

070229428

HOUSE BILL NO. 3050

Offered January 15, 2007

A BILL to amend and reenact §§ 56-231.24, 56-234.3, 56-235.6, 56-249.6, 56-576, 56-580, 56-585, and 56-594 of the Code of Virginia and to repeal §§ 56-577, 56-578, 56-579, 56-581 through 56-584, 56-586, 56-587 through 56-593, and 56-596 of the Code of Virginia, relating to the regulation of electric utilities.

Patron—Morgan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-231.24, 56-234.3, 56-235.6, 56-249.6, 56-576, 56-580, 56-585, and 56-594 of the Code of Virginia are amended and reenacted as follows:

§ 56-231.24. Power to dispose of property.

No cooperative may sell, lease or dispose of all or substantially all of its property (other than property which, in the judgment of the board, is neither necessary nor useful in operating and maintaining the cooperative's system and which in any one year shall not exceed fifty percent in value of the value of all the property of the cooperative, or merchandise), unless authorized to do so by the votes of at least a two-thirds majority of its members; however, a cooperative (i) may mortgage, finance (including, without limitation, pursuant to a sale and leaseback or lease and leaseback transaction), or otherwise encumber its assets by a vote of at least two-thirds of its board of directors; (ii) may sell or transfer its assets to another cooperative upon the vote of a majority of its members at any regular or special meeting if the notice of such meeting contains a copy of the terms of the proposed sale or transfer; or (iii) may sell or transfer distribution system facilities to a city or town at any time following the annexation of additional territory pursuant to § 56-265.4:2 by a vote of at least two-thirds of its board of directors; or (iv) may sell, lease or dispose of its property to an affiliate pursuant to a plan approved by the Commission in accordance with subsection B of § 56-590 by a vote of at least two-thirds of the members of the Board.

§ 56-234.3. Approval of expenditures for and monitoring of new generation facilities and projected operation programs of electric utilities.

Prior to construction or financial commitments therefor, any electric utility subject to the jurisdiction of the State Corporation Commission intending to construct any new generation facility capable of producing 100 megawatts or more of electric energy shall submit to the State Corporation Commission a petition setting forth the nature of the proposed construction and the necessity therefor in relation to its projected forecast of programs of operation. Such petition shall include (i) the utility's preliminary construction plans, (ii) the methods by which the work will be contracted, by competitive bid or otherwise, (iii) the names and addresses of the contractors and subcontractors, when known, proposed to do such work, and (iv) the plan by which the public utility will monitor such construction to ensure that the work will be done in a proper, expeditious and efficient manner. The Commission, upon receipt of the petition, shall order that a public hearing be held to assist it in accumulating as much relevant data as possible in reaching its determination for the necessity of the proposed generation facility. The Commission shall review the petition, consider the testimony given at the public hearing, and determine whether the proposed improvements are necessary to enable the public utility to furnish reasonably adequate service and facilities at reasonable and just rates. After making its determination, the Commission shall enter an order within nine months after the filing of such petition either approving or disapproving the proposed expenditure. Upon approval, the Commission shall set forth in its order terms and conditions it deems necessary for the efficient and proper construction of the generation facility.

Every electric utility capable of producing 100 megawatts or more of electric energy shall file with the Commission a projected forecast of its programs of operation, on such terms and for such time periods as directed by the Commission. Such a forecast shall include, but not be limited to, the anticipated required capacity to fulfill the requirements of the forecast, how the utility will achieve such capacity, the financial requirements for the period covered, the anticipated sources of those financial requirements, the research and development procedures, where appropriate, of new energy sources, and the budget for the research and development program.

In addition, the Commission shall investigate and monitor the major construction projects of any public utility to assure that such projects are being conducted in an economical, expeditious, and efficient manner.

Whenever uneconomical, inefficient or wasteful practices, procedures, designs or planning are found

INTRODUCED

HB3050

59 to exist, the Commission shall have the authority to employ, at the sole expense of the utility, qualified  
60 persons, answerable solely to the Commission, who shall audit and investigate such practices,  
61 procedures, designs or planning and recommend to the Commission measures necessary to correct or  
62 eliminate such practices, procedures, designs or planning.

63 Consistent with § 56-235.3, any public utility, electric or otherwise, seeking to pass through the cost  
64 of any capital project to its customers, shall have the burden of proving that such cost was incurred  
65 through reasonable, proper and efficient practices, and to the extent that such public utility fails to bear  
66 such burden of proof, such costs shall not be passed on to its customers in its rate base *or by any other*  
67 *recovery mechanism. If the Commission finds that the public utility meets such burden of proof, the*  
68 *Commission may provide for recovery of such costs through the public utility's rate base or through rate*  
69 *surcharges, adders, or other recovery mechanisms as the Commission finds are in the public interest.*

70 The Commission shall have the authority to approve, disapprove, or alter the utility's program in a  
71 manner consistent with the best interest of the citizens of the Commonwealth. The petitioning or filing  
72 public utility may appeal the decision of the Commission to the Supreme Court of Virginia.

73 § 56-235.6. Optional performance-based regulation of gas utilities.

74 A. Notwithstanding any provision of law to the contrary, the Commission may approve a  
75 performance-based ratemaking methodology for any public utility engaged in the business of furnishing  
76 gas service (for the purposes of this section a "gas utility") *or electricity service (for the purposes of this*  
77 *section an "electric utility")*, either upon application of the gas utility *or electric utility* or upon its own  
78 motion, and after such notice and opportunity for hearing as the Commission may prescribe. For the  
79 purposes of this section, "performance-based ratemaking methodology" shall mean a method of  
80 establishing rates and charges that are in the public interest, and that departs in whole or in part from  
81 the cost-of-service methodology set forth in § 56-235.2.

82 B. The Commission shall approve such performance-based ratemaking methodology if it finds that it:  
83 (i) preserves adequate service to all classes of customers; (including transportation-only customers *if for*  
84 *a gas utility*); (ii) does not unreasonably prejudice or disadvantage any class of gas utility *or electric*  
85 *utility* customers; (iii) provides incentives for improved performance by the gas utility *or electric utility*  
86 in the conduct of its public duties; (iv) results in rates that are not excessive; and (v) is in the public  
87 interest. Performance-based forms of regulation may include, but not be limited to, fixed or capped base  
88 rates, the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing *for gas*  
89 *utilities*, and innovative utilization of utility-related assets and activities (such as *a gas utility's*  
90 *off-system sales of excess gas supplies; and release of upstream pipeline capacity, performance of billing*  
91 *services for other gas or electricity suppliers, and reduction or elimination of regulatory requirements*) in  
92 ways that benefit both the gas utility and its customers and may include a mechanism for automatic  
93 annual adjustments to revenues or prices to reflect changes in any index adopted for the implementation  
94 of such performance-based form of regulation. In making the findings required by this subsection, the  
95 Commission shall include, but not be limited to, in its considerations: (i) any proposed measures,  
96 including investments in infrastructure, that are reasonably estimated to preserve or improve system  
97 reliability, safety, supply diversity, and *gas utility* transportation options; and (ii) other customer benefits  
98 that are reasonably estimated to accrue from the gas *or electric utility's* proposal.

99 C. Each gas utility *or electric utility* shall have the option to apply for implementation of a  
100 performance-based form of regulation. If the Commission approves the application with modifications,  
101 the gas utility *or electric utility* may, at its option, withdraw its application and continue to be regulated  
102 under the form of regulation that existed immediately prior to the filing of the application. The  
103 Commission may, after notice and opportunity for hearing, alter, amend or revoke, or authorize a gas  
104 utility *or electric utility* to discontinue, a performance-based form of regulation previously implemented  
105 under this section if it finds that (i) gas service to one or more classes of customers has deteriorated, or  
106 will deteriorate, to the point that the public interest will not be served by continuation of the  
107 performance-based form of regulation; (ii) any class of gas utility customer *or electric utility customer* is  
108 being unreasonably prejudiced or disadvantaged by the performance-based form of regulation; (iii) the  
109 performance-based form of regulation does not, or will not, provide reasonable incentives for improved  
110 performance by a gas utility *or electric utility* in the conduct of its public duties (which determination  
111 may include, but not be limited to, consideration of whether rates are inadequate to recover *a gas utility*  
112 *utility's or electric utility's* cost of service); (iv) the performance-based form of regulation is resulting in  
113 rates that are excessive compared to a gas utility's *or electric utility's* cost of service and any benefits  
114 that accrue from the performance-based plan; (v) the terms ordered by the Commission in connection  
115 with approval of a gas utility's *or electric utility's* implementation of a performance-based form of  
116 regulation have been violated; or (vi) the performance-based form of regulation is no longer in the  
117 public interest. Any request by a gas utility *or electric utility* to discontinue its implementation of a  
118 performance-based form of regulation may include application pursuant to this chapter for approval of  
119 new rates under the standards of § 56-235.2.

120 D. The Commission shall use the annual review process established in § 56-234.2 to monitor each

121 performance-based form of regulation approved under this section and to make any annual prospective  
122 adjustments to revenues or prices necessary to reflect increases or decreases in any index adopted for the  
123 implementation of such performance-based form of regulation.

124 § 56-249.6. Recovery of fuel and purchased power costs.

125 A. 1. Each electric utility that purchases fuel for the generation of electricity or purchases power and  
126 that was not, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that  
127 extended in its application beyond January 1, 2002, shall submit to the Commission its estimate of fuel  
128 costs, including the cost of purchased power, for the 12-month period beginning on the date prescribed  
129 by the Commission. Upon investigation of such estimates and hearings in accordance with law, the  
130 Commission shall direct each company to place in effect tariff provisions designed to recover the fuel  
131 costs determined by the Commission to be appropriate for that period, adjusted for any over-recovery or  
132 under-recovery of fuel costs previously incurred.

133 2. The Commission shall continuously review fuel costs and if it finds that any utility described in  
134 subdivision A 1 this subsection is in an over-recovery position by more than five percent, or likely to be  
135 so, it may reduce the fuel cost tariffs to correct the over-recovery.

136 B. All fuel costs recovery tariff provisions in effect on January 1, 2004, for any electric utility that  
137 purchases fuel for the generation of electricity and that was, as of July 1, 1999, bound by a rate case  
138 settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall  
139 remain in effect until the earlier of (i) July 1, 2007; (ii) the termination of capped rates pursuant to the  
140 provisions of subsection C of § 56-582; or (iii) ii) the establishment of tariff provisions under subsection

141 C. Any such utility shall continue to report to the Commission annually its actual fuel costs, including  
142 the cost of purchased power until July 1, 2007. For periods after January 1, 2008, the Commission shall  
143 place in effect tariff provisions designed to recover the fuel costs as provided in subsection A.

144 C. Until the capped rates for such utility expire or are terminated pursuant to the provisions of  
145 § 56-582, each Each electric utility described in subsection B shall submit annually to the Commission  
146 its estimate of fuel costs, including the cost of purchased power, for the successive 12-month periods  
147 beginning on July 1, 2007, 2008, and 2009, and the six-month period beginning July 1, 2010 2007.  
148 Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct  
149 each such utility to place in effect tariff provisions designed to recover the fuel costs determined by the  
150 Commission to be appropriate for such periods, adjusted for any over-recovery or under-recovery of fuel  
151 costs previously incurred; however, (i) no such adjustment for any over-recovery or under-recovery of  
152 fuel costs previously incurred shall be made for any period prior to July 1, 2007, and (ii) the  
153 Commission may order that up to 40% of any increase in fuel tariffs determined by the Commission to  
154 be appropriate for the 12-month 6-month period beginning July 1, 2007, above the fuel tariffs previously  
155 existing, shall be deferred and recovered during the period from July 1, 2008, through December 31,  
156 2010.

157 D. 1. In proceedings under subsections A and C, the Commission may, to the extent deemed  
158 appropriate, offset against fuel costs and purchased power costs to be recovered the revenues attributable  
159 to sales of power pursuant to interconnection agreements with neighboring electric utilities.

160 2. In proceedings under subsections A and C, the Commission shall disallow recovery of any fuel  
161 costs that it finds without just cause to be the result of failure of the utility to make every reasonable  
162 effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs, giving  
163 due regard to reliability of service and the need to maintain reliable sources of supply, economical  
164 generation mix, generating experience of comparable facilities, and minimization of the total cost of  
165 providing service.

166 3. The Commission is authorized to promulgate, in accordance with the provisions of this section, all  
167 rules and regulations necessary to allow the recovery by electric utilities of all of their prudently  
168 incurred fuel costs under subsections A and C, including the cost of purchased power, as precisely and  
169 promptly as possible, with no over-recovery or under-recovery, except as provided in subsection C, in a  
170 manner that will tend to assure public confidence and minimize abrupt changes in charges to consumers.

171 E. The Commission may, however, dispense with the procedures set forth above for any electric  
172 utility if it finds, after notice and hearing, that the electric utility's fuel costs can be reasonably recovered  
173 through the rates and charges investigated and established in accordance with other sections of this  
174 chapter.

175 § 56-576. Definitions.

176 As used in this chapter:

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

179 "Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases,  
180 electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy, for sale to,  
181 or on behalf of, two or more retail customers not controlled by or under common control with such

182 person. The following activities shall not, in and of themselves, make a person an aggregator under this  
183 chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii)  
184 furnishing educational, informational, or analytical services to two or more retail customers, unless direct  
185 or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii)  
186 furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv)  
187 providing default service under § 56-585; (v) engaging in activities of a retail electric energy supplier,  
188 licensed pursuant to § 56-587, which are authorized by such supplier's license; and (vi) engaging in  
189 actions of a retail customer, in common with one or more other such retail customers, to issue a request  
190 for proposal or to negotiate a purchase of electric energy for consumption by such retail customers.

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

193 "Commission" means the State Corporation Commission.

194 "Cooperative" means a utility formed under or subject to Chapter 9-1 (§ 56-231.15 et seq.) of this  
195 title.

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

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

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

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

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

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

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

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

213 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,  
214 1999, supplied electric energy to retail customers located in an exclusive service territory established by  
215 the Commission.

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

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

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

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

226 "Period of transition to customer choice" means the period beginning on January 1, 2002, and ending  
227 on January 1, 2004, unless otherwise extended by the Commission pursuant to this chapter, during  
228 which the Commission and all electric utilities authorized to do business in the Commonwealth shall  
229 implement customer choice for retail customers in the Commonwealth.

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

232 "Renewable energy" means energy derived from sunlight, wind, falling water, sustainable biomass,  
233 energy from waste, wave motion, tides, and geothermal power, and does not include energy derived  
234 from coal, oil, natural gas or nuclear power.

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

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

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

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

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

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

249 § 56-580. Electrical generating facilities.

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

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

256 C. The Commission shall develop codes of conduct governing the conduct of incumbent electric  
 257 utilities and affiliates thereof when any such affiliates provide, or control any entity that provides,  
 258 generation, distribution, transmission or any services made competitive pursuant to § 56-581.1, to the  
 259 extent necessary to prevent impairment of competition.

260 D. The Commission shall permit the construction and operation of electrical generating facilities  
 261 upon a finding that such generating facility and associated facilities (i) will have no material adverse  
 262 effect upon reliability of electric service provided by any regulated public utility and (ii) are not  
 263 otherwise contrary to the public interest. In review of a petition for a certificate to construct and operate  
 264 a generating facility described in this subsection, the Commission shall give consideration to the effect  
 265 of the facility and associated facilities on the environment and establish such conditions as may be  
 266 desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1. In order to  
 267 avoid duplication of governmental activities, any valid permit or approval required for an electric  
 268 generating plant and associated facilities issued or granted by a federal, state or local governmental  
 269 entity charged by law with responsibility for issuing permits or approvals regulating environmental  
 270 impact and mitigation of adverse environmental impact or for other specific public interest issues such  
 271 as building codes, transportation plans, and public safety, whether such permit or approval is prior to or  
 272 after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect  
 273 to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were  
 274 considered by, the governmental entity in issuing such permit or approval, and the Commission shall  
 275 impose no additional conditions with respect to such matters. Nothing in this section shall affect the  
 276 ability of the Commission to keep the record of a case open. Nothing in this section shall affect any  
 277 right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed  
 278 facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the  
 279 one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a  
 280 decision approving such proposed facility that is conditioned upon issuance of any environmental permit  
 281 or approval.

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

288 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or  
 289 operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt  
 290 from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any  
 291 such electric utility unless (i) that municipality or that authority created by a governmental unit exempt  
 292 from the referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii)  
 293 that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail  
 294 customer outside the geographic area that was served by such municipality as of July 1, 1999, except (a)  
 295 any area within the municipality that was served by an incumbent public utility as of that date but was  
 296 thereafter served by an electric utility owned or operated by a municipality or by an authority created by  
 297 a governmental unit exempt from the referendum requirement of § 15.2-5403 pursuant to the terms of a  
 298 franchise agreement between the municipality and the incumbent public utility, or (b) where the  
 299 geographic area served by an electric utility owned or operated by a municipality is changed pursuant to  
 300 mutual agreement between the municipality and the affected incumbent public utility in accordance with  
 301 § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1, 1999, or by an  
 302 authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 is  
 303 made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in  
 304 such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any

305 such utility, mutatis mutandis.

306 G. The applicability of this chapter to any investor-owned incumbent electric utility supplying  
307 electric service to retail customers on January 1, 2003, whose service territory assigned to it by the  
308 Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be  
309 suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any  
310 other service territory in any jurisdiction to customers who have the right to receive retail electric energy  
311 from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates  
312 established pursuant to §56-582 for the duration of the capped rate period established thereunder, and  
313 (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs  
314 pursuant to Chapter 10 (§56-232 et seq.) of this title.

315 H.B. The expiration date of any certificates granted by the Commission pursuant to subsection DA,  
316 for which applications were filed with the Commission prior to July 1, 2002, shall be extended for an  
317 additional two years from the expiration date that otherwise would apply.

318 § 56-585. Coal-fired generation facility.

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

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

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

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

337 3. To the extent that default service is not provided pursuant to a designation under subdivision 2,  
338 may require a distributor to provide, in a safe and reliable manner, one or more components of such  
339 services, or to form an affiliate to do so, in one or more regions of the Commonwealth, at rates  
340 determined pursuant to subsection C and for periods specified by the Commission; however, the  
341 Commission may not require a distributor, or affiliate thereof, to provide any such services outside the  
342 territory in which such distributor provides service; and

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

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

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

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

362 3. Prior to a distributor's provision of default service, and upon request of such distributor, the  
363 Commission shall review any plan filed by the distributor to procure electric generation services for  
364 default service. The Commission shall approve such plan if the Commission determines that the  
365 procurement of electric generation capacity and energy under such plan is adequately based upon prices  
366 of capacity and energy in competitive regional electricity markets. If the Commission determines that the

367 plan does not adequately meet such criteria, then the Commission shall modify the plan, with the  
368 concurrence of the distributor, or reject the plan.

369 4. a. For purposes of this subsection, in determining whether regional electricity markets are  
370 competitive and rates for default service, the Commission shall consider (i) the liquidity and price  
371 transparency of such markets, (ii) whether competition is an effective regulator of prices in such  
372 markets, (iii) the wholesale or retail nature of such markets, as appropriate, (iv) the reasonable  
373 accessibility of such markets to the regional transmission entity to which the distributor belongs, and (v)  
374 such other factors it finds relevant. As used in this subsection, the term "competitive regional electricity  
375 market" means a market in which competition, and not statutory or regulatory price constraints,  
376 effectively regulates the price of electricity.

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

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

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

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

402 G. To ensure a reliable and adequate supply of electricity, and to promote economic development, an  
403 investor-owned distributor that has been designated a default service provider under this section may  
404 petition the Commission for approval to construct, or cause to be constructed, a coal-fired generation  
405 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as  
406 described in § 15.2-6002, to meet its native load and default service obligations, regardless of whether  
407 such facility is located within or without the distributor's service territory. The Commission shall  
408 consider any petition filed under this subsection in accordance with its competitive bidding rules  
409 promulgated pursuant to § 56-234.3, and in accordance with the provisions of this chapter.  
410 Notwithstanding the provisions of subdivision C 3 related to the price of default service, a A distributor  
411 that constructs, or causes to be constructed, such facility shall have the right to recover the costs of the  
412 facility, including allowance for funds used during construction, life-cycle costs, and costs of  
413 infrastructure associated therewith, plus a fair rate of return, through its rates for default service. A  
414 distributor filing a petition for the construction of a facility under the provisions of this subsection shall  
415 file with its application a plan, or a revision to a plan previously filed, as described in subdivision C 3,  
416 that proposes default service rates to ensure such cost recovery and fair rate of return. The construction  
417 of such facility that utilizes energy resources located within the Commonwealth is in the public interest,  
418 and in determining whether to approve such facility, the Commission shall liberally construe the  
419 provisions of this title.

420 § 56-594. Net energy metering provisions.

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

428 B. For the purpose of this section:

429 "Eligible customer-generator" means a customer that owns and operates, or contracts with other  
430 persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than  
431 10 kilowatts for residential customers and 500 kilowatts for nonresidential customers; (ii) uses as its  
432 total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises  
433 and is connected to the customer's wiring on the customer's side of its interconnection with the  
434 distributor; (iv) is interconnected and operated in parallel with an electric company's utility's transmission  
435 and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own  
436 electricity requirements.

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

440 "Net metering period" means the 12-month period following the date of final interconnection of the  
441 eligible customer-generator's system with an electric service provider, and each 12-month period  
442 thereafter.

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

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

463 **2. That §§ 56-577, 56-578, 56-579, 56-581 through 56-584, 56-586, 56-587 through 56-593, and**  
464 **56-596 of the Code of Virginia are repealed.**

465 **3. That the repeal of § 56-590 of the Code of Virginia shall not modify or impair the terms, unless**  
466 **otherwise modified by an order of the State Corporation Commission, of any order of the State**  
467 **Corporation Commission approving the divestiture of generation assets that was entered pursuant**  
468 **to repealed § 56-590.**

469 **4. That the provisions of this act shall become effective on January 1, 2008.**