucky, and Georgia.

[15] Under the streamlined approach, Virginia allows a 5% increase based on operating revenue. Hearings are required upon a motion of Commission staff or Division of Consumer Counsel or if 150 customers or 5% of any rate class protests. One rate increase is allowed per calendar year and no more than three consecutive streamlined filings allowed. The G&T is not rate regulated.

Draft – December 12, 2000

HOUSE BILL NO.

Offered _____

An Act to amend §§ 56-582 and 56-583 of the Code of Virginia relating to rate caps and wires charges for electric energy.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-582 and 56-583 of the Code of Virginia are 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. 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. 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 any time 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.

F. Capped retail rates for municipalities and other governmental customers purchasing bundled electric transmission, distribution and generation services for governmental uses from an incumbent utility, unless otherwise mutually agreed by the municipality and the utility, shall be the rates in effect or billed for each incumbent utility as of January 1, 2001 and to continue until July 1, 2007, provided, however, if the Commission makes any adjustments to, or termination of, capped rates pursuant to paragraphs B or C of this section, the municipalities or other governmental customers and incumbent utility shall make any similar adjustment or termination of capped rates unless otherwise mutually agreed.

§ 56-583. Wires Charges.

A. To provide the opportunity for competition and consistent with § 56-584, the Commission shall calculate wires charges for each incumbent electric utility, effective upon the commencement of customer choice, which shall be the excess, if any, of the incumbent electric utility's capped unbundled rates for generation over the projected market prices for generation, as determined by the Commission; 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. 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.

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 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 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.

E. The determination of market prices for generation and the calculation of, and subsequent adjustments to, wires charges applicable to retail purchases by municipalities and other governmental customers shall be consistent with and based on the same methodologies as approved by the Commission unless otherwise mutually agreed.

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City of Martinsville
Proposed Amendment to the Virginia Electric Utility Restructuring Act

Virginia Code § 56-580(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, *except any area within the municipality that was served by an incumbent public utility as of that date but was thereafter served by an electric utility owned or operated by a municipality pursuant to the terms of a franchise agreement between the municipality and the incumbent public utility*.

RECOMMENDATION OF ELECTRIC COOPERATIVES

INTERCONECTION ISSUE

BILL NO.

A BILL to amend and reenact §§ 56-582 and 56-585 of the Code of Virginia, relating to acquisition of certificated service territory, capped rates; default service.

Patrons--

Referred to

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-582 and 56-585 of the Code of Virginia are 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. 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. 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 any time 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.

F. 1. In the event that an incumbent electric utility transfers all or substantially all of its distribution facilities in the Commonwealth to a cooperative prior to or during the period capped rates are in effect, the cooperative shall charge the customers added as a result of the transfer of

facilities no more than the sum of the capped bundled rates in effect for those customers from the incumbent electric utility at the time of such transfer and the cooperative's currently effective fuel adjustment factor. Any such capped bundled rates shall remain in effect for such customers until the expiration or termination of the cooperative's capped rates pursuant to this section; however, subject to subdivision F.3 of this section, such capped bundled rates will be adjusted to reflect any rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002 to the customers added as a result of the transfer of facilities.

2. The cooperative may adjust the unbundled components of such capped rates provided the sum of the charges for the unbundled components and the currently effective fuel adjustment factor is not higher than either (i) the sum of the capped bundled rate for such customers at the time of the transfer of such distribution facilities and the currently effective fuel factor adjustment, or (ii) the sum of any rates applicable to the customers added as a result of the transfer of facilities established pursuant to a rate case settlement by the Commission that extends in its application beyond January 1, 2002, and the currently effective fuel factor adjustment.

3. Only in the event that an incumbent electric utility transfers all or substantially all of its distribution facilities and its generation assets or their equivalent to a cooperative shall the capped rates and any adjustments calculated pursuant to subdivisions F.1 and F.2 of this section include the fuel adjustment factor in effect for the incumbent electric utility immediately prior to the transfer of facilities, and not the currently effective fuel adjustment factor of the cooperative.

§ 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, including any service territory acquired after July 1, 1999. 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.

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Proposed Legislative Language submitted to the
Legislative Transition Task Force of the Virginia Electric Utility Restructuring Act
by the Virginia Renewable Energy Industry Association

Contact: Michel A. (Mitch) King, President and General Manager, Old Mill Power Company, 103 Shale Place, Charlottesville, VA, 22902-6402, 1-804-979-9288, Fax: 1-804-979-9287, Email: mitchking@oldmillpower.com.

§ 56-583. Wires charges.

A. To provide the opportunity for competition and consistent with § 56-584, the Commission shall calculate wires charges for each incumbent electric utility, effective upon the commencement of customer choice, which shall be the excess, if any, of the incumbent electric utility's capped unbundled rates for generation over the projected market prices for generation, as determined by the Commission; 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. 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. *The projected market price for generation, when determined under this subsection, shall also be adjusted for any fuel costs recovered by the incumbent electric utility pursuant to §56-249.6.*

Rationale:
Energy generated by an incumbent utility but not consumed within its service territory because some of its former customers have switched to competitive energy service providers is sometimes referred to as "displaced" generation. Because an incumbent utility may have made long term commitments to provide such generation and because such a utility may experience financial losses (called "stranded costs") if it does not receive the revenue from its native load customers that such generation was expected to produce, the General Assembly provided the stranded cost recovery mechanism described in § 56-584.

§ 56-584, Stranded costs, provides that "Just and reasonable net stranded costs, to the extent that they exceed zero value in total for the incumbent electric utility, shall be recoverable by each incumbent electric utility provided each incumbent electric utility shall only recover its just and reasonable net stranded costs through either capped rates as provided in § 56-582 or wires charges as provided in § 56-583."

The assumption underlying § 56-584 is that displaced generation would be sold on the "open market" where the market price may be greater than or less than the "capped rates" identified in § 56-582. Such sales outside of an incumbent utility's certificated service territory are sometimes referred to as "off-system sales".

In recent months, market prices for off-system sales of displaced generation—including the market prices for generation at trading hubs identified by the State Corporation Commission as the proper markets for calculating the market prices that will be used to calculate the wires charges for incumbent utilities with retail access pilot programs—have risen markedly. Many analysts agree that a major reason for these market price increases, if not the primary reason for such increases, has been the rising cost of fuel.

Thus, incumbent utilities making off-system sales of their displaced generation into the open market have been recovering, and will continue to recover, essentially all of the fuel costs associated with the sale of such displaced generation. Thus, it is neither just nor reasonable—that is, it is inconsistent with the governing principal that justifies § 56-584—to allow incumbent utilities to recover, for a second time, the fuel costs associated with off-system sales of displaced generation by implicitly including such fuel costs in the wires charges to be applied to customers who choose competitive energy service providers.

The legislative language proposed herein enables incumbent utilities to recover their just and reasonable fuel costs associated with off-system sales of displaced generation without "double dipping". We encourage the Legislative Transition Task Force and the General Assembly to adopt the proposed change.

APPENDIX GG: Eminent Domain Authority of Public Service Corporations

RECOMMENDED BY TENASKA VIRGINIA PARTNERS

§ 56-579. Regional transmission entities.

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

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

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

a. Promote:

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

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

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

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

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

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

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

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

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

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

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

[E. and F. -- Unchanged]

Virginia Power

		Bundled Rates
	Line Extension Costs:	$5,000
	Aver. Residential Usage /mo	1000 kWh
	Average Annual Revenue:	$830.60
	Line Extension Allowance:	$3,322.40 Four (4) times the annual revenue less fuel
		Unbundled Rates
	Line Extension Costs:	$5,000
	Aver. Residential Usage /mo	1000 kWh
	Average Annual Revenue:	$391.66
	Line Extension Allowance:	$1,566.66 Four (4) times the annual revenue less fuel

	Bundled Rates	**Unbundled Rates**
Cust CHg	7	7
	Summer	Summer
1st 800	0.06403	0.02212
Over 800	0.07423	0.0114
	Winter	Winter
1st 800	0.06403	0.03221
Over 800	0.04533	0.01351
Jan	$67.29	$35.47
Feb	$67.29	$35.47
Mar	$67.29	$35.47
Apr	$67.29	$35.47
May	$67.29	$35.47
Jun	$73.07	$26.98
Jul	$73.07	$26.98
Aug	$73.07	$26.98
Sep	$73.07	$26.98
Oct	$67.29	$35.47
Nov	$67.29	$35.47
Dec	$67.29	$35.47
	$830.60	$391.66

Line Extension Credits

Drafting Note. A question posed by the Commission Staff at the LTTF's last meeting was whether, as a matter of policy, utilities' line extension credits (contained in filed tariffs and thus deemed capped rates under § 56-582) should, during the capped rate period, be calculated on the basis of customer revenue expectations generated by (i) bundled electric service, or (ii) distribution service, alone. Section 56-582 is silent on this issue, and its clarification in this regard would be helpful to the Commission in its application of the capped rate statute to utilities' existing line extension credit tariffs. The draft language below expresses the options available to the General Assembly concerning this issue, as described above.

§ 56-582 Rate caps.

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~~231.33. 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. Line extension provisions previously approved by the Commission prior to the establishment of capped rates that reflect credits against the cost of such extensions based on revenue expectations associated with proposed new services shall reflect [Option 1] all revenues including revenues expected to be produced by capped generation rates [Option 2] all revenues expected to be produced by distribution rates only.

Cooperative Rate Discounts during the capped rate period.

Drafting Note. The language tracks the legislation passed by the 2000 Session of the General Assembly authorizing non-ODEC cooperatives to discount their capped rates to match the cost of providing distribution service. Inasmuch as this issue was raised by an ODEC member distribution cooperative, the draft is limited to this class of utilities.

The Commission takes no position on this issue; it is a matter of policy for the General Assembly to determine.

§ 56-582 Rate caps.

B. 1. 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, (a) their recovery of fuel costs, through the wholesale power cost adjustment clauses of their tariffs pursuant to § 56-231.33, and (b) discounts from capped rates to match the cost of providing distribution services. 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.