CODE OF VIRGINIA

Title 56

Public Service Companies

Title 56 - PUBLIC SERVICE COMPANIES

Chapter 1 - GENERAL PROVISIONS

Article 1 - IN GENERAL

§ 56-1. Definitions

Whenever used in this title, unless the context requires a different meaning:

"Broadband connection, " for purposes of this section, means a connection where transmission speeds exceed 200 kilobits per second in at least one direction.

"Commission" means the State Corporation Commission.

"Corporation" or "company" includes all corporations created by acts of the General Assembly of Virginia, or under the general incorporation laws of this Commonwealth, or doing business therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth.

"Electric vehicle charging service" means the replenishment of the battery of a plug-in electric motor vehicle, which replenishment occurs by plugging the motor vehicle into an electric power source in order to charge or recharge its battery.

"Interexchange telephone service" means telephone service between points in two or more exchanges that is not classified as local exchange telephone service. "Interexchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Local exchange telephone service" means telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service. Local exchange service, as opposed to interexchange service, consists of telecommunications between points within an exchange or between exchanges which are within an area where customers may call at specified rates and charges. "Local exchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Mail" includes electronic mail and other forms of electronic communication when the customer has requested or authorized electronic bill delivery or other electronic communications.

"Municipality" or "municipal corporation" shall include an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403.

"Person" includes individuals, partnerships, limited liability companies, and corporations.

"Plug-in electric motor vehicle" means an on-road motor vehicle that draws propulsion using a traction battery that has at least four kilowatt hours of capacity, uses an external source of electric energy to charge or recharge the battery, has a gross vehicle weight of not more than 14,000 pounds, and meets any applicable emissions standards.

"Public service corporation" or "public service company" includes gas, pipeline, electric light, heat, power and water supply companies, sewer companies, telephone companies, and all persons authorized to transport passengers or property as a common carrier. "Public service corporation" or "public service company" shall not include (i) a municipal corporation, other political subdivision or public institution owned or controlled by the Commonwealth; however, if such an entity has obtained a certificate to provide services pursuant to § 56-265.4:4, then such entity shall be deemed to be a public service corporation or public service company and subject to the authority of the Commission with respect only to its provision of the services it is authorized to provide pursuant to such certificate; or (ii) any company described in subdivision (b)(10) of § 56-265.1.

"Railroad" includes all railroad or railway lines, whether operated by steam, electricity, or other motive power, except when otherwise specifically designated.

"Railroad company" includes any company, trustee or other person owning, leasing or operating a railroad.

"Rate" means rate charged for any service rendered or to be rendered.

"Rate, " "charge" and "regulation" include joint rates, joint charges and joint regulations, respectively.

"Regulated operating revenue" includes only revenue from services not found to be competitive.

"Transportation company" includes any railroad company, any company transporting express by railroad, and any ship or boat company.

"Virginia limited liability company" has the same meaning ascribed to "limited liability company" in § 13.1-1002. A foreign limited liability company, as that term is defined in § 13.1-1002, may become a Virginia limited liability company, even though also being a limited liability company organized under laws other than the laws of the Commonwealth, by filing articles of organization that meet the requirements of §§ 13.1-1003 and 13.1-1011 and include (i) the name of the foreign limited liability company immediately prior to the filing of the articles of organization; (ii) the date on which and the jurisdiction in which the foreign limited liability company was first formed,

organized, created or otherwise came into being; and (iii) the jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the foreign limited liability company, or any equivalent thereto under applicable law, immediately prior to the filing of the articles of organization. With respect to a foreign limited liability company that is also organized as a Virginia limited liability company, the terms and conditions of its organization as a Virginia limited liability company shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the foreign limited liability company in the conduct of its business or by applicable law other than the law of the Commonwealth, as appropriate.

"Voice-over-Internet protocol service" or "VoIP service" means any service that: (i) enables real-time, two-way voice communications that originate or terminate from the user's location using Internet protocol or any successor protocol and (ii) uses a broadband connection from the user's location. This definition includes any such service that permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

Code 1919, §§ 3693, 3881; 1971, Ex. Sess., c. 23; 1984, c. 382; 2002, cc. 479, 489; 2004, c. 1028; 2006, cc. 691, 912, 929, 941; 2007, c. 619; 2009, c. 746; 2011, cc. 408, 738, 740; 2016, c. 288.

§ 56-1.1. Designation as public service corporation

The State Corporation Commission may designate a business enterprise operating as a telephone or telecommunications company to be a public service corporation when, upon appropriate inquiry and public hearing, the Commission determines that the enterprise is engaged in any of the public utility services described in § 56-1. However, this section shall not apply to any mutual telephone association existing prior to January 1, 1984.

1984, c. 648.

§ 56-1.2. Persons not designated as public utility, public service corporation, etc

The terms public utility, public service corporation, or public service company, as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) of this title, shall not refer to:

1. Any person who owns or operates property and provides electricity, natural gas, water, or sewer service to residents or tenants on the property, provided that (i) the electricity, natural gas, water or sewer service provided to the residents or tenants is purchased by the person from a public utility, public service corporation, public service company, or person licensed by the Commission as a competitive provider of energy services, or a county, city or town, or other publicly regulated political subdivision or public body, (ii) the person or his agent charges to the resident or tenant on the property only that portion of the person's utility charges for the electricity, natural gas, water, or sewer service which is attributable to usage by the resident or tenant on the property, and addi-

tional service charges permitted by § 55-226.2, and (iii) the person maintains three years' billing records for such charges; or

2. Any person who is not a public service corporation and who provides electric vehicle charging service at retail. The ownership or operation of a facility at which electric vehicle charging service is sold, and the selling of electric vehicle charging service from that facility, does not render the person a public utility, public service corporation, or public service company as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale, ownership, or operation.

1993, c. 265; 1999, c. 778; 2000, c. 994; 2003, c. 355; 2011, c. 408.

§ 56-1.2:1. Retail sale of electricity in connection with the provision of electric vehicle charging service

A. The provision of electric vehicle charging service by a person who is not a public utility, public service corporation, or public service company shall not constitute the retail sale of electricity if:

1. The electricity furnished in connection with the provision of electric vehicle charging service is used solely for transportation purposes; and

2. The person providing the electric vehicle charging service has procured the furnished electricity from the public utility that is authorized by the Commission to engage in the retail sale of electricity within the exclusive service territory in which the electric vehicle charging service is provided.

B. The provision of electric vehicle charging service shall:

1. Be a permitted electric utility activity of a certificated electric utility; and

2. Not affect the status as a public utility of a certificated public utility that provides such service.

2011, c. 408.

§ 56-1.3. Regulation of Voice-over-Internet protocol service

Notwithstanding any provision of law, except §§ 56-484.12:1 and 58.1-1730, to the contrary:

1. "Telecommunications service" and "telephone service" shall not include the provision of Voice-over-Internet protocol service for purposes of regulation by the Commission.

2. The Commission shall not have jurisdiction with respect to the regulation of Voice-over-Internet protocol service, including but not limited to the imposition of regulatory fees, certification requirements, and the filing or approval of tariffs.

3. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service, as may be determined by the Commission.

2006, c. 691.

§ 56-2. Public service corporations, etc., governed by provisions of this title

Every public service corporation heretofore or hereafter incorporated and authorized to construct, maintain, or operate, in this Commonwealth, any work of public service, and every association, person, or partnership constructing, maintaining, or operating any such work, shall be governed by the provisions of this title and Title 13.1, so far as they apply to such corporations, associations, persons, and partnerships, as well as by any laws that may hereafter be enacted relating to such corporations.

Code 1919, § 3900.

§ 56-3. Expenses prior to organization

The expenses incurred prior to the organization of any public service corporation, for preliminary surveys, or for stationery or advertising, or any other necessary matter or thing, may, if deemed reasonable by the president and directors, be paid by their order.

Code 1919, § 3901.

§ 56-4. Repealed

Repealed by Acts 1954, c. 188.

§ 56-5. Triple damages for injury to property of public service corporation

Any person who shall wilfully destroy, injure, or obstruct any of the works or property of a public service corporation shall be liable to such corporation for three times the amount of the actual damage thereby sustained. This section shall not relieve such person of any liability to criminal prosecution for such offense, or of any fine or imprisonment imposed by law therefor.

Code 1919, § 3894.

§ 56-5.1. Repealed

Repealed by Acts 2005, c. 35.

§ 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.

Code 1919, § 3902.

§ 56-7. Common law, etc., remedies not altered or abridged

Nothing contained in this title shall in any way abridge or alter existing remedies at common law or under any other statute, but the new remedies given shall be deemed to be in addition to those already existing.

Code 1919, § 3903.

§ 56-8. Repeal of charter

The charter of every public service corporation heretofore or hereafter incorporated may be repealed by any future General Assembly; but no law shall be passed for taking from a company its works or property without making to it just compensation.

Code 1919, § 3891.

§ 56-8.1. Free services to members of General Assembly and others prohibited

No public service corporation doing business in this Commonwealth shall grant to any member of the General Assembly or to any state, county, district, or municipal officer any free pass, free transportation, or any rebate or reduction in the rates charged by such corporation to the general public. Any public service corporation violating this section and any person receiving any privilege or benefit prohibited by this section shall be guilty of a misdemeanor, and upon conviction thereof, shall each be fined an amount not to exceed $1,000 for each such offense. This section shall not be construed to prevent any public service corporation from granting free transportation, services or free passes to any person including those set forth herein who would by virtue of their employment or service as an officer, director or otherwise be entitled thereto, or to members of any police force or fire department while in the discharge of their official duties.

1971, Ex. Sess., c. 9.

§ 56-8.2. Appeals in rate cases

Any public service corporation which is required by law to file a schedule of rates with the Commission, or the Commonwealth, or any other party in interest or party aggrieved may appeal to the Supreme Court from any final decision or order of the Commission concerning such rates. Upon the granting of such appeal, the Supreme Court may award or refuse a writ of supersedeas, and, if a writ of supersedeas be awarded, it may suspend the operation of the action appealed from in whole or in part. Alternatively, the Supreme Court in its discretion may authorize putting into effect of the schedule of rates so filed and suspended by the Commission or the schedule of rates existing at the time of the filing of the schedule upon which the investigation and hearing have been had, or require the inauguration of the schedule of rates as ordered by the Commission, until the final disposition of the appeal. But, prior to the final reversal by the Supreme Court of the order appealed to the Supreme Court, no action of the Commission prescribing or affecting rates or charges shall be delayed, or suspended in its operation, by reason of any appeal by the party whose rates or charges are affected, or by reason of any proceeding resulting from such appeal until a suspending bond payable to the Commonwealth has been executed and filed with the

Commission with such conditions, in such penalty, and with such surety thereon as the Commission, subject to review by the Supreme Court, may deem sufficient. In any appeal from action of the Commission prescribing or affecting the rates or charges of a public service corporation, such bond, or if no bond is required, the order of the Supreme Court, shall expressly provide for the prompt refunding to the parties entitled thereto of all charges which may have been collected or received, pending the appeal, in excess of those fixed, or authorized by the final decision on appeal, with interest from the date of the collection thereon. But no bond shall be required of the Commonwealth. Any bond required under this section shall be enforced in the name of the Commonwealth before the Commission or before any court having jurisdiction, and the process and proceedings thereon shall be as provided by law upon bonds of like character required to be taken by courts of record of this Commonwealth.

1971, Ex. Sess., c. 227.

Article 2 - FORECLOSURE SALES AND DISSOLUTION

§ 56-9. Sale of public service corporation under deed of trust; how purchaser may form new corporation

If a sale be made under a deed of trust or mortgage, executed by a public service corporation, on all its works and property, and there be a conveyance pursuant thereto, such sale and conveyance shall pass to the purchaser at the sale not only the works and property of the company as they were at the time of making the deed of trust or mortgage, but any works which the company may, after that time and before the sale, having constructed, and all other property of which it may be possessed at the time of the sale other than debts due to it. Upon such conveyance to the purchaser, the company shall ipso facto be dissolved, and the purchaser shall become a corporation by any name which may be set forth in the conveyance, upon complying with the provisions of § 13.1-604.1.

Code 1919, § 3895.

§ 56-10. Effect of such sale; date for meeting of stockholders

The corporation created by or in consequence of such sale and conveyance shall succeed to all such franchises, rights, and privileges, and perform all such duties as would have been had or should have been performed by the first company but for such sale and conveyance, including in the case of a railroad corporation the duty of maintaining and operating any branch or lateral road which may have been constructed and operated before the sale, and of transporting freight and passengers thereon; save only, that the corporation so created shall not be entitled to the debts due to the first company, and shall not be liable for any debts of, or claims against, the first company, which may not be expressly assumed in the contract of purchase, and that the whole profits of the business to be done by such corporation shall belong to the purchaser or his assigns. The interest in the corporation of the purchaser or his assigns shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper, not exceeding together

the amount of stock in the first company at the time of the sale, except in pursuance of an amendment to the charter obtained according to law; and such purchaser or his assigns may assign such shares in a book to be kept for that purpose. Such shares shall thereupon be on the footing of shares in corporations generally, except only that the first meeting of the stockholders shall be held on such day and at such place as shall be fixed by the purchaser, of which notice shall be published for two successive weeks in a newspaper.

Code 1919, § 3896.

§ 56-11. Debts and claims against corporation so sold

The debts due to and by, and claims against, the corporation whose works and property are so sold, shall be subject to the provisions contained in § 56-13, and the corporation, notwithstanding its dissolution, shall, as to such debts and claims, have the power and perform the duties prescribed by that section and be served with process as therein provided.

Code 1919, § 3897; 1920, p. 20.

§ 56-12. Works and property sold under court decree subject to provisions of three preceding sections

The works and property of a public service corporation sold under a decree of a court having competent jurisdiction shall be held by the purchaser thereof subject to all the provisions of §§ 56-9 through 56-11, so far as the same may be applicable to such a sale.

Code 1919, § 3898.

§ 56-13. Effect of dissolution of public service corporation

When any public service corporation shall expire or be dissolved, or its corporate rights and privileges shall have ceased, all of its works and property, and debts due to it, shall be subject to the payment of debts due by it, and then to distribution among the members or stockholders, according to their respective interests. Such corporation may sue and be sued as before for the purpose of collecting debts due to it, prosecuting rights under previous contracts with it, enforcing its liability, and distributing the proceeds of its works, property, and debts among those entitled thereto. Notice to or process against such company, if necessary in any suit or civil proceeding, shall be sufficiently served by publication thereof once a week for four successive weeks in some newspaper published in the county or corporation wherein the suit or proceeding is; or, if there be no newspaper published in such county or corporation, in a newspaper published in some neighboring county or corporation in this Commonwealth, to be designated by the clerk of the court in which such suit or proceeding is.

Code 1919, § 3899.

Article 3 - OCCUPATION OF STREETS AND ROADS

§ 56-14. Streets, etc., of city or town not to be occupied without its consent; compensation

No public service corporation, cold storage, compressed air, viaduct, conduit, or bridge company, nor any corporation, association, person, or partnership, engaged in these or like enterprises, shall use, cross, or occupy with its works the streets or alleys, public or private, or the public grounds, of any incorporated city or town, whether along, over or under the same, without the consent of the corporate authorities thereof; and in case any person shall be damaged in his property by any such use, occupation, or crossing, such corporation, association, person, or partnership shall, before using, crossing, or occupying such streets, alleys or public grounds, make compensation therefor to the person so damaged. Such compensation, if the parties cannot agree upon the same, shall be ascertained in the mode prescribed in the laws regulating the exercise of the right of eminent domain.

Code 1919, § 3882.

§ 56-15. Permits to place poles, wires, etc., in roads and streets in certain counties; charge therefor

A. The governing body of Albemarle County, Chesterfield County, Henrico County, Prince William County, or York County, may adopt an ordinance requiring any person, firm or corporation to obtain a permit from the county engineer or such other officer as may be designated in such ordinance before placing any pole or subsurface structures under, along or in any county road or street in such county which is not included within the primary state highway system or secondary system of state highways, or any lines or wires that cross any such road or street, whether or not such road or street be actually opened, and may provide in such ordinance reasonable charges for the issuance of such a permit and penalties for violations of the terms of such ordinance to be imposed by the court, judge or justice trying the case.

B. In the event the county engineer or such other officer as may be designated fails or refuses to issue any such permit requested within thirty days after application therefor, or attaches to such permit conditions to which such person, firm or corporation is unwilling to consent, then such person, firm or corporation may proceed to make such crossing pursuant and subject to the provisions of §§ 56-23 to 56-32, as if the application had been made to the board of supervisors or other governing body of the county.

C. The provisions of this section shall not apply with regard to the occupancy and use of any public roads, works, turnpikes, streets, avenues, and alleys by a renewable generator that has acquired the authority to locate distribution facilities therein pursuant to Chapter 11 (§ 67-1100 et seq.) of Title 67.

1942, p. 222; Michie Code 1942, § 3885a; 2007, c. 813; 2009, c. 807.

Article 4 - CROSSINGS AND CONNECTIONS

§ 56-16. Wagonways to be constructed across roads, railroads, canals, and other works; enforcement

For the purpose of this section, "wagonway" means a vehicular crossing adequate to permit the passage of machinery and vehicles used for agricultural or forestal purposes, including but not limited to the transportation of agricultural and forestal products to markets. Every public service corporation whose road, railroad, canal, or works passes through the lands of any person in this Commonwealth shall provide and maintain proper and suitable wagonways across such road, railroad, canal, or other works, from one part of such land to the other, and shall keep such wagonways in good repair. Such wagonways shall be constructed and maintained on the request of the landowner, in writing, by certified mail, made to the registered agent for the corporation owning such road, railroad, canal, or other works at that point, and shall designate the points at which the wagonways are desired. If the company fails or refuses for ninety days after such request to construct and maintain wagonways of a convenient and proper character at the places designated, then the owner may apply to the circuit court of the county or city wherein such land is located for the appointment of three disinterested persons whose lands do not abut on such road, railroad, canal, or other works, who shall constitute a board of commissioners whose duty it shall be to go upon the land and determine whether the requested wagonways should be constructed and maintained.

Any delay in construction or maintenance caused by inclement weather, war, strikes, acts of God, national emergencies, or failure of any local, state, or federal government agencies to grant permits shall extend the aforesaid period. The decision of such board shall be in writing and, if favorable to the landowner, shall set forth the points at which the wagonways should be constructed and maintained, giving also a description of what should be done by the company to make and maintain a suitable and convenient wagonway. The decision of the board of commissioners shall be returned to, and filed in, the clerk's office of such court, and when called up at the next or any succeeding term of such court, it shall be confirmed, unless good cause is shown against it by the company. Either party shall have the right of appeal to the Supreme Court from the judgment of the court. If the company fails, within a reasonable time fixed by the court at the time of the confirmation of a report favorable to the landowner, to make and maintain the wagonways therein referred to, it shall pay the landowner fifty dollars for each day of such failure, which may be recovered on motion by the landowner against the company, in the circuit court of the county or city wherein such land is located having jurisdiction to try the same. The commissioners shall each receive for their services the sum of fifty dollars per day, to be taxed as a part of the costs of the proceeding.

Once the right to such wagonway has been established, should the railroad change the grade of any portion of the tracks across which such wagonway passes, it shall be the duty of the railroad to make whatever reasonable modifications of the wagonway are necessary within the railroad right-of-way to permit the passage of the aforesaid machinery and vehicles.

Code 1919, § 3883; 1994, c. 352.

§ 56-16.1. Telephone, telegraph or electric power lines crossing railroads

A. If a telephone, telegraph or electric power company desires to cross the works of a railroad company and the parties thereto cannot agree on the manner of the crossing or the compensation to be paid or the damages, if any, occasioned by such crossing, then either party may proceed under this section in such case. Such party, after complying with the provisions of §§ 56-17 and 56-18, insofar as they are applicable, may apply to the Commission within thirty days after the submission of the plans and specifications required in § 56-18, to inquire into the necessity for such crossing, the propriety of the proposed location, all matters pertaining to its construction and operation, and the crossing fee and damages, if any, to be paid to such railroad.

B. Every such application shall, in addition to the plans and specifications required in § 56-18, set forth (i) the means applicant proposes to employ to protect persons and property on the premises of the railroad; (ii) the extent to which applicant will safeguard the railroad from damage or destruction of persons or property resulting from such crossing including a provision to save the railroad harmless from claims arising as a result of such crossing; (iii) the conditions under which usage of the crossing will terminate and all interests revert to the railroad; and (iv) the means which applicant proposes to employ to prevent interference with the unlimited use of the property by the railroad including, but without limitation, the communication and transportation system on the property proposed to be crossed. The Commission may, at its discretion, require the applicant to provide a bond or insurance conditioned to save the railroad harmless from claims arising as a result of such crossing. The Commission may, as provided in § 56-19, employ experts to advise it with reference to such application.

C. If the Commission grants such application in whole or in part, the order of the Commission shall grant a license for such crossing upon compliance with the terms of the order, and shall fix a fee for such crossing and determine the damages, if any; in fixing the amount of such fees the Commission shall consider the costs involved to the company to be crossed and the periodic inspection of such works.

D. Construction shall not begin until permitted under an order provided for in paragraph C hereof unless the parties agree thereto; provided that the Commission may allow construction to proceed pending the determination of the fee and damages, if any.

1976, c. 328.

§ 56-16.2. Public utility lines crossing railroads

A. As used in this section:

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

"Public utility line" means any line, wire, pipe, or conduit that is used in connection with the provision of water, sewer, or telecommunications service by a municipality, and includes any poles and other appurtenant fixtures and structures that are necessary and appropriate for the operation and support of such line, wire, pipe, or conduit.

B. If a municipality desires to cross the works of a railroad company with a public utility line and the municipality and railroad company cannot agree on the manner of the crossing or the compensation to be paid or the damages, if any, occasioned by such crossing, then either party, after complying with the provisions of §§ 56-17 and 56-18, insofar as they are applicable, may apply to the Commission within 30 days after the submission of the plans and specifications required in § 56-18 to inquire into the necessity for such crossing, the propriety of the proposed location, all matters pertaining to its construction and operation, and a fee for such crossing and damages, if any, to be paid to the railroad company.

C. Every such application shall, in addition to the plans and specifications required in § 56-18, set forth (i) the means the applicant proposes to employ to protect persons and property on the premises of the railroad; (ii) standard railroad liability protection insurance to safeguard the railroad from damage or destruction of persons or property resulting from such crossing, including a provision to save the railroad harmless from claims arising as a result of such crossing; (iii) the conditions under which usage of the crossing will terminate and all interests revert to the railroad; and (iv) the means which the applicant proposes to employ to prevent interference with the unlimited use of the property by the railroad including, but without limitation, the communication and transportation system on the property proposed to be crossed. The Commission may, at its discretion, require the applicant to provide a bond or insurance conditioned to save the railroad harmless from claims arising as a result of such crossing. The Commission may, as provided in § 56-19, employ experts to advise it with reference to such application.

D. If the Commission grants such application in whole or in part, the order of the Commission shall require the railroad to grant to the municipality a license for such crossing upon compliance with the terms of the order, and shall fix a fee for the crossing and determine the damages, if any. The amount of the fee for the crossing fixed by the Commission shall not exceed the actual costs reasonably expected to be incurred by the railroad company as a result of the crossing and the periodic inspection of such works but shall take into consideration the systemwide administrative and other costs of the railroad to implement utility crossing agreements.

E. Construction shall not begin until permitted under an order provided for in subsection D unless the parties agree thereto; however, the Commission may allow construction to proceed pending the determination of the fee and damages, if any.

2006, c. 383.

§ 56-17. Right of one public service corporation to cross the works of another; cost

If any public service corporation deems it necessary in the construction of its works to cross the works of any other public service corporation, or if any renewable generator as defined in § 67-1100 deems it necessary to cross the works of a public service corporation in the construction of distribution facilities that are required to (i) connect a renewable energy facility that generates electricity to the electric distribution grid, (ii) distribute steam generated at a renewable energy

facility, or (iii) distribute landfill gas, it may do so; provided such crossing shall be so located, constructed, and operated as not to impair, impede, or obstruct, in any material degree, the works and operations of the railroad, canal, turnpike, or other works to be crossed; and provided such crossing shall be supported by such permanent and proper structures and fixtures, and shall be controlled by such customary and approved appliances, methods, and regulations as will best secure the safe passage and transportation of persons and property along such crossing, and will not be injurious to the works of the company to be crossed. The cost of such crossings, their appliances and apparatus, and of the repair and operation of the same, shall be borne by the party desiring to make the crossing.

Code 1919, § 3884; 2009, c. 807.

§ 56-18. Submission of plans for such crossing

Before any such work as is mentioned in § 56-17 is commenced, the president or general managing officer of the company which proposes to cross the works of another company shall submit plans, specifications and descriptions of the proposed crossing and of the proposed appliances and methods of operation thereof to the president or other general officer of the latter company; and if the plans, specifications and descriptions are accepted or if no notice of suspension of the work on such crossing by the Commission pursuant to § 56-19 is received by the first named company within thirty days after such plans, specifications and descriptions have been delivered to the president, or any general officer of the company whose works are to be crossed, the first named company may proceed with the construction and operation of the crossing, under the plans, specifications and descriptions, and with the appliances and methods, so submitted.

Code 1919, § 3884.

§ 56-19. Contest by company whose works are crossed

Any company whose works are to be crossed under the provisions of §§ 56-17 and 56-18 may, within fifteen days from the date of the submission of the plans and specifications mentioned in § 56-18, apply to the State Corporation Commission to inquire into the necessity for such crossing, and the propriety of the proposed location, and all matters pertaining to its construction and operation; and thereupon, within thirty days from the date of such submission of plans and specifications, the Commission in its discretion may, by notice served upon both companies, suspend work on such crossing for such reasonable time, prescribed in the notice, as it may deem necessary to make such inquiry. The Commission may, in its discretion, where railroads or canals are to be crossed by other railroads or canals, employ expert engineers, at a cost not exceeding $500, to be paid equally by both companies, who shall, with the Commission, or some member thereof, or such person as the Commission may designate, (1) examine the location, plans, specifications and descriptions of appliances, and methods proposed to be employed, (2) hear any objections and consider any modifications that the company whose line is to be crossed desires to offer, and (3) within such time as the Commission may fix, reject, approve, or modify such plans and spe-

cifications. The final order of the Commission shall, unless an appeal be taken to the Supreme Court within thirty days from the date of the same, be final and binding on both companies.

Code 1919, § 3884.

§ 56-20. Payment for damage occasioned by crossing works of public service corporations

If any such crossing as is provided for in §§ 56-17 to 56-19 cause damage to the works of any company, or to the owner or occupant of any lands, the company exercising the privileges granted by such sections shall make proper compensation for such damage.

Code 1919, § 3884.

§ 56-21. When work on crossing works of public service corporation to proceed; no injunction to be awarded

Upon the failure of the company desiring to make any crossing pursuant to §§ 56-17 to 56-19 to receive notice of the suspension of the work on such crossing by the Commission, within thirty days after submission of the plans, specifications and descriptions as required by § 56-18, or upon the approval or modification of the plans, specifications and descriptions by the Commission, or, if an appeal be taken as aforesaid, upon the approval or modification by the Supreme Court of the plans, specifications and descriptions, and the payment of the proper compensation for damages by the company desiring to cross the works of another company, such damages to be ascertained according to the laws regulating the exercise of the right of eminent domain, work may be commenced immediately, and no order shall be made, and no injunction awarded, by any court or judge to stay the proceedings or prosecution of the work.

Code 1919, § 3884.

§ 56-22. Change of course of railroad, etc., to avoid crossings

If any public service corporation desires that the course of any other railroad, turnpike, canal, or other works shall be changed to avoid the necessity of any crossing, or frequent crossings of the same, the change may be made in such manner and on such terms as may be agreed on by the company desiring the change, and the company, person, or county owning or having charge of the works to be affected by such change.

Code 1919, § 3884.

§ 56-23. Crossing of highway by public service corporation

If any public service corporation deems it necessary in the construction of its works or in changing its grade or line or in double tracking the same, or if, for any reason, it is required to cross a state highway or county road at grade, or at an elevation above the grade or below the grade, of such highway or road, it may do so under the conditions set forth in §§ 56-24 through 56-32.

Code 1919, § 3885; 1920, p. 411.

§ 56-24. Effect of crossing on highway

Such crossing shall be so located, constructed and operated as not to impair, impede or obstruct, in any material degree, the state highway or county road to be crossed, and so that the use of such highway or road by the public will not be materially interfered with; and shall likewise be so located, constructed and operated as not to render such highway or road less safe and convenient for the passage or transportation of persons or property along the same.

Code 1919, § 3885; 1920, p. 411.

§ 56-25. Manner of construction of crossing

Such crossing shall be supported by such permanent and proper structures and fixtures, and shall be controlled by such customary and approved appliances, methods, and regulations as will best secure the safe passage and transportation of persons and property at and along the state highway or county road along the line of the public service corporation, and will not be injurious to the highway or road to be crossed. If an underpass or overhead or grade crossing be provided for the state highway or county road, it shall be constructed with proper approaches and proper drainage of the approaches and underpass or overhead or grade crossing, so that the road therein may be safe, convenient and dry.

Code 1919, § 3885; 1920, p. 411.

§ 56-26. Cost of crossing

The cost of any such crossing, its appliances and apparatus, and of the repair and operation of the same, shall be borne by the railroad, canal, or other public service corporation desiring or required to make the crossing.

Code 1919, § 3885; 1920, p. 412.

§ 56-27. Applications required for crossings

Before the work is commenced upon any such crossing, the public service corporation which proposes to cross the public road shall make written application to and submit to the board of supervisors or other governing body of the county in which such highway is located and to the Commissioner of Highways plans, specifications and descriptions of the proposed crossing and of the proposed appliances and methods of operation thereof; and if the plans, specifications and descriptions are not accepted by such board of supervisors or other governing body aforesaid and by the Commissioner of Highways within sixty days after the same shall have been delivered to the clerk of such board of supervisors or other governing body aforesaid and to the Commissioner of Highways, such public service corporation may then proceed with the construction and operation of the crossing, under the plans, specifications and descriptions and with the appliances and methods so submitted.

Code 1919, § 3885; 1920, p. 412.

§ 56-28. Contest by county or Commissioner of Highways

The board of supervisors or other governing body aforesaid or the Commissioner of Highways may, however, within thirty days from the date of the submission of such plans, specifications and

descriptions, reject the same, and may apply to the Commission to inquire into the necessity for such crossing, and the propriety of the proposed location, and all matters pertaining to its construction and operation; and, thereupon the Commission, in its discretion, may, after notice served upon the public service corporation, the board of supervisors or other governing body aforesaid, and the Commissioner of Highways, suspend work on such crossing for such reasonable time prescribed in such notice as it may deem necessary to make such inquiry. The Commission may, in its discretion, employ expert engineers, at a cost not to exceed $500, to be paid by the public service corporation desiring the crossing, who shall, with the Commission, or some member thereof, or such person as the Commission may designate, (1) examine the location, plans, specifications and descriptions of appliances and methods proposed to be employed, (2) hear any objection, and consider any modification that the board of supervisors or other governing body aforesaid, or the Commissioner of Highways, may desire to offer, and, (3) within such time as the Commission may fix, reject, approve, or modify such plans, specifications and descriptions. The final order of the Commission shall, unless an appeal be taken to the Supreme Court by any party to the proceeding within thirty days of the date of such final order, be final and binding on the public service corporation and the board of supervisors or other governing body aforesaid, and the Commissioner of Highways.

Code 1919, § 3885; 1920, p. 412.

§ 56-29. Change of course of highway to avoid crossings

If any public service corporation desires that the course of any public road shall be changed to avoid the necessity of any crossing, or frequent crossings of the same, or for any other purpose in connection with the crossing, the change may be made in such manner, and on such terms as may be agreed on by the company desiring the change and by the board of supervisors or other governing body aforesaid and the Commissioner of Highways, after changes shall have been first clearly indicated on plans and specifications submitted to the board of supervisors or other governing body aforesaid, and the Commissioner of Highways, and after the plans and specifications shall have been approved in writing both by the board of supervisors or other governing body aforesaid, and the Commissioner of Highways.

Code 1919, § 3885; 1920, p. 412.

§ 56-30. Payment of damages occasioned by crossing highway

If any such crossing or change as is provided for in §§ 56-23 to 56-32 cause damage to any county property or public highway, or to the owners or occupants of any lands, the company exercising the privileges granted by such sections shall make proper compensation for such damage.

Code 1919, § 3885; 1920, p. 413.

§ 56-31. When work of crossing highway to proceed

Upon failure of the company desiring to make any crossing pursuant to § 56-23 to receive notice of suspension of the work on such crossing by the Commission within sixty days after submission

of the plans, specifications and descriptions as required by § 56-27, or upon the approval or modification of plans, specifications and descriptions by the Commission, or, if an appeal be taken as aforesaid, upon the approval or modification by the Supreme Court of the plans, specifications and descriptions prescribed by the Commission and the payment of the proper compensation to the state or county for damages to the state or county property, or to the owner or occupant of lands, such damage to be ascertained according to the laws regulating the exercise of eminent domain, work may be commenced immediately.

Code 1919, § 3885; 1920, p. 413.

§ 56-32. Limitation on crossing rights if altering, closing or obstructing highway or stream involved

No state highway or county road or stream, or watercourse, shall be altered, closed or obstructed by any public service corporation for any of the purposes mentioned in § 56-23 until it shall have first submitted plans and specifications to the board of supervisors or other governing body aforesaid, and to the Commissioner of Highways, of the proposed alteration, closing or obstruction, and until after the plans and specifications shall have been first approved in writing both by the board of supervisors or other governing body aforesaid, and by the Commissioner of Highways. And in any such case such public service corporation shall provide and construct an equally convenient highway or waterway in lieu of any such highway or waterway so altered, closed or obstructed.

Code 1919, § 3885; 1920, p. 413.

§ 56-33. Duty of corporation whose wires cross other works

Every corporation, association, person, or partnership erecting or maintaining any wires over or across the works of a public service corporation shall support the same by, and shall maintain, all proper and needful structures, fixtures, and approved appliances, so as to afford the utmost protection to the employees of such public service corporation and to all persons traveling upon or using the facilities of such corporation.

Code 1919, § 3888.

§ 56-34. General Assembly may require connections between public service corporations

The General Assembly reserves the right to provide for connecting any work of a railroad, canal, or turnpike company, or other public service corporation, with any other work of companies of the like character, at such point as may seem to it proper.

Code 1919, § 3887.

Article 5 - RATES, RECORDS, REPORTS, ETC

§ 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.

Const., § 156, par. (b); Code 1919, § 3709; 1971, Ex. Sess., c. 38; 1973, c. 377.

§ 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.

Const., § 156, par. (b); Code 1919, § 3710; 1971, Ex. Sess., c. 38.

§ 56-37. Regulation of services performed under municipal or county franchise

Nothing in § 56-36 shall impair the right which has heretofore been, or may hereafter be, conferred by law upon the authorities of any city, town or county to prescribe rules, regulations or rates of charge to be observed by any public service corporation in connection with any services performed by it under a municipal or county franchise granted by such city, town or county, so far as such services may be wholly within the limits of the city, town or county granting the franchise.

Const., § 156, par. (b); Code 1919, § 3712; 1971, Ex. Sess., c. 39.

§ 56-38. Adjustment of claims and controversies

Upon the request of the parties interested, it shall be the duty of the Commission, as far as possible, to effect, by mediation, the adjustment of claims, and the settlement of controversies, between public service companies and their employees and patrons.

Const., § 156, par. (b); Code 1919, § 3713; 1971, Ex. Sess., c. 24.

§ 56-39. Repealed

Repealed by Acts 1995, c. 647.

§ 56-40. Reduction of rates and charges

The Commission, in the exercise of its discretion, may permit any public utility corporation to put into effect any proposed revision of its rate schedules, or any part thereof, without notice when the proposed revision effects no increases.

1928, p. 726; Michie Code 1942, § 4065a.

§ 56-41. Repealed

Repealed by Acts 1971, Ex. Sess., c. 39.

§ 56-41.1. Rates and charges for use of poles by telephone cooperatives, mutual telephone associations and small investor-owned telephone utilities

A. The General Assembly has determined that the joint use of poles by electric light, heat and power companies, telephone cooperatives, mutual telephone associations and small investor-owned telephone utilities is in the public interest and should be encouraged to the maximum extent possible.

B. The terms and rates for the joint use of poles by electric light, heat and power companies, telephone cooperatives, mutual telephone associations and small investor-owned telephone utilities shall be by agreement between the parties. In the event that the terms and rates cannot be agreed upon by the interested parties, it shall be the duty of the Commission to determine and establish such terms and the rates to be paid for joint use.

1989, c. 605 .

§ 56-42. Repealed

Repealed by Acts 1971, Ex. Sess., c. 39.

§ 56-43. Examination of public service company; notice; fines and penalties

Upon the complaint and application of the mayor or council of any city or town or the board of supervisors or other governing body of any county within which any part of any public service company is located, it shall be the duty of the Commission to make an examination of the physical condition and operation thereof. Before proceeding to make such examination in accordance with such application, the Commission shall give to the applicants and the corporation or person operating any such line reasonable notice in writing of the time and place of entering upon the same. If upon such examination it shall appear to the Commission that the complaint alleged by the applicant is well founded, it shall so adjudge and shall notify such corporation or person of its adjudication; and, if such corporation or person fails for sixty days after such notification to remove the cause of complaint, the Commission shall impose the fines and penalties provided by law for its failure to obey the orders and requirements of the Commission and enforce the collection thereof by its judgments and processes.

Code 1919, § 3721; 1971, Ex. Sess., c. 39.

Article 6 - COMPANIES IN WHICH COMMONWEALTH IS INTERESTED

§§ 56-44 through 56-46. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-46.1. Commission to consider environmental, economic and improvements in service reliability factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearing

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (a) shall consider the effect of the proposed facility on economic development within the Commonwealth, including but not limited to furtherance of the economic and job creation objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and (b) shall consider any improvements in service reliability that may result from the construction of such facility.

B. Subject to the provisions of subsection J, no electrical transmission line of 138 kilovolts or more shall be constructed unless the State Corporation Commission shall, after at least 30 days' advance notice by (i) publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, (ii) written notice to the governing body of each such county and municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, approve such line. Such notices shall include a written description of the proposed route the line is to follow, as well as a map or sketch of the route including a digital geographic information system (GIS) map provided by the public utility showing the location of the proposed route.

The Commission shall make GIS maps provided under this subsection available to the public on the Commission's website. Such notices shall be in addition to the advance notice to the chief administrative officer of the county or municipality required pursuant to § 15.2-2202. As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned. To assist the Commission in this determination, as part of the application for Commission approval of the line, the applicant shall summarize its efforts to reasonably minimize adverse impact on the scenic assets, historic districts, and environment of the area concerned. In making the determinations about need, corridor or route, and method of installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation. If the local comprehensive plan of an affected county or municipality designates corridors or routes for electric transmission lines and the line is proposed to be constructed outside such corridors or routes, in any hearing the county or municipality may provide adequate evidence that the existing planned corridors or routes designated in the plan can adequately serve the needs of the company. Additionally, the Commission shall consider, upon the request of the governing body of any county or municipality in which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from requiring the underground placement of the line and (b) any potential impediments to timely construction of the line.

C. If, prior to such approval, any interested party shall request a public hearing, the Commission shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as may be designated by the Commission. In any hearing the public service company shall provide adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.

If, prior to such approval, written requests therefor are received from the governing body of any county or municipality through which the line is proposed to be built or from 20 or more interested parties, the Commission shall hold at least one hearing in the area that would be affected by construction of the line, for the purpose of receiving public comment on the proposal. If any hearing is to be held in the area affected, the Commission shall direct that a copy of the transcripts of any previous hearings held in the case be made available for public inspection at a convenient location in the area for a reasonable time before such local hearing.

D. As used in this section, unless the context requires a different meaning:

"Environment" or "environmental" shall be deemed to include in meaning "historic, " as well as a consideration of the probable effects of the line on the health and safety of the persons in the area concerned.

"Interested parties" shall include the governing bodies of any counties or municipalities through which the line is proposed to be built, and persons residing or owning property in each such county or municipality.

"Public utility" means a public utility as defined in § 56-265.1.

"Qualifying facilities" means a cogeneration or small power production facility which meets the criteria of 18 C.F.R. Part 292.

"Reasonably accommodate requests to wheel or transmit power" means:

1. That the applicant will make available to new electric generation facilities constructed after January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total megawatts of the additional transmission capacity created by the proposed line, for the purpose of wheeling to public utility purchasers the power generated by such qualifying facilities and other nonutility facilities which are awarded a power purchase contract by a public utility purchaser in compliance with applicable state law or regulations governing bidding or capacity acquisition programs for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant will extend only to those requests for wheeling service made within the 12 months following certification by the State Corporation Commission of the transmission line and with effective dates for commencement of such service within the 12 months following completion of the transmission line; and

2. That the wheeling service offered by the applicant, pursuant to subdivision D 1, will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L. 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line, the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include in its agreements for such wheeling service.

E. In the event that, at any time after the giving of the notice required in subsection B, it appears to the Commission that consideration of a route or routes significantly different from the route described in the notice is desirable, the Commission shall cause notice of the new route or routes to be published and mailed in accordance with subsection B. The Commission shall thereafter comply with the provisions of this section with respect to the new route or routes to the full extent necessary to give affected localities and interested parties in the newly affected areas the same protection afforded to affected localities and interested parties affected by the route described in the original notice.

F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of § 15.2-2232 and local zoning ordinances with respect to such transmission line.

G. The Commission shall enter into a memorandum of agreement with the Department of Environmental Quality regarding the coordination of their reviews of the environmental impact of electric generating plants and associated facilities.

H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from the Commission for any electric generating facility, electric transmission line, natural or manufactured gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured gas storage facility (hereafter, an energy facility) and (ii) an environmental permit for the energy facility that is subject to issuance by any agency or board within the Secretariat of Natural Resources, may request a pre-application planning and review process. In any such request to the Commission or the Secretariat of Natural Resources, the applicant shall identify the proposed energy facility for which it requests the pre-application planning and review process. The Commission, the Department of Environmental Quality, the Marine Resources Commission, the Department of Game and Inland Fisheries, the Department of Historic Resources, the Department of Conservation and Recreation, and other appropriate agencies of the Commonwealth shall participate in the pre-application planning and review process. Participation in such process shall not limit the authority otherwise provided by law to the Commission or other agencies or boards of the Commonwealth. The Commission and other participating agencies of the Commonwealth may invite federal and local governmental entities charged by law with responsibility for issuing permits or approvals to participate in the pre-application planning and review process. Through the pre-application planning and review process, the applicant, the Commission, and other agencies and boards shall identify the potential impacts and approvals that may be required and shall develop a plan that will provide for an efficient and coordinated review of the proposed energy facility. The plan shall include (a) a list of the permits or other approvals likely to be required based on the information available, (b) a specific plan and preliminary schedule for the different reviews, (c) a plan for coordinating those reviews and the related public comment process, and (d) designation of points of contact, either within each agency or for the Commonwealth as a whole, to facilitate this coordination. The plan shall be made readily available to the public and shall be maintained on a dedicated website to provide current information on the status of each component of the plan and each approval process including opportunities for public comment.

I. The provisions of this section shall not apply to the construction and operation of a small renewable energy project, as defined in § 10.1-1197.5, by a utility regulated pursuant to this title for which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1.

J. Approval under this section shall not be required for any transmission line for which a certificate of public convenience and necessity is not required pursuant to subdivision A of § 56-265.2.

1972, c. 652; 1973, c. 307; 1974, c. 498; 1983, c. 438; 1984, cc. 287, 562; 1985, c. 282; 1991, cc. 90, 148; 1996, c. 254; 2001, c. 758; 2002, c. 483; 2007, cc. 756, 761, 776, 825; 2009, cc. 808, 854; 2011, cc. 236, 243; 2012, cc. 54, 284; 2016, cc. 192, 276.

§ 56-46.2. Construction of electrical transmission lines

The construction of all overhead electrical transmission lines shall adhere to the standards set forth in the National Electrical Safety Code. The Commission shall, upon receipt of a written complaint concerning the lack of compliance with these standards in the construction of a particular transmission line, investigate the situation and, if appropriate, exercise its powers granted under § 12.1-12 to enforce adherence to the standards.

1985, c. 187.

§ 56-46.3. Foreign utility companies; penalties

A. The provisions of the Public Utility Holding Company Act of 2005 (PUHCA), which is set out at § 1261 et seq. of the Energy Policy Act of 2005, stipulate that certain exemptions afforded a foreign utility company (FUCO) under PUHCA are not applicable unless every state commission having jurisdiction over the retail electric or gas rates of a public utility company that is an associate company or an affiliate of a company (other than a public utility company that is an associate company or an affiliate of a registered holding company under PUHCA) has certified to the U.S. Securities and Exchange Commission (SEC) that it has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise its authority.

B. Upon application to the Commission by any person that (i) is an affiliated interest of a public service company, as such terms are defined in Chapter 4 (§ 56-76 et seq.) of this title, (ii) proposes to invest in or acquire a specific FUCO, and (iii) is not a registered holding company under PUHCA, and subject to the proviso contained herein, the Commission shall have the authority to impose upon, and require of, the applicant, the public service company, and any other "affiliated interests" of such public service company, such terms, conditions, limitations, restrictions, undertakings and commitments as the Commission deems necessary to protect the public interest from any adverse effects attributable to such proposed FUCO investment or acquisition, including such provisions for the enforcement thereof as the Commission shall deem necessary; and, upon doing so, may certify to the SEC that the Commission has the authority and resources to protect the ratepayers of such public service company subject to its jurisdiction and that it intends to exercise its authority; provided, however, that such applicant, the public service company, and such other affiliated interests of such public service company shall have furnished to the Commission, prior to delivery of said certification to the SEC, and in the manner prescribed by the Commission, a written statement accepting all such terms, conditions, limitations, restrictions, undertakings and commitments, as the Commission shall have so specified.

C. The Commission shall have the power to enforce the terms, conditions, limitations, restrictions, undertakings and commitments upon which said certification was based, including the power to penalize for and enjoin the violation or attempted violation thereof, and to issue

mandatory injunctions requiring such actions as may be in the public interest to remedy any such violation or attempted violation. Any person committing any such violation or attempted violation, or failing or refusing to obey any order or injunction of the Commission issued under this section, may be fined by the Commission such sum, not exceeding $100,000, as the Commission may deem proper, and each day's continuance of such condition shall be a separate offense.

1997, c. 110; 2014, c. 192.

Chapter 2 - CREATION AND POWERS OF PUBLIC SERVICE CORPORATIONS

§§ 56-47, 56-48. Repealed

Repealed by Acts 1956, c. 438.

§ 56-49. Powers

In addition to the powers conferred by Title 13.1, each public service corporation of this Commonwealth organized to conduct a public service business other than a railroad shall have the power:

1. To cause to be made such examinations and surveys for its proposed line or location of its works as are necessary to the selection of the most advantageous location or route or for the improvement or straightening of its line or works, or changes of location or construction, or providing additional facilities, and for such purposes, by its officers and servants, to enter upon the lands or waters of any person but subject to responsibility for all damages that are done thereto, and subject to permission from, or notice to, the landowner as provided in § 25.1-203.

2. To acquire by the exercise of the right of eminent domain any lands or estates or interests therein, sand, earth, gravel, water or other material, structures, rights-of-way, easements or other interests in lands, including lands under water and riparian rights, of any person, which are deemed necessary for the purposes of construction, reconstruction, alteration, straightening, relocation, operation, maintenance, improvement or repair of its lines, facilities or works, and for all its necessary business purposes incidental thereto, for its use in serving the public either directly or indirectly through another public service corporation, including permanent, temporary, continuous, periodical or future use, whenever the corporation cannot agree on the terms of purchase or settlement with any such person because of the incapacity of such person or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because any such person cannot with reasonable diligence be found or is unknown, or is a nonresident of the Commonwealth, or is unable to convey valid title to such property. Such proceeding shall be conducted in the manner provided by Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 and shall be subject to the provisions of § 25.1-102. However, the corporation shall not take by condemnation proceedings a strip of land for a right-of-way within 60 feet of the dwelling house of any person except (i) when the court having jurisdiction of the condemnation proceeding finds, after notice of motion to be granted authority to do so to the owner of such dwelling house, given in the manner provided in §§ 25.1-209, 25.1-210, and 25.1-212, and a hearing thereon, that it would otherwise

be impractical, without unreasonable expense, to construct the proposed works of the corporation at another location; (ii) in case of occupancy of the streets or alleys, public or private, of any county, city or town, in pursuance of permission obtained from the board of supervisors of such county or the corporate authorities of such city or town; or (iii) in case of occupancy of the highways of this Commonwealth or of any county, in pursuance of permission from the authorities having jurisdiction over such highways. A public service corporation which has not been (i) allotted territory for public utility service by the State Corporation Commission or (ii) issued a certificate to provide public utility service shall acquire lands or interests therein by eminent domain as provided in this subdivision for lines, facilities, works or purposes only after it has obtained any certificate of public convenience and necessity required for such lines, facilities, works or purposes under Chapter 10.1 (§ 56-265.1 et seq.) of this title.

And provided, further, that notwithstanding the foregoing nor any other provision of the law the right of eminent domain shall not be exercised for the purpose of acquiring any lands or estates or interests therein nor any other property for the construction, reconstruction, maintenance or operation of any pipeline for the transportation of coal.

For the purposes of this section, the words "public service corporation" shall include any Virginia limited liability company as defined in § 56-1 that has been issued a certificate of public convenience and necessity authorizing it to furnish telecommunications services of a public utility set forth in subdivision (b) of § 56-265.1 and that seeks to construct or acquire facilities for use in providing the certificated telecommunications service.

1944, p. 539; Michie Suppl. 1946, § 3866a; 1952, c. 497; 1956, c. 438; 1962, c. 222; 1972, c. 657; 1988, c. 649; 1990, c. 630; 1999, cc. 484, 531; 2003, c. 940; 2004, c. 1028.

§ 56-49.01. Natural gas companies; right of entry upon property

A. Any firm, corporation, company, or partnership, organized for the bona fide purpose of operating as a natural gas company as defined in 15 U.S.C. § 717a, as amended, may make such examinations, tests, hand auger borings, appraisals, and surveys for its proposed line or location of its works as are necessary (i) to satisfy any regulatory requirements and (ii) for the selection of the most advantageous location or route, the improvement or straightening of its line or works, changes of location or construction, or providing additional facilities, and for such purposes, by its duly authorized officers, agents, or employees, may enter upon any property without the written permission of its owner if (a) the natural gas company has requested the owner's permission to inspect the property as provided in subsection B, (b) the owner's written permission is not received prior to the date entry is proposed, and (c) the natural gas company has given the owner notice of intent to enter as provided in subsection C. A natural gas company may use motor vehicles, self-propelled machinery, and power equipment on property only after receiving the permission of the landowner or his agent.

B. A request for permission to inspect shall (i) be sent to the owner by certified mail, (ii) set forth the date such inspection is proposed to be made, and (iii) be made not less than 15 days prior to the date of the proposed inspection.

C. Notice of intent to enter shall (i) be sent to the owner by certified mail, (ii) set forth the date of the intended entry, and (iii) be made not less than 15 days prior to the date of mailing of the notice of intent to enter.

D. Any entry authorized by this section shall not be deemed a trespass. The natural gas company shall make reimbursement for any actual damages resulting from such entry. Nothing in this section shall impair or limit any right of a natural gas company obtained by (i) the power of eminent domain, (ii) any easement granted by the landowner or his predecessor in title, or (iii) any right-of-way agreement, lease or other agreement by and between a natural gas company and a landowner or their predecessors in title or interest.

2004, c. 829.

§§ 56-49.1 through 56-51. Repealed
Repealed by Acts 1956, c. 438.

§ 56-51.1. Repealed
Repealed by Acts 2011, c. 429, cl. 1.

§§ 56-52 through 56-54.1. Repealed
Repealed by Acts 1956, c. 438.

Chapter 2.1 - COMPETITIVE TELEPHONE COMPANIES

§ 56-54.2. Definitions
As used in this chapter, unless the context requires a different meaning:

"Competitive local exchange telephone company" means (i) a competing telephone company, excluding a city, town, or county, that was granted a certificate on or after January 1, 1996, pursuant to § 56-265.4:4 or (ii) an incumbent local exchange telephone company to the extent such company is providing service outside of its incumbent territory.

"Competitive telephone company" means (i) an incumbent local exchange telephone company whose residential dial tone lines (a) were deemed competitive by the Commission throughout the company's incumbent service territory prior to January 1, 2014, or (b) are declared competitive by the Commission throughout its incumbent service territory on or after January 1, 2014, in a proceeding pursuant to § 56-235.5 or (ii) a competitive local exchange telephone company.

"Incumbent local exchange telephone company" means a public service corporation that was providing local exchange telephone service prior to January 1, 1996, or a successor entity to such a public service corporation.

"Incumbent territory" means the area in which an incumbent local exchange telephone company was providing local exchange telephone service prior to July 1, 2002, except as its incumbent certificate may have been amended by the Commission after that date pursuant to subdivision B 1 of § 56-265.4:4.

2014, cc. 340, 376.

§ 56-54.3. Election to be regulated as a competitive telephone company

Any telephone company meeting the definition of a competitive telephone company may elect to be regulated as a competitive telephone company pursuant to the provisions of this chapter by providing written notice to the Commission of such election. The election shall be effective 30 days after receipt of the notice by the Commission unless (i) the Commission notifies the electing telephone company within that 30-day period that the telephone company does not meet the definition of a competitive telephone company and (ii) the Commission then commences a proceeding to challenge the election. In such a proceeding, interested parties shall be provided notice and an opportunity for a hearing. The Commission shall issue a final decision on any such proceeding challenging the election within 60 days of the electing telephone company's receipt of the Commission's notification of the commencement of the proceeding to challenge the election. A telephone company's election to be regulated as a competitive telephone company shall be deemed approved if the Commission fails to act within this 60-day period. A new entrant may elect to be regulated under this chapter when it applies for certification pursuant to § 56-265.4:4. Such an election will be effective upon its certification as a competitive local exchange carrier.

2014, cc. 340, 376.

§ 56-54.4. Commission authority over competitive telephone companies

Notwithstanding any other provision of law, the Commission shall not have any jurisdiction and authority, including jurisdiction and authority over any obligation of a competitive telephone company to seek approval from the Commission, to regulate, supervise, or promulgate rules relating to the retail services, rates, and terms of service of a competitive telephone company, except as specifically enumerated in this chapter. The Commission shall have discretion as to the extent to which it will exercise the authority granted to it in this chapter. Nothing in this chapter grants, affects, modifies, or limits any rights, duties, obligations, or authority of any entity, including the Commission, (i) pursuant to the provisions of 47 U.S.C. § 251 and 47 U.S.C. § 252 or (ii) related to wholesale telephone services and issues, including the payment of switched network access rates or other intercarrier compensation, interconnection, porting, and numbering.

2014, cc. 340, 376.

§ 56-54.5. Powers of the Commission

A. The Commission may ensure competitive telephone companies provide reasonably adequate retail voice service, including rendering timely and accurate bills for service, by receiving customer

complaints and requiring the competitive telephone company to reasonably address bona fide complaints as promptly as is reasonably possible under the circumstances.

B. The Commission shall continue to have jurisdiction and authority to ensure the reasonably adequate provision by competitive telephone companies of the telecommunications portions of emergency 911 services provided to PSAPs, as that term is defined in § 56-484.12.

C. The Commission shall continue to have jurisdiction and authority over Lifeline telephone service such as the Virginia Universal Service Plan, but shall not impose Lifeline telephone service obligations on competitive telephone companies that do not seek designation as eligible telecommunications carriers or impose Lifeline telephone service obligations over and above that imposed by the default Lifeline plan imposed by the Federal Communications Commission.

D. The Commission shall continue to have jurisdiction and authority to permit existing and new retail tariffs to be filed by competitive telephone companies; however, nothing in this chapter shall be construed to require a competitive telephone company to file tariffs concerning retail services.

E. Existing extended local service calling plans ordered by the Commission pursuant to Article 4 (§ 56-484.1 et seq.) of Chapter 15 that are applicable to competitive telephone companies shall remain in effect, but shall not be expanded by the Commission. The Commission shall continue to have jurisdiction and authority to enforce these extended local service calling plans, but shall not create any new plans.

F. The Commission shall continue to have jurisdiction and authority to grant, amend, reissue, and cancel certificates of public convenience and necessity of competitive telephone companies.

G. The Commission may promulgate such rules, including the revision and repeal of current rules, as may be necessary to implement the specific authority granted in this chapter.

H. The Commission shall continue to enforce the Utility Transfers Act (§ 56-88 et seq.) regarding competitive telephone companies.

2014, cc. 340, 376.

§ 56-54.6. Duties of a competitive telephone company

A. A competitive telephone company that is an incumbent telephone carrier shall have the duty in its incumbent territory to extend or expand its facilities to furnish retail voice service and facilities when the person, firm, or corporation does not have service available from one or more alternative providers of wireline or terrestrial wireless communications services at prevailing market rates.

B. A competitive telephone company shall continue to have the powers and duties provided in the first sentence of subdivision A 2 of § 56-234.

C. For the purposes of subsections A and B, the Commission shall have the authority, upon request of an individual, corporation, or other entity, or a competitive telephone company, to determine whether the wireline or terrestrial wireless communications service available to the party requesting service is a reasonably adequate alternative to local exchange telephone service.

D. The use by a competitive telephone company of wireline and terrestrial wireless technologies shall not be construed to grant any additional jurisdiction or authority to the Commission over such technologies.

E. For purposes of subsection A, "prevailing market rates" means rates similar to those generally available to consumers in competitive areas for the same services.

F. A competitive telephone company shall have the obligation to provide access to emergency 911 service to its end-user retail customers.

2014, cc. 340, 376.

§ 56-54.7. Service provided to the Commonwealth

The Commission shall have no jurisdiction or authority over (i) schedules of rates for any telecommunications service provided to the public by virtue of any contract with, (ii) any service provided under or relating to a contract for telecommunications services with, or (iii) contracts for service rendered by any competitive telephone company to, the Commonwealth or any agency thereof.

2014, cc. 340, 376.

Chapter 3 - ISSUANCE OF STOCKS, BONDS, ETC.

§ 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 "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.

1934, p. 221; Michie Code 1942, §§ 4073(1), 4073(16); 1984, c. 721; 1987, c. 479.

§ 56-56. Issue of securities a special privilege subject to regulation

The power of public service companies to issue stocks and stock certificates or other evidences of interest or ownership, and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this Commonwealth is a special privilege, the right of supervision, regulation, restriction, and control of which is and shall continue to be vested in the Commonwealth; and such power shall be exercised as provided by law and under such rules and regulations as the Commission may prescribe; provided that this section shall not apply to obligations incurred for purchase of machinery or equipment where such obligations are secured by conditional sales contracts.

1934, p. 221; Michie Code 1942, § 4073(2); 1958, c. 11.

§ 56-57. Securities to which chapter is applicable

A. This chapter shall apply to every stock or stock certificate or other evidence of interest or ownership, and, except as otherwise provided by § 56-65, every bond, note or other evidence of indebtedness, of a public service company, which may be issued, and to every obligation or liability as guarantor, endorser, surety or otherwise in respect of the securities of any other person, firm, association or corporation, when such securities are payable at periods of twelve months or more after the date thereof, which may be or may have been assumed after March 24, 1934, notwithstanding the fact that any preparatory steps, whether by the issuance or amendment of a certificate of incorporation, or by the action of the board of directors, or the stockholders or otherwise, may have been taken prior to such date.

B. Notwithstanding subsection A, this chapter shall not apply to any stock or stock certificate or other evidence of interest or ownership, or any bond, note or other evidence of indebtedness of a (i) public service company that operates under an alternative form of regulation approved by the Commission pursuant to § 56-235.5, unless the Commission rescinds such exemption as hereafter authorized, or (ii) competitive telephone company as defined in § 56-54.2, provided such securities are issued for lawful purposes pursuant to § 56-58. Any public service company exempt from this chapter shall instead provide notice to the Commission of the issuance of any stock or stock certificate or other evidence of interest or ownership, or, except as otherwise provided by §§ 56-65 and 56-65.1, any bond, note or other evidence of indebtedness, within ninety days of issuance. The Commission may rescind the exemption from this chapter provided by this subsection to any public service company that operates under an alternative form of regulation approved by the Commission pursuant to § 56-235.5 if the Commission finds, after notice and an opportunity for a hearing, that such exemption is not in the public interest.

1934, p. 225; Michie Code 1942, § 4073(11); 2001, c. 347; 2014, cc. 340, 376.

§ 56-58. Purposes for which stock, etc., may issue

A public service company may issue stocks and stock certificates or other evidences of interest or ownership, and bonds, notes and other evidences of indebtedness payable at periods of twelve months or more after the date thereof, for the following purposes and no others, namely:

(1) For the acquisition of property (including stocks, stock certificates or other evidences of interest or ownership, and bonds, notes and other evidences of indebtedness of other persons, firms, associations or corporations when the acquisition thereof has been approved and authorized by the Commission);

(2) For the construction, completion, extension or improvement of its facilities;

(3) For the improvement or maintenance of its service;

(4) For the discharge or lawful refunding of its obligations; or

(5) For the reimbursement of moneys actually expended from income, or from any other moneys in the treasury of the public service company not secured by or obtained from the issue of its stocks or stock certificates or other evidences of interest or ownership of bonds, notes or other evidences of indebtedness payable at periods of twelve months or more after the date thereof, for any of the aforesaid purposes except maintenance of service in cases where the applicant shall have kept its accounts and vouchers for such expenditures in such manner as to enable the Commission to ascertain the amount of moneys so expended and the purposes for which such expenditures were made.

1934, p. 221; Michie Code 1942, § 4073(3).

§ 56-59. Order required before acting as surety, guarantor, etc

No public service company shall henceforth assume any obligation or liability as guarantor, endorser, surety or otherwise in respect to the securities of any other person, firm, association or corporation, when such securities are payable at periods of twelve months or more after the date thereof, without having first secured from the Commission an order authorizing it so to do.

1934, p. 222; Michie Code 1942, § 4073(4).

§ 56-60. Application for order authorizing issuance of securities or assumption of liabilities

An application for an order authorizing the issue of such stocks and stock certificates or other evidences of interest or ownership, and bonds, notes or other evidences of indebtedness for any purpose described in § 56-58 or the assumption of the obligations or liabilities of any other person, firm, association or corporation as provided in § 56-59 shall be made to the Commission stating the amount, character, terms and purposes of the stocks, stock certificates or other evidences of interest or ownership, and bonds, notes and other evidences of indebtedness to be issued or assumed, and stating such other pertinent details as the Commission may require.

1934, p. 222; Michie Code 1942, § 4073(5).

§ 56-61. Action of Commission on such application

When an application is filed with the Commission under § 56-60 it shall consider and pass upon the same within twenty-five days, and when the application sets forth that such securities are to be issued or such obligations or liabilities are to be assumed for any purpose set forth in § 56-58, and the Commission so finds, it shall approve the application and issue the order applied for,

unless the Commission shall find, for reasons stated by it, that the issuance of such securities or the assumption of such obligations or liabilities is not reasonably necessary to carry out one or more of the purposes set forth in the application. The Commission may by its order grant permission for any such issuance or assumption in the amount or on the terms applied for, or in a less amount, or on different terms, or not at all, and may include in its order such terms and conditions fairly relating to the matter of such issuance or assumption as it may deem reasonable or necessary. Whenever the Commission refuses, in whole or in part, an application to issue securities or assume obligations or liabilities, or grants such an application with modifications, it shall state specifically its reasons so that such refusal or modifications may be reviewed judicially on appeal. If at the end of twenty-five days after the filing of such an application, or at the end of any extension or extensions of that time, which may have been ordered by the Commission, no order of disapproval is entered, the application shall be deemed in fact and law to have been approved, and an order shall be issued by the Commission authorizing the issuance of the securities or the assumption of the obligations or liabilities as applied for and such securities may be issued or such obligations or liabilities assumed accordingly. But the Commission may extend the original twenty-five-day period not to exceed an additional thirty days unless the Commission shall conclude that fifty-five days is not a sufficient time in which fully to investigate and determine whether such certificate shall be issued, in which event it shall by written order extend the time for a specified reasonable period, and in such order set forth the reasons for such extension, which order shall be viewed in law as a final order for purposes of appeal, and upon appeal the court shall approve or decrease the period specified in the order.

To enable it to determine whether it will issue such order, the Commission may hold a hearing and may make such additional inquiry or investigation, and examine such witnesses, books, papers, documents and contracts, and require the filing of such data as it may deem of assistance.

1934, p. 222; Michie Code 1942, § 4073(5); 1980, c. 246.

§ 56-62. Joint action with commission of another state

If a commission or other agency or agencies is empowered by another state to regulate and control the amount and character of securities to be issued by any public service company within such other state, then the Commission shall have the power to agree with such other commission or other agency or agencies of such other state on the issuance of stocks or stock certificates or other evidences of interest or ownership, and bonds, notes or other evidences of indebtedness by a public service company owning or operating a public utility both in such state and in this Commonwealth, and shall have the power to approve such issue jointly with such commission or other agency or agencies and to issue a joint certificate of such approval; provided, however, that no such joint approval shall be required in order to express the consent to and approval of such issue by the Commonwealth of Virginia if such issue is separately approved by the Commission.

1934, p. 223; Michie Code 1942, § 4073(5).

§ 56-63. Appeal from decision of Commission on issuance of securities

The public service company making any application under § 56-60 may have the decision or order of the Commission reviewed on appeal to the Supreme Court in the same manner and by the same procedure as any other order, action, or decision of the Commission, when the public service company shall deem such decision or order to be in any respect or manner improper, unjust or unreasonable.

1934, p. 223; Michie Code 1942, § 4073(5).

§ 56-64. Repealed

Repealed by Acts 1975, c. 500.

§ 56-65. Exceptions as to issue of stock, etc., in treasury, etc

The provisions of this chapter shall not apply to the sale or other disposition of any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, which may be held in the treasury of a public service company if title thereto, or possession by pledge thereof, shall have at some previous time once lawfully passed from such public utility company, nor to the issuance of bonds, notes or other evidences of indebtedness, payable at a period of less than twelve months, nor to the pledging or replacing of stocks, trust certificates, bonds, or other evidences of indebtedness to secure such bonds, notes, or evidences of indebtedness, payable at periods of less than twelve months; but if such bonds, notes, or other evidences of indebtedness shall, in whole or in part, directly or indirectly, be refunded by any issue of bonds, notes, or other evidences of indebtedness running for twelve months or more then the aforesaid mentioned provisions with regard to certificates of public convenience and applications therefor shall apply to such refunding.

1934, p. 224; Michie Code 1942, § 4073(7).

§ 56-65.1. Short-term indebtedness

Notwithstanding the provisions of §§ 56-57 and 56-65, the provisions of this chapter shall apply to the issuance of any note or notes by any public service company which has total capitalization, including securities having a maturity date of less than twelve months from the time of issue, of five million dollars or more, unless such note or notes together with all other outstanding notes and drafts of a maturity of less than twelve months on which such utility is primarily or secondarily liable, aggregates not more than twelve percent of the total capitalization of such utility.

1952, c. 148; 1976, c. 408; 1987, c. 479; 1995, c. 137.

§ 56-65.2. Repealed

Repealed by Acts 1976, c. 408.

§ 56-66. No authority to capitalize permit, franchise or contract for consolidation

The Commission shall have no power to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the Commonwealth or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right. No

contract for consolidation shall be capitalized, and no public service company hereafter shall issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger.

1934, p. 224; Michie Code 1942, § 4073(8); 1987, c. 204.

§ 56-67. Issuance of securities or assumption of liability void if order not obtained

Any stock, or stock certificate or other evidence of interest or ownership, and, except as otherwise provided by § 56-65, any bond, note or other evidence of indebtedness, of a public service company, and every assumption of obligation or liability as a guarantor, endorser, surety or otherwise in respect to the securities of any other person, firm, association or corporation, when such securities are payable at periods of twelve months, or more, after the date thereof, shall be void if issued or assumed without an order of the Commission authorizing the same, or if issued or assumed contrary in any substantial respect to any term or condition of such order as issued, or as modified prior to such issuance or assumption; but no such issuance or assumption, if made in accordance in every substantial respect with all terms and conditions of such order as issued or as modified prior to such issuance or assumption, shall be rendered void because of failure to comply with any provision of this chapter relating to procedure or other matters preceding the entry of such order.

1934, p. 224; Michie Code 1942, § 4073(10).

§ 56-67.1. Validity of authorized securities

Securities of a public service company, and assumptions by a public service company of obligations or liabilities in respect of the securities of another person, firm, association or corporation, issued or assumed pursuant to an authorizing order of the Commission and valid at the time of their issuance or assumption, shall not cease to be valid because such order is subsequently suspended, vacated, superseded or reversed.

1977, c. 631.

§ 56-68. No licensed salesman required when securities approved under this chapter

No licensed salesman shall be necessary in case of orders of approval or validation of securities under the provisions of this chapter.

1934, p. 227; Michie Code 1942, § 4073(16).

§ 56-69. Purposes to which proceeds of security issues may be applied

No public service company shall, without the consent of the Commission, apply the proceeds of the issue of any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, or any part thereof, to any purpose not specified in the Commission's order, or to any purpose specified in the Commission's order in excess of the amount authorized for such purpose, or issue or dispose of the same on any terms less favorable than those specified in such order or any modification thereof.

1934, p. 223; Michie Code 1942, § 4073(6).

§ 56-70. Accounting for disposition of proceeds of issue of securities

The Commission shall have the power to require public service companies to account for the disposition of the proceeds of all sales of stocks and stock certificates or other evidences of interest or ownership, and bonds, notes, and other evidences of indebtedness, in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order.

1934, p. 224; Michie Code 1942, § 4073(9).

§ 56-71. Violations of provisions of chapter; penalty

Every public service company which, directly or indirectly, issues or causes to be issued any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, otherwise than in conformity with the order of the Commission authorizing the same, or contrary to the provisions of this chapter, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes specified in the Commission's order, as provided in this chapter, or to any purpose specified in such order in excess of the amount in such order authorized for such purpose, shall be subject, in a proceeding before the Commission under rule to show cause, to a penalty of not more than $1,000 for each offense. Every violation of any such order, rule, direction, demand or requirement of the Commission, or of any provision of this chapter, shall be a separate and distinct offense and in case of continuing violation every day's continuance thereof shall be deemed to be a separate and distinct offense. The Commission shall also have jurisdiction, in a proceeding under § 13.1-519, to issue a cease and desist order enjoining any further or threatened violation of the provisions of this chapter.

1934, p. 225; Michie Code 1942, § 4073(12).

§ 56-72. Acts of officers, etc., bind company

For the purposes of this chapter the act, omission or failure of any officer, agent or employee of any public service company acting within the scope of his official duties or employment shall in every case be deemed to be the act, omission or failure of such public service company.

1934, p. 225; Michie Code 1942, § 4073(12).

§ 56-73. Penalty as to officers, etc., for violation of provisions of chapter

Every officer, agent or employee of a public service company, and every other person (1) who knowingly authorizes, directs, aids in, issues or executes, or causes to be issued or executed, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, otherwise than in conformity with the order of the Commission authorizing the same, or contrary to the provisions of this chapter; or (2) who, in any proceedings before the Commission, knowingly makes any false statement or representation or, with knowledge of its falsity, files or causes to be filed with the Commission any false statement or representation which

statement or representation so made, filed or caused to be filed may tend in any way to influence the Commission to make an order authorizing the issuance of any stock or stock certificate or other evidence of interest or ownership, or any bond, note, or other evidence of indebtedness, or which results in procuring from the Commission the making of any such order; or (3) who, with knowledge that any false statement or representation was made to the Commission in any proceedings tending in any way to influence the Commission to make such order, issues or executes or originally negotiates, or causes to be issued, executed or originally negotiated any such stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness; or (4) who, directly or indirectly, knowingly applies, or causes or assists to be applied the proceeds, or any part thereof, from the sale of any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, to any purpose not specified in the Commission's order or to any purpose specified in the Commission's order in excess of the amount authorized for such purpose; or (5) who, with knowledge that any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, has been issued or executed in violation of any of the provisions of this chapter, originally negotiates the same, or causes the same to be originally negotiated, shall be guilty of a misdemeanor.

1934, p. 225; Michie Code 1942, § 4073(13).

§ 56-74. State not obligated to pay or guarantee

No provision of this chapter, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the Commonwealth of Virginia to pay or guarantee, in any manner whatsoever, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of this chapter, nor shall any approval given under this chapter involve, or be construed or represented as involving, an expression of opinion on the part of the Commission as to value, and any person who shall make, directly or by implication, any statement or representation to the contrary shall be guilty of a misdemeanor.

1934, p. 226; Michie Code 1942, § 4073(14).

§ 56-75. Fees in connection with applications for authority to issue securities

Upon the filing of an application for the approval of any issue of securities or the making of any loan under the provisions of this chapter, a filing fee in the amount of $25 shall be paid, and upon the approval or validation of any such issue of securities or upon the approval or validation of the making of any such loan, and as a condition precedent to the entry of the order of approval or validation, there shall be paid an additional fee equal to one tenth of one percent of the proposed selling price of the securities and the amount of the loan, subject to credit by the amount of such filing fee, and limited, as to any one issue of securities, whether issued at once or from time to time, and as to any one loan to the amount of $250.

A public service company may seek approval in one application of more than one issue of securities and more than one loan. In that event, the filing fee shall be twenty-five dollars, and the additional fees shall be computed as if all the issues and loans were one issue or one loan.

A public service company that has paid filing fees and additional fees aggregating $250 on account of the approval of loans from the United States may apply for the approval of further loans from the United States on payment of a filing fee and without payment of additional fees.

A filing fee shall in no case be returnable, but additional fees paid in advance of approval shall be returned, in whole or in part, should the application be withdrawn or modified or disapproved in whole or in part.

1934, p. 226; Michie Code 1942, § 4073(16); 1956, c. 429.

Chapter 4 - REGULATION OF RELATIONS WITH AFFILIATED INTERESTS

§ 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.

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.

1934, p. 743; Michie Code 1942, § 3774(b); 1984, c. 721; 1987, c. 385; 1996, c. 19.

§ 56-77. Certain contracts must be approved by the Commission

A. No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right or thing, other than those above enumerated, or for the purchase or sale of treasury bonds or treasury capital stock made or entered into between a public service company and any affiliated interest shall be valid or effective unless and until it shall have been filed with and approved by the Commission. The Commission shall, after the filing of such a contract or arrangement, approve or disapprove the contract or arrangement within sixty days. The sixty-day period may be extended by Commission order for an additional period not to exceed thirty days. The contract or arrangement shall be deemed approved if the Commission fails to act within sixty days or any extended period ordered by the Commission. It shall be the duty of every public service company to file with the Commission a verified copy of any such contract or arrangement, regardless of the amount involved, and the general rule herein referred to shall remain in full force and effect as to all other public service companies.

B. The Commission may, in its discretion and upon petition of the public service company or upon the Commission's own action, choose to exempt a public service company from all or any part of the requirements imposed by subsection A if the Commission determines that such an exemption is in the public interest. In addition to exemptions for individual public service

companies, the Commission may adopt rules implementing exemptions from all or any part of the requirements imposed by subsection A. The Commission may revoke any exemptions granted under this subsection if it finds that such action is in the public interest.

C. Notwithstanding the provisions of § 56-481.2, the Commission, after giving notice and an opportunity for a hearing, may, in its discretion, require any company certificated to provide, and engaged in the provision of, local exchange telephone service to meet the requirements of subsection A.

1934, p. 744; Michie Code 1942, § 3774c; 1996, c. 19; 1998, c. 707.

§ 56-78. Exclusion from accounts of payments to affiliated companies

In any proceeding, whether upon the Commission's own motion or upon complaint, involving the rates or practices of any public service company, the Commission may exclude in whole or in part from the accounts of such public service company any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or arrangements with such affiliated interest, if it shall appear and be established upon investigation that such payment or compensation or such contract or arrangement is not consistent with the public interest. In such proceeding any payment or compensation may be disapproved or disallowed by the Commission, in whole or in part, unless satisfactory proof is submitted to the Commission of the cost to the affiliated interest rendering the service or furnishing the property or service above described.

1934, p. 744; Michie Code 1942, § 3774d.

§ 56-79. Proof of costs in cases of payment to affiliated companies

No proof shall be satisfactory, within the meaning of the foregoing sections, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom, as the Commission may deem adequate, properly identified and duly authenticated; provided, however, that the Commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts.

1934, p. 745; Michie Code 1942, § 3774e.

§ 56-80. Continuing supervisory control over terms and conditions of contracts

The Commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The Commission shall have the same jurisdiction over the modification or amendment of contracts or arrangements herein described as it has over such original contracts or arrangements. The fact that the Commission shall have approved entry into any such contract or arrangement shall not preclude disallowance or disapproval of payments made pursuant thereto in the future, if upon actual experience under such contract or arrangement, it appears that the payments provided for, or made, were, or are, unreasonable. Every order of the Commission

approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the Commission to revise and amend the terms and conditions thereof, if, when and as necessary to protect and promote the public interest.

1934, p. 745; Michie Code 1942, § 3774f.

§ 56-81. Summary order prohibiting treatment of payments as operating expenses, etc

Whenever the Commission shall find upon investigation (1) that any public service company is giving effect to any contract or arrangement of the character described in § 56-77, entered into after March 29, 1934, when such contract or arrangement shall not have been filed with the Commission as required by this chapter, or (2) that any public service company is making payment to an affiliated interest, although such payments have been disallowed and disapproved by the Commission under this chapter or in a proceeding involving the public service company's rates or practices, the Commission may, in the former case, and shall, in the latter case, issue a summary order prohibiting the public service company from treating any payments made under the terms of such contract or arrangement or any payments so disallowed and disapproved as operating expenses or as capital expenditures for rate or valuation purposes, unless and until such payments shall have received the approval of the Commission.

1934, p. 745; Michie Code 1942, §§ 3774g, 3774h.

§ 56-82. Approval of loans to affiliates, etc

No public service company shall henceforth make, extend or renew any loan of money to any affiliated interest or assume, extend or renew any obligation or liability whatsoever of any affiliated interest, whether as guarantor, endorser, surety or otherwise, unless the Commission shall first have approved such loan or assumption, or the extension or renewal of such loan, obligation, or liability, as being not inconsistent with the public interest, and then only upon such terms and conditions as may be set forth in the order of the Commission approving such transaction. The Commission shall, after the filing of such a loan, obligation, or liability, approve or disapprove the loan, obligation, or liability within sixty days. The sixty-day period may be extended by Commission order for an additional period not to exceed thirty days. The loan, obligation, or liability shall be deemed approved if the Commission fails to act within sixty days or any extended period ordered by the Commission. This section shall not be construed so as to invalidate or impair any such loan, obligation, or liability lawfully made, extended or renewed, or assumed, extended or renewed, and entered into prior to March 29, 1934.

1934, p. 745; 1938, p. 21; Michie Code 1942, § 3774i; 1998, c. 707.

§ 56-83. Summary order prohibiting payment of dividends to affiliates

The Commission may, of its own motion, whenever facts of record in any department of the Commission or within its knowledge appear to justify it in so doing, or upon complaint by the Commonwealth, and after reasonable notice, and opportunity to be heard, and upon hearing and consideration, either formal or informal, issue a summary order prohibiting any public service

company from declaring or paying any dividend on any common or equity stock in any case in which such dividend or any part thereof would be payable to an affiliated interest as defined in § 56-76, and such summary order may, in case of emergency, be issued under like circumstances as preliminary injunctions are issued by the courts of equity of this Commonwealth, and in either case such summary order so issued may thereafter be made permanent, or be modified, or be vacated, after such investigation and hearing as may be proper to satisfy the requirements of due process of law. The jurisdiction of the Commission under this section shall be based upon considerations of public interest, and the summary order herein provided for shall be issued only upon a finding that the declaration or payment of any dividends is, as a matter of fact, inconsistent with the public interest on account of the probability of disabling the public service company from continuing to perform adequately its public duties, or that there is a purpose on the part of such affiliated interest to gain unjust advantage or profit to the probable detriment of the public service company, bondholders, other classes of stockholders, or any others having rights in the premises.

1938, p. 21; Michie Code 1942, § 3774i1.

§ 56-84. Application or petition by public service company and affiliates; hearing; action of Commission; conditions imposed on foreign corporations

In every case wherein the approval of the Commission is required of any contract, arrangement, loan, extension or renewal thereof, assumption of obligation or liability, renewal or extension thereof, or any transaction or act, an application or petition, duly executed and verified by any such public service company and by each and every corporation, partnership, association or person constituting an affiliated interest, who are parties to such transaction or act, shall be presented to and filed with the Commission which, upon hearing, either formal or informal, as may be determined by the Commission, may, in addition to passing upon the propriety of the proposed transaction or act subject to approval under this chapter, pass upon all questions of jurisdiction of the Commission and upon whether any party is, as a matter of fact and law, an affiliated interest. And in any such proceeding the Commission may require, as a condition precedent to an approval or action upon the proposed transaction or act, any other corporation, partnership, association or person which it appears to the Commission, prima facie, is or might be an affiliated interest, to join, or to be joined, as a party to the proceeding. And the Commission may, in its discretion, impose any condition as to obtaining a license to transact business in Virginia on the part of any foreign corporation which it appears would contravene any provision of Article 17 (§ 13.1-757 et seq.) of Chapter 9 of Title 13.1 by the performance of the proposed transaction or act or may require any such foreign corporation to submit to the jurisdiction of the Commission under § 13.1-759 or otherwise for a determination of such question, whenever the public interest and the due enforcement of this chapter and of other laws under the jurisdiction of the Commission appear to require such course.

1938, p. 22; Michie Code 1942, § 3774i2.

§ 56-85. Offenses

Every public service company (1) entering into, participating in or acting under any contract or arrangement, required by this chapter to be approved by the Commission, before obtaining such approval, or (2) making any loan, extension or renewal thereof, or assuming any obligation or liability, or extension or renewal of any such obligation or liability, required by this chapter to be approved by the Commission, before obtaining such approval, or (3) making any declaration or payment of any dividends after entry of a summary order, either temporary or permanent, prohibiting such declaration or payment in accordance with the provisions of this chapter, or (4) otherwise violating any provision of this chapter, or of any valid order of the Commission entered in pursuance thereof, shall be subject to a fine, to be imposed in a proceeding before the Commission instituted for the purpose of determining whether there is any liability hereunder, of not less than $10 and not in excess of $500, together with the costs of the proceeding as adjudged by the Commission and as taxed by the clerk of the Commission according to law; and every day of any such violation which, in its nature, is continuing, may be deemed a separate offense.

Every public service company and every affiliated interest participating in any contract, arrangement, loan, or assumption, declaration or payment of dividends, or doing any other act, in violation of this chapter, or in violation of any valid order of the Commission hereunder, and every officer, director, or employee of any such public service company or of any such affiliated interest, knowingly authorizing, directing, aiding in or executing or causing to be executed, any such contract or arrangement, loan or assumption, declaration or payment of dividends, in violation of this chapter, or in violation of any valid order of the Commission hereunder, shall be guilty of a misdemeanor, and such liability for a misdemeanor shall be in addition and cumulative to any liability for the imposition of a fine or penalty as hereinbefore provided in this section.

1938, p. 22; Michie Code 1942, § 3774i3.

§ 56-86. Appeal from decisions of Commission under chapter

Any public service company or affiliated interest or any other interested corporation, partnership, association or person, or the Commonwealth, deeming any decision or order of the Commission, rendered or entered under the provisions of this chapter, and being final in its general character with respect to any such company, interest, corporation, partnership, association, person, or the Commonwealth, to be in any respect or manner improper, unjust or unreasonable, may appeal the same to the Supreme Court in the same manner and by the same procedure as provided by law for review of any other decision or order of the Commission.

1934, p. 746; 1938, p. 23; Michie Code 1942, § 3774j.

§ 56-87. Rules of Commission to carry out chapter

The Commission is empowered to promulgate such rules and regulations as it may deem necessary or proper to carry out the provisions of this chapter.

1934, p. 746; 1938, p. 23; Michie Code 1942, § 3774k.

Chapter 5 - UTILITY TRANSFERS ACT

§ 56-88. Definitions

In this chapter the following terms shall have the following meanings:

"Acquire" or "acquisition" includes any purchase or other acquisition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Company" means a corporation, a partnership, an association, a joint-stock company, a business trust or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or county.

"Dispose of" or "disposition" includes any sale or other disposition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Public utility" means any company which owns or operates facilities within the Commonwealth for the generation, transmission or distribution of electric energy for sale; for the production, transmission or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas for sale for heat, light or power, but excluding any company described in subdivision (b)(8) or (b)(10) of § 56-265.1; or for the furnishing of sewerage facilities or water.

"Utility assets" means the facilities in place of any public utility or municipality for the production, transmission or distribution of electric energy or natural or manufactured gas, or for the furnishing of sewerage facilities or water.

"Utility security" means any note, draft, debenture, bond, share of stock, certificate, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, receiver's or trustee's certificate or any other instrument or interest commonly known as a security which is issued, assumed or guaranteed by any public utility or any company which would be a public utility if the facilities owned or operated by it were within the Commonwealth, or any company substantially engaged in the ownership of any of the aforesaid securities or in supplying management or advice to any of the aforesaid companies; or any certificate of deposit for, voting trust certificate for, certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase or acquire, any of the aforesaid securities.

1940, p. 425; Michie Code 1942, § 3774l; 1992, c. 376; 2000, cc. 528, 543; 2009, c. 746.

§ 56-88.1. Acquisition or disposition of control of a public utility

A. No person, whether acting alone or in concert with others, shall, directly or indirectly, acquire or dispose of control of:

1. A public utility within the meaning of this chapter, or all of the assets thereof, without the prior approval of the Commission. Any person proposing an acquisition or disposition for which Com-

mission approval is required by this section shall seek such approval pursuant to the procedure of § 56-90; or

2. A telephone company, or all of the assets thereof, without the prior approval of the Commission. In determining whether to grant approval, the Commission shall consider only the financial, managerial, and technical resources to render local exchange telecommunications services of the person acquiring control of or all of the assets of the telephone company.

The Commission shall, after the filing of a completed application, approve or disapprove the requested acquisition or disposition within 60 days. The 60-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 60 days or any extended period ordered by the Commission.

B. Any such acquisition or disposition of control without prior approval shall be voidable by the Commission. In addition, the Commission is authorized to revoke any certificate of public convenience and necessity it has issued, order compliance with this chapter, or take such other action as may be appropriate within the authority of the Commission.

C. For purposes of this section, "control" means (i) the acquisition of 25 percent or more of the voting stock or (ii) the actual exercise of any substantial influence over the policies and actions of any public utility or telephone company.

D. This section shall not apply to any company engaged in the business of generating electricity whose rates and services are not regulated by the State Corporation Commission.

1992, c. 376; 2011, cc. 738, 740.

§ 56-89. Acquisition or disposition of utility assets or utility securities

It shall be unlawful for any public utility, directly or indirectly, to acquire or dispose of any utility assets situated within the Commonwealth or any utility securities of any other company unless such acquisition or disposition shall have been authorized by the Commission. If and when so authorized by the Commission, any public utility may acquire or dispose of any such utility assets or utility securities; but no such authorization by the Commission shall confer upon any county or municipality authority, other than that otherwise conferred by law, to acquire or to dispose of any utility assets or utility securities.

1940, p. 426; Michie Code 1942, § 3774m.

§ 56-90. Procedure for authority to acquire or dispose of utility assets or securities

Application for authority to acquire or dispose of utility assets or utility securities under § 56-89 shall be by petition to the Commission. The petition may be joint or several. It shall be signed and verified by the president or any vice-president and the secretary or any assistant secretary of the petitioner. The petition shall clearly summarize the object in view, the proposed procedure and the terms and conditions thereof. Upon the filing of the petition, if the Commission shall

deem a hearing necessary, the Commission shall assign the matter for prompt hearing. If and when the Commission, with or without hearing, shall be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition, the Commission shall make such order in the premises as it may deem proper and the circumstances require, and thereupon it shall be lawful to do the things provided for in such order, subject, however, to the exception contained in § 56-89 as to counties and municipalities.

1940, p. 426; Michie Code 1942, § 3774o.

§ 56-90.1. Sale of utility assets or undivided fractional interest therein; taxation

If the Commission shall have granted a petition filed pursuant to § 56-90 in which a public utility has applied for authority to sell utility assets or associated properties situated within the Commonwealth, or an undivided fractional interest therein, to (i) an association of one or more electric cooperatives or electric membership corporations that are wholesale customers of the electric public utility, (ii) an association of one or more cities or incorporated towns that are wholesale customers of the electric utility, (iii) any combination of such associations, or (iv) another public utility then, notwithstanding any other provisions of law:

(1) A waiver made by any such electric public utility, association of cooperatives, cities or towns of any right it may have to compel partition, whether pursuant to the provisions of Article 9 (§ 8.01-81 et seq.) of Chapter 3 of Title 8.01, or otherwise, shall be effective and enforceable against (i) such public utility, association of cooperatives, cities or towns, and their successors and assigns, and (ii) all creditors of such public utility, association of cooperatives, cities and towns, their successors and assigns, who have notice of record of such waiver, so long as the waiver shall be limited so as not to exceed ninety-nine years;

(2) No state recording tax shall be payable upon the admission to record of any deed, deed of trust, mortgage, bill of sale, contract, agreement or other writing supplemental to any such instrument which conveys or reconveys such utility assets or properties, or an undivided fractional interest therein or secures any bonds or other obligations of such association of cooperatives, cities or towns or combination thereof; provided, however, that any local recording taxes shall be payable as though the state recording taxes had been collected;

(3) No state franchise tax or local license tax shall be payable on the proceeds of any such sale of utility assets or properties, or an undivided fractional interest therein; and

(4) Unless otherwise expressly agreed by the joint owners the joint ownership of such utility assets or properties as approved by the Commission shall not constitute a partnership or joint venture among the owners.

1979, c. 238; 1980, c. 703.

§ 56-91. Violations of chapter

Any company violating any provision of § 56-89 shall upon conviction be fined not more than $1,000.

1940, p. 426; Michie Code 1942, § 3774n.

§ 56-92. Short title
This chapter may be cited as the Utility Transfers Act.

1940, p. 426; Michie Code 1942, § 3774q.

Chapter 6 - TRANSPORTATION COMPANIES GENERALLY

Article 1 - RATES AND CHARGES

§§ 56-93 through 56-99.1. Repealed
Repealed by Acts 1996, cc. 114 and 157.

§ 56-99.2. Commission authority over rates, rules, classifications and practices of railroad companies
Notwithstanding any other provision of law, the State Corporation Commission shall have the authority to administer and prescribe the rates, rules, classifications and practices of railroad companies exclusively in accordance with the provisions of Subtitle IV of Title 49 of the United States Code, as amended by the Staggers Rail Act of 1980, Public Law 96-448. The Commission shall also have the authority to establish, by rule or regulation, standards and procedures to administer the rates, rules, classifications and practices of railroad companies exclusively in accordance with federal law.

1983, c. 443.

§ 56-100. Repealed
Repealed by Acts 1970, c. 618.

§§ 56-100.1, 56-101. Repealed
Repealed by Acts 1996, cc. 114 and 157.

§ 56-102. Unlawful to charge other than published tariff
When rates, fares, and charges excluding those covered by contracts have been published in a tariff, it shall be unlawful for any such company to charge, demand, collect, or receive from any person a greater or less compensation for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges, unless it is determined that a rate, fare or charge has been recorded in error.

Code 1919, § 3910; 1979, c. 106; 1996, cc. 114, 157.

§§ 56-102.1 through 56-110. Repealed
Repealed by Acts 1996, cc. 114 and 157.

Article 2 - SERVICE

§ 56-111. When railroads may operate by motor vehicle or aircraft

Any railroad doing business in this Commonwealth may acquire, own and operate motor vehicles for the purpose of transporting persons or property over the public highways as a common carrier by motor vehicle as that term is defined by § 46.2-2000, subject to the laws of Virginia governing the operations and regulation of common carriers by motor vehicle and all lawful regulations of the Commonwealth made pursuant thereto and applying to other motor vehicles or other common carriers by motor vehicle, including the laws requiring the payment of registration and license fees and other taxes by common carriers by motor vehicle, when lawfully authorized in accordance with the provisions of such laws and regulations.

Any such railroad may also acquire, own and operate equipment for and engage in air transportation, subject to the provisions of the law regulating air transportation.

1938, p. 1000; Michie Code 1942, § 3857a; 1944, p. 537; 1996, cc. 114, 157.

§§ 56-112 through 56-116. Repealed
Repealed by Acts 1996, cc. 114 and 157.

§ 56-117. Company to notify consignee of arrival of freight
It shall be the duty of every railroad company, or carrier, upon the arrival of freight shipped to any of its depots or stations, to notify the consignee by mail, electronic data transfer, or otherwise when such freight is ready for delivery, and to give a reasonable time for the removal of the same, making due allowance for its class and bad weather and holidays.

Code 1919, § 3916; 1996, cc. 114, 157.

§ 56-118. Freight bill; what to contain
Every railroad company or line, doing business in this Commonwealth, shall, at the time when such company delivers any articles shipped or transported over its line, furnish to the owner or consignee thereof, or to his agent, a bill, plainly stating the class of freight to which the articles belong, the weight thereof, and the rate charged for transporting the same. Bills may be furnished by mail or contemporaneous electronic transmission.

Code 1919, § 3917; 1996, cc. 114, 157.

Article 3 - LIABILITIES

§ 56-119. Contracts, etc., limiting liability invalid
No contract, receipt, rule, or regulation shall exempt any transportation company from the liability of a common carrier which would exist had no contract been made or entered into and no such contract, receipt, rule, or regulation for exemption from liability for injury or loss occasioned by the neglect or misconduct of such transportation company as a common carrier shall be valid. The liability referred to in this section shall mean the liability imposed by law upon a common carrier for any loss, damage, or injury to freight or passengers in its custody and care as a common carrier.

Code 1919, §§ 3926, 3930; 1979, c. 477.

§§ 56-120, 56-121. Repealed

Repealed by Acts 1964, c. 219.

§ 56-122. When railroad, steamship, etc., companies not liable as a common carrier

Whenever any corporation, company, or association not incorporated by or formed in the Commonwealth, or any person or partnership not a resident thereof, shall obtain from a railroad, steamship, or steamboat company the right or privilege of carrying articles upon the trains, steamships, or steamboats of such railroad, steamship, or steamboat company, such railroad, steamship, or steamboat company shall not in any manner be liable as a common carrier for any article thereafter delivered to such corporation, company, association, person, or partnership for carriage as aforesaid.

Code 1919, § 4031; 2014, c. 192.

§ 56-123. Adjustment of claims against carriers

Every claim against a common carrier doing business in the Commonwealth for loss or damage to property while in its possession, and every claim for storage, demurrage and car service against such carrier under the rules and regulations prescribed by the State Corporation Commission, shall be adjusted and paid within 60 days in case of shipments wholly within the Commonwealth, and within 90 days in case of interstate shipment, and within 60 days in case of claims for demurrage or car service after the filing of such claim with the agent of such carrier at the point of destination of such shipment or with the claims department of such common carrier. No such claims shall be filed until after the arrival of shipment or some part thereof at the point of destination or until after the lapse of a reasonable time for the arrival thereof, when such claim is for loss or damage to freight. In every case such carrier shall be liable for the amount of such loss or damage to freight, or such penalty as is prescribed for failure to comply with the rules and regulations of the Commission, relating to storage, demurrage, and car service, together with interest thereon from the date of the filing of the claim therefor, until the payment thereof. Failure to adjust and pay such claim within the periods herein respectively prescribed shall subject such common carrier so failing to a penalty of $25 for each and every such failure, to be recovered by such claimant so aggrieved in the same action or proceedings in any court having jurisdiction in the Commonwealth; provided, that unless such claimant recover in such action the full amount claimed by him no penalty shall be recovered, but only the actual amount of the loss or damage to freight, or amount due for storage, demurrage or car service, with interest as aforesaid; and, provided further, that if in such action or proceedings such claim shall be found to be fraudulent the claimant shall pay to the carrier a penalty of $25, to be recovered along with the costs. If after such periods above prescribed, the carrier shall voluntarily pay the full amount so claimed, then such penalty alone may be recovered as aforesaid by the claimant.

1918, p. 467; 1922, p. 420; Michie Code 1942, § 3928a; 2005, c. 839.

§ 56-124. Procedure in action on such claims

In any action which may be instituted pursuant to § 56-123 before a general district court for an amount not exceeding $300, either party at or before the return day of the warrant may, in lieu of or in addition to giving evidence at the hearing, file an affidavit relating to the subject matter and in such case the other party to such action shall have a right to a continuance for a reasonable time; provided, that any party to such action may give reasonable notice to the party filing such affidavit and take the deposition of the affiant, at such time and place as the court may prescribe, the taking of such deposition to be governed by the rules of law in force regarding the cross-examination of witnesses. Such affidavits and depositions shall be read with the same force and effect as if taken in the form of a deposition after due notice to the other party. In the event of appeal of any such action such affidavits and depositions shall be read in the appellate court with the same force and effect as before the general district court.

1918, p. 467; 1922, p. 421; Michie Code 1942, § 3928b; 2005, c. 839.

§ 56-125. Suits against unincorporated carriers

When transportation lines are owned or operated by persons, partnerships, or associations, not incorporated, any one or more of them may be sued by his or their name or names only, and such suit shall not abate for want of joining any of the copartners or coproprietors.

Code 1919, § 3931.

Article 4 - LIEN

§§ 56-126, 56-127. Repealed

Repealed by Acts 1964, c. 219.

Article 5 - STATE CORPORATION COMMISSION; SURETY BONDS ON EMPLOYEES; TRANSPORTATION OF EXPLOSIVES, CONVICTS AND INSANE PERSONS

§ 56-128. Commission's examination of all transportation companies, etc

The Commission may examine all the railroads and other transportation companies, and the works and equipment thereof so that it may keep itself informed as to their physical condition, the manner in which they are operating with reference to the security and accommodation of the public, and whether they are in compliance with the provisions of their charters and the laws of the Commonwealth. The provisions of this section shall apply to all railroads and other transportation companies, and to the corporations, trustees, receivers, or other person owning or operating the same.

Code 1919, § 3718; 1987, c. 185.

§ 56-129. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-129.1. Participation in the Federal Railroad Administration Safety and Inspection Program

The State Corporation Commission shall have the authority to participate in carrying out safety inspection activities in connection with any rule, regulation, order, or standard prescribed by the Secretary of Transportation of the United States under the authority of the Federal Railroad Safety Act (49 U.S.C. § 20101 et seq.) as delegated to the Commonwealth by the Federal Railroad Administration, provided that the Commission shall comply with all the requirements imposed by the United States Code. The Commission shall employ such expert, professional or other assistance as is necessary to carry out the activities authorized by this section. Safety inspectors shall attain the Federal Railroad Administration qualifications necessary to qualify the Commonwealth for federal funds. A maximum of $200,000 paid to the State Corporation Commission under §§ 58.1-2660 through 58.1-2662 shall be allocated to this program.

The Commission shall have the authority to adopt such rules in conformance with the Federal Railroad Safety Act that are necessary for the promulgation of railroad safety within the Commonwealth.

1981, c. 363; 1987, c. 145; 1996, cc. 114, 157.

§ 56-130. Penalty for failure to make necessary repairs, etc

If any railroad, or other railroad company, when directed by a valid order of the Commission, refuses or fails to comply with any requirement imposed pursuant to § 56-129.1, such company shall, in the discretion of the Commission, be fined in accordance with federal guidelines.

Code 1919, § 3932; 1996, cc. 114, 157.

§ 56-131. Accident Investigation and Reporting

The Commission shall investigate the cause of any accident on any railroad which, in its judgment, requires investigation. The Commission shall require every common carrier by railroad doing business in this Commonwealth to file all reports required by the Federal Railroad Administration pursuant to the Federal Accidents Reports Act and regulations issued pursuant thereto to the Commission at its office in Richmond, Virginia, provided that neither such report nor any part thereof shall be admitted as evidence in any suit or action for damages growing out of any matter mentioned in such report.

Code 1919, § 3737; 1996, cc. 114, 157.

§ 56-132. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§§ 56-133 through 56-135. Repealed

Repealed by Acts 1956, c. 492.

§§ 56-136 through 56-138. Repealed

Repealed by Acts 1979, c. 405.

§ 56-139. Repealed
Repealed by Acts 1996, cc. 114 and 157.

§ 56-140. Penalty for violation of chapter, orders, rules or regulations
Any transportation company which violates any of the provisions of this chapter, or refuses to conform to or obey any lawful rule, order, or regulation of the Commission relating to the provisions of this chapter, may, when not otherwise provided in this chapter, be fined by the Commission, in its discretion, in a sum not exceeding $500 for each offense, and each day such company continues to violate any provision of this chapter, or continues to refuse to obey or perform any lawful rule, order, or regulation prescribed by the Commission, shall be a separate offense.

Code 1919, § 3925.

§ 56-141. Repealed
Repealed by Acts 1994, c. 314.

Chapter 7 - AIR CARRIERS [Repealed]

§§ 56-142 through 56-206. Repealed
Repealed by Acts 1970, c. 708.

Chapter 8 - CANAL COMPANIES [Repealed]

§§ 56-207, 56-208. Repealed
Repealed by Acts 1981, c. 177.

Chapter 9 - DISTRIBUTION AND POWER SUPPLY COOPERATIVES [Repealed]

§§ 56-209 through 56-231.14. Repealed
Repealed by Acts 1999, c. 874.

Chapter 9.1 - UTILITY CONSUMER SERVICES COOPERATIVES AND UTILITY AGGREGATION COOPERATIVES

Article 1 - UTILITY CONSUMER SERVICES COOPERATIVES ACT

§ 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.

1999, c. 874; 2000, cc. 944, 964, 989, 999.

§ 56-231.16. Organization; purpose

A. Any number of natural persons not less than five may, by executing, filing and recording articles of incorporation as hereinafter set forth, form a cooperative, either with or without capital stock, not organized for pecuniary profit, for the principal purpose of making energy, energy services, and other utility services available at the lowest cost consistent with sound economy and prudent management of the business of such cooperative and such other purposes as its membership shall approve: (i) provided, however, that within its certificated service territory, no such cooperative shall, prior to July 1, 2000, undertake or initiate any new program (a) to buy or maintain an inventory of HVACR equipment or household appliances, (b) to 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, (c) to sell HVACR equipment or household appliances to customers metered and billed on residential rates, (d) to 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 traditional cooperative activities, (e) to 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 (f) to 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 traditional cooperative activities; (ii) provided further, that notwithstanding clause (i), such cooperative may engage within its certificated service territory in any of the activities enumerated in clause (i) that (a) have received State Corporation Commission approval prior to February 1, 1998, (b) such cooperative is ordered or required to undertake by any jurisdictional court or regulatory authority, (c) were lawfully undertaken prior to February 1, 1998, (d) are specifically permitted by statute, or (e) are undertaken by any other regulated public service company or its unregulated affiliate within such cooperative's certificated service territory; and (iii) also provided that such cooperative or its affiliate may not undertake such activities as are prohibited by clause (i) within the certificated service territory of another public service company unless such activities are undertaken by such public service company or its unregulated affiliate within such cooperative's certificated service territory. In addition, such cooperative may establish one or more subsidiaries to engage in any other business activities not prohibited by law; notwithstanding the foregoing, no such subsidiary may engage in any business activities that the cooperatives are prohibited from engaging in under this section. For purposes of determining whether a cooperative is formed not for pecuniary profit, the establishment of one or more affiliates thereof on a for-profit basis shall not disqualify such entity from being formed as a cooperative pursuant to this article.

B. Nothing in this article shall be construed to authorize a cooperative formed pursuant to this article, or any affiliate thereof, to engage, on a not-for-profit basis, within either the cooperative's certificated service territory or in the certificated service territory of another public service company, in the sale of products, the provision of services, or other business activity, except for regulated electric utility services, unregulated sales of electric power to its members within its certificated service territory, and traditional cooperative activities. However, if such products or services are not currently provided by any person other than a cooperative formed under or subject to this chapter or its affiliate and the Commission determines that no such other person is likely, within a reasonable time, to effectively provide such products and services in such territory, an affiliate of a cooperative may provide such products or services on a not-for-profit basis. The Commission shall also permit an affiliate of a cooperative formed under or subject to this chapter to provide such products or services on a not-for-profit basis upon a finding that the affiliate will not receive the benefit of any federal income tax exemption that is not available to persons other than cooperatives and will not receive the benefit of any federally guaranteed or subsidized financing that is not available to persons other than cooperatives; and provided further that nothing in this subsection shall prohibit the continued operation of any business activities of any not-for-profit cooperative or affiliate formed, operating, and actively providing products or services to customers on or before July 1, 1999.

1999, c. 874; 2000, cc. 964, 989.

§ 56-231.17. Articles of incorporation

A. The articles of incorporation mentioned in § 56-231.16 shall be entitled and endorsed "Articles of Incorporation of the . . . . . Electric Cooperative" or "Articles of Incorporation of the . . . . . Utility Consumer Services Cooperative" (the blank space being filled in with the distinguishing part of the name of the cooperative) and shall state:

1. The name of the cooperative, which name need not contain the word "corporation" or "incorporated" but shall be such as to distinguish it from any other cooperative.

2. To the extent it conducts regulated electric distribution operations, a reasonable designation of the territory in which such operations are principally to be conducted.

3. The location of its principal office and post office address thereof.

4. The maximum number of directors, which shall be not less than five.

5. The names and post office addresses of the directors who are to manage the affairs of the cooperative for the first year of its existence, or until their successors are chosen.

6. The period, if any, limited for the duration of the cooperative.

7. The terms and conditions upon which persons shall be admitted to membership in the cooperative, and in the case of a cooperative incorporating with capital stock, a statement of the maximum and minimum amount of the capital stock of the cooperative and its division into shares.

8. In the case of a cooperative incorporating on or after July 1, 1999, the registered office and registered agent of the cooperative.

B. The articles of incorporation may also contain any provision not inconsistent with law or the provisions of Chapters 9 (§ 13.1-601 et seq.) and 10 (§ 13.1-801 et seq.) of Title 13.1 which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the cooperative; and any provision as to the plan of financial organization, or relating to the internal regulation or government of the cooperative, its directors and members; provided, however, that subsections D through G of § 13.1-620 and subdivision 1 of § 13.1-825 shall not apply to any affiliate or subsidiary of a cooperative.

1999, c. 874.

§ 56-231.18. Name of other corporations not to include term "electric cooperative" or "utility consumer services cooperative."

The words "electric cooperative" or "utility consumer services cooperative" shall not be used in the corporate name of corporations other than (i) those subject to the provisions of this chapter, (ii) nonstock corporations of which cooperatives are members, and (iii) corporations, all of the stock of which is owned by cooperatives.

1999, c. 874; 2000, cc. 944, 999.

§ 56-231.19. Filing articles of incorporation; effect thereof; other provisions of law applicable

The natural persons executing the articles of incorporation shall be residents of the territory in which the principal operations of the cooperative are to be conducted who intend to use utility services to be furnished by the cooperative. The articles of incorporation shall be subscribed by at least five such persons and acknowledged by them before an officer authorized by the law of this Commonwealth to take and certify acknowledgments of deeds and conveyances. When so acknowledged the articles shall be filed in accordance with the provisions of Article 3 (§ 13.1-618 et seq.) of Chapter 9 or Article 3 (§ 13.1-818 et seq.) of Chapter 10 of Title 13.1. When so filed the articles of incorporation, or certified copies thereof, shall be received in all the courts of this Commonwealth and elsewhere as prima facie evidence of the facts contained therein, and of the due incorporation of such cooperative. All of the provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.), and the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), insofar as not inconsistent with this article are hereby made applicable to such stock and nonstock cooperatives, respectively; provided, however, that subsections D through G of § 13.1-620 and subdivision 1 of § 13.1-825 shall not apply to any affiliate or subsidiary of a cooperative. When the charter is filed in the office of the State Corporation Commission, the proposed cooperative described therein, under its designated name, shall be and constitute a body corporate, and, with respect to its providing regulated utility services, with all of the applicable powers provided for in § 56-49. A cooperative formed prior to July 1, 1999, need not have a registered office or registered agent. A stock or nonstock cooperative formed thereafter shall comply with § 13.1-634 or § 13.1-833, respectively.

1999, c. 874.

§ 56-231.20. Repealed

Repealed by Acts 2000, cc. 944, 999.

§ 56-231.21. Dissolution and termination of cooperatives

A stock or nonstock cooperative may be dissolved in the manner prescribed by Article 16 (§ 13.1-742 et seq.) of Chapter 9 or Article 13 (§ 13.1-902 et seq.) of Chapter 10 of Title 13.1, respectively.

1999, c. 874.

§ 56-231.22. Charter amendments

A cooperative may amend its articles of incorporation to change its corporate name, to increase or reduce the number of its directors or change any other provision therein; however, no cooperative shall amend its articles of incorporation to embody therein any purpose, power or provision which would not be authorized if original articles including such additional or changed purpose, power or provision were offered for filing at the time articles under this section are offered. Such amendment may be accomplished in the method prescribed in Chapters 9 (§ 13.1-601 et seq.) and 10 (§ 13.1-801 et seq.) of Title 13.1.

1999, c. 874.

§ 56-231.23. General powers granted

Each cooperative formed under this article shall have power to do any and all lawful acts or things including, but not limited to the power:

1. To produce, generate, gather, store, transport, transmit, distribute, buy and sell energy and energy-related products.

2. To sue and be sued.

3. To have a seal and alter the same at pleasure.

4. To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

5. To render service and to acquire, own, operate, maintain and improve a system or systems.

6. To accept gifts or grants of money or of property, real or personal, from any person, municipality or federal agency and to accept voluntary or uncompensated services.

7. To sell, lease, mortgage or otherwise encumber or dispose of all or any parts of its property, as hereinafter provided.

8. To contract debts, borrow money and to issue or assume the payment of bonds, and other obligations.

9. To fix, maintain and collect reasonable fees, rents, tolls and other charges for service rendered.

10. To exercise, with respect to its providing regulated utility service, all the powers set forth in § 56-49, including the power of eminent domain as prescribed for other public service corporations by general law.

11. To assist its members and nonmember customers, by loans or otherwise, in the acquisition by them of such installation and wiring, and the obtaining of such machinery, equipment and appliances, as will enable them to secure the greatest benefit from the use of utility services supplied by the cooperative.

12. To issue nonassessable nonvoting common and preferred capital stock or similar securities and pay dividends thereon.

13. To become a member or stockholder in one or more other cooperatives or corporations created to engage in any business not prohibited by law, including, but not limited to, other types of public service company business.

14. To perform any and all of the foregoing acts and do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

1999, c. 874; 2000, cc. 944, 999.

§ 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; (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.

1999, c. 874; 2000, cc. 944, 999.

§ 56-231.25. Power to issue obligations

A cooperative shall have power and is hereby authorized, from time to time, to issue its obligations for any corporate purpose. Such obligations may be authorized by resolution of the board, and may bear such date or dates, mature at such time or times, bear such interest, be payable at such times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, as such resolution may provide. Such obligations may be sold in such manner and upon such terms as the board may determine. Pending the preparation or execution of definitive bonds, or obligations, interim receipts or certificates of temporary bonds may be delivered to the purchaser of such obligations.

1999, c. 874; 2000, cc. 944, 999.

§ 56-231.26. Covenants in connection with obligations

In connection with the issuance of any obligations a cooperative may make covenants or agreements and do any and all acts or things that a corporation can make or do under the laws of this Commonwealth.

1999, c. 874.

§ 56-231.27. Power to purchase its own obligations

A cooperative may purchase any obligation issued by it.

1999, c. 874; 2000, cc. 944, 999.

§ 56-231.28. Board of directors of cooperatives

Each cooperative shall have a board of directors of five or more members, which board shall constitute the governing body of the cooperative. Only members and the officers, directors or employees of any member shall be eligible for election to the board of directors. The directors, other than those named in the articles of incorporation, shall be elected annually by the members entitled to vote, unless the bylaws provide that, in lieu of electing the whole number of directors annually, the directors shall be divided into two, three or four classes at the first or any subsequent annual meeting. If the bylaws so provide, each class shall be as nearly equal in number as possible, with the term of office of one class to expire every year. If the number of classes changes, then the board of directors shall have authority to determine how directors will be allocated among the new number of classes, provided that no director's term will exceed, without reelection, a number of years equal to the number of classes of directors. The board of directors shall have authority to fix the compensation of directors. The directors shall elect annually from their own number a president of the board or a chairman of the board; and one or more vice-presidents of the board, vice-chairmen of the board or both. They may also elect or appoint annually (i) a president of the cooperative, (ii) one or more vice-presidents of the cooperative, (iii) a secretary, (iv) a treasurer, and (v) such other officers as the board deems necessary. No person shall hold any office unless that person is a director or employee of the cooperative. The offices of secretary and treasurer may be held by the same person.

1999, c. 874; 2000, cc. 944, 999.

§ 56-231.29. Powers of board of directors

The board of directors of a cooperative shall have power to do all things necessary or incidental in conducting the business of the cooperative, including, but not limited to the power:

1. If authorized by the articles of incorporation, or by resolution of its members having voting power, to adopt and amend bylaws for the management and regulation of the affairs of the cooperative, subject, however, to the right of the members to alter or repeal such bylaws. The bylaws of a cooperative may make provisions, not inconsistent with law or its articles of incorporation, regulating the admission, suspension or expulsion of members; the transfer of membership, the fees and dues of members and the termination of membership on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties and compensation of its officers and directors; defining a vacancy in the board or in any office and the manner of filling it; the number of members, not less than 2.5 percent of the total number of members, to constitute a quorum at meetings; the date of the annual meeting and the giving of notice thereof and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the cooperative is to render service to its members; the disposition of the revenues and receipts of the cooperative; and regular and special meetings of the board and the giving of notice thereof.

2. To appoint agents and employees and to fix their compensation and the compensation of the officers of the cooperative.

3. To execute all instruments.

4. To make its own rules and regulations as to its procedure.

1999, c. 874.

§ 56-231.30. Rights and liabilities of members

A. A cooperative may have one or more classes of members. If the cooperative has more than one class of members, the designation of each class and the qualifications and rights of the members of each class shall be set forth in the bylaws of the cooperative.

B. A cooperative shall issue to its members certificates of membership and each member shall be entitled to only one vote at the meetings of the members of the cooperative. The liability of each member shall be limited to the unpaid portion of his membership fee or subscription to capital stock, and any unpaid bills for utility services or other services, commodities or merchandise purchased from the cooperative, provided that nothing in this section shall be construed to limit the exposure of any unrefunded patronage capital to the lawful creditors of a cooperative. The equity of members of a nonstock cooperative shall be set by the board in accordance with cooperative principles. A cooperative shall be operated on a not-for-profit basis, with the exception of for-profit affiliates, for the mutual benefit of the members. The bylaws of a cooperative or its contract with the members shall contain such provisions relative to the disposition of margins as may be necessary and appropriate to establish and maintain its nonprofit and cooperative character.

1999, c. 874; 2000, cc. 944, 964, 989, 999.

§ 56-231.31. Payment of certain patronage capital to spouse or next of kin of deceased person

When there is held by any cooperative any patronage capital to the credit of a deceased person, in an amount not exceeding $10,000, upon whose estate there shall have been no qualification, it shall be lawful for such electric cooperative, after 120 days from the death of such person, to pay such balance to his or her spouse, and if none, to his or her next of kin, whose receipt therefor shall be a full discharge and acquittance to such electric cooperative to all persons whomsoever on account of such patronage capital.

1999, c. 874.

§ 56-231.31:1. Donation of certain patronage capital to the cooperative

Notwithstanding any other provision of law, when there is held by any cooperative any retired patronage capital to the credit of (i) a deceased person who has no spouse or next of kin identified in the records of the cooperative or (ii) a member or former member who has terminated service and who does not have a current address on file with the cooperative, then the bylaws or member agreements of the cooperative may provide that such credits shall be deemed to have been transferred as a gift to the cooperative and shall thereafter be the property of the cooperative; however, after July 1, 1999, such credits may be deemed gifts to the cooperative only if the cooperative publishes notice of such credit in its regular member publication and a publication of general

circulation, and such credit is not claimed by such member, former member or next of kin within 120 days of such publication or such longer period as set out in the bylaws or member agreements of the cooperative. If there is no such provision in the cooperative's bylaws or member agreement, or if there is no publication, then any unclaimed credit shall be treated in accordance with the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.). This section shall apply only to cooperatives organized under or governed by this article for the purpose of providing regulated electric utilities service on a mutual, not-for-profit basis, with a board democratically elected by its member consumers.

1999, cc. 939, 940.

§ 56-231.32. Service to members

No person shall become or remain a member unless such person shall use utility services supplied by such cooperative and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such cooperative. However, nothing in this article shall prevent a cooperative from engaging in other lawful activities or enterprises. Should the cooperative acquire any utility facilities already dedicated or devoted to the public use it may, for the purpose of continuing existing service and avoiding hardship, continue to serve the persons served directly from such facilities at the time of such acquisition without requiring that such persons become members. Such nonmember utility service customers shall have the right to become members upon nondiscriminatory terms. The charges for regulated utility services to such nonmembers shall be on a cost basis similar to the charges to members.

1999, c. 874.

§ 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. 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.

1999, c. 874; 2000, cc. 944, 999.

§ 56-231.34. Regulation by Commission

The regulated utility services of a cooperative shall be subject to the jurisdiction of the Commission in the same manner and to the same extent as are regulated utility services provided by other persons under the laws of this Commonwealth. All other business activities of a cooperative and its affiliates shall be subject to the jurisdiction of the Commission to the extent provided by § 56-231.34:1 and any other applicable laws of the Commonwealth.

1999, c. 874.

§ 56-231.34:1. Separation of regulated and unregulated businesses

A. No cooperative that engages in a regulated utility service shall conduct any unregulated business activity, other than traditional cooperative activities, except in or through one or more affiliates of such cooperative, provided that a cooperative that provides regulated utility services shall have the right to offer and make unregulated sales of electric power to its members within its certificated service territory. No such affiliates, formed to engage in any business that is not a regulated utility service, shall engage in regulated utility services.

B. The Commission shall promulgate rules and regulations, governing the conduct of the cooperatives, to promote effective and fair competition between (i) affiliates of cooperatives that are engaged in business activities which are not regulated utility services and (ii) other persons engaged in the same or similar businesses. The rules and regulations shall be effective by July 1, 2000, and shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between a cooperative and its affiliates;

2. Prohibiting anticompetitive behavior or self-dealing between a cooperative and its affiliates;

3. Prohibiting a cooperative from engaging in discriminatory behavior towards nonaffiliated entities; and

4. Establishing codes of conduct detailing permissible relations between a cooperative and its affiliates. In establishing such codes, the Commission shall consider, among other things, whether and, if so, under what circumstances and conditions (i) a cooperative may provide its affiliates with customer lists or other customer information, sales leads, procurement advice, joint promotions, and access to billing or mailing systems unless such information or services are made available to third parties under the same terms and conditions, (ii) the cooperative's name, logos or trademarks may be used in promotional, advertising or sales activities conducted by its affil-

iates, and (iii) the cooperative's vehicles, equipment, office space and employees may be used by its affiliates.

C. Nothing in this article shall be deemed to abrogate or modify the Commission's authority under Chapter 4 (§ 56-76 et seq.) of this title.

1999, c. 874; 2000, cc. 944, 999.

§ 56-231.34:2. Right of action; violation of rules or regulations

A. Any person who suffers loss as the proximate result of a violation by a cooperative or its affiliate of any rule or regulation adopted by the Commission pursuant to § 56-231.34:1 shall be entitled to initiate an action to recover actual damages or $500, whichever is greater, and to obtain injunctive relief. Any action pursuant to this section shall be commenced within two years after its accrual.

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

C. In any case arising under this section, no liability shall be imposed upon any cooperative or its affiliate which shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of any rule or regulation adopted by the Commission pursuant to § 56-231.34:1 was an act or practice over which the same had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subsection B to any person aggrieved as a result of an unintentional violation.

1999, c. 874.

§ 56-231.35. Charter fees, etc

The general laws relating to fees and other charges in connection with issuing charters, amendments thereto and dissolutions of corporations organized on a mutual basis or without capital stock shall apply to cooperatives organized under the provisions of this article.

1999, c. 874.

§ 56-231.36. Construction of article; conflicting laws

This article is to be liberally construed and the enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things, and any provisions of other laws in conflict with the provisions of this article shall not apply to cooperatives operating hereunder. Any object, purpose, power, manner, method or thing which is not specifically prohibited is permitted.

1999, c. 874.

§ 56-231.37. How article cited

This article may be cited as the "Utility Consumer Services Cooperatives Act."

1999, c. 874.

Article 2 - UTILITY AGGREGATION COOPERATIVES ACT

§ 56-231.38. Definitions

As used in this article:

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

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

"Commission" means the State Corporation Commission of Virginia.

"Cooperative" means a power supply cooperative formed under the former Power Supply Cooperatives Act (§ 56-231.1 et seq.) or a utility aggregation cooperative formed under this article or which becomes subject to this article.

"Energy" means and includes all energy, regardless of how or where it is generated or produced.

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

"Member" means any person that holds any class of membership in a cooperative.

"Obligations" means all evidences of indebtedness issued by or the payment of which is assumed by a cooperative.

"Patronage capital" includes all amounts received by a cooperative from the sale of electric power to members in excess of the cooperative's cost of furnishing electric power to members and such other margins as determined by the Board.

"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 any plant, works, facility, or property used or useful in connection with the purchase, generation, sale or transmission of energy, utility products and services, or both.

"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, however, 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.

1999, c. 874; 2000, cc. 944, 964, 989, 999.

§ 56-231.39. Organization and purpose

A. Subject to § 56-231.50:1, any utility consumer service cooperative or utility aggregation cooperative may form a cooperative in accordance with this article, either stock or nonstock, not for pecuniary profit, with the exception of for-profit affiliates, for the purpose of purchasing, generating or transmitting energy products and services for sale or resale, operating or participating in an independent system operator, regional transmission entity, regional power exchange, or both, and any other lawful purpose, consistent with sound business principles and prudent management practices; (i) provided, however, that within the certificated service territory of any member distribution cooperative that existed as of January 1, 1999, no such cooperative shall, prior to July 1, 2000, undertake or initiate any new program (a) to buy or maintain an inventory of HVACR equipment or household appliances, (b) to 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, (c) to sell HVACR equipment or household appliances to customers who are metered and billed on residential rates, (d) to 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 traditional cooperative activities, (e) to 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 (f) to 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 traditional cooperative activities; (ii) provided further, that notwithstanding clause (i), such cooperative may, within the certificated service territory of a specific distribution cooperative that existed as of January 1, 1999, and then only to the extent that such specific distribution cooperative could

lawfully do so, engage in any of the activities enumerated in clause (i) that (a) have received State Corporation Commission approval prior to February 1, 1998, (b) such cooperative is ordered or required to undertake by any jurisdictional court or regulatory authority, (c) were lawfully undertaken prior to February 1, 1998, (d) are specifically permitted by statute, or (e) are undertaken by any other regulated public service company or its unregulated affiliate within such distribution cooperative's certificated service territory; and (iii) also provided that such cooperative or its affiliate may not undertake such activities as are prohibited by clause (i) within the certificated service territory of another public service company unless such activities are undertaken by such public service company or its unregulated affiliate within the certificated service territory of a specific distribution cooperative existing as of January 1, 1999, and the certificated service territories of the public service company and the specific distribution cooperative overlap. In addition, such cooperative may establish one or more subsidiaries to engage in any other business activities not prohibited by law. Notwithstanding the foregoing, no such subsidiary may engage in any business activities that the cooperatives are prohibited from engaging in under this section. For purposes of determining whether a cooperative is formed not for pecuniary profit, the establishment of one or more affiliates thereof on a for-profit basis shall not disqualify such entity from being formed as a cooperative pursuant to this article.

B. Nothing in this article shall be construed to authorize a cooperative formed pursuant to this article, or any affiliate thereof, to engage, within any political subdivision of the Commonwealth on a not-for-profit basis, in the sale of products, the provision of services, or other business activity, except for electric power services and traditional cooperative activities. However, if such business activities are not currently provided by any person other than a cooperative formed under or subject to this chapter or its affiliate and the Commission determines that no such other person is likely, within a reasonable time, to effectively provide such products and services in such political subdivision, an affiliate of a cooperative may provide such products or services on a not-for-profit basis. The Commission shall also permit an affiliate of a cooperative formed under or subject to this chapter to provide such products or services on a not-for-profit basis upon a finding that the affiliate will not receive the benefit of any federal income tax exemption that is not available to persons other than cooperatives and will not receive the benefit of any federally guaranteed or subsidized financing that is not available to persons other than cooperatives; and provided further, that nothing in this subsection shall prohibit the continued operation of any business activities of any not-for-profit cooperative or affiliate formed, operating, and actively providing products or services to customers on or before July 1, 1999.

1999, c. 874; 2000, cc. 964, 989.

§ 56-231.40. Names

The words "electric cooperative" or "utility aggregation cooperative" shall not be used in the corporate name of any corporation other than those subject to this chapter, or their wholly owned subsidiaries.

1999, c. 874; 2000, cc. 944, 999.

§ 56-231.41. Articles of incorporation

A. The articles of incorporation shall be entitled "Articles of Incorporation of . . . . . Cooperative" (the blank space being filled in with the distinguishing part of the name of the cooperative) and shall state:

1. The name of the cooperative, which name need not contain the word "corporation" or "incorporated," but shall be such as to distinguish it from any other cooperative;

2. The location and post office address of its principal office and its registered agent;

3. The number of directors;

4. The names and post office addresses of the directors who are to manage the affairs of the cooperative for the first year of its existence, or until their successors are chosen;

5. The duration of the cooperative if its duration is to be limited; and

6. In the case of a cooperative incorporating with capital stock, a statement of the maximum and minimum amount of the capital stock of the cooperative, and its division into shares.

B. The articles of incorporation may also contain any provision not inconsistent with law or the provisions of Title 13.1, which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the cooperative; and any provision as to the plan of financial organization, or relating to the internal regulation or the government of the cooperative, its directors and members; provided, however, that subsections D through G of § 13.1-620 and subdivision 1 of § 13.1-825 shall not apply to any affiliate or subsidiary of a cooperative.

1999, c. 874.

§ 56-231.42. Bylaws

The original bylaws of a cooperative shall be adopted by the members of such cooperative. Thereafter, such cooperative's board shall adopt, amend, or repeal the bylaws unless otherwise provided in the articles of incorporation or bylaws, subject to the rights of the members to alter or repeal such bylaws. The bylaws shall set forth the rights and duties of directors, officers and members and other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this article, the cooperative's articles of incorporation or other applicable law. The bylaws shall contain provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain the cooperative's nonprofit character.

1999, c. 874.

§ 56-231.43. Powers

A. Each cooperative formed under this article shall have power to do any and all lawful acts or things, including, but not limited to the power:

1. To purchase, sell, generate, store, transport or transmit energy, energy services, products and equipment.

2. To sue and be sued.

3. To have a seal and alter the same at pleasure.

4. To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

5. To render service and to acquire, own, operate, maintain and improve a system or systems.

6. To accept gifts or grants of money or of property, real or personal, and to accept voluntary and uncompensated services.

7. To sell, lease, mortgage or otherwise encumber or dispose of all or any parts of its property.

8. To contract debts, borrow money and to issue or assume the payment of bonds and other obligations.

9. To fix, maintain and collect reasonable fees, rents, tolls and other charges for service rendered.

10. To exercise, with respect to its construction of regulated transmission facilities as a power supply cooperative, all the powers set forth in § 56-49, including the power of eminent domain as prescribed for other public service corporations by general law.

11. To assist its members, by loans or otherwise, in the acquisition by them of energy and electrical, technological and other equipment related to the business of the cooperative.

12. To issue nonassessable nonvoting common and preferred capital stock or similar securities and pay dividends thereon.

13. To perform any and all of the foregoing acts through or by means of its own officers, agents and employees, or by contract.

B. A cooperative shall have the power and is authorized, from time to time, to issue its obligations for any corporate purpose.

1. The obligations may be authorized by resolution of the board, and may bear any date or dates, mature at any time or times, bear any interest, be payable at any times, be in any denominations, be in any form, either coupon or registered, carry any registration privileges, be executed in any manner, be payable in any medium of payment, at any place or places, and be subject to any terms of redemption, as provided by the resolution.

2. These obligations may be sold in the manner and upon the terms as the board may determine. Pending the preparation or execution of definitive bonds or obligations, interim receipts or certificates of temporary bonds may be delivered to the purchaser of such obligations.

C. A cooperative may purchase any of its own obligations.

D. The Virginia Securities Act (§ 13.1-501 et seq.) shall not apply to membership certificates issued by a cooperative or its cooperative affiliates, or subsidiaries organized prior to January 1, 1999.

1999, c. 874; 2000, cc. 944, 999.

§ 56-231.44. Board of directors

A. Each cooperative shall have a board of directors consisting of at least five directors, which shall constitute the governing body of such cooperative. The board, other than those named in the articles of incorporation, shall be elected annually by the members. The bylaws may provide in lieu of electing the whole number of directors annually, that the directors may be divided into classes and that the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he or she is elected and until his or her successor is elected except in cases of ex officio directors.

The directors shall be elected by the members of the cooperative. At a minimum, there shall be at least one director elected from the membership, officers, directors or employees of each member of the cooperative that is itself a cooperative subject to any article of this chapter. Additional directors may be elected from the membership, from the members, officers, directors or employees of any member of the cooperative, or from employees of the cooperative. The board of directors shall have the authority to fix the compensation of the directors.

B. The board of directors of a cooperative shall have the power to do all things necessary or incidental in conducting the business of such cooperative, including, but not limited to the power:

1. To adopt and amend bylaws for the management and regulation of the affairs of such cooperative unless otherwise provided in the articles of incorporation or bylaws, subject to the rights of the members to alter or repeal such bylaws. The bylaws of a cooperative may make provisions not inconsistent with law or its articles of incorporation, regulating:

a. The admission, suspension or expulsion of members;

b. The transfer or classification of membership;

c. The fees and dues of members and the termination of membership on nonpayment of dues;

d. The number, times and manner of choosing or electing, qualifications, terms of office, official designations, powers, duties and compensation of its directors and officers;

e. The filling of a vacancy in the board or in any office;

f. The number of board members or member-delegates constituting a quorum at meetings;

g. The date of the annual meeting and the giving of notice thereof and the holding of special meetings and the giving of notice thereof;

h. The terms and conditions upon which such cooperative is to render service to its members;

i. The disposition of capital contributions; and

j. The establishment of classes of membership, the qualifications therefor and the rights and obligations thereof.

2. To appoint agents and employees and to fix their compensation and the compensation of the officers of the cooperative.

3. To execute all instruments.

4. To make its own rules and regulations as to its procedure.

1999, c. 874; 2000, cc. 944, 999.

§ 56-231.45. Officers

The officers of a cooperative shall consist of a president, vice-president, secretary and treasurer who shall be elected annually by the board and such other officers as may be designated by the board of directors. No person shall hold any offices unless that person is a director or employee of the cooperative. The offices of secretary and treasurer may be held by the same person. Any officer may be removed from office and a successor elected or appointed in accordance with such cooperative's bylaws.

1999, c. 874.

§ 56-231.46. Members

A. A cooperative may have one or more classes of members. If the cooperative has more than one class of members, the designation of each class and the qualifications and rights of the members of each class shall be set forth in the bylaws of the cooperative.

B. Such cooperative shall issue to its members nontransferable certificates of membership. Members shall be entitled to vote in accordance with the articles of incorporation or, if the articles of incorporation so provide, the bylaws. The liability of each member shall be limited to the unpaid portion of its membership fee or subscription to capital stock and its contractual obligations to the cooperative. The equity of members of a nonstock cooperative shall be in proportion to the patronage capital paid such cooperative.

C. No person shall become or remain a member unless it has complied with the terms and conditions of membership contained in the bylaws of the cooperative.

1999, c. 874.

§ 56-231.47. Adoption of article

Any cooperative of this Commonwealth engaged in the purchase, sale, generation or transmission of electric energy products or services for sale or resale may come under the provisions of this article by filing with the Commission a certificate of adoption in the manner provided by subsection (b) of § 13.1-334 and relinquishing all rights and powers granted by its former charter.

1999, c. 874.

§ 56-231.48. Applicability of other laws

All of the provisions of the Virginia Stock Corporation Act, Chapter 9 (§ 13.1-601 et seq.) of Title 13.1, and the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.), insofar as not inconsistent with this article, are hereby made applicable to stock and nonstock cooperatives, respectively, when the articles of incorporation are filed in the office of the Commission; provided, however, that subsections D through G of § 13.1-620 and subdivision 1 of § 13.1-825 shall not apply to any affiliate or subsidiary of a cooperative. A cooperative must have a registered office and a registered agent, pursuant to § 13.1-634 or § 13.1-833, as appropriate.

1999, c. 874.

§ 56-231.49. Restructuring costs

To the extent authorized in this title, a cooperative may recover its costs related to the restructuring of the electric utility industry, including stranded costs and transition costs, from its members through its rates and charges.

1999, c. 874.

§ 56-231.50. Regulation by State Corporation Commission

The regulated utility services and operations of any cooperative organized under this article shall be subject to the jurisdiction of the Commission in the same manner and to the same extent as are all other providers of such regulated utility services under the laws of this Commonwealth; but with regard to sales of energy at wholesale, no cooperative shall be subject to the provisions of §§ 56-234 through 56-245, 56-247 and 56-249 through 56-249.6. With regard to business activities which are not regulated utility services, no cooperative shall be subject to the provisions of §§ 56-234 through 56-245 and 56-249 through 56-249.6. All other business activities of a cooperative and its affiliates shall be subject to the jurisdiction of the Commission to the extent provided by § 56-231.50:1 and any other applicable laws of this Commonwealth.

1999, c. 874.

§ 56-231.50:1. Separation of regulated and unregulated businesses

A. No cooperative that engages in a regulated utility service shall conduct any unregulated business activity, other than traditional cooperative activities, except in or through one or more affiliates of such cooperative. No such affiliates, formed to engage in any business that is not a regulated utility service, shall engage in regulated utility services.

B. The Commission shall promulgate rules and regulations to promote effective and fair competition between (i) affiliates of cooperatives that are engaged in business activities which are not regulated utility services and (ii) other persons engaged in the same or similar businesses. The rules and regulations shall be effective by July 1, 2000, and shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between a cooperative and its affiliates;

2. Prohibiting anticompetitive behavior or self-dealing between a cooperative and its affiliates;

3. Prohibiting a cooperative from engaging in discriminatory behavior towards nonaffiliated entities; and

4. Establishing codes of conduct detailing permissible relations between a cooperative and its affiliates. In establishing such codes, the Commission shall consider, among other things, whether and, if so, under what circumstances and conditions (i) a cooperative may provide its affiliates with customer lists or other customer information, sales leads, procurement advice, joint promotions, and access to billing or mailing systems unless such information or services are made available to third parties under the same terms and conditions, (ii) the cooperative's name, logos or trademarks may be used in promotional, advertising or sales activities conducted by its affiliates, and (iii) the cooperative's vehicles, equipment, office space and employees may be used by its affiliates.

C. Nothing in this article shall be deemed to abrogate or modify the Commission's authority under Chapter 4 (§ 56-76 et seq.) of this title.

1999, c. 874; 2000, cc. 944, 999.

§ 56-231.50:2. Right of action; violation of rules or regulations

A. Any person who suffers loss as the proximate result of a violation by a cooperative or its affiliate of any rule or regulation adopted by the Commission pursuant to § 56-231.50:1 shall be entitled to initiate an action to recover actual damages or $500, whichever is greater, and to obtain injunctive relief. Any action pursuant to this section shall be commenced within two years after its accrual.

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

C. In any case arising under this section, no liability shall be imposed upon any cooperative or its affiliate which shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of any rule or regulation adopted by the Commission pursuant to § 56-231.50:1 was an act or practice over which the same had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subsection B to any person aggrieved as a result of an unintentional violation.

1999, c. 874.

§ 56-231.51. Construction of article and conflicting laws

This article is to be liberally construed and the enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things, and any provisions of other laws in conflict with the provisions of this article shall not apply to cooperatives operating hereunder. Any object, purpose, power, manner, method or thing which is not specifically prohibited is permitted.

1999, c. 874.

§ 56-231.52. Citation to article

This article may be cited as the "Utility Aggregation Cooperatives Act."

1999, c. 874.

Chapter 10 - HEAT, LIGHT, POWER, WATER AND OTHER UTILITY COMPANIES GENERALLY

Article 1 - DEFINITIONS

§ 56-232. Public utility and schedules defined

A. The term "public utility" as used in §§ 56-233 to 56-240 and 56-246 to 56-250:

1. 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.

2. Notwithstanding any provision of subdivision 1 of this subsection or subsection G of § 13.1-620, shall also include any governmental entity established pursuant to the laws of any other state, corporation (other than a municipality established under the laws of this Commonwealth), company, individual, or association of individuals or cooperative, their lessees, trustees, or receivers, appointed by any court whatsoever, that at any time owns, manages or controls any plant or equipment, or any part thereof, located within the Commonwealth, which plant or equipment is used in the provision of sewage treatment services to or for an authority as defined in § 15.2-5101; however, the Commission shall have no jurisdiction to regulate the rates, terms and conditions of sewage treatment services that are provided by any such public utility directly to persons pursuant to the terms of a franchise agreement between the public utility and a municipality established under the laws of this Commonwealth.

3. Except as provided in subdivision 2, 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.

B. 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.

C. 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.

D. 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 that is excluded from the definition of "public utility" by subdivision (b)(4), (b)(8), (b)(9), or (b)(10) of § 56-265.1.

E. 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.

Code 1919, § 4067; 1918, p. 413; 1922, p. 887; 1942, p. 20; 1950, pp. 54, 481; 1954, c. 525; 1956, c. 436; 1964, c. 195; 1966, c. 620; 1975, c. 358; 1981, c. 385; 1984, c. 341; 1985, cc. 2, 41; 1990, c. 488; 1999, c. 419; 2000, cc. 528, 543; 2002, c. 813; 2003, c. 172; 2006, c. 411; 2009, c. 746.

§ 56-232.1. Regulation of service by certain gas pipeline companies to municipalities

Notwithstanding any provision of law the Commission shall regulate, to the same extent as it regulates other public utilities, the utility service furnished to any municipal corporation by a natural gas pipeline transmission company, all of whose facilities are located within the Commonwealth, and the rates, charges and facilities of such company used to furnish such service.

1985, c. 41.

§ 56-232.2. Regulation of compressed natural gas service

The Commission may refrain from regulating and prescribing the rates, charges, and fees for the provision of retail compressed natural gas service provided by corporations other than public service corporations. Wholesale compressed natural gas sales provided by public service corporations shall continue to be regulated by the Commission to the same extent as are services provided by other public utilities under this chapter. The Commission may adopt regulations implementing this statute.

1991, c. 263 .

§ 56-232.2:1. Regulation of electric vehicle charging service

The Commission shall not regulate or prescribe the rates, charges, and fees for the provision of retail electric vehicle charging service provided by persons other than public service corporations.

Sales of electricity by public utilities to persons who (i) are not public service corporations and (ii) provide electric vehicle charging service shall continue to be regulated by the Commission to the same extent as are other services provided by public utilities. The Commission may adopt regulations implementing this section.

2011, c. 408.

§ 56-232.3. Regulation of service by certain gas distribution companies to federal, state and local governmental facilities

Notwithstanding the provisions of § 56-232, the Commission shall regulate, to the same extent as it regulates other public utility service, the utility service furnished to any federal, state or local governmental facility by a natural gas distribution company for which a service area has been determined by the Federal Energy Regulatory Commission, or its predecessor, under Section 7(f)(1) of the Natural Gas Act, 15 U.S.C. § 717(f)(1).

1995, c. 454.

§ 56-233. Service defined

The term "service" is used in this chapter in its broadest and most inclusive sense and includes not only the use and quality of accommodations afforded consumers or patrons, but also any product or commodity furnished by any public utility and equipment, apparatus, appliances and facilities devoted to the purposes in which such public utility is engaged and to the use and accommodation of the public.

Code 1919, § 4068; 1980, c. 249.

Article 1.1 - PURCHASING PRACTICES

§ 56-233.1. Public utilities purchasing practices

Every public utility subject to the annual or biennial review provisions of Title 56 shall use competitive bidding to the extent practicable in its purchasing and construction practices. In addition, all such public utilities shall file with the Commission and keep current a description of its purchasing and construction practices.

1978, c. 627; 2007, cc. 888, 933; 2008, c. 522.

Article 2 - SERVICES, RATES, CHARGES, ETC

§ 56-234. Duty to furnish adequate service at reasonable and uniform rates

A. It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same. Notwithstanding any other provision of law:

1. A telephone company shall not have the duty to extend or expand its facilities to furnish service and facilities when the person, firm or corporation has service available from one or more altern-

ative providers of wireline or terrestrial wireless communications services at prevailing market rates; and

2. A telephone company may meet its duty to furnish reasonably adequate service and facilities through the use of any and all available wireline and terrestrial wireless technologies; however, a telephone company, when restoring service to an existing wireline customer, shall offer the option to furnish service using wireline facilities.

For purposes of subdivisions 1 and 2, the Commission shall have the authority upon request of an individual, corporation, or other entity, or a telephone company, to determine whether the wireline or terrestrial wireless communications service available to the party requesting service is a reasonably adequate alternative to local exchange telephone service.

The use by a telephone company of wireline and terrestrial wireless technologies shall not be construed to grant any additional jurisdiction or authority to the Commission over such technologies.

For purposes of subdivision 1, "prevailing market rates" means rates similar to those generally available to consumers in competitive areas for the same services.

B. It shall be the duty of every public utility to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions. However, no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates, where such experiments have been approved by order of the Commission after notice and hearing and a finding that such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest. The charge for such service shall be at the lowest rate applicable for such service in accordance with schedules filed with the Commission pursuant to § 56-236. But, subject to the provisions of § 56-232.1, nothing contained herein or in § 56-481.1 shall apply to (i) schedules of rates for any telecommunications service provided to the public by virtue of any contract with, (ii) for any service provided under or relating to a contract for telecommunications services with, or (iii) contracts for service rendered by any telephone company to, the state government or any agency thereof, or by any other public utility to any municipal corporation or to the state or federal government. The provisions hereof shall not apply to or in any way affect any proceeding pending in the State Corporation Commission on or before July 1, 1950, and shall not confer on the Commission any jurisdiction not now vested in it with respect to any such proceeding.

C. The Commission may conclude that competition can effectively ensure reasonably adequate retail services in competitive exchanges and may carry out its duty to ensure that a public utility is furnishing reasonably adequate retail service in its competitive exchanges by monitoring individual customer complaints and requiring appropriate responses to such complaints.

Code 1919, § 4066; 1918, p. 675; 1924, p. 540; 1927, p. 125; 1950, p. 55; 1964, c. 195; 1970, c. 258; 1976, c. 290; 1985, cc. 2, 41; 2002, c. 833; 2011, cc. 738, 740.

§ 56-234.1. Liability to customer for violation of duty to determine and charge lowest rate applicable

It shall be the duty of every public utility, upon written request by the customer, to determine the lowest rate applicable, provided that such public utility shall not be required to make such a determination for any single customer more frequently than annually. If the rate charged thereafter is not such lowest rate applicable, such public utility shall be liable to the customer for the amount of the difference between the amount paid by the customer and the amount that would have been paid if the customer had been charged the lowest rate applicable from and after the customer's request; provided that the public utility may require and rely on written information from the customer relating to the customer's expected demand for and use of the utility service where such information is relevant to the determination required hereunder. Where a contract for a specified period of time is lawfully required by the public utility, the rates prescribed by such contract shall be lawful during the term of such contract so long as they are the lowest applicable to the conditions of service specified in the contract, unless the actual conditions of service require the application of a higher rate. This section shall not be applicable to rates charged by any public utility prior to July 1, 1970.

1970, c. 258.

§ 56-234.2. Review of rates

The Commission shall review the rates of any public utility on an annual basis when, in the opinion of the Commission, such annual review is in the public interest, provided that the rates of a public utility subject to § 56-585.1 shall be reviewed in accordance with subsection A of that section.

1972, c. 537; 2007, cc. 888, 933.

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

Consistent with § 56-235.3, any public utility, electric or otherwise, seeking to pass through the cost of any capital project to its customers, shall have the burden of proving that such cost was incurred through reasonable, proper and efficient practices, and to the extent that such public utility fails to bear such burden of proof, such costs shall not be passed on to its customers in its rate base.

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

1976, c. 701; 1977, c. 261; 1978, c. 700; 1984, cc. 453, 454; 1997, c. 138.

§ 56-234.4. Authority to investigate utility operations to determine efficiency

The Commission shall have the authority to investigate public utilities for the purpose of determining efficiency and economy of operations.

1977, c. 261.

§ 56-234.5. Required disclosure by certain officers and directors of certain utilities

If it comes to the attention of any elected officer or director of a public utility, as defined in § 56-232, that such public utility has, during the preceding calendar year, let a construction,

engineering or equipment contract, including any subcontract, of a value in excess of $750,000 to a contractor or subcontractor in which such officer or director, or the spouse of such officer or director living in the same household, owns stocks or bonds or an equity interest, constituting more than five percent of the ownership of such contractor or subcontractor or valued at more than $50,000, whichever is less, such officer or director shall file with the Commission, by April 30 of each year, a list of every such contractor or subcontractor. This requirement shall only apply to the elected officer or director of a public utility that has its rates, tolls, charges, or schedules set by the Commission based on the public utility's cost of providing service.

1979, c. 9; 2010, c. 581.

§ 56-235. When Commission may fix rates, schedules, etc.; conformance with chapter

If upon investigation the rates, tolls, charges, schedules, or joint rates of any public utility operating in this Commonwealth shall be found to be unjust, unreasonable, insufficient or unjustly discriminatory or to be preferential or otherwise in violation of any of the provisions of law, the State Corporation Commission shall have power to fix and order substituted therefor such rate or rates, tolls, charges or schedules as shall be just and reasonable. All rates, tolls, charges or schedules set by the Commission shall be valid only if they are in full conformance with the provisions of this chapter.

Code 1919, § 4071; 1977, c. 336.

§ 56-235.1. Conservation of energy and capital resources

It shall be the duty of the Commission to investigate from time to time the acts, practices, rates or charges of public utilities so as to determine whether such acts, practices, rates or charges are reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in rendering utility service. Where the Commission finds that the public interest would be served, it may order any public utility to eliminate, alter or adopt a substitute for any act, practice, rate or charge which is not reasonably calculated to promote the maximum effective conservation and use of energy and capital resources used by public utilities in providing utility service and it may further provide for the dissemination of information to the public, either through the Commission staff or through a public utility, in order to promote public understanding and cooperation in achieving effective conservation of such resources; provided, however, that nothing in this section shall be construed to authorize the adoption of any rate or charge which is clearly not cost-based or which is in the nature of a penalty for otherwise permissible use of utility services. This section shall not apply to telephone companies.

1976, c. 379; 2011, cc. 738, 740.

§ 56-235.1:1. Rates for stand-by electric service at renewable cogeneration facilities

A. The Commission shall adopt regulations pursuant to its rules of practice and procedure that require an electric utility to provide a rate for stand-by service to customers that operate a cogeneration facility in the Commonwealth that generates renewable energy, as defined in § 56-576.

Such regulations shall allow the electric utility to recover all of the costs that are identified by the electric utility and determined by the Commission to be related to the provision of the stand-by service, including but not limited to the costs of transformers and other equipment required to provide stand-by service and the costs of capacity and generation, including but not limited to fuel costs.

B. Within 90 days following the effective date of the regulations adopted pursuant to subsection A, each public utility providing electric service in the Commonwealth shall submit a plan setting forth how the utility will comply with the regulations if it does not already have stand-by provisions approved by the Commission that comply with the regulations. The Commission shall, after notice and the opportunity for hearing, determine whether a utility's plan complies with the regulations.

2009, c. 745.

§ 56-235.2. All rates, tolls, etc., to be just and reasonable to jurisdictional customers; findings and conclusions to be set forth; alternative forms of regulation for electric companies

A. Any rate, toll, charge or schedule of any public utility operating in this Commonwealth shall be considered to be just and reasonable only if: (1) the public utility has demonstrated that such rates, tolls, charges or schedules in the aggregate provide revenues not in excess of the aggregate actual costs incurred by the public utility in serving customers within the jurisdiction of the Commission, including such normalization for nonrecurring costs and annualized adjustments for future costs as the Commission finds reasonably can be predicted to occur during the rate year, and a fair return on the public utility's rate base used to serve those jurisdictional customers, which return shall be calculated in accordance with § 56-585.1 for utilities subject to such section; (1a) the investor-owned public electric utility has demonstrated that no part of such rates, tolls, charges or schedules includes costs for advertisement, except for advertisements either required by law or rule or regulation, or for advertisements which solely promote the public interest, conservation or more efficient use of energy; and (2) the public utility has demonstrated that such rates, tolls, charges or schedules contain reasonable classifications of customers. Notwithstanding § 56-234, the Commission may approve, either in the context of or apart from a rate proceeding after notice to all affected parties and hearing, special rates, contracts or incentives to individual customers or classes of customers where it finds such measures are in the public interest. Such special charges shall not be limited by the provisions of § 56-235.4. In determining costs of service, the Commission may use the test year method of estimating revenue needs. In any Commission order establishing a fair and reasonable rate of return for an investor-owned gas, telephone or electric public utility, the Commission shall set forth the findings of fact and conclusions of law upon which such order is based.

For ratemaking purposes, the Commission shall determine the federal and state income tax costs for investor-owned water, gas, or electric utility that is part of a publicly-traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according

to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.

B. The Commission shall, before approving special rates, contracts, incentives or other alternative regulatory plans under subsection A, ensure that such action (i) protects the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the continuation of reliable electric service.

C. After notice and public hearing, the Commission shall issue guidelines for special rates adopted pursuant to subsection A that will ensure that other customers are not caused to bear increased rates as a result of such special rates.

1977, c. 336; 1984, c. 312; 1996, c. 156; 2007, cc. 537, 888, 933.

§ 56-235.3. Procedures for investigation of rate applications

At any hearing on the application of a public utility for a change in a rate, toll, charge or schedule, the burden of proof to show that the proposed change is just and reasonable, shall be upon the public utility. The Commission shall be authorized to prescribe all necessary rules and regulations for the conduct of such hearings which shall provide for full and fair participation in such hearings by any interested person subject to such guidelines as the Commission may deem appropriate. Upon the conclusion of such hearings, the Commission shall issue an order and such opinion as is necessary to set forth fully the Commission's findings of fact and conclusions of law. Copies of the transcripts of public hearings held to establish a fair rate of return and changes in rates, tolls and charges for investor-owned public utilities involving significant public interest shall be placed in no less than one location nor more than three locations in the geographic area served by the utility. The Commission shall determine which proceedings are of sufficient interest to require the placing of such transcripts and the location or locations to be used; provided, however, that proceedings involving investor-owned utilities serving 25,000 or more customers shall be deemed to be of sufficient public interest.

1977, c. 336.

§ 56-235.4. Prohibition of multiple rate increases within any twelve-month period; exception

A. The regulated operating revenues of a public utility shall not be increased pursuant to Chapter 9.1 (§ 56-231.15 et seq.), 10 (§ 56-232 et seq.) or 19 (§ 56-531 et seq.) of this title more than once within any twelve-month period. This limitation shall not apply to increases in regulated operating revenues resulting from (i) increases in rates pursuant to § 56-245 or § 56-249.6, (ii) any automatic rate adjustment clause approved by the Commission, (iii) new rate schedules for service not offered under existing rate schedules or for expansion, reduction, or termination of existing services, (iv) initiation, modification or termination of experimental rates under § 56-234, or (v)

the making permanent of an experimental program. Notwithstanding any other provisions of this section, a telephone company may apply to the Commission to pass on to its customers as a part of its rates any changes approved by the Commission in the carrier access charges.

B. The Commission may adopt such rules and regulations as may be necessary to carry out the provisions of this section. The Commission may specify, by rule, the time during the calendar year when application may be filed by electric utility and cooperatives, gas utilities, telephone utilities and cooperatives, and other utilities.

The Commission may by rule provide standards and procedures for expedited handling of rate increase applications, and such rules may provide that an expedited rate increase may take effect in less than twelve months after the preceding increase so long as regulated operating revenues are not increased pursuant to the provisions of subsection A of this section more than once in any calendar year.

1984, c. 725; 1989, c. 666; 1990, c. 787; 1995, c. 382; 1997, c. 707; 2000, c. 994.

§ 56-235.5. Telephone regulatory alternatives

A. As used in this section, "telephone company" means any public service corporation or public service company which holds a certificate of public convenience and necessity to furnish local exchange telephone service, except that companies which are regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title are not included within this definition.

B. In regulating telephone services of any telephone company, and notwithstanding any provision of law to the contrary, the Commission, after giving notice and an opportunity for hearing, may replace the ratemaking methodology set forth in § 56-235.2 with any alternative form of regulation which: (i) protects the affordability of basic local exchange telephone service, as such service is defined by the Commission; (ii) reasonably ensures the continuation of quality local exchange telephone service; (iii) will not unreasonably prejudice or disadvantage any class of telephone company customers or other providers of competitive services; and (iv) is in the public interest. Alternatives may differ among telephone companies and may include, but are not limited to, the use of price regulation, ranges of authorized returns, categories of services, price indexing or other alternative forms of regulation. A hearing under this section shall include the right to present evidence and be heard. Prior to any hearing under this section, the Commission shall provide parties an opportunity to conduct discovery.

C. Any telephone company or company regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title may apply to the Commission at any time to obtain an alternative form of regulation. The Commission shall approve the application if it finds, after notice to all affected parties and hearing, that the proposal meets the standards for an alternative form of regulation set forth in subsection B.

1. A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for an alternative form of regulation shall

be entered no more than 90 days from the filing of the application, except that the Commission, upon notice to all parties in interest, may extend that period in additional 30-day increments not to exceed an additional 90 days in all.

2. If the Commission approves the application with modifications, the telephone company, or company regulated pursuant to Chapter 16 (§ 56-485 et seq.) or 19 (§ 56-531 et seq.) of this title, may, at its option, withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application, unless it is modified for a telephone company by the Commission pursuant to subsection B.

D. The Commission may, after notice and opportunity for hearing, alter, amend or revoke any alternative form of regulation previously implemented if it finds that (i) the affordability of basic local exchange service, as such service is defined by the Commission, is threatened by the alternative form of regulation; (ii) the quality of local exchange telephone service has deteriorated or will deteriorate to the point that the public interest will not be served by continuation of the alternative form of regulation; (iii) the terms ordered by the Commission in connection with approval of a company's application for alternative form of regulation have been violated; (iv) any class of telephone company customers or other providers of competitive services are being unreasonably prejudiced or disadvantaged by the alternative form of regulation; or (v) the alternative form of regulation is no longer in the public interest.

E. The Commission shall have the authority, after notice to all affected parties and an opportunity for hearing, to determine whether any telephone service of a telephone company is subject to competition and to provide, either by rule or case-by-case determination, for deregulation, detariffing, or modified regulation determined by the Commission to be in the public interest for such competitive services.

F. The Commission may determine telephone services of any telephone company to be competitive when it finds competition or the potential for competition in the market place is or can be an effective regulator of the price of those services. Such determination may be made by the Commission on a statewide or a more limited geographic basis, such as one or more political subdivisions or one or more telephone exchange areas, or on the basis of a category of customers, such as business or residential customers, or customers exceeding a revenue or service quantity threshold, or some combination thereof. The Commission may also determine bundles composed of a combination of competitive and noncompetitive services to be competitive if the noncompetitive services are available separately pursuant to tariff or otherwise. In determining whether competition effectively regulates the prices of services, the Commission shall consider: (i) the ease of market entry, (ii) the presence of other providers reasonably meeting the needs of consumers, and (iii) other factors the Commission considers relevant. For purposes of this section, the Commission shall consider all wireless communications providers that offer voice communications services to be facilities-based competitors owning wireline network facilities and reasonably meeting the needs of consumers, regardless of whether such wireless providers own wireline network

facilities. In its determination, the Commission shall not exclude as a competitor any affiliate of the telephone company. Notwithstanding any other provisions of this subsection, any telephone services that are the functional equivalent of the services offered individually or as part of a bundle of services by a county, city or town pursuant to § 56-265.4:4 or Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of this title, either directly or pursuant to a public-private partnership, shall be deemed competitive services in the geographic area where the services of the county, city or town are offered for purposes of this article and any alternate regulatory plans approved by the Commission.

G. The Commission shall monitor the competitiveness of any telephone service previously found by it to be competitive under any provision of subsection F above and may change that conclusion, if, after notice and an opportunity for hearing, it finds that competition no longer effectively regulates the price of that service.

H. Whenever the Commission adopts an alternative form of regulation pursuant to subsection B or C above, or determines that a service is competitive pursuant to subsections E and F above, the Commission shall adopt safeguards to protect consumers and competitive markets. At a minimum these safeguards must ensure that there is no cross subsidization of competitive services by monopoly services.

I. If the Commission determines pursuant to subsections E and F that 75 percent or more of residential households or businesses in a telephone company's incumbent territory are in areas that have been determined by the Commission to be competitive for a telephone service, the Commission shall expand, for that telephone service throughout the company's incumbent territory, its competitive determination and apply the same regulatory treatment already adopted by the Commission for that telephone service in competitive areas, including any safeguards under subsection H.

J. If a telephone company provides 90 percent or more of its residential and business lines access to fiber optic or copper-based broadband service, as defined by the Federal Communications Commission, within an exchange area, the Commission shall expand, for basic and associated telephone services in that exchange area, its competitive determination and apply the same regulatory treatment already adopted by the Commission for those services in competitive areas, including any safeguards under subsection H.

1993, c. 21; 1996, c. 18; 2002, cc. 479, 489; 2003, c. 711; 2009, c. 788.

§ 56-235.5:1. Local exchange telephone service competition policy

A. The Commission, in resolving issues and cases concerning local exchange telephone service under the federal Telecommunications Act of 1996 (P.L. 104-104), this title, or both, shall, consistent with federal and state laws, consider it in the public interest to, as appropriate, (i) treat all providers of local exchange telephone services in an equitable fashion and without undue discrimination and, to the greatest extent possible, apply the same rules to all providers of local

exchange telephone services; (ii) promote competitive product offerings, investments, and innovations from all providers of local exchange telephone services in all areas of the Commonwealth; and (iii) reduce or eliminate any requirement to price retail and wholesale products and services at levels that do not permit providers of local exchange telephone services to recover their costs of those products and services.

B. In order to treat all providers of local exchange telephone service more equitably and without undue discrimination by ensuring that they are subject to the same rules:

1. Notwithstanding any other provision of law, the Commission shall (i) for incumbent local exchange carriers serving more than 15,000 access lines in its incumbent territory, establish a schedule that eliminates the carrier common line charge element of intrastate carrier switched access charges no later than July 1, 2013, provided that (a) any such carrier that directly receives no later than April 1, 2010, a Broadband Initiatives Program grant and loan for use in the Commonwealth from the Rural Utilities Service of the U.S. Department of Agriculture under the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) shall be considered under clause (ii), and (b) any such carrier that has not been the subject of a Commission proceeding to investigate its carrier common line charge may apply to the Commission for an opportunity to be heard as to why it is in the public interest and why it will not unreasonably prejudice or disadvantage telephone customers throughout the Commonwealth to extend the deadline for the elimination of its carrier common line charge to a date determined by the Commission, but in no case later than July 1, 2014; and (ii) for incumbent local exchange carriers with 15,000 or fewer access lines in its incumbent territory, determine, no later than July 1, 2011, and after notice and an opportunity for a hearing, a schedule for the elimination of the carrier common line charge element of intrastate carrier switched access charges in a manner to be determined by the Commission.

2. The Commission shall permit any incumbent local exchange carrier to increase its retail rates to recover a reasonable amount of carrier common line charge revenue lost due to the reductions required in subdivision 1.

2004, c. 151; 2010, c. 748; 2013, c. 26.

§ 56-235.6. Optional performance-based regulation of certain utilities

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

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

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

rates under the standards of § 56-235.2 for a gas utility or pursuant to § 56-585.1 for an investor-owned incumbent electric utility.

D. The Commission shall use the annual review process established in § 56-234.2 to monitor each performance-based form of regulation approved under this section and to make any annual prospective adjustments to revenues or prices necessary to reflect increases or decreases in any index adopted for the implementation of such performance-based form of regulation.

1996, c. 350; 2006, c. 574; 2007, cc. 888, 933.

§ 56-235.7. Jurisdiction of Commission when federal governmental facility ceases to be retail customer of electric utility

Notwithstanding anything to the contrary in § 56-234, the rates and charges for service to any federal governmental facility that is a retail customer of any electric utility prior to January 1, 1996, and which ceases, in whole or in part, to be a retail customer of that electric utility after January 1, 1996, because of its purchase of electricity from another supplier shall be subject to the jurisdiction of the Commission for the limited purpose of determining the proper rate, if any, to be paid by the federal government to the electric utility for any and all costs stranded due to the cessation of such retail service, and payments of such costs shall be made pursuant to a tariff filed and approved by the Commission; provided, however, the Commission's jurisdiction shall not arise unless and until the effective date of any federal action that allows any federal governmental facility to purchase electricity from a supplier other than the electric public service company now providing electric service to such federal facility.

1996, c. 466.

§ 56-235.8. Retail supply choice for natural gas customers

A. Notwithstanding any provision of law to the contrary, each public utility authorized to furnish natural gas service in Virginia (gas utility) is authorized to offer to all of the gas utility's customers not eligible for transportation service under tariffs in effect on the effective date of this section, direct access to gas suppliers (retail supply choice) by filing a plan for implementing retail supply choice with the State Corporation Commission for approval. The provisions of this section shall not apply to any retail supply choice pilot program in effect on July 1, 1999. The Commission shall accept such a plan for filing within thirty days of filing if it contains, at a minimum:

1. A schedule for implementing retail supply choice for all of its customers;

2. Tariff revisions, including proposed unbundled rates for firm and interruptible service (which may utilize a cost allocation and rate design formulated to recover the gas utility's nongas fixed costs on a nonvolumetric basis) and terms and conditions of service designed to provide nondiscriminatory open access over its transportation system, comparable to the transportation service provided by the gas utility to itself, to allow competitive suppliers to sell natural gas directly to the gas utility's customers. Any proposed unbundling rates shall include an explanation of the

methodology used to develop the rates and a calculation of revenues, by customer class, thereby produced;

3. Nonbypassable, competitively neutral annual surcharges for the gas utility to properly allocate and recover from its firm service customers not eligible for nonpilot transportation service under tariffs in effect on the effective date of this section, its nonmitigable costs associated with the provision of retail supply choice, including prudently incurred contract obligation costs and transition costs. For the purposes of this section, contract obligation costs are costs associated with acquiring, maintaining or terminating interstate and intrastate pipeline and storage capacity contracts, less revenues generated by mitigating such contract obligations, whether by off-system sales, capacity release, pipeline supplier refunds or otherwise; and transition costs are costs incurred by the gas utility associated with educating the public on retail supply choice and redesigning its facilities, operations and systems to permit retail supply choice;

4. Tariff provisions to balance the receipts and deliveries of gas supplies to retail supply choice customers and allocate the gas utility's gas costs so that one class of customers is not subsidized by another class of customers;

5. Tariff provisions requiring the gas utility, at a minimum, to offer gas suppliers or retail supply choice customers the right to acquire the gas utility's upstream transmission and/or storage capacity in a manner that assures that one class of customers is not subsidized by another class of customers, provided that nothing contained herein shall deny the gas utility the right to request Commission approval of such tariff provisions as are designed to ensure the safe and reliable delivery of natural gas to firm service customers on its system, including provisions requiring gas suppliers to accept assignment of upstream transportation and storage capacity, and/or allowing the gas utility to retain a portion of its upstream transportation and storage capacity to ensure safe and reliable natural gas service to its customers;

6. A code of conduct governing the activities and relationships between the gas utility and gas suppliers to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power. Such codes of conduct shall incorporate or be consistent with any rule or guideline established by the Commission; and

7. Any other requirement established by Commission rule or regulation.

The Commission may, by rule or regulation, impose such additional filing requirements as it deems necessary in the public interest. The Commission may also require a gas utility to continue to serve as a gas supplier to its customers after the gas utility's plan becomes effective and under such terms and conditions as are necessary to protect the public interest.

B. After the Commission has accepted a filing as provided in subsection A, the Commission shall review and approve a plan filed by a gas utility unless it determines, after notice and an opportunity for public hearing, that the plan would:

1. Adversely affect the quality, safety, or reliability of natural gas service by the gas utility or the provision of adequate service to the gas utility's customers;

2. Result in rates charged by the gas utility that are not just and reasonable rates within the contemplation of § 56-235.2 or that are in excess of levels approved by the Commission under § 56-235.6, as the case may be;

3. Adversely affect the gas utility's customers not participating in the retail supply choice plan;

4. Unreasonably discriminate against one class of the gas utility's customers in favor of another class (provided, however, that a gas utility's recovery of nongas fixed costs on a nonvolumetric basis shall not necessarily constitute unreasonable discrimination); or

5. Not be in the public interest.

The Commission shall, after the acceptance of a filing of a retail supply choice plan, approve or disapprove the plan within 120 days. The 120-day period may be extended by Commission order for an additional period not to exceed sixty days. The retail supply choice plan shall be deemed approved if the Commission fails to act within 120 days or any extended period ordered by the Commission. The Commission shall approve a retail supply choice plan filed by a gas utility pursuant to this subsection regardless of whether it has promulgated rules and regulations pursuant to subsection A. The Commission may also modify a plan filed by a gas utility to ensure that it conforms to the provisions of this subsection and is otherwise in the public interest. Plans approved pursuant to this section shall not be placed into effect before July 1, 2000.

C. The Commission may, on its own motion, direct a gas utility to file a retail supply choice plan, which shall comply with subsection A, shall include such other details in the plan as the Commission may require, and does not cause the effects set forth in subsection B, or the Commission may, on its own motion, propose a plan for a gas utility for retail supply choice that complies with the requirements of subsection A and does not cause the effects set forth in subsection B. The Commission may approve any plans under this subsection after notice to all affected parties and an opportunity for hearing.

D. Once a plan becomes effective pursuant to this section, if the Commission determines, after notice and opportunity for hearing, that the plan is causing, or is reasonably likely to cause, the effects set forth in subsection B, it may order revisions to the plan to remove such effects. Any such revisions to the plan will operate prospectively only.

E. If, upon application of at least twenty-five percent of retail supply choice customers or of 500 retail choice customers, whichever number is lesser, or by the gas utility, it is alleged that the marketplace for retail supply choice customer is not reasonably competitive or results in rates unreasonably in excess of what would otherwise be charged by the gas utility, or if the Commission renders such a determination upon its own motion, then the Commission may, after notice, and opportunity for hearing, terminate the gas utility's retail supply choice program and provide for an

orderly return of the retail choice customers to the gas utility's traditional retail natural gas sales service. In such event, the gas utility shall be given the opportunity to acquire, under reasonable and competitive terms and conditions and within a reasonable time period, such upstream transportation and storage capacity as is necessary for it to provide traditional retail natural gas sales service to former retail supply choice customers.

F. Licensure of gas suppliers.

1. No person, other than a gas utility, shall engage in the business of selling natural gas to the residential and small commercial customers of a gas utility that has an approved plan implementing retail supply choice unless such person (for the purpose of this section, gas supplier) holds a license issued by the Commission. An application for a gas supplier license must be made to the Commission in writing, be verified by oath or affirmation and be in such form and contain such information as the Commission may, by rule or regulation, require. For purposes of this subsection, the Commission shall require a gas supplier to demonstrate that it has the means to provide natural gas to essential human needs customers. A gas supplier license shall be issued to any qualified applicant within forty-five days of the date of filing such application, authorizing in whole or in part the service covered by the application, unless the Commission determines otherwise for good cause shown. A person holding such a license shall not be considered a "public service corporation," "public service company" or a "public utility" and shall not be subject to regulation as such; however, nothing contained herein shall be construed to affect the liability of such a person for any license tax levied pursuant to Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1. No license issued under this chapter shall be transferred without prior Commission approval finding that such transfer is not inconsistent with the public interest. If the Commission determines, after notice and opportunity for public hearing, that a gas supplier has failed to comply with the provisions of this subsection or the Commission's rules, regulations or orders, the Commission may enjoin, fine, or punish any such failure pursuant to the Commission's authority under this statute and under Title 12.1 of the Code of Virginia. The Commission may also suspend or revoke the gas supplier's license or take such other action as is necessary to protect the public interest.

2. The Commission shall establish rules and regulations for the implementation of this subsection, provided that:

a. The Commission's rules and regulations shall not govern the rates charged by licensed gas suppliers, except that the Commission's rules and regulations may govern the terms and conditions of service of licensed gas suppliers to protect the gas utility's customers from commercially unreasonable terms and conditions; and

b. The Commission's rules and regulations shall permit an affiliate of the gas utility to be licensed as a gas supplier and to participate in the gas utility's retail supply choice program under the same terms and conditions as gas suppliers not affiliated with the gas utility.

3. The Commission shall also have the authority to issue rules and regulations governing the marketing practices of gas suppliers.

G. Retail customers' private right of action; marketing practices.

1. No gas supplier shall use any deception, fraud, false pretense, misrepresentation, or any deceptive or unfair practices in providing or marketing gas service.

2. Any person who suffers loss (i) as the result of fraudulent marketing practices, including telemarketing practices, engaged in by any gas supplier providing any service made competitive under this section, or of any violation of rules and regulations issued by the Commission pursuant to subdivision F 3, or (ii) as the result of any violation of subdivision 1 of this subsection, shall be entitled to initiate an action to recover actual damages, or $500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or $1,000, whichever is greater. Notwithstanding any other provisions of law to the contrary, in addition to any damages awarded, such person also may be awarded reasonable attorney's fees and court costs.

3. The Attorney General, the attorney for the Commonwealth or the attorney for the city, county or town may cause an action to be brought in the appropriate circuit court for relief of violations referenced in subdivision 2 of this subsection.

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

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

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

7. In any case arising under this subsection, no liability shall be imposed upon any gas supplier who shows by a preponderance of the evidence that (i) the act or practice alleged to be in violation of subdivision 1 of this subsection was an act or practice over which the same had no control or (ii) the alleged violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid a violation. However, nothing in this section shall prevent

the court from ordering restitution and payment of reasonable attorney's fees and court costs pursuant to subdivision 4 of this subsection to individuals aggrieved as a result of an unintentional violation of this subsection.

H. Authorized public utilities shall file with the Commission tariff revisions reflecting the net effect of the elimination of taxes pursuant to subsection B of § 58.1-2904 and the addition of state income taxes pursuant to § 58.1-400. Such tariffs shall be effective for service rendered on and after January 1, 2001, and shall be filed at least forty-five days prior to the effective date. Such filing shall not constitute a rate increase for the purposes of § 56-235.4.

I. Consumer education.

1. The Commission shall develop a consumer education program designed to provide the following information to retail customers concerning retail supply choice for natural gas customers:

a. Opportunities and options in choosing natural gas suppliers;

b. Marketing and billing information gas suppliers will be required to furnish retail customers;

c. Retail customers' rights and obligations concerning the purchase of natural gas and related services; and

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

2. The consumer education program authorized herein may be conducted in conjunction with the program provided for in § 56-592.

3. The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against gas utilities, public service companies, licensed suppliers and other providers of any services affected by this section. Upon the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of § 56-235.8 and to enjoin or punish any violations thereof pursuant to its authority under § 56-235.8, this title, or Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.

4. For all billing statements sent on and after August 1, 2000, all gas utilities, as defined in subsection A, shall enclose the following information in all billing statements for retail natural gas service:

a. Gas utilities shall separately state an approximate amount of the tax imposed under §§ 58.1-2626, 58.1-2660 and 58.1-3731 which is included in the customer's bill until such tax is no longer imposed; and

b. For all such billing statements, a statement which reads as follows shall be included: "Beginning January 1, 2001, the current state and local gross receipts taxes on sales of natural gas will

be replaced by a tax based on the consumption of natural gas by consumers. In the past, the current gross receipts tax has always been included in the rate charged for natural gas. Now, this tax is being separately stated. The total gross receipts tax imposed by Virginia and the localities is approximately two percent of the amount charged to consumers. The new state and local consumption tax will be charged at an approximate rate of $0.02 per 100 cubic feet (CCF) of natural gas consumed. While this rate was designed to be less than, or equal to, the effect of the current gross receipts tax which is being replaced, the tax you pay may actually be higher in your locality. This statement is being provided for your information."

1999, c. 494; 2000, cc. 691, 706.

§ 56-235.9. Recovery of funds used for capital projects prior to a rate case for strategic natural gas facilities

A. As used in this section:

"Capitalized carrying cost" includes the return on the investment, depreciation, and tax.

"Natural gas transmission company" means any investor-owned public service company engaged in the business of transporting natural gas to more than one electric utility, natural gas utility, or non-jurisdictional customer.

"Natural gas utility" means any investor-owned public service company engaged in the business of furnishing natural gas service to the public.

"Strategic natural gas facility" includes, without limitation, a natural gas distribution or transmission pipeline, storage facility, compressor station, liquefied natural gas facility, peaking facility or other appurtenant facility, used to furnish natural gas service in the Commonwealth that, for a natural gas utility with fewer than 150,000 customers, adds stand-alone design day deliverability or designed send-out of at least 10,000 dekaTherms per day or two or more such facilities, regardless of size, that add design day deliverability or designed send out of at least 75,000 dekaTherms per day in the aggregate, and for a natural gas utility with 150,000 or more customers, adds stand-alone design day deliverability or designed send out of at least 20,000 dekaTherms per day or two or more such facilities, regardless of size, that add design day deliverability or designed send out of at least 100,000 dekaTherms per day in the aggregate, and for a natural gas transmission company, adds design day deliverability or designed send out of at least 100,000 dekaTherms per day in the aggregate.

B. Any natural gas utility that places a strategic natural gas facility into service on or after July 1, 2008, or natural gas transmission company that places a strategic natural gas facility into service on or after July 1, 2014, to serve its customers shall have the right to recover through its rates charged to those customers the entire prudently incurred costs of the facility including: planning, development and construction costs; costs of infrastructure associated therewith; an allowance for funds used during construction; and the capitalized carrying cost from the time construction is completed and the asset is placed into service until the time that the Commission establishes new

rates that include recovery of all costs as defined herein. Such recovery shall be permitted by allowing such costs to be recorded in the utility's plant accounts and included in rate base for purposes of cost recovery (i) in new rate schedules for service not offered under existing rate schedules or new rate schedules for expansion of existing services as permitted by § 56-235.4, (ii) in a rate case using the cost of service methodology set forth in § 56-235.2, or (iii) in a performance-based regulation plan authorized by § 56-235.6, subject to Commission determination that such costs were prudently incurred. The allowance for funds used during construction and the return on investment shall be calculated utilizing the weighted average cost of capital, including the cost of debt and cost of equity used in determining the natural gas utility's base rates in effect during the construction period of the strategic natural gas facility.

C. Nothing in this section shall be construed to prohibit the Commission from granting similar treatment to other natural gas facilities when the Commission deems such treatment to be in the public interest.

2008, c. 867; 2014, cc. 467, 507.

§ 56-235.10. Recovery of eligible safety activity costs; administration; procedure

A. As used in this section:

"Eligible safety activity costs" means a natural gas utility's operation and maintenance expenditures that are related to (i) the development, implementation, or execution of the natural gas utility's integrity management program developed in conformance with 49 CFR Part 192, Subpart P -- Gas Distribution Pipeline Integrity Management or (ii) programs or measures implemented to comply with regulations issued by the Commission or a federal regulatory body with jurisdiction over pipeline safety.

"Natural gas utility" means any investor-owned public service company engaged in the business of furnishing natural gas service to the public.

B. In order to enhance pipeline safety in the Commonwealth, when the requirements of this section have been satisfied, a natural gas utility shall be permitted to recover eligible safety activity costs incurred on and after January 1, 2013, in future rates as provided in this section. The natural gas utility shall maintain the burden of demonstrating that the eligible safety activity costs have been reasonably and prudently incurred and that the criteria of this section have been satisfied.

C. A natural gas utility may account for eligible safety activity costs to be recovered pursuant to this section as deferred costs. The accumulated unrecovered balance of eligible safety activity costs deferred pursuant to this section shall not exceed four percent of the natural gas utility's net plant investment that was utilized in establishing or confirming base rates in the natural gas utility's most recent rate case using the cost of service methodology set forth in § 56-235.2 or performance-based regulation plan authorized by § 56-235.6. The eligible safety activity costs deferred hereunder shall be included in new base rates and charges instituted pursuant to a Commission order establishing or confirming customer rates in a rate case using the cost of service

methodology set forth in § 56-235.2 or a performance-based regulation plan authorized by § 56-235.6. Such deferred costs shall not be subject to write-off or write-down by the Commission in an earnings test filing made pursuant to Commission rules governing utility rate increases and annual informational filings except as provided in this subsection. The natural gas utility shall be deemed to have recovered eligible safety activity costs to the extent that the return on equity earned by the natural gas utility in an earnings test filing for a given year, after consideration of the treatment of regulatory assets, is in excess of the mid-point of the rate of return on equity range specified or confirmed in the natural gas utility's most recent rate case or performance-based regulation plan. Notwithstanding the foregoing, in the event that a utility's base rates include eligible safety activity costs, the utility shall only be permitted to defer the level of eligible safety activity costs that are in excess of the level reflected in base rates.

D. Any natural gas utility that has on its books eligible safety activity costs deferred pursuant to this section shall include an earnings test filing as part of any application for an annual informational filing or rate proceeding.

2013, cc. 281, 406.

§ 56-236. Public utilities required to file schedules of rates and charges; rules and regulations; when detariffing of telephone services to be permitted

A. Unless the Commission determines otherwise, every public utility shall be required to file with the Commission and to keep open to public inspection schedules showing rates and charges, either for itself, or joint rates and charges between itself and any other public utility. Every public utility shall file with, and as a part of, such schedules, copies of all rules and regulations that in any manner affect the rates charged or to be charged.

B. The Commission shall permit, but may not mandate, the detariffing of any or all terms, conditions, or rates for (i) any retail telephone service classified by the Commission to be competitive and (ii) any other retail telephone service not found by the Commission prior to January 1, 2011, to be a basic local exchange telephone service.

C. As of July 1, 2013, the Commission shall permit, but may not mandate, the detariffing of any or all terms, conditions, or rates for any or all retail telephone services.

Code 1919, § 4066; 1918, p. 674; 1924, p. 538; 1927, p. 123; 2011, cc. 738, 740.

§ 56-236.1. Rates to be charged churches

No electric utility, subject to regulation by the Commission, shall charge a church for its services by any method other than actual kilowatt hour consumption; nor shall any such electric utility charge a church for its electrical service at a rate in excess of the applicable residential rate for the area in which it is located. As used in this section, "church" shall be limited to the synagogue or church building in which the sanctuary or principal place of worship is located and to all educational buildings which are physically attached by enclosed corridors or hallways to the building in which the sanctuary or principal place of worship is located.

Notwithstanding the requirements of the first sentence of this section, the Commission may, after a hearing upon application by an electric utility, set a rate for churches in excess of the applicable residential rate if the utility proves that the cost of service for churches exceeds the cost of service for those other customers under the residential rate. In setting such a rate, the Commission shall consider the special use characteristics of churches, such as the amount of electricity utilized during off-peak power periods for the utility. The provisions of this section shall not apply to churches which are served by an electric utility having a time of usage rate approved by the Commission and which have elected to be on such time of usage rate.

1978, c. 531; 1980, c. 259.

§ 56-236.2. Suspension of service to sewerage system

No public utility furnishing heat, light or power to a sewerage system, after receiving notice pursuant to § 56-261 or § 56-265.11:1 from the person operating such system, may suspend service for nonpayment without giving at least ten days' advance notice in writing to the Commission and the Director of the Department of Environmental Quality.

2000, c. 183.

§ 56-237. How changes in rates effected; notice required; changes to be indicated on schedules

No change shall be made in any schedule required to be filed pursuant to § 56-236, including schedules of joint rates, except after 30 days' notice to the Commission, in such manner as the Commission may require, and to the public, in such manner as prescribed in § 56-237.1, and all such changed rates, tolls, charges, rules, and regulations shall be plainly indicated upon existing schedules or by filing new schedules in lieu thereof not less than 30 days prior to the time the same are to take effect; provided, that the Commission may, in particular cases, authorize or prescribe less time in which changes may be made; and provided further that, in the case of water companies, the notice to the public shall set forth the proposed rates and charges.

Code 1919, § 4066; 1918, p. 674; 1924, p. 539; 1927, p. 123; 1954, c. 298; 1976, c. 763; 2011, cc. 738, 740.

§ 56-237.1. Notification of intent to seek rate change in schedules required to be filed under § 56-236

A. Every public utility, other than a public utility providing water or sewer service, that indicates upon existing required schedules, or upon new schedules required to be filed in lieu thereof, changes in rates, tolls, charges, rules and regulations, shall cause to have published, once a week for four successive weeks, in one or more newspapers in circulation in its franchise area and approved by the Commission, a notice of its intention to change its rates, tolls, charges, rules and regulations. Every public utility providing water or sewer service that indicates upon existing required schedules, or upon new schedules required to be filed in lieu thereof, changes in rates, tolls, charges, rules and regulations, shall cause to have published at least once in one or more

newspapers in circulation in its franchise area and approved by the Commission, a notice of its intention to change its rates, tolls, charges, rules and regulations. The last such publication shall appear no less than 30 days prior to the time any changed rates, tolls, charges, rules and regulations shall take effect. This notice shall be in such form and contain such information as prescribed by the Commission.

B. Every public utility that indicates upon existing required schedules, or upon new schedules required to be filed in lieu thereof, changes in rates, tolls, charges, rules, and regulations shall mail to each of its customers who receive periodic statements of charges by mail or send electronically to each of its customers who receive periodic statements of charges electronically, along with its periodic invoice, bill, or other statement advising the customer of its charges, a notice of its intention to change its rates, tolls, charges, rules, and regulations. This notice shall be mailed or sent electronically no less than 30 days prior to the time any such changed rate, toll, charge, rule, and regulation shall take effect. This notice shall be in such form and contain such information as prescribed by the Commission.

C. Except for public utilities providing water or sewer service, the Commission may dispense with either or both of the requirements contained in subsections A and B if either or both such requirements are not necessary to provide adequate notice to all of the public utilities' customers. The Commission may prescribe additional requirements for notification to a public utility's customers of its intention to change its rates, tolls, charges, rules, and regulations.

1976, c. 763; 2011, cc. 738, 740; 2016, cc. 191, 283.

§ 56-237.2. Public hearings on protests or objections to rate changes

Whenever pursuant to § 56-237 there shall be filed with the Commission any schedule required to be filed under § 56-236 stating a change of rate, toll or charge and a protest or objection thereto is filed by or on behalf of the lesser of 150 or five percent of the customers or consumers or other persons subject to such rate, toll or charge, the Commission shall upon reasonable notice conduct a public hearing concerning the lawfulness of the proposed rate, toll or charge. At any such hearing involving a change of such rate, toll or charge, the burden of proof shall be upon the applicant therefor to demonstrate that the proposed change is just and reasonable. The Commission shall prescribe all necessary rules and regulations for the conduct of such hearing, which rules shall afford ample opportunity for participation or representation by persons affected by such change.

1977, c. 436; 1995, c. 260; 2011, cc. 738, 740.

§ 56-238. Suspension of proposed rates, etc.; investigation; effectiveness of rates pending investigation and subject to bond; fixing reasonable rates, etc

The Commission, either upon complaint or on its own motion, may suspend the enforcement of any or all of the proposed rates, tolls, charges, rules or regulations for schedules required to be filed under § 56-236 of any public utility except an investor-owned electric public utility for a period not exceeding 150 days from the date of filing, and the Commission shall suspend the

enforcement of all of the proposed rates, tolls, charges, rules or regulations of an investor-owned electric public utility until the Commission's final order in the proceeding, during which times the Commission shall investigate the reasonableness or justice of such proposed rates, tolls, charges, rules and regulations and thereupon fix and order substituted therefor such rates, tolls, charges, rules and regulations as shall be just and reasonable. The Commission's final order in such a proceeding involving an investor-owned electric public utility that is filed after January 1, 2010, shall be entered not more than nine months after the date of filing, at which time the suspension period shall expire, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order. Notice of the suspension of any such proposed rate, toll, charge, rule or regulation shall be given by the Commission to the public utility, prior to the expiration of the 30 days' notice to the Commission and the public heretofore provided for. If the proceeding has not been concluded and an order made at the expiration of the suspension period, after notice to the Commission by the public utility making the filing, the proposed rates, tolls, charges, rules or regulations shall go into effect. Where increased rates, tolls or charges are thus made effective, the Commission shall, by order, require the public utility to furnish a bond, to be approved by the Commission, to refund any amounts ordered by the Commission, to keep accurate accounts in detail of all amounts received by reason of such increase, and upon completion of the hearing and decision, to order such public utility to refund, with interest at a rate set by the Commission, the portion of such increased rates, tolls or charges by its decision found not justified. The Commission shall prescribe all necessary rules and regulations to effectuate the purposes of this section on or before September 1, 1980. This section shall not apply to proceedings conducted pursuant to § 56-245 or 56-249.6.

Code 1919, § 4066; 1918, p. 674; 1924, p. 539; 1927, p. 123; 1980, c. 446; 2010, cc. 1, 2; 2011, cc. 738, 740.

§ 56-239. Appeal from action of Commission

The public utility whose schedules shall have been so filed or the Commonwealth or other party in interest or party aggrieved may appeal to the Supreme Court from such decision or order as the Commission may finally enter. Upon the granting of such appeal the Supreme Court may award or refuse a writ of supersedeas, and, if a writ of supersedeas be awarded, it may suspend the operation of the action appealed from in whole or in part. Alternatively, the Supreme Court in its discretion may authorize putting into effect the schedule of rates so filed and suspended by the Commission or the schedule of rates existing at the time of the filing of the schedule upon which the investigation and hearing have been had, or require the inauguration of the schedule of rates as ordered by the Commission, until the final disposition of the appeal. But, prior to the final reversal of the order appealed from by the Supreme Court, no action of the Commission prescribing or affecting rates or charges shall be delayed, or suspended in its operation, by reason of any appeal by the party whose rates or charges are affected, or by reason of any proceeding resulting from such appeal until a suspending bond payable to the Commonwealth has been executed

and filed with the Commission with such conditions, in such penalty, and with such surety thereon as the Commission, subject to review by the Supreme Court, may deem sufficient. In any appeal from action of the Commission prescribing or affecting the rates or charges of a public utility, such bond, or if no bond is required, the order of the Supreme Court, shall expressly provide for the prompt refunding to the parties entitled thereto of all charges which may have been collected or received, pending the appeal, in excess of those fixed, or authorized by the final decision on appeal, with interest from the date of the collection thereof. But no bond shall be required of the Commonwealth. Any bond required under this section shall be enforced in the name of the Commonwealth before the Commission or before any court having jurisdiction, and the process and proceedings thereon shall be as provided by law upon bonds of like character required to be taken by courts of record of this State.

Code 1919, § 4066; 1918, p. 674; 1924, p. 539; 1927, p. 124; 1971, Ex. Sess., c. 31.

§ 56-240. Proposed rates, etc., or changes thereof, not suspended effective subject to later change by Commission; refund or credit; appeal; investor-owned public utilities required to show increase complies with § 56-235.2

Unless the Commission so suspends such schedule of rates, tolls, charges, rules and regulations or changes thereof that are required to be filed under § 56-236, the same shall go into effect as originally filed by any public utility as defined in § 56-232, upon the date specified in the schedule subject, however, to the power of the Commission, upon investigation thereafter, to fix and order substituted therefor such rate or rates, tolls, charges, rules, or regulations, as shall be just and reasonable, as provided in §§ 56-235 and 56-247. The Commission may thereupon, in its discretion, order such public utility to refund or give credit promptly to the parties entitled thereto any portion or all of the charges originally filed by the public utility which may have been collected or received in excess of those charges finally fixed and ordered substituted therefor by the Commission. Rates of any utility found to be operating in violation of § 56-265.3 may be deemed subject to refund by the Commission, on its own motion, as of the date of the Commission's order finding that the utility was operating in violation of § 56-265.3. Such rates shall then be interim in nature and subject to refund until such time as the Commission has determined the appropriateness of the rates. Any amount of the rates found excessive by the Commission shall be subject to refund with interest, as may be ordered by the Commission.

From any action of the Commission in prescribing rates, refunds, credits, tolls, charges, rules and regulations or changes thereof that are required to be filed under § 56-236, an appeal may be taken by the corporation whose rates, refunds, credits, tolls, charges, rules and regulations or changes thereof are affected, or by the Commonwealth, or by any person deeming himself aggrieved by such action.

No such rate increase shall go into effect under the provisions of this section for an investor-owned gas, telephone or electric public utility unless such public utility has filed with its schedule information and data designed to show that any increase complies with the just and reasonable

requirements of § 56-235.2, and unless based thereon the Commission finds a reasonable probability that the increase will be justified upon full investigation and hearing. The Commission is authorized to promulgate any rules necessary to implement this provision.

Code 1919, § 4066; 1918, p. 675; 1924, p. 540; 1927, pp. 124, 125; 1971 Ex. Sess., c. 31; 1973, c. 262; 1979, c. 249; 1998, c. 63; 2011, cc. 738, 740.

§ 56-241. Rates of telephone companies

The power of the Commission over the rates of telephone companies shall be as defined (i) by this chapter or (ii) by § 56-481.1.

Code 1919, § 4066; 1918, p. 676; 1924, p. 540; 1927, p. 125; 1964, c. 195; 1973, c. 262; 1984, c. 721; 2011, cc. 738, 740.

§ 56-241.1. Flat and measured telephone rates; certain rates prohibited

Every telephone company which offers dial tone line or substantially equivalent local service shall offer to its residential and business customers at least one offering of such service consisting of a single dial tone line, including associated usage, for the purpose of two-way voice communications within a local calling area at a flat rate unless there was no telephone company offering such a class of service at a flat rate in the local calling area on January 1, 1979. No residential or business customer shall be forced to accept local measured rate service for calling within a local calling area based on the number of calls, length of call, distance or time of day, not in effect on January 1, 1979. Nothing contained herein shall prohibit the Commission from approving the voluntary tariff of any telephone company based on the number of calls, length of call, distance or time of day.

1979, c. 91; 1985, c. 389; 1996, c. 378.

§ 56-241.2. Approval of rates for resale of telephone service

Notwithstanding the provisions of § 56-241.1, the Commission may approve a mandatory tariff based only on the number of calls for any telephone company if such tariff is limited to the rates charged for the resale of local business service or for the providing of coin telephone service by a person other than the telephone company.

1985, c. 389.

§ 56-242. Temporary reduction of rates

Whenever the Commission, pending an investigation had upon its own motion, or upon complaint, is of the opinion and so finds after an examination of any report or reports, annual or otherwise, filed with the Commission by any public utility, together with any other facts or information which the Commission may acquire or receive from an investigation of the books, records, or papers, or from an inspection of the property of such public utility, that the net income of such public utility, after reasonable deductions for depreciation and other proper and necessary reserves, is in excess of the amount required for a reasonable return upon the value of such public utility's property, used and useful in rendering its service to the public, and if the Commission is

of the opinion and so finds in such cause that a hearing to determine all of the issues involved in a final determination of rates of service will require more than ninety days of elapsed time, the Commission may, in case of such emergency, enter a temporary order, after not less than ten days' notice to such public utility of its contemplated action and affording to it reasonable opportunity to introduce evidence and to be heard thereon, fixing a temporary schedule of rates, which order shall be forthwith binding upon such public utility. But the Commission's power to order reductions in rates and charges of any public utility by means of such a temporary order, is limited to reductions which will absorb not more than the amount found by the Commission to be in excess of the amount of income, as determined by the Commission, necessary to provide a reasonable return on the value of the property of such public utility as found by the Commission as aforesaid.

1934, p. 365; Michie Code 1942, § 4071a.

§ 56-243. Duration of such temporary reduction

No temporary order made under § 56-242 shall remain in force or effect for a longer period than nine months from its effective date, and a further period not to exceed three months in addition if so ordered by the Commission.

1934, p. 366; Michie Code 1942, § 4071a.

§ 56-244. Increase to make up for losses due to excessive temporary reduction

If upon a final disposition of the issues involved in a proceeding mentioned in § 56-242, the rates or charges as finally determined by the Commission, or the court having jurisdiction of the subject matter, are in excess of the rates and charges prescribed in any temporary order issued in such proceeding, then such public utility shall be permitted, over such reasonable time as the Commission shall fix, to amortize and recover, by means of a temporary increase over and above the rates and charges finally determined, such sum as shall represent the difference between the gross income obtained from the rates and charges prescribed in such temporary reduction order, and the gross income which would have obtained, during the period such temporary reduction order was in effect, based upon the same volume, from the rates and charges finally determined.

1934, p. 366; Michie Code 1942, § 4071a.

§ 56-245. Temporary increase in rates

Whenever the Commission, upon petition of any public utility, is of the opinion and so finds, after an examination of the reports, annual or otherwise, filed with the Commission by such public utility, together with any other facts or information which the Commission may acquire or receive from an investigation of the books, records or papers, or from an inspection of the property of such public utility, or upon evidence introduced by such public utility, that an emergency exists, and that the public utility has made a preliminary showing of all the elements of § 56-235.2 sufficient to demonstrate a reasonable probability that the increase will be justified upon full investigation and hearing and is of the opinion and so finds that a hearing to determine all of the issues involved in the final determination of the rates or service will require more than ninety

days of elapsed time, the Commission may, in case of such emergency, enter a temporary order fixing a temporary schedule of rates, which order shall be forthwith binding upon such utility and its customers; provided, however, that when the Commission orders an increase in the rates or charges of any public utility by means of such temporary order, it shall require such utility to enter into bond in such amount and with such security as the Commission shall approve, payable to the Commonwealth, and conditioned to insure prompt refund by such public utility, to those entitled thereto, of all amounts which such public utility shall collect or receive in excess of such rates and charges as may be finally fixed and determined by the Commission; and provided, further, however, that no such temporary order shall remain in force or effect for a longer period than nine months from its effective date, and a further period not to exceed three months in addition if so ordered by the Commission.

1934, p. 366; Michie Code 1942, § 4071a; 1973, c. 262; 1977, c. 336.

§ 56-245.1. Meters to be kept in good working condition; defective meters

(1) Any person, firm, corporation, county, city, town or association, hereinafter referred to as person, who or which furnishes water, gas or electricity to the premises of another and employs a meter to determine the quantity of water, gas or electricity furnished to such premises and bases its charges thereon shall keep meter in good working condition.

(2) When any such person is notified in writing that any such meter is broken or not functioning properly he shall promptly investigate the matter and, if the meter is found to be defective, repair or replace the meter within thirty days of such notice. If the meter is found to be in good working condition, a written report of such determination shall be mailed or delivered to the affected customer within thirty days of such notice. If any defective meter is not repaired or replaced as provided herein, or if the required report is not made, the affected customer shall not be required to pay for the service furnished through the meter, after the expiration of the thirty-day period until the repair or replacement is made, or until the required report is made, and his service shall not be terminated for failure to pay under such circumstances.

1972, c. 71.

§ 56-245.1:1. Customers to be notified about nuclear emergency evacuation plans

At least once in every calendar year after July 1, 1980, each electric public utility which owns, operates or maintains a nuclear generating facility in the Commonwealth shall publish in a newspaper having general circulation within a ten-mile radius of such facility, a statement or notice prepared or approved by the Department of Emergency Management setting forth the evacuation and other protective actions to be taken by persons or concerns located within such ten-mile radius, in the event of a nuclear radiation emergency resulting from the maintenance, operation or failure of such nuclear facility. After the publication of the first statement or notice required hereby, subsequent statements or notices shall be published at time intervals not exceeding twelve months. The provisions hereof shall not be effective when federal laws or regulations providing for yearly

dissemination of similar information to members of the public located within a ten-mile radius of any such nuclear generating facility take effect.

1980, c. 734.

§ 56-245.1:2. Customers to be notified of renewable power options

A. The Commission shall post on its website the names, telephone numbers, and available hyperlinks of suppliers of electric energy licensed to sell retail electric energy pursuant to § 56-587, that (i) expressly state in their applications for licensure, or for any renewal thereof, that they offer electric energy supplied from renewable energy to retail customers in the Commonwealth as described in subdivision A 5 of § 56-577 and (ii) request in any such applications that they be identified on the Commission's website as making such offers. Provided, however, that by posting such information on its website, the Commission shall not be deemed to provide any guarantees or assurances concerning the bona fides of such offers or that any such offers are in conformance with the laws of the Commonwealth.

B. At least once each calendar quarter, each investor-owned electric utility in the Commonwealth shall include in or on the customer bills a notice directing them to the Commission website described in subsection A. Each investor-owned electric utility shall also feature available options for purchasing electric energy from renewable sources offered by the utility prominently on its website.

2008, c. 518; 2016, cc. 248, 259.

Article 2.1 - REGULATION OF SUBMETERING AND ENERGY ALLOCATION EQUIPMENT

§ 56-245.2. Definitions

A. When used in this article, unless expressly stated otherwise:

"Apartment house" means a building or buildings with the primary purpose of residential occupancy containing more than two dwelling units all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house includes residential condominiums and cooperatives, whether rented or owner occupied.

"Campground" means the same as the term is defined in § 35.1-1.

"Campsite" means that same as that term is defined in § 35.1-1.

"Dwelling unit" means a room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

"Energy allocation equipment" means any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any dwelling unit or nonresidential rental unit within an apartment house, office building or shopping center, or campsite at a campground.

"Nonresidential rental unit" means a room or rooms in which retail or commercial services, clerical work or professional duties are carried out.

"Office building" means a building or buildings containing more than two rental units which are rented primarily for retail, commercial or professional use, with rental paid at intervals of one month or longer.

"Owner-paid areas" means those areas for which the owner bears financial responsibility for energy costs which include but are not limited to areas outside individual residential or nonresidential units or campsites or in owner-occupied or owner-shared areas such as maintenance shops, vacant units, meeting units, meeting rooms, offices, swimming pools, laundry rooms, or model apartments.

"Shopping center" means a building or buildings containing more than two stores which are rented primarily for commercial, retail or professional use.

"Submetering equipment" means equipment used to measure actual electricity or natural gas usage in any dwelling unit or nonresidential rental unit or campsite when such equipment is not owned or controlled by the electric or natural gas utility serving the apartment house, office building, shopping center, or campground in which the dwelling unit or nonresidential rental unit or campsite is located.

B. Any building or buildings which qualify as an apartment house, office building, or shopping center shall not be excluded from § 56-245.3 because the apartment house, office building or shopping center contains a mixture of dwelling units and nonresidential rental units.

1978, c. 392; 1979, c. 313; 1992, c. 766; 2012, c. 338.

§ 56-245.3. Commission to promulgate regulations and standards

A. Notwithstanding any law to the contrary, the Commission shall promulgate regulations and standards under which any owner, operator, or manager of an apartment house, office building, shopping center, or campground, which is not individually metered for electricity or gas for each dwelling unit, nonresidential rental unit, or campsite may install submetering equipment or energy allocation equipment for the purpose of fairly allocating (a) the cost of electrical or gas consumption for each dwelling unit, nonresidential rental unit, or campsite and (b) electrical or gas demand and customer charges made by the utility. In addition to other appropriate safeguards for the tenant, the regulations shall require (i) that an apartment house, office building, shopping center, or campground owner shall not impose on the tenant any charges, over and above the cost per kilowatt hour, cubic foot or therm, plus demand and customer charges, where applicable, which are charged by the utility company to the owner, including any sales, local utility, or other taxes, if any, except that additional service charges permitted by § 55-226.2 may be collected to cover administrative costs and billing, and (ii) that the apartment house, office building, shopping center, or campground owner shall maintain adequate records regarding submetering and energy allocation equipment and shall make such records available for inspection by the Commission during

reasonable business hours. The provisions of this section shall not restrict the right of the owner, operator or manager to recover in periodic lease payments the tenant's fair share of electricity or gas costs attributable to owner-paid areas and costs incurred by the owner, operator or manager in establishing and maintaining the submetering or energy allocation equipment.

B. Only for purposes of Commission enforcement of the regulations adopted under this section, the owners, operators, or managers of apartment houses, office buildings, shopping centers, or campgrounds included within the purview of this article shall be treated as public service corporations under §§ 56-5, 56-6 and 56-7. All submetering equipment shall be subject to the same regulations and standards established by the Commission for accuracy, testing, and record keeping of meters installed by electric or gas utilities and shall be subject to the meter requirements of § 56-245.1. All energy allocation equipment shall be subject to regulations and standards established by the Commission to ensure that such systems result in a reasonable determination of energy use and the resulting costs for each dwelling unit, nonresidential rental unit, or campsite. Violations of Commission regulations and orders issued under this section shall be subject to the penalty set forth in § 12.1-33.

C. In implementing this section, no apartment house, office building, shopping center, or campground shall be considered a public utility or public service corporation engaged in the business of distributing or reselling electricity or gas except as provided in subsection B. The apartment house, office building, shopping center, or campground may use submetering or energy allocation equipment solely to allocate the costs of electric or gas service fairly among the tenants using the apartment house, office building, shopping center, or campground.

1978, c. 392; 1979, c. 313; 1980, c. 741; 1986, c. 11; 1988, c. 231; 1989, c. 188; 1991, c. 573; 1992, c. 766; 2003, c. 355; 2012, c. 338.

Article 3 - POWERS OF COMMISSION IN RELATION TO SERVICE

§ 56-246. Tests and equipment therefor

The Commission may purchase such materials, apparatus and standard measuring instruments for such examinations and tests as it may deem necessary, and may provide for the examinations and testing of the service or any part thereof of any public utility in this Commonwealth at such time and under such circumstances as the Commission may deem best.

Code 1919, § 4069.

§ 56-247. Commission may change regulations, measurements, practices, services, or acts

If upon investigation it shall be found that any regulation, measurement, practice, act or service of any public utility complained of is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise in violation of law or if it be found that any service is inadequate or that any reasonable service cannot be obtained, the Commission may substitute therefor such other regulations, measurements, practices, service or acts and make such order respecting, and such

changes in, such regulations, measurements, practices, service or acts as shall be just and reasonable.

The Commission shall investigate the promotional allowances and practices of public utilities and shall take such action as such investigation may indicate to be in the public interest.

Code 1919, § 4072; 1966, c. 552.

§ 56-247.1. Commission to require public utilities to follow certain procedures

A. The Commission shall require that public utilities adhere to the following procedures for services not found to be competitive:

1. Every public utility shall provide its residential customers one full billing period to pay for one month's local or basic services, before initiating any proceeding against a residential customer for nonpayment of local service.

2. Pay the residential customer a fair rate of interest as determined by the Commission on money deposited and return the deposit with the interest after not more than one year of satisfactory credit has been established.

3. Every public utility shall establish customer complaint procedures which will insure prompt and effective handling of all customer inquiries, service requests and complaints. Such procedure shall be approved by the Commission before its implementation and it shall be distributed to its residential customers.

4. No electric or gas utility shall terminate a customer's service without 10 days' notice by mail to the customer.

5. No public utility shall terminate the residential service of a customer for such customer's nonpayment of basic nonresidential services as defined by its terms and conditions on file with the Virginia State Corporation Commission.

6. A public utility providing water service shall not terminate service for nonpayment until it first sends the customer written notice by mail 10 days in advance of making the termination but, in no event, shall it terminate the customer's service until 20 days after the customer's bill has become due. Any such notice shall also include contact information for the customer's use in contacting the public utility regarding the notice.

7. Any electric utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.) may install and operate, upon a customer's request and pursuant to an appropriate tariff for any type or classification of service, a prepaid metering equipment and system that is configured to terminate electric service immediately and automatically when the customer has incurred charges for electric service equal to the customer's prepayments for such service. Subdivisions 1, 2, 4, and 5 shall not apply to services provided pursuant to electric service provided on a prepaid basis by a prepaid metering equipment and system pursuant to this subsection. Such tariffs shall be filed with the Commission for its review and determination that the tariff is not contrary to the public interest.

B. Any and all Commission rules and regulations concerning the denial of telephone service for nonpayment of such service shall not apply to services found to be competitive.

1976, c. 738; 1977, c. 59; 1980, c. 415; 2010, c. 320; 2011, cc. 500, 738, 740.

§ 56-248. Commission to prescribe standard units of products or service

The Commission shall ascertain and prescribe for each kind of public utility suitable standard commercial units of products or service. This section shall not apply to telephone companies.

Code 1919, § 4070; 2011, cc. 738, 740.

§ 56-248.1. Commission to monitor fuel prices and utility fuel purchases; fuel price index

The Commission shall monitor all fuel purchases, transportation costs, and contracts for such purchases of a utility to ascertain that all feasible economies are being utilized.

In addition, the Commission shall establish a fuel price index in order to compare the prices paid for the various types of fuel by Virginia utilities with the average price of the various types of fuel paid by other public utilities at comparable geographic locations in the market. This section shall not apply to telephone companies.

1976, c. 507; 1982, c. 107; 2011, cc. 738, 740.

§ 56-249. Reports by utilities

The Commission, with or without an investigation, may require any public utility to furnish to it in such form, at such times, and in such detail as the Commission shall require, such accounts, reports and other information of whatsoever kind or character as it may deem proper and in such form and detail as it may prescribe, in order to show completely the entire operation of the public utility in furnishing the unit of its product or service to the public.

Code 1919, § 4070.

§ 56-249.1. Commission may require transfer of gas, water or electricity by one utility to another; compensation

The Commission may require a public utility to transfer to another public utility of like business, gas, water or electricity, whenever the public health, welfare or safety shall be found to so require; provided, however, that the transferring public utility shall be compensated, at a rate fixed by the Commission, for all such deliveries by the receiving public utility.

1975, c. 358.

§ 56-249.2. Certain records to be maintained

All public utilities doing business in the Commonwealth that file a rate of return statement shall, on and after January 1, 1977, or the beginning of the next fiscal year of the public utility after such date, maintain all records necessary to prepare and submit annually a rate of return statement reflecting that part of its total business under regulation of the Commission.

1976, c. 742; 1979, c. 617; 2011, cc. 738, 740.

§ 56-249.3. Certain electric utilities to file reports in relation to fuel transactions, fuel purchases, fuel adjustment clauses, etc

The Commission shall require that public electric utilities, owning and operating generating facilities, or privately owned utilities purchasing power at wholesale for retail sales within this State, file monthly with the Commission for its review such information as it may deem necessary, which may include the following:

1. The various types of fuels received such as coal, oil, nuclear fuel or natural gas;

2. The following information on fossil fuels:

a. The supplier of the fossil fuel, the cost in cents per MBTU of the fuel, with a notation of whether the fuel was contracted for, purchased on the spot market or purchased from an affiliate of the electric utility;

b. The quantities of the various types of fossil fuels received stated in tons of coal, barrels of oil, millions of cubic feet of natural gas;

c. The average BTU content per pound, gallon or cubic foot received, whichever is applicable;

d. The average sulfur and ash content, where applicable, of the fuel received;

3. Total demurrage charges incurred at each generating plant;

4. Total cost of transportation incurred at each generating plant;

5. The quantity of fuel consumed by each generation unit in the generating plant;

6. The average cost of the fossil and nuclear fuel in cents per MBTU's consumed at each plant with and without handling charges;

7. The monthly net heat rate expressed in BTU's per kilowatt-hour for each generating unit;

8. The kilowatt-hour output delivered into the system on a monthly basis;

9. The monthly net kilowatt-hour interchange; and

10. The monthly system kilowatt-hour sales.

1977, c. 125; 1979, c. 617.

§ 56-249.4. How reports shall be filed; reports open to public; rules and regulations

A. The information filed pursuant to § 56-249.3 shall be filed with the Commission in affidavit form within forty-five days following the close of the reference month.

B. All such information and reports filed pursuant to this section and § 56-249.3 shall be open to the public and available for inspection.

C. The Commission shall promulgate all rules and regulations necessary to implement this section and § 56-249.3.

1977, c. 125; 1982, c. 107.

§ 56-249.5. Repealed

Repealed by Acts 1979, c. 492.

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

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

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

3. Beginning July 1, 2009, for all utilities described in subdivision A 1 and subsection B, if the Commission approves any increase in fuel factor charges pursuant to this section that would increase the total rates of the residential class of customers of any such utility by more than 20 percent, the Commission, within six months following the effective date of such increase, shall review fuel costs, and if the Commission finds that the utility is, or is likely to be, in an over-recovery position with respect to fuel costs for the 12-month period for which the increase in fuel factor charges was approved by more than five percent, it may reduce the utility's fuel cost tariffs to correct the over-recovery.

B. All fuel costs recovery tariff provisions in effect on January 1, 2004, for any electric utility that purchases fuel for the generation of electricity and that was, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall remain in effect until the later of (i) July 1, 2007 or (ii) the establishment of tariff provisions under subsection C. Any such utility shall continue to report to the Commission annually its actual fuel costs, including the cost of purchased power.

C. Each electric utility described in subsection B shall submit annually to the Commission its estimate of fuel costs, including the cost of purchased power, for successive 12-month periods beginning on July 1, 2007, and each July 1 thereafter. Upon investigation of such estimates and hearings in accordance with law, the Commission shall direct each such utility to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for such periods, adjusted for any over-recovery or under-recovery of fuel costs previously incurred; however, (i) no such adjustment for any over-recovery or under-recovery of fuel costs previously incurred shall be made for any period prior to July 1, 2007, and (ii) the Commission shall order that the deferral portion, if any, of the total increase in fuel tariffs for all classes as determined by the Commission to be appropriate for the 12-month period beginning July 1, 2007, above

the fuel tariffs previously existing, shall be deferred without interest and recovered from all classes of customers as follows: (i) in the 12-month period beginning July 1, 2008, that part of the deferral portion of the increase in fuel tariffs that the Commission determines would increase the total rates of the residential class of customers of the utility by four percent over the level of such total rates in existence on June 30, 2008, shall be recovered; (ii) in the 12-month period beginning July 1, 2009, that part of the balance of the deferral portion of the increase in fuel tariffs, if any, that the Commission determines would increase the total rates of the residential class of customers of the utility by four percent over the level of such total rates in existence on June 30, 2009, shall be recovered; and (iii) in the 12-month period beginning July 1, 2010, the entire balance of the deferral portion of the increase in fuel tariffs, if any, shall be recovered. The "deferral portion of the increase in fuel tariffs" means the portion of such increase in fuel tariffs that exceeds the amount of such increase in fuel tariffs that the Commission determines would increase the total rates of the residential class of customers of the utility by more than four percent over the level of such total rates in existence on June 30, 2007.

D. In proceedings under subsections A and C:

1. Energy revenues associated with off-system sales of power shall be credited against fuel factor expenses in an amount equal to the total incremental fuel factor costs incurred in the production and delivery of such sales. In addition, 75 percent of the total annual margins from off-system sales shall be credited against fuel factor expenses; however, the Commission, upon application and after notice and opportunity for hearing, may require that a smaller percentage of such margins be so credited if it finds by clear and convincing evidence that such requirement is in the public interest. The remaining margins from off-system sales shall not be considered in the biennial reviews of electric utilities conducted pursuant to § 56-585.1. In the event such margins result in a net loss to the electric utility, (i) no charges shall be applied to fuel factor expenses and (ii) any such net losses shall not be considered in the biennial reviews of electric utilities conducted pursuant to § 56-585.1. For purposes of this subsection, "margins from off-system sales" shall mean the total revenues received from off-system sales transactions less the total incremental costs incurred; and

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

E. The Commission is authorized to promulgate, in accordance with the provisions of this section, all rules and regulations necessary to allow the recovery by electric utilities of all of their prudently incurred fuel costs under subsections A and C, including the cost of purchased power, as precisely and promptly as possible, with no over-recovery or under-recovery, except as provided in

subsection C, in a manner that will tend to assure public confidence and minimize abrupt changes in charges to consumers.

1978, c. 636; 1979, c. 492; 1980, c. 384; 1982, c. 584; 1984, cc. 716, 725; 1989, c. 666; 2004, c. 827; 2006, c. 939; 2007, cc. 888, 933; 2009, c. 244.

§ 56-249.7. Certain directors and officers of utility to file shareholder information

The directors and officers of any public utility as defined in § 56-232 shall file with the Commission a record of all officers and directorships and all sources of income in excess of $25,000 per year arising from voting securities in all other corporations which to the knowledge of the director or officer furnishes fuel with a value in excess of $50,000 per year to the public utility. Such records for the past year shall be filed or made current on or before September 1 of each year.

1985, c. 522.

§ 56-250. Commission may authorize action by public utility in time of emergency or shortage; plans

(1) Whenever it shall appear by satisfactory evidence that any public utility furnishing in this State power, heat, light or water cannot supply all of its customers the usual requirements of each by reason of strikes, accidents, want of fuel, or for any other reason, the Commission may authorize such public utility to take such action as, in the opinion of the Commission, will minimize adverse impact on the public health and safety and facilitate restoration of normal service to all customers at the earliest time practicable.

(2) To facilitate implementation of this section, the Commission may require any such public utility to file, as a part of the rules and regulations referred to in § 56-236, its plan for curtailment of service in such a condition of emergency or shortage. Such plans shall be considered and shall take effect in the manner provided in this chapter for the schedules of rates and charges and rules and regulations of public utilities.

1920, p. 232; Michie Code 1942, § 4072a; 1974, c. 478; 1975, c. 358.

§§ 56-251, 56-252. Repealed

Repealed by Acts 1974, c. 478.

§ 56-253. Existing remedies retained

Nothing contained in this chapter shall in any way abridge or alter the remedies at common law, in equity, or by statute, but the provisions hereof shall be deemed to be in addition to such remedies.

Code 1919, § 4073.

Article 4 - SALE OF PLANTS; EXTENSIONS; GENERAL POWERS OF COMPANIES

§ 56-254. Sale or lease of plants to cities or towns

The board of directors of any public service corporation operating a gas, electric or water plant within the limits of any city or town, or within territory contiguous thereto, is hereby authorized to sell or lease to such city or town the entire plant of such corporation, or any part thereof, including the franchises and easements of such corporation; provided the action of the board of directors be authorized or ratified by an affirmative vote of a majority in interest of the stock issued and outstanding of such corporation, unless a larger interest is required by the charter or bylaws of such corporation.

1918, p. 463; Michie Code 1942, § 4073g.

§ 56-255. Extension of electric service to territory not being served

If, from any rural territory not now being served, application be made to the Commission by a group of five or more persons, natural or artificial, to require an extension of electric service to such territory, the Commission shall, if necessary to accomplish the purposes sought, fix a time for hearing such application, on such terms and conditions as the Commission may prescribe, and, if it be established to the satisfaction of the Commission that a proper guaranteed revenue for a sufficient number of years will accrue to any company which may be required to construct the desired extension, and that a reasonable investment will accrue to the company constructing such extension, then the Commission is hereby authorized and empowered to require the nearest or most advantageously located electric utility company to such territory to construct such extension to such point or points in such territory and to serve such customer or customers therein, as in its judgment is right and proper.

1936, p. 1056; Michie Code 1942, § 4057(24).

§ 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.

Code 1919, §§ 4058, 4061.

Article 5 - PIPELINES AND OTHER WORKS

§ 56-257. Manner of installing underground utility lines

A. Every operator, as defined in § 56-265.15, having the right to install underground utility lines, as defined in § 56-265.15, except interstate gas pipelines subject to regulation by the U.S.

Department of Transportation, shall install such underground utility lines in accordance with accepted industry standards. Such standards shall include, as applicable, standards established by the National Electric Safety Code, the Commission's pipeline safety regulations, the Department of Health's waterworks regulations (12VAC5-590-10 et seq.), and standards established by the Utility Industry Coalition of Virginia.

B. The Commission shall promulgate any rules or regulations necessary to enforce the provisions of this section as to those operators that do not comply with such accepted industry standards.

C. This section shall not authorize the Commission to order action by, or impose penalties on, any county, city or town. However, the Commission shall inform counties, cities and towns of alleged violations by the locality of the accepted industry standards or regulations adopted under this section and, at the request of the locality, suggest corrective action.

Code 1919, § 4059; 1996, c. 278; 2000, c. 779.

§ 56-257.1. Means of locating nonmetallic underground conduits

Any plastic or other nonmetallic pressurized conduit installed underground on and after July 1, 1976, shall have affixed thereto a wire conductive of electricity or some other means of locating the conduit while it is underground.

1976, c. 556.

§ 56-257.2. Gas pipeline safety

A. Notwithstanding any other provision of law, the Commission shall have the authority to regulate the safety of master-metered gas systems, landfill gas transmission or distribution facilities transmitting or distributing landfill gas off premises from a solid waste management facility permitted by the Department of Environmental Quality, and other gas pipeline facilities used in intrastate pipeline transportation, all as defined in the federal regulations promulgated under 49 U.S.C. § 60101 et seq., as amended, and the federal pipeline safety laws, owned or operated by any person, limited liability company, business entity or association of individuals. The authority granted herein shall be exercised in a manner that is not inconsistent with the above-referenced federal regulations and pipeline safety laws.

This subsection shall not apply to gas systems and pipeline facilities owned or operated by any county, city, or town.

B. For the purposes of pipeline facilities used in the intrastate transportation of gas, all as defined in the federal regulations promulgated under 49 U.S.C. § 60101 et seq., as amended, and the federal pipeline safety laws, and notwithstanding any other provision of law, any person, limited liability company, business entity or association of individuals failing or refusing to obey Commission orders relating to the adoption or enforcement of regulations for the design, construction, operation, and maintenance of intrastate pipeline facilities and temporary or permanent injunctions issued by the Commission shall be fined such sums not exceeding the fines and penalties specified by 49 U.S.C. § 60122 (a)(1), as amended. Should the operation of such order be suspended pending

an appeal, the period of such suspension shall not be computed against the person in the matter of his liability to fines or penalties. The authority granted herein shall be exercised in a manner that is not inconsistent with the above-referenced federal regulations and pipeline safety laws.

This subsection shall not apply to gas systems and pipeline facilities owned or operated by any county, city, or town.

C. With respect to the gas systems and pipeline facilities owned or operated by any county, city, or town, the Commission is authorized to act for the United States Secretary of Transportation to conduct safety inspections pursuant to the federal pipeline safety laws, 49 U.S.C. § 60101 et seq., to the extent authorized by certification or agreement with the Secretary under 49 U.S.C. § 60106 of the federal pipeline safety laws, 49 U.S.C. § 60101 et seq., as amended. After each inspection, an exit interview with any county, city, or town shall be conducted prior to promptly reporting to the United States Department of Transportation. This subsection shall not authorize the Commission to impose civil penalties or fines on any county, city, or town and shall not authorize the Commission to exercise jurisdiction over the rates, charges, services, facilities, or service territory of any county, city, or town providing gas service except as is otherwise provided by law.

1994, c. 12; 2005, c. 35.

§ 56-257.3. Repealed

Repealed by Acts 2005, c. 35.

§ 56-258. Who to permit laying of pipelines in roads

The Commissioner of Highways or the board of supervisors or other governing body in any county that has withdrawn its county roads from the secondary system of state highways is authorized to enter into contract with water companies or other corporations or persons to lay water pipelines along the rights-of-way of public roadways and turnpikes. Such water pipelines shall be laid in such manner as not to obstruct passage thereon when completed, and in any such contract the Commissioner of Highways or any such board of supervisors or other governing body, as the case may be, shall provide that the parties so laying such pipelines shall, at all times, exercise reasonable care not to obstruct such roadways while laying, repairing or replacing such pipe.

Code 1919, § 4060; 2013, cc. 585, 646.

§ 56-259. Rights-of-way, etc., may be contracted for; location of easements of public service corporations

A. Any corporation of the character mentioned in this chapter or in Chapter 2 (§ 56-49 et seq.) may contract with any person or corporation, the owner of lands, or of any interest, franchise, privilege, or easement therein, over, under, or through which any pipeline transmitting petroleum products or natural gas, power or telephone line, sewer or water main or similar works is to be constructed, for the right-of-way for such line, sewer, main or works, and for sufficient land for its necessary offices, plant, or plants, works, stations and structures. All such contracts shall specify with reasonable particularity and definiteness the location of such easement of right-of-way;

provided, however, that this provision shall not apply to contracts between any such corporation and any political subdivision of this Commonwealth, but any such corporation shall provide the location of its facilities on land owned by such a political subdivision upon request of such political subdivision.

B. The location of any easement of right-of-way of any public service corporation shall be as specified in the instrument by which such easement was conveyed to such public service corporation; provided that, with respect to all such easements granted after December 31, 1968, if such location is not specified by metes and bounds or by reference to a center line or survey line showing courses and distances from some ascertainable point of beginning, the location of such easement shall be determined by reference to the facilities constructed thereon, and the center line of those facilities shall be the center line of the easement.

C. Prior to acquiring any easement of right-of-way, public service corporations will consider the feasibility of locating such facilities on, over, or under existing easements of rights-of-way. In the event any public service corporation owning a right-of-way shall deny a request of any other public service corporation for joint use of that right-of-way, the corporation whose request is denied shall have the right, within thirty days after the denial to apply to the Commission for an order requiring such joint use. The Commission shall conduct a hearing on such application and shall direct the corporation owning the right-of-way to allow joint use if the Commission finds that such joint use is reasonable and that the present or future public utility service of such corporation will not be adversely affected by such joint use. In making such determination, the Commission may establish the terms and conditions for such joint use, including, without limitation, a requirement of compensation by the utility making the request to the utility owning the right-of-way, if the Commission finds such a requirement to be appropriate.

D. In any case involving an application for a certificate pursuant to § 56-265.2, the governing body of each locality in which a gas pipeline or electrical transmission line would be located shall have the right to request the Commission to consider directing a joint use of right-of-way within that locality pursuant to the standards in subsection C of this section, provided that the governing body shall file its request no later than the date for public comment on the application established by the Commission.

E. A renewable generator, as defined in § 67-1100, should where feasible locate distribution facilities, as defined in § 67-1100, that are required to connect its renewable energy facility that generates electricity to the electric distribution grid, to distribute steam generated at such facility, or to distribute its landfill gas to customers or a natural gas distribution or transmission pipeline, as applicable, on, over, or under existing easements of rights-of-way of a public service corporation. The renewable generator shall request joint use of the right-of-way from the public service corporation that owns the easement of right-of-way and shall offer to enter into an agreement that will specify the terms and conditions, including rental, under which such joint use will occur. The compensation to be paid to the public service corporation for such joint use shall be as negotiated

between the public service corporation and the renewable generator. If any public service corporation owning an easement of right-of-way shall deny a request for the joint use of that right-of-way, the renewable generator shall have the right, exercisable within 30 days after the denial, to apply to the Commission for an order requiring such joint use. The Commission shall conduct a hearing on such application and shall direct the public service corporation owning the easement of right-of-way to allow joint use if the Commission finds that such joint use is reasonable and that the present or future public utility service of such corporation will not be adversely affected by such joint use. In making such determination, the Commission may establish the terms and conditions for such joint use, including, without limitation, the rental compensation that the renewable generator shall pay to the public service corporation owning the easement of right-of-way. The provisions of this subsection shall not apply to railroads.

Code 1919, § 4062; 1964, c. 523; 1968, c. 534; 1972, c. 519; 1979, c. 309; 2001, cc. 745, 752; 2009, c. 807.

§ 56-259.1. Instruments conveying easements to public service corporations

No instrument executed by a landowner after January 1, 2002, by which an easement of right of way in land is conveyed to a public service corporation shall be accepted for recordation in any Clerk's office that maintains property records unless it bears the following provision:

"NOTICE TO LANDOWNER: You are conveying rights to a public service corporation. A public service corporation may have the right to obtain some or all of these rights through exercise of eminent domain. To the extent that any of the rights being conveyed are not subject to eminent domain, you have the right to choose not to convey those rights and you could not be compelled to do so. You have the right to negotiate compensation for any rights that you are voluntarily conveying."

If such an instrument does not bear such a notice provision but is accepted for recordation in any Clerk's office, the absence of such notice provision shall not affect the validity or enforceability of such instrument.

2001, c. 751.

§ 56-260. Compensation for damages

If any company of the character mentioned in this chapter and such owner as is referred to in § 56-259 cannot agree on the terms of such contract as is referred to in § 56-259, the company may acquire such right-of-way in the manner provided by the laws of this Commonwealth for the exercise of the right of eminent domain; and in case any person is damaged in his property along the line of any such public road, highway, park, street, avenue, or alley by any such use or occupation of the same, by any company of the character mentioned in this chapter, such corporation shall, before using or occupying with its works such public roads, highways, parks, streets, avenues, or alleys, make compensation therefor to the persons so damaged. If the parties cannot agree upon

the same, such compensation shall be ascertained in the mode prescribed by law for the exercise of the right of eminent domain.

Code 1919, § 4063.

§ 56-260.1. Contract provisions exempting company from liability unlawful

No contract for an easement of right-of-way for a pipeline, power or telephone line, sewer, main or similar works shall contain any provision which purports to exempt the corporation erecting, laying or installing the same from liability for injuries sustained by any person or property by reason of the laying, constructing, maintaining, operating, repairing, altering, replacing or removal of, or any failure or defect in, such line, sewer, main or works. Any such provision in any such contract is hereby declared to be against public policy and shall be null and void and unenforceable; provided, that this provision shall not apply as to any cause of action arising prior to June 26, 1964.

1964, c. 523.

Article 6 - WATER AND SEWERAGE COMPANIES

§ 56-261. Duties of companies furnishing water or sewerage facilities

Every public service corporation engaged in the business of furnishing water or sewerage facilities to any city, incorporated town, or county having a population greater than 500 inhabitants per square mile as shown by United States census, in this Commonwealth or to inhabitants thereof (whether or not such business is conducted under or by virtue of a municipal franchise), shall furnish at all times and at a reasonable charge a supply of water, a system of distribution or disposal and services and facilities incidental to such supply, distribution or disposal sufficient and adequate to the protection of the health of such inhabitants and to the public health of the community, and any such water company shall furnish a supply of water adequate for proper fire protection within such city or town or such county and the adjacent territory served by the mains of such corporation. Each person operating a sewerage system which includes one or more sewage treatment plants shall notify in writing, the Commission, the Director of the Department of Environmental Quality and each electric or natural gas utility supplying or distributing energy to such system that such system includes a sewage treatment plant.

1924, p. 690; 1928, p. 632; Michie Code 1942, § 4073a; 2000, c. 183.

§ 56-261.1. Duties of water and sewerage companies in certain counties

Chapter 298 of the Acts of 1950, approved April 4, 1950, requiring water and sewerage companies in any county adjoining a county having a population in excess of 2,000 per square mile, to furnish a supply of water sufficient for health and fire protection, is incorporated in this Code by this reference.

§ 56-261.2. Hydrant connections and water supply for fire protection in certain counties

Chapter 319 of the Acts of 1950, approved April 4, 1950, relating to any county adjoining a county having a population in excess of 2,000 per square mile requiring certain water companies to furnish water for fire protection and the necessary hydrant connections, is incorporated in this Code by this reference.

§ 56-262. Proceeding upon failure of public service corporation to perform duties

If any such public service corporation shall fail or refuse to perform any of the duties imposed by § 56-261 or by this chapter, any city or incorporated town, or any such county served or whose inhabitants are served by such corporation may file with the State Corporation Commission a petition setting forth the failure or refusal of such corporation to carry out and perform one or more of such duties, at a reasonable charge, or to the detriment or threatened detriment of the public health or safety from fire of such community.

1924, p. 690; 1928, p. 632; Michie Code 1942, § 4073b.

§ 56-263. Commission may order increase in service

The Commission, after due notice to such public service corporation, shall investigate such complaint and if, upon such investigation, the Commission shall determine that the public health of the community or its safety from fire is impaired or threatened with impairment by reason of the failure of such public service corporation to perform or carry out any of the duties imposed by § 56-261, or by this chapter, it shall embody such finding in an order to be entered upon its records and at the same time shall enter an order requiring such public service corporation to make such increase in its water supply or such increases, changes, modifications and extensions of its distribution or disposal system and such changes, modifications and extensions in its service charges and facilities as may be requisite to the proper protection of the public health or safety of the community. The Commission shall fix in its order a reasonable time within which such increases, changes, modifications and extensions shall be completed and may require reports from such public service corporation of the progress of the work so ordered.

1924, p. 690; 1928, p. 632; Michie Code 1942, § 4073c.

§ 56-264. Quo warranto in case of failure to comply with order of Commission

If any such public service corporation shall fail or refuse to comply with any order of the Commission made pursuant to the provisions of § 56-263, the Commonwealth, or any person authorized by Article 1 (§ 8.01-635 et seq.) of Chapter 25 of Title 8.01 to institute such a proceeding, may proceed against such corporation by a writ of quo warranto, or information in the nature of a writ of quo warranto, in the circuit or corporation court having jurisdiction in the county or city wherein is located the principal office of the corporation in this Commonwealth. The provisions of Article 1 of Chapter 25 of Title 8.01 shall be applicable to any such proceeding except as herein otherwise provided and if, in such proceeding, there shall be a judgment of dissolution, the provisions of § 13.1-755 shall apply.

1924, p. 690; 1928, p. 633; Michie Code 1942, § 4073d.

§ 56-264.1. Collection of rates, fees and charges

In the event that the rates, fees or charges charged by any private sewage disposal system company for the services and facilities of any sewage disposal system or sewer improvements by or in connection with any real estate or other property served shall not be paid as and when due, the owner, tenant or occupant, as the case may be, of such property shall, until such rates, fees and charges shall be paid, cease to dispose of sewage or industrial wastes originating from or on such property by discharge thereof directly or indirectly into the sewerage system, and if such owner, tenant or occupant shall not cease such disposal within two months thereafter, it shall be the duty of each county, city, town or other public corporation, board or body, supplying water to or selling water for use on, such property, within five days after receipt of notice of such facts from the private sewage disposal system company to cease supplying water to, and selling water for use on, such property. If such county, city, town or other public corporation, board or body, shall not within such time cease supplying water to, and selling water for use on, such property the private sewage disposal system company may disconnect such property from such sewage disposal system or sewer improvements, and for such purposes may enter on any lands, waters and premises of such county, city, town or other public corporation, board or body. The county, city, town or other public corporation, board or body supplying water to or selling water for use on such property may establish a reasonable fee for discontinuing such service and shall establish administrative regulations to insure proper notice to the customer, to provide for reestablishment of service and to protect it against liability for action taken pursuant hereto.

1976, c. 405.

§ 56-264.2. Governing board of multistate entities operating certain sewage treatment facilities; arbitration of issues; condemnation of facilities

A. As used in this section, "multistate entity" means any corporation, company, political subdivision, association, or other legal entity, without regard to whether such entity is a public utility or public service company, that engages in the provision of sewerage service to persons residing in the Commonwealth and to persons residing in an adjacent state and that operates a sewage treatment facility with a capacity of not less than five million gallons per day that is located in the Commonwealth, the construction or expansion of which treatment facility was financed primarily through the Virginia Revolving Loan Fund or a successor loan fund program administered by the Virginia Resources Authority or Department of Environmental Quality.

B. Notwithstanding any contrary provision of law, all powers of a multistate entity shall be exercised by or under the authority of, and all business and affairs of the multistate entity shall be managed under the direction of, a governing board, which may be titled a board of directors, board of trustees, or similar appellation. The governing board shall be comprised of (i) two members residing in the Commonwealth for each locality of the Commonwealth wherein the multistate entity provides sewage treatment services and (ii) a number of members residing in the adjacent state that is equal to the number of members residing in the Commonwealth. The governing body

of each locality of the Commonwealth wherein the multistate entity provides sewerage services shall appoint two individuals to the board, which individuals need not be residents of such locality. The terms of members of the board residing in the Commonwealth shall expire one year following their appointment; however, despite the expiration of such a member's term, the member shall continue to serve until his successor is elected and qualifies. Unless the articles of incorporation, bylaws, charter, or other organic document of the multistate entity requires a greater number for the transaction of particular business, a quorum of the governing board shall consist of a majority of the number of members prescribed by this subsection. If a quorum is present when a vote of the governing board is taken, the affirmative vote of a majority of members present is the act of the governing board unless the articles of incorporation, bylaws, charter, or other organic document of the multistate entity requires the vote of a greater number of members. Except as provided in this section, the provisions of the articles of incorporation, bylaws, charter, or other organic document of a multistate entity in effect prior to July 1, 2006, shall continue to apply with respect to the method of appointing the board members residing in the adjacent state and the duration of their terms, and to other matters relating to the governing board of such multistate entity, except that no amendment to the articles of incorporation, bylaws, charter, or other organic document of the multistate entity that contravenes any provision of this section shall be effective.

C. Upon the filing of a petition by not fewer than one-half of the members of the governing board of a multistate entity requesting the Commission to arbitrate an issue pertaining to the management of the business and affairs of the multistate entity that requires the affirmative vote of the members, upon which issue the governing board is deadlocked, the Commission shall commence a proceeding to arbitrate the issue. The multistate entity and the nonpetitioning members of the governing board shall be parties to the proceeding. With the petition for arbitration, the petitioners shall provide all relevant documentation concerning the issue on which it is alleged that the board is deadlocked and the positions of the petitioners and the other members of the governing board with respect to the issue. The Commission shall conduct the arbitration proceeding in accordance with its Rules of Practice and Procedure (5VAC5-20-10 et seq.). The Commission's consideration shall be limited to the issue in the petition. The Commission shall proceed promptly with the hearing and determination of the issue in controversy. The final order of the Commission shall be final and binding on the multistate entity and the governing board, unless notice of appeal to the Supreme Court is filed in the office of the Clerk of the Commission within 30 days after entry of the order appealed from, in the manner provided in the rules of the Supreme Court of Virginia. If the Commission incurs additional costs in conducting such an arbitration proceeding that cannot be recovered through the maximum levy authorized pursuant to § 58.1-2660, the unrecoverable portion of the costs of the arbitration proceedings shall be assessed against the multistate entity.

D. If the articles of incorporation, bylaws, charter, or other organic document of a multistate entity in existence on July 1, 2006, does not comply with the requirements of subsection B by January 1, 2008, then the locality in the Commonwealth wherein the sewage treatment facility is located shall be authorized to acquire, by exercise of the power of eminent domain if the governing body of the locality deems it appropriate, the sewage treatment facility operated by the multistate entity, without regard to whether such entity is the owner of the sewage treatment facility, and any related pipelines, easements, and other property related to the provision of sewerage services that is located within the locality, for the purpose of providing sewerage services to persons residing within the Commonwealth and the Bluestone Watershed.

2006, cc. 576, 591.

§ 56-265. Certain sections not to limit Commission's powers

Nothing in § 56-261 or §§ 56-262 through 56-264 shall be construed so as to limit or curtail the existing powers of the Commission to require of all public service corporations in all cases the rendition of adequate service to the public at reasonable rates nor the existing right of municipalities or individuals to apply to the Commission for the enforcement of such duties, the purpose of such sections being to extend and not to limit the powers of the Commission.

1924, p. 691; 1928, p. 633; Michie Code 1942, § 4073f.

Chapter 10.1 - UTILITY FACILITIES ACT

§ 56-265.1. Definitions

In this chapter the following terms shall have the following meanings:

(a) "Company" means a corporation, a limited liability company, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or a county, unless such municipal corporation or county has obtained a certificate pursuant to § 56-265.4:4.

(b) "Public utility" means any company which owns or operates facilities within the Commonwealth of Virginia for the generation, transmission or distribution of electric energy for sale, for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of telephone service, sewerage facilities or water; however, the term "public utility" shall not include any of the following:

(1) Except as otherwise provided in § 56-265.3:1, any company furnishing sewerage facilities, geothermal resources or water to less than 50 customers. Any company furnishing water or sewer services to 10 or more customers and excluded by this subdivision from the definition of "public utility" for purposes of this chapter nevertheless shall not abandon the water or sewer services

unless and until approval is granted by the Commission or all the customers receiving such services agree to accept ownership of the company.

(2) Any company generating and distributing electric energy exclusively for its own consumption.

(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant, and (B) which does not charge separately or by meter for electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within 30 days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ 56-232 et seq.) and 17 (§ 56-509 et seq.) of this title and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.

(4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or delivery service, of natural or manufactured gas to fewer than 35 commercial or industrial customers, which are not themselves "public utilities" as defined in this chapter, or to certain public schools as indicated in this subdivision, for use solely by such purchasing customers at facilities which are not located in a territory for which a certificate to provide gas service has been issued by the Commission under this chapter and which, at the time of the Commission's receipt of the notice provided under § 56-265.4:5, are not located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, provided that such company shall comply with the provisions of § 56-265.4:5. Direct sales or ancillary transmission or delivery services of natural gas to public schools in the following localities may be made without regard to the number of schools involved and shall not count against the "fewer than 35" requirement in this subdivision: the Counties of Dickenson, Wise, Russell, and Buchanan, and the City of Norton.

(5) Any company which is not a public service corporation and which provides compressed natural gas service at retail for the public.

(6) Any company selling landfill gas from a solid waste management facility permitted by the Department of Environmental Quality to a public utility certificated by the Commission to provide gas distribution service to the public in the area in which the solid waste management facility is located. If such company submits to the public utility a written offer for sale of such gas and the public utility does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within three miles of the solid waste management facility or (ii) any purchaser

after such landfill gas has been liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

(7) Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or industrial customer from a solid waste management facility permitted by the Department of Environmental Quality and operated by that same authority, if such an authority limits off-premises sale, transmission or delivery service of landfill gas to no more than one purchaser. The authority may contract with other persons for the construction and operation of facilities necessary or convenient to the sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility, the public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover the cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or both, that is derived from a solid waste management facility permitted by the Department of Environmental Quality and sold or delivered from any such facility to not more than three commercial or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as authorized by this section. If a purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility or within an area in which a municipal corporation provides gas distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such company shall submit to such public utility or municipal corporation a written offer for sale of that gas prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility or municipal corporation does not agree within 60 days following the date of the offer to purchase such landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover any cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(9) A company that is not organized as a public service company pursuant to subsection D of § 13.1-620 and that sells and delivers propane air only to one or more public utilities. Any company

excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and enforcement.

(10) A farm or aggregation of farms that owns and operates facilities within the Commonwealth for the generation of electric energy from waste-to-energy technology. As used in this subdivision, (i) "farm" means any person that obtains at least 51 percent of its annual gross income from agricultural operations and produces the agricultural waste used as feedstock for the waste-to-energy technology, (ii) "agricultural waste" means biomass waste materials capable of decomposition that are produced from the raising of plants and animals during agricultural operations, including animal manures, bedding, plant stalks, hulls, and vegetable matter, and (iii) "waste-to-energy technology" means any technology, including but not limited to a methane digester, that converts agricultural waste into gas, steam, or heat that is used to generate electricity on-site.

(11) A company, other than an entity organized as a public service company, that provides non-utility gas service as provided in § 56-265.4:6.

(c) "Commission" means the State Corporation Commission.

(d) "Geothermal resources" means those resources as defined in § 45.1-179.2.

1950, p. 599; 1954, c. 354; 1970, c. 265; 1981, c. 506; 1988, c. 440; 1990, c. 488; 1991, c. 263; 1992, c. 476; 1994, cc. 652, 852; 1995, c. 643; 1997, cc. 105, 148; 1999, c. 768; 2000, cc. 528, 543; 2002, cc. 479, 489; 2004, cc. 748, 1028; 2005, c. 22; 2006, c. 411; 2007, c. 813; 2009, cc. 746, 794.

§ 56-265.2. Certificate of convenience and necessity required for acquisition, etc., of new facilities

A. 1. Subject to the provisions of subdivision 2, it shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service, except ordinary extensions or improvements in the usual course of business, without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege. Any certificate required by this section shall be issued by the Commission only after opportunity for a hearing and after due notice to interested parties. The certificate for overhead electrical transmission lines of 138 kilovolts or more shall be issued by the Commission only after compliance with the provisions of § 56-46.1.

2. For construction of any transmission line of 138 kilovolts, a public utility shall either (i) obtain a certificate pursuant to subdivision 1 or (ii) obtain approval pursuant to the requirements of (a) § 15.2-2232 and (b) any applicable local zoning ordinances by the locality or localities in which the transmission line will be located.

B. In exercising its authority under this section, the Commission, notwithstanding the provisions of § 56-265.4, may permit the construction and operation of electrical generating facilities, which

shall not be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10 (§ 56-232 et seq.), upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse effect upon reliability of electric service provided by any such regulated public utility; and (iii) are not otherwise contrary to the public interest. In review of its petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1. Facilities authorized by a certificate issued pursuant to this subsection may be exempted by the Commission from the provisions of Chapter 10 (§ 56-232 et seq.).

C. A map showing the location of any proposed ordinary extension or improvement outside of the territory in which the public utility is lawfully authorized to operate shall be filed with the Commission, and prior notice of such ordinary extension shall be given to the public utility or other entity authorized to provide the same utility service within said territory. Ordinary extensions outside the service territory of a public utility shall be undertaken only for use in providing its public utility service and shall be constructed and operated so as not to interfere with the service or facilities of any public utility or other entity authorized to provide utility service within any other territory. If, upon objection of the affected utility or entity filed within 30 days of the aforesaid notice and after investigation and opportunity for a hearing the Commission finds an ordinary extension would not comply with this section, it may alter or amend the plan for such activity or prohibit its construction.

D. Whenever a certificate is required under this section for a pipeline for the transmission or distribution of natural or manufactured gas, the Commission may issue such a certificate only after compliance with the provisions of § 56-265.2:1. As used in this section and § 56-265.2:1, "pipeline for the transmission or distribution of manufactured or natural gas" shall include the pipeline and any related facilities incidental or necessary to the operation of the pipeline.

E. This section shall be subject to the requirements of § 56-265.3, if any, and nothing herein shall be construed to supersede § 56-265.3.

1950, p. 599; 1985, c. 282; 1995, cc. 311, 514; 1998, c. 92; 2012, cc. 54, 284.

§ 56-265.2:1. Approval by Commission required for construction of certain gas pipelines and related facilities; notice and hearing

A. Whenever a certificate is required pursuant to § 56-265.2 for the construction of a pipeline for the transmission or distribution of manufactured or natural gas, the Commission shall consider the effect of the pipeline on the environment, public safety, and economic development in the Commonwealth, and may establish such reasonably practical conditions as may be necessary to

minimize any adverse environmental or public safety impact. In such proceedings, the Commission shall receive and consider all reports by state agencies concerned with environmental protection; and, if requested by any county or municipality in which the pipeline is proposed to be constructed, local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2.

B. The Commission shall not approve construction of any such pipeline unless the public utility has provided 30 days' advance public notice of the proposed pipeline by (i) publishing a notice in a newspaper or newspapers of general circulation in each of the counties and municipalities through which the pipeline is proposed to be constructed, (ii) providing written notice to the governing body of each such county and municipality, (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed pipeline, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, and (iv) filing a copy of any plans, specifications, or maps of the proposed pipeline with the Commission, which plans, specifications, or maps shall be made available for public inspection at the Commission's business office, during normal business hours. Any notice required by this subsection shall include a written description of the proposed route the line is to follow, a map or sketch of the route, and information regarding the time period during which persons may request a public hearing under subsection C of this section.

C. If, within 45 days after publication and mailing of the notices required in subsection B of this section, any interested party requests a public hearing, the Commission shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as may be designated by the Commission. If written requests therefor are received from 20 or more interested parties, the Commission shall hold at least one hearing in the area that would be affected by construction of the pipeline, for the purpose of receiving public comment on the proposal. If any hearing is to be held in the area affected, the Commission shall direct that a copy of the transcripts of any previous hearings held in the case be made available for public inspection at a convenient location in the area for a reasonable time before such local hearing.

D. For the purposes of this section, "interested parties" means the governing bodies of any counties or municipalities through which the pipeline is to be constructed, and persons residing or owning property within one-half mile of such pipeline. For the purposes of this section, "environment" or "environmental" shall be deemed to include in meaning "historic."

E. If a significantly different route is determined more desirable after the giving of the notice required in subsection B of this section, the Commission shall cause notice of the new route or routes to be published and mailed in accordance with subsection B of this section. The Commission shall thereafter comply with the provisions of this section to the full extent necessary to

give interested parties in the newly affected areas the same protection afforded interested parties affected by the route described in the original notice.

F. Approval of a pipeline pursuant to this section shall be deemed to satisfy and supersede the requirements of § 15.2-2232 and local zoning ordinances with respect to such pipeline and related facilities; however, the Commission shall not approve the construction of a natural gas compressor station in an area zoned exclusively for residential use unless the public utility provides certification from the local governing body that the natural gas compressor station is consistent with the zoning ordinance. The certification required by this subsection shall be deemed to have been waived unless the local governing body informs the Commission and the public utility of the natural gas compressor station's compliance or noncompliance within 45 days of the public utility's written request.

1995, c. 311; 2001, c. 758; 2014, cc. 467, 507.

§ 56-265.3. Certificate to furnish public utility service; allotment of territory transfers, leases or amendments

A. No public utility shall begin to furnish public utility service within the Commonwealth without first having obtained from the Commission a certificate of public convenience and necessity authorizing it to furnish such service. Any company engaged in furnishing a public utility service in this Commonwealth as of July 1, 1950, shall, upon filing maps with the Commission within ninety days from such date, showing the territory now being served by it, be entitled to receive a certificate of convenience and necessity authorizing it to begin to furnish such public utility service in such territory. Also, any company that is granted authority under the Public Utilities Securities Act, Chapter 3 (§ 56-55 et seq.) of this title to issue securities for the purpose of constructing or extending facilities described in the application for such authority, shall, if the application was filed with the State Corporation Commission before February 1, 1950, have the same right to a certificate of convenience and necessity that it would have had if the facilities had been in operation and serving the public on February 1, 1950. Any company which was engaged in furnishing a public utility service in this Commonwealth as of July 1, 1950, and which is now so engaged in providing the same kind of service, and which could have filed maps with the Commission in accordance with the requirements of this section but failed to do so, may file such maps not later than January 1, 1974, showing the territory now being served by it, and be entitled to receive a certificate of convenience and necessity authorizing it to continue to furnish the same kind of public utility service in such areas to the same extent as if it had filed maps as of July 1, 1950.

B. On initial application by any company, the Commission, after formal or informal hearing upon such notice to the public as the Commission may prescribe, may, by issuance of a certificate of convenience and necessity, allot territory for development of public utility service by the applicant if the Commission finds such action in the public interest.

C. If the initial application provides for the furnishing of water or sewerage service within any political subdivision in which there has been created an authority for either or both of such purposes pursuant to Chapter 51 (§ 15.2-5100 et seq.) of Title 15.2, the Commission shall not hold any hearing on such application or issue any certificate for the allotment of territory unless the application shall first have been approved by the governing body of the political subdivision in which the territory is located. In any area where a water company was in existence and furnishing water prior to the formation of an authority to provide water, the Commission may hold a hearing on an application and issue a certificate to the water company for that territory which was served prior to the creation of the authority whether or not the governing body of the political subdivision has approved the application. In any area where a sewer company was in existence and furnishing sewer services prior to the formation of an authority to provide sewer services, the Commission may hold a hearing on an application and issue a certificate to the sewer company for that territory which was served prior to the creation of the authority whether or not the governing body of the political subdivision has approved the application.

D. If the Commission finds it to be in the public interest, upon the application of a holder of a water or sewer certificate, such certificate may be transferred, leased or amended after such reasonable notice to the public and opportunity to be heard as the Commission by order may prescribe. The Commission may authorize the transfer, lease, or amendment of the certificate subject to such restrictions as the Commission finds will promote the public interest.

E. The Commission is authorized to promulgate any rules necessary to implement this section.

1950, c. 599; 1968, c. 720; 1973, c. 397; 1986, c. 521; 1988, c. 233.

§ 56-265.3:1. Certificates to furnish water and sewer service

A. Any company proposing to construct facilities after January 1, 1995, ultimately intended to make water or sewer service available to more than fifty residential building lots shall, prior to construction or financial commitments therefor, organize a public service corporation and seek certificates of public convenience and necessity pursuant to §§ 56-265.2 and 56-265.3. The application for such certificates shall include (i) a comprehensive business plan detailing the technical, managerial and financial resources to be devoted to operation of the water or sewer service; (ii) except in the case of a company seeking a certificate to operate a sewer service only, proof of receipt of, or application for, a permit for the facilities pursuant to Virginia Department of Health requirements under Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1; and (iii) such other information as is now or hereafter deemed appropriate by the Commission, including proof of the issuance of a bond or the deposit of funds in escrow as may be required by the Department of Health pursuant to § 32.1-174.1.

B. Certificates of public convenience and necessity shall not be granted by the Commission unless, in addition to the findings required by §§ 56-265.2 and 56-265.3, it also finds that the comprehensive business plan presented in the application reasonably assures that system performance

requirements for providing water supply can be met over the long term and at reasonable costs. The Commission may issue such certification with any conditions or restrictions as public interest may require.

C. Water or sewer companies existing on or before January 1, 1995 which extend their service at any time following the effective date of this section shall not be required to comply with the requirements thereof.

D. If any applicant under this section so requests, the Commission shall not disclose the contents of the comprehensive business plan except as necessary to perform its duties.

1994, c. 852.

§ 56-265.4. Certificate to operate in territory of another certificate holder

Except as provided in § 56-265.4:4, no certificate shall be granted to an applicant proposing to operate in the territory of any holder of a certificate unless and until it shall be proved to the satisfaction of the Commission that the service rendered by such certificate holder in such territory is inadequate to the requirements of the public necessity and convenience; and if the Commission shall be of opinion that the service rendered by such certificate holder in such territory is in any respect inadequate to the requirements of the public necessity and convenience, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to an applicant proposing to operate in such territory. For the purposes of this section, the transportation of natural gas by pipeline, without providing service to end users within the territory, shall not be considered operating in the territory of another certificate holder.

1950, p. 600; 1984, c. 382; 2014, cc. 467, 507.

§ 56-265.4:1. Furnishing of electric public utility service or provision of facilities therefor by municipal corporations and other governmental bodies

If any municipal corporation or other governmental body, having legal authority by charter or other law, shall desire to supply electric public utility service, or construct, enlarge or acquire, by lease or otherwise, any electric utility facilities, outside its political boundaries, it shall have power to enter into agreements in that regard with affected public utilities which shall be binding in accordance with their terms and for the period therein provided; but no contract entered into under this section shall limit the power of the Commission to fix rates and to otherwise regulate a public utility. No such service by a municipal corporation or other governmental body shall be provided, or facilities constructed, enlarged or acquired, in territory allotted to any public utility by the Commission except in territory served by such municipal corporation or other governmental body on June 26, 1964, unless the affected public utility shall consent by such an agreement or the Commission shall grant a certificate therefor upon application by the municipal corporation or other governmental body pursuant to § 56-265.4, authority for which certification is hereby granted. Provided, however, this limitation on the extension of public utility service by any municipal corporation or governmental body outside its political boundaries shall not be

applicable to cities or towns extending their service in accordance with the provisions of § 56-265.4:2. No public utility shall extend its electric public utility service, or construct, enlarge or acquire, by lease or otherwise, any electric utility facilities, in territory served exclusively by a municipal corporation or other governmental body on June 26, 1964, unless such municipal corporation or other governmental body shall consent by such an agreement. In case of question as to the scope of the territory served by a municipal corporation or other governmental body on June 26, 1964, the Commission may, and on application by either such public utility or such municipal corporation or other governmental body shall, decide such question and allot such territory accordingly, between such public utility and such municipal corporation or other governmental body, in which event any expansion of service outside the territory so allotted shall be subject to the applicable provisions of this chapter, provided, however, that nothing contained herein shall prevent any municipal corporation from constructing or maintaining facilities in county areas for the purpose of generating or purchasing electricity to be transmitted into the service area of such municipal corporation.

1964, c. 228; 1978, c. 325.

§ 56-265.4:2. Extension of service by cities and towns into annexed areas

A. Any city or town in the Commonwealth which provides electric utility service for the use of its residents may, at any time following annexation of additional territory to such city or town, acquire the distribution system facilities of the electric utility serving the annexed area in the manner provided by Title 25.1. As used in this section (i) the term "distribution system facilities" shall be deemed to include all facilities necessary to distribute electric utility service to any annexed area but shall not include substations of the public utility whose facilities are being acquired, and (ii) the terms "city" and "town" shall not include a shire, a borough or any other subdivision of a city or town. This section shall not apply to the addition of territory to a city or town by consolidation, merger, or through any other procedure that results in an effective combination with another governmental entity.

B. Upon completion of the eminent domain proceedings or upon the negotiation of a settlement between the city or town and the electric utility, the State Corporation Commission shall amend the certificate of convenience and necessity of the public utility whose distribution system facilities have been acquired to reflect the change in its territory.

1978, c. 325; 1987, c. 337; 1995, c. 36.

§ 56-265.4:3. Repealed

Repealed by Acts 2011, cc. 738 and 740, cl. 2.

§ 56-265.4:4. Certificate to operate as a telephone utility

A. The Commission may grant certificates to competing telephone companies, or any county, city or town that operates an electric distribution system, for interexchange service where it finds that such action is justified by public interest, and is in accordance with such terms, conditions,

limitations, and restrictions as may be prescribed by the Commission for competitive telecommunications services. A certificate to provide interexchange services shall not authorize the holder to provide local exchange services. The Commission may grant a certificate to a carrier, or any county, city or town that operates an electric distribution system, to furnish local exchange services as provided in subsection B.

B.1. After notice to all local exchange carriers certificated in the Commonwealth and other interested parties and following an opportunity for hearing, the Commission may grant certificates to any telephone company, or any county, city or town that operates an electric distribution system, proposing to furnish local exchange telephone service in the Commonwealth. In determining whether to grant a certificate under this subsection, the Commission may require that the applicant show that it possesses sufficient technical, financial, and managerial resources. Before granting any such certificate, the Commission shall: (i) consider whether such action reasonably protects the affordability of basic local exchange telephone service, as such service is defined by the Commission, and reasonably assures the continuation of quality local exchange telephone service; and (ii) find that such action will not unreasonably prejudice or disadvantage any class of telephone company customers or telephone service providers, including the new entrant and any incumbent local exchange telephone company, and is in the public interest. Except as provided in subsection A of § 15.2-2160, all local exchange certificates granted by the Commission after July 1, 2002, shall be to provide service in any territory in the Commonwealth unless the applicant specifically requests a different certificated service territory. The Commission shall amend the certificated service territory of each local exchange carrier that was previously certificated to provide service in only part of the Commonwealth to permit such carrier's provision of local exchange service throughout the Commonwealth beginning on September 1, 2002, unless that local exchange carrier notifies the Commission prior to September 1, 2002, that it elects to retain its existing certificated service territory. A local exchange carrier shall only be considered an incumbent in any certificated service territory in which it was considered an incumbent prior to July 1, 2002, except that the Commission may make changes to a local exchange carrier's incumbent certificated service territory at the request of those incumbent local exchange carriers that are directly involved in a proposed change in the certificated service territory.

2. A Commission order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a new entrant shall be entered no more than 180 days from the filing of the application, except that the Commission, upon notice to all parties in interest, may extend that period in additional 30-day increments not to exceed an additional 90 days in all.

3. The Commission shall (i) promote and seek to assure the provision of competitive services to all classes of customers throughout all geographic areas of the Commonwealth by a variety of service providers; (ii) require equity in the treatment of the certificated local exchange telephone companies so as to encourage competition based on service, quality, and price differences between

alternative providers; (iii) consider the impact on competition of any government-imposed restrictions limiting the markets to be served or the services offered by any provider; (iv) determine the form of rate regulation, if any, for the local exchange services to be provided by the applicant and, upon application, the form of rate regulation for the comparable services of the incumbent local exchange telephone company provided in the geographical area to be served by the applicant; and (v) promulgate standards to assure that there is no cross-subsidization of the applicant's competitive local exchange telephone services by any other of its services over which it has a monopoly, whether or not those services are telephone services. The Commission shall also adopt safeguards to ensure that the prices charged and the revenue received by a county, city or town for providing telecommunications services shall not be cross-subsidized from other revenues of the county, city or town or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as authorized pursuant to subdivision 5.

4. The Commission shall discharge the responsibilities of state commissions as set forth in the federal Telecommunications Act of 1996 (P.L. 104-104)(the Act) and applicable law and regulations, including, but not limited to, the arbitration of interconnection agreements between local exchange carriers; however, the Commission may exercise its discretion to defer selected issues under the Act. If the Commission incurs additional costs in arbitrating such agreements or resolving related legal actions or disputes that cannot be recovered through the maximum levy authorized pursuant to § 58.1-2660, that levy shall be increased above the levy authorized by that section to the extent necessary to recover such additional costs.

5. Upon the Commission's granting of a certificate to a county, city or town under this section, such county, city, or town (i) shall be subject to regulation by the Commission for intrastate telecommunications services, (ii) shall have the same duties and obligations as other certificated providers of telecommunications services, (iii) shall separately account for the revenues, expenses, property, and source of investment dollars associated with the provision of such services, and (iv) to ensure that there is no unreasonable advantage gained from a government agency's taxing authority and control of government-owned land, shall charge an amount for such services that (a) does not include any subsidies, unless approved by the Commission, and (b) takes into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by for-profit providers. Each certificated county, city, or town that provides telecommunications services regulated by the Commission shall file an annual report with the Commission demonstrating that the requirements of clauses (iii) and (iv) have been met. The Commission may approve a subsidy under this section if deemed to be in the public interest and provided that such subsidy does not result in a price for the service lower than the price for the same service charged by the incumbent provider in the area.

6. A locality that has obtained a certificate pursuant to this section shall (i) comply with all applicable laws and regulations for the provision of telecommunications services; (ii) make a reasonable estimate of the amount of all federal, state, and local taxes (including income taxes and consumer

utility taxes) that would be required to be paid or collected for each fiscal year if the locality were a for-profit provider of telecommunications services, (iii) prepare reasonable estimates of the amount of any franchise fees and other state and local fees (including permit fees and pole rental fees), and right-of-way charges that would be incurred in each fiscal year if the locality were a for-profit provider of telecommunications services, (iv) prepare and publish annually financial statements in accordance with generally accepted accounting principles showing the results of operations of its provision of telecommunications services, and (v) maintain records demonstrating compliance with the provisions of this section that shall be made available for inspection and copying pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

7. Each locality that has obtained a certificate pursuant to this section shall provide nondiscriminatory access to for-profit providers of telecommunications services on a first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the locality unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

8. The prices charged and the revenue received by a locality for providing telecommunications services shall not be cross-subsidized by other revenues of the locality or affiliated entities, except (i) in areas where no offers exist from for-profit providers of such telecommunications services, or (ii) as permitted by the provisions of subdivision 5. The provisions of this subdivision shall not apply to Internet access, broadband, information, and data transmission services provided by any locality providing telecommunications services on March 1, 2002, except for an authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

9. The Commission shall promulgate rules necessary to implement this section. In no event, however, shall the rules necessary to implement clauses (iii) and (iv) of subdivision 5, clauses (ii) through (v) of subdivision 6, and subdivision 8 impose any obligations on a locality that has obtained a certificate pursuant to this section, but is not yet providing telecommunications services regulated by the Commission.

10. Public records of a locality that has obtained a certificate pursuant to this section, which records contain confidential proprietary information or trade secrets pertaining to the provision of telecommunications service, shall be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.). As used in this subdivision, a public record contains confidential proprietary information or trade secrets if its acquisition by a competing provider of telecommunications services would provide the competing provider with a competitive benefit. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

C. Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 shall not apply to a county, city, or town that has obtained a certificate pursuant to this section.

D. Any county, city, or town that has obtained a certificate pursuant to this section may construct, own, maintain, and operate a fiber optic or communications infrastructure to provide consumers with Internet services, data transmission services, and any other communications service that its infrastructure is capable of delivering; provided, however, nothing in this subsection shall authorize the provision of cable television services or other multi-channel video programming service. Furthermore, nothing in this subsection shall alter the authority of the Commission.

E. Any county, city, or town that has obtained a certificate pursuant to this section and that had installed a cable television headend prior to December 31, 2002, is authorized to own and operate a cable television system or other multi-channel video programming service and shall be exempt from the provisions of §§ 15.2-2108.4 through 15.2-2108.8. Nothing in this subsection shall authorize the Commission to regulate cable television service.

1984, c. 382; 1995, cc. 22, 35, 187; 2001, c. 75; 2002, cc. 479, 489; 2003, cc. 677, 711, 720; 2005, c. 258; 2006, cc. 73, 76; 2009, c. 330; 2016, cc. 724, 725.

§ 56-265.4:5. Furnishing gas service to commercial and industrial customers in an area not certificated for public utility gas service

A. Any company desiring to make an exempt sale, transmission or service under subdivision (b)(4) of § 56-265.1 shall notify the Commission of its plans for furnishing such gas service. The Commission shall make a determination of whether the customers' facilities are located within a territory for which a certificate has been granted, or, as of the time of the Commission's receipt of the notice provided hereunder, within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, and shall prohibit the furnishing of gas service to any facility so located. The Commission shall provide notice of such plans to furnish gas service to all public utilities providing gas service in the Commonwealth. Within sixty days of such notice, any public utility so notified may make application to the Commission to provide such service. If an application is filed, the Commission shall determine, after a public hearing, which company shall furnish the gas service.

B. In the event a gas utility is issued a certificate to serve the area where customers to whom service is being provided pursuant to this section are located, the gas utility shall have the right, subject to existing contracts regarding gas service to such customers and to the gas utility's effective transportation tariff, to acquire any facilities installed to serve such customers, at a price to be mutually agreed upon, or if not so agreed, at a price to be determined by the Commission.

1990, c. 488; 1992, c. 476 .

§ 56-265.4:6. Furnishing non-utility gas service

A. In this section the following terms shall have the following meanings:

"Affiliated interest" shall have the same meaning as set forth in § 56-76 and shall be applied in this statute to non-utility gas service providers.

"Commercial customer" means any person that purchases non-utility gas service for its own consumption at one or more metering points or nonmetered points of delivery located in the Commonwealth and who if served by a natural gas utility would be classified as a nonresidential customer under the applicable natural gas utility's tariff.

"Municipally-owned gas service" means the sale and distribution of natural gas by a municipal corporation that has the authority to provide natural gas distribution service through the provisions of its charter.

"Natural gas line" means a distribution or transmission pipeline owned and operated by the natural gas utility and subject to the jurisdiction of the Commission but excluding such lines that serve only a single residence or retail establishment.

"Natural gas utility" or "utility" means an investor-owned public service company engaged in the business of furnishing natural gas service to the public and which is regulated as to rates and service pursuant to this title.

"Non-utility gas service" means the sale and distribution of propane, propane-air mixtures, or other natural or manufactured gas to two or more customers by way of underground or aboveground distribution lines by a person other than a natural gas utility or an affiliated interest of a natural gas utility, master meter operator, or any person operating in compliance with § 56-1.2.

"Non-utility gas service provider" means a person, other than a natural gas utility, providing non-utility gas service.

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

"Pipeline safety standards" means all gas pipeline safety requirements established pursuant to § 56-257.2.

"Residential customer" means any person that purchases non-utility gas service for its own consumption at one or more metering points or nonmetered points of delivery located in the Commonwealth and who if served by a natural gas utility would be classified as a residential customer under the applicable natural gas utility's tariff.

B. A person, individually or together with its affiliated interests, other than the natural gas utility that holds the certificate to provide natural gas service in a particular territory or one of its affiliated interests, shall apply to the Commission for and obtain approval prior to providing non-utility gas service to:

1. Two or more residential or commercial customers located one-half mile or less from any existing underground natural gas line operated by a utility under the jurisdiction of the Commission;

2. More than 10 residential or two commercial customers located more than one-half mile but within one mile or less from any existing underground natural gas line operated by a utility under the jurisdiction of the Commission;

3. More than 20 residential or five commercial customers located more than one mile but within three miles or less from any existing underground natural gas line operated by a utility under the jurisdiction of the Commission; or

4. More than 50 residential or 10 commercial customers located more than three miles but no more than five miles from an existing underground natural gas line operated by a utility under the jurisdiction of the Commission.

Approval of any application to provide non-utility gas service pursuant to this section shall be granted by the Commission only after opportunity for a hearing and after due notice to the natural gas utility that holds the certificate to provide service in the defined geographic area proposed to be served. The Commission shall approve an application to provide non-utility gas service upon finding that: (i) the natural gas utility that holds the certificate to provide natural gas service in the defined geographic area proposed to be served is not currently offering service to the area desired for non-utility gas service and is unable to extend natural gas utility service to the requested area within a reasonable period of time; and (ii) the provision of non-utility gas service in the defined geographic area proposed to be served, and to the estimated number of customers defined in the application, is in the public interest.

Any order approving an application to provide non-utility gas service pursuant to this section shall define the geographic area to be covered and the maximum number of customers to whom the non-utility gas service provider can provide service before having to apply to the Commission for a revised order. The order approving an application to provide non-utility gas service shall also provide for compliance with all pipeline safety standards; however, nothing in the order shall authorize the Commission to exercise jurisdiction over the rates, charges, or services being offered in conjunction with non-utility gas service by a non-utility gas service provider. Further, except as provided in this section, approval of an application to provide non-utility gas service shall not infringe upon or diminish the rights of the natural gas utility that holds the certificate to provide natural gas service in the specified area.

Any fully constructed and operational non-utility gas service system as of April 8, 2009, shall be exempt from the requirements of this subsection.

C. A non-utility gas service provider shall comply with the provisions of subsection B if any proposed new customers (i) are located in or are adjacent to a residential subdivision, commercial or mixed-use development, currently being provided non-utility gas service by that non-utility gas service provider and (ii) the number of such new customers, when added to the number of then existing customers of such non-utility gas service provider, individually or together with its affiliated interests, located in the adjacent residential subdivision, commercial or mixed-use

development, would exceed the threshold number of customers for any of the geographical areas described in subsection B.

D. In any instance in which customers proposed to be served by a non-utility gas service provider, individually or together with its affiliated interests, are in the same residential subdivision, commercial or mixed-use development, or any phase thereof, and that residential subdivision, commercial or mixed use development, including all parts and phases thereof, straddles any of the distance thresholds set forth in subsection B, then all of the customers in all parts and phases of such residential subdivision, commercial or mixed-use development shall be deemed to be within the distance from the underground natural gas line operated by a utility under the jurisdiction of the Commission applicable to the customer located in such residential subdivision, commercial or mixed-use development that is located closest to such underground natural gas line operated by a utility under the jurisdiction of the Commission.

E. The distance threshold set forth in subsection B shall be measured in a linear manner and shall be based upon the underground natural gas lines operated by a utility under the jurisdiction of the Commission that are in existence at the time the non-utility gas service provider applies for Commission approval pursuant to subsection B, if applicable, or at the time the non-utility gas service provider applies for the initial local government approval necessary to construct its distribution lines required to serve the proposed new customers, whichever is earlier.

F. All non-utility gas service providers shall provide notice to the Commission of any and all non-utility gas service that is subject to pipeline safety standards and is being provided to two or more customers in the Commonwealth and shall provide notice of the construction of new non-utility gas service to the Commission no later than 30 days prior to commencing construction of such system. Any non-utility gas service provider that is required to provide such notice shall be subject to the jurisdiction of the Commission for the purpose of ensuring compliance with the pipeline safety standards and subject to any penalties that may be applicable under § 56-257.2. Upon request of the Commission, the non-utility gas service provider shall provide, within 30 days of such request, documentation to show compliance with the requirements of the pipeline safety standards.

G. Any municipal corporation that provides municipally-owned gas service to residential or commercial customers located within an area where a natural gas utility holds a certificate to provide service, must have written authorization from that certificate holder to provide such service which authorization shall not be unreasonably withheld. The written authorization shall define the geographic area to be served by the municipally-owned gas service provider. If authorization is withheld, the natural gas utility shall provide a written justification for the decision to the municipally-owned gas service provider. Any decision to withhold authorization shall be subject to review by the Commission upon petition by a customer seeking natural gas service. Any natural gas utility that provides written permission to a municipal corporation to provide municipally-owned gas service within a territory where it holds a certificate shall provide a written copy of the authorization to the Commission.

Notwithstanding the foregoing, a municipally-owned gas service provider shall not be required to obtain consent to i) provide natural gas service to facilities or property owned in whole or in part by the municipal corporation, or ii) install lines that serve only a single residential customer.

A municipally-owned gas service provider which fails to comply with this subsection shall be subject to relief in a court having competent jurisdiction. Nothing herein shall authorize the Commission to impose penalties or fines on any municipal corporation.

Any fully constructed and operational municipally-owned gas service system in place as of April 8, 2009, shall be exempt from the requirements of this subsection.

H. The Commission is authorized to promulgate any rules consistent with and necessary to implement this section other than subsection G.

I. The provision of non-utility gas service without complying with subsection B shall be punishable by a penalty of up to $500 per day to be imposed and collected by the Commission, in addition to any injunctive or other non-monetary penalties provided by law.

2009, c. 794.

§ 56-265.5. Effective date of certificates

Certificates issued under the provisions of this chapter shall be effective from the date of issuance unless a different date be specified therein and shall remain in effect until terminated as herein provided.

1950, p. 600.

§ 56-265.6. Penalties for misrepresentations, violations of law, regulations or terms of certificates

The Commission may, by its order duly entered after hearing, held after due notice to the holder of any such certificate and an opportunity to such holder to be heard, at which hearing it shall be proved that such holder has willfully made a misrepresentation of a material fact in obtaining such certificate or has willfully violated or refused to observe the laws of this State touching such certificate or any of the terms of the certificate, or any of the Commission's proper orders, rules or regulations, impose a penalty not exceeding $1,000, which may be collected by the process of the Commission as provided by law; or the Commission may suspend, revoke, alter or amend any such certificate for any of the causes set forth above. But no such certificate shall be revoked, altered or amended (except upon application of the holder thereof) unless the holder thereof shall wilfully fail to comply, within a reasonable time to be fixed by the Commission, with the lawful order of the Commission or with the lawful rule or regulation of the Commission, or with the term, condition or limitation of such certificate, found by the Commission to have been violated by such holder. No such certificate shall be suspended, revoked, altered or amended for any cause not stated in this section.

Proceedings looking to the imposition of any penalty provided for in this section may be commenced upon the complaint of any person or upon the Commission's own initiative.

1950, p. 600.

§ 56-265.7. Appeal from order of revocations, etc

From any order of the Commission suspending, revoking, altering or amending any certificate, the holder thereof shall have the right of appeal to the Supreme Court of Virginia, as a matter of right, as in other cases of appeals from the Commission.

1950, p. 601.

§ 56-265.8. Proceedings before Commission on or before July 1, 1950

The provisions of this chapter shall not apply to or in any way affect any proceeding before the State Corporation Commission on or before July 1, 1950, and shall not confer on said Commission any jurisdiction not now vested in it with respect to any such proceeding.

1950, p. 601.

§ 56-265.8:1. Inspection and approval of certain installations not regulated pursuant to this chapter

The owner or operator of any facility for the generation of electrical energy not subject to regulation under the Utilities Facilities Act but designed to generate electrical energy for the use by persons other than the owner or operator shall at his expense have the facility designed and inspected by a professional engineer licensed to work in the State of Virginia. Said engineer shall certify that the installation meets the standards of the National Electrical Code and the National Safety Code and that there is adequate equipment for standby purposes. The provisions of this section shall apply only to generation facilities used as a primary source of power and not to emergency supply systems. The provisions hereof shall not apply to municipally owned and operated facilities.

1970, c. 363.

§ 56-265.9. Title of chapter

This chapter may be cited as the Utility Facilities Act.

1950, p. 601.

Chapter 10.2 - CERTAIN WATER AND SEWERAGE SYSTEMS NOT REGULATED AS PUBLIC UTILITIES

§ 56-265.10. Definitions

(a) "Water system" as used herein means any privately owned connected system of mains, pipes, conduits, pumping stations, reservoirs and related facilities furnishing water to 50 or more subscribers for compensation when the person who furnishes the service is not subject to regulation by the Commission as a public utility under Chapter 10 (§ 56-232 et seq.) of Title 56.

(b) "Sewerage system" means any privately owned system of pipelines or conduits, pumping stations, force mains, sewage treatment plants, and all other constructions, devices, and appliances appurtenant thereto, used for conducting or treating sewage as that term is defined in Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1, which furnishes service for compensation to 50 or more subscribers, which is not subject to regulation by the Commission as a public utility, and for which a certificate has not been issued or applied for in accordance with the provisions of Chapter 3.1 of Title 62.1.

(c) "Commission" means the State Corporation Commission.

(d) "Person" means person as that term is defined in § 1-230.

1954, c. 669; 2005, c. 839.

§ 56-265.11. Petition of subscribers alleging inadequacy of service; Commission to investigate and formulate opinion

If fifty or more of the subscribers, but not more than one from any one household, who have contracts to purchase water from a water system or for sewerage service from a sewerage system file with the Commission a petition alleging that the service furnished by the system is inadequate and ought to be improved, the Commission shall after notice to the operators of such system investigate the complaint and formulate an opinion whether in the light of the successful performance of sewerage or water systems of similar design and purpose, the system is capable of serving the reasonable domestic needs of the persons or properties served.

1954, c. 669.

§ 56-265.11:1. Notification to energy utilities

Each person operating a sewerage system which includes one or more sewage treatment plants shall notify in writing, the Commission, the Director of the Department of Environmental Quality and each electric or natural gas utility supplying or distributing energy to such system that such system includes a sewage treatment plant.

2000, c. 183.

§ 56-265.12. Opinion of Commission admissible in evidence

The opinion of the Commission shall be furnished in writing to the petitioners and to the owners of the water or sewerage system and shall be admissible in evidence in any proceedings concerning contracts between such water sewerage system and its subscribers together with any other evidence which may be offered by either litigant.

1954, c. 669.

§ 56-265.13. Chapter not applicable to certain hotel corporations

No provision of this chapter shall apply to a corporation the principal business of which is the operation of a hotel and which may extend the use of its surplus water and sewerage facilities to a limited number of patrons.

1954, c. 669.

Chapter 10.2:1 - SMALL WATER OR SEWER PUBLIC UTILITY ACT

§ 56-265.13:1. Short title

This chapter may be cited as the "Small Water or Sewer Public Utility Act."

1986, c. 323.

§ 56-265.13:2. Definitions

As used in this chapter:

"Commission" shall mean the "State Corporation Commission."

"Service" shall mean any product or commodity furnished by a small water or sewer utility, as well as its equipment, apparatus, appliances and facilities devoted to the functions in which that utility is engaged to the use and accommodation of the public.

1986, c. 323.

§ 56-265.13:3. Applicability of chapter

This chapter shall apply to every certificated water or sewer public utility company or water and sewer public utility company (i) with gross annual operating revenues of less than one million dollars or (ii) that is owned by the property owners' association of the subdivision served by the public utility.

In case of a company with gross annual revenues of $500,000 or more, (i) the Commission may suspend a proposed increase in rates for a period not exceeding 150 days from the date of the filing of the proposed rate increase and (ii) notwithstanding any other provision of this chapter, such company shall be subject to Chapter 4 (§ 56-76 et seq.) of Title 56.

1986, c. 323; 1993, c. 369; 1997, c. 143.

§ 56-265.13:4. Rates and services

A small water or sewer utility shall be required to furnish reasonably adequate services and facilities, subject to the regulation of the Commission. The charges made by any small water or sewer utility for any service rendered shall be (i) uniform as to all persons or corporations using such service under like conditions and (ii) nondiscriminatory, reasonable and just. Every charge for service found to be otherwise shall be unlawful. Reasonable and just charges for service within the meaning of this section shall be the lowest charges as shall produce sufficient revenues to pay all lawful and necessary expenses incident to:

1. The operation of the system, including maintenance costs, operating charges, and interest charges on bonds or other obligations;

2. The providing for the liquidation of bonds or other evidence of indebtedness and the attraction of capital;

3. The providing of adequate funds to be used as working capital, as well as reasonable reserves and funds for making replacements, which may be escrowed and used only as working capital if the Commission so directs as a result of a proceeding conducted pursuant to § 56-265.13:6;

4. The providing for the payment of taxes that may be assessed against the small water or sewer utility or its property; and

5. Compensation of owners of the utility for their capital or property invested in the system, if any, and for their time and other resources expended in the operation of the system not otherwise recovered under subdivisions 1 through 4 of this section.

1986, c. 323.

§ 56-265.13:5. Notice of rate changes

A. A small water or sewer utility shall make a copy of its current rates, charges, fees, rules and regulations available for public inspection during regular business office hours in its designated business office where bills can be paid.

B. Unless a small water or sewer utility notifies in writing all of its customers of any changes in its rates, charges, fees, rules and regulations at least forty-five days in advance of any change in any one of them, the utility shall not make any such changes. A copy of such notification shall be forwarded to the Commission at the same time as provided to the customers. The notice to the customers shall identify the nature of the change, the effective date of the change, and in the case of changes in rates, fees, and charges, shall identify the new rates, fees, and charges.

1986, c. 323; 1994, c. 313.

§ 56-265.13:6. Public hearing on application; prohibition of multiple rate increases within any 12-month period

A. Upon application to the Commission by at least 25 percent of all customers affected by a rate change or by 250 affected customers, whichever number is lesser, or by the small water or sewer utility itself, or by the Commission, upon its own motion, a hearing shall be held after at least 30 days' notice to the small water or sewer utility and to its customers. The Commission may order such improvements or changes in service, measurements, practices, acts, rates, charges, fees, and rules and regulations of such utility as are just and reasonable.

When a hearing is ordered, the Commission shall have the authority to suspend such rates, charges, fees, and rules and regulations for no more than 60 days or to declare them to be interim, or both. Interim rates, fees, and charges shall be subject to refund with interest until such time as the Commission has made its final determination in the proceeding. Upon completion of the hearing and decision, the Commission may order such public utility to refund, with interest at a rate set by the Commission, the portion of such rates, charges, or fees found not justified by its decision.

B. A small water or sewer utility shall not implement an increase in the utility's rates or charges more than once within any 12-month period. This limitation shall not prohibit applications for increases in rates or charges pursuant to § 56-245.

C. If the change in rates, fees, and charges results in an increase of 50 percent or greater of the small water or sewer utility's annual revenues, the small water or sewer utility shall file the financial data required by the Commission's rules under this chapter simultaneously with providing notice of such change as prescribed by subsection B of § 56-265.13:5, and, if a hearing is ordered, the Commission shall expedite the hearing on the change in rates, fees, and charges. The Commission shall also direct that the funds produced by the increase in rates, fees, and charges shall be held in escrow by the small water or sewer utility until the Commission has rendered its decision, at which time the funds held in escrow shall either be released to the small water or sewer utility or refunded to its customers. The Commission may, however, allow the funds held in escrow to be used as necessary to comply with environmental or health laws or regulations or to allow the small water or sewer utility to provide adequate service to its customers.

1986, c. 323; 1990, cc. 410, 431; 1994, c. 313; 1996, c. 15; 2003, c. 385.

§ 56-265.13:6.1. Appointment of receiver; penalty

A. The Commission may, either upon petition of two-thirds of the affected customers or upon petition of its staff or upon a petition of the Board of Health, appoint a receiver to operate a small water or sewer utility which is unable or unwilling to provide adequate service to its customers. The utility shall be deemed to be unable or unwilling to provide adequate service if the Commission finds, after notice to the utility and the Department of Health and hearing, that:

1. The utility has failed to supply water or sewer service to a majority of the consumers for five days or more during the preceding three months for reasons within the control of the water and sewer utility; or

2. The Department of Health has certified that the utility has not met Department standards regarding the provision of an adequate quality and quantity of public drinking water and the Department of Health has found that the utility is unwilling to take action to meet these standards; or

3. The utility is grossly mismanaged; or

4. The utility has failed to comply with an order of the Commission to provide adequate service to the customers.

Upon appointment, the receiver shall take possession of the assets of the utility and operate them in the best interests of the customers. Control of and responsibility for the utility shall remain in the receiver until the utility can, in the best interests of customers, be returned to the original owners, transferred to new owners, or liquidated, whichever the Commission may determine to be in the public interest.

B. The provisions of §§ 8.01-583 through 8.01-590 shall apply mutatis mutandis. The receiver shall be empowered to make application to the Commission for temporary and permanent rate increases and changes in the utility's rules and regulations.

C. If the Commission determines that the utility's actions that caused it to be placed under the control and responsibility of the receiver, under this section, were due to intentional misappropriation or wrongful diversion of the assets or income of such utility or to other willful misconduct by any director, officer, or manager of the utility, it may require such director, officer, or manager to make restitution to the utility. In addition to the foregoing, any such director, officer, manager, or affiliate that commits such misappropriation or wrongful diversion or fails, neglects, or refuses to obey an order, rule, direction, or requirement of the Commission to make restitution to the utility shall be subject to a civil penalty of no more than $500 for each offense, and each day of such conduct shall constitute a separate offense.

1994, c. 311.

§ 56-265.13:7. Regulation by State Corporation Commission

A. Every small water or sewer utility subject to this chapter shall be subject only to the following provisions: §§ 56-234.4, 56-236, 56-239, 56-245, 56-245.1, 56-246, 56-247.1 through 56-248, 56-249 through 56-249.2, 56-250, 56-254, 56-256 through 56-265, and Chapters 1 (§ 56-1 et seq.), 2 (§ 56-49 et seq.), 5 (§ 56-88 et seq.) and 10.1 (§ 56-265.1 et seq.) of Title 56. Small water or sewer utilities shall not be subject to Chapters 3 (§ 56-55 et seq.) and 4 (§ 56-76 et seq.) of Title 56.

B. The Commission is authorized to promulgate any rules necessary to implement this chapter.

1986, c. 323; 1992, c. 376; 1994, c. 313; 1996, c. 48.

Chapter 10.3 - UNDERGROUND UTILITY DAMAGE PREVENTION ACT

§ 56-265.14. Short title

This chapter may be cited as the "Underground Utility Damage Prevention Act."

1979, c. 291.

§ 56-265.15. Definitions; calculation of time periods

A. As used in this chapter:

"Abandoned" means no longer in service and physically disconnected from a portion of the underground utility line that is in use for storage or conveyance of service.

"Commission" means the State Corporation Commission.

"Contract locator" means any person contracted by an operator specifically to determine the approximate horizontal location of the operator's utility lines that may exist within the area specified by a notice served on a notification center.

"Damage" means any impact upon or removal of support from an underground facility as a result of excavation or demolition which according to the operating practices of the operator would necessitate the repair of such facility.

"Demolish" or "demolition" means any operation by which a structure or mass of material is wrecked, razed, rendered, moved, or removed by means of any tools, equipment, or discharge of explosives which could damage underground utility lines.

"Designer" means any licensed professional designated by the project owner who designs government projects, commercial projects, residential projects consisting of 25 or more units, or industrial projects, which projects require the approval of governmental or regulatory authorities having jurisdiction over the project area.

"Emergency" means a sudden or unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

"Excavate" or "excavation" means any operation in which earth, rock, or other material in the ground is moved, removed, or otherwise displaced by means of any tools, equipment, or explosives and includes, without limitation, grading, trenching, digging, ditching, dredging, drilling, augering, tunneling, scraping, cable or pipe plowing and driving, wrecking, razing, rendering, moving, or removing any structure or mass of material. "Excavate" or "excavation" shall not include installation of a sign that consists of metal, plastic, or wooden poles placed in the ground by hand or by foot without the use of tools or equipment.

"Extraordinary circumstances" means floods, snow, ice storms, tornadoes, earthquakes, or other natural disasters.

"Hand digging" means any excavation involving nonmechanized tools or equipment. Hand digging includes, but is not limited to, digging with shovels, picks, and manual post hole diggers, vacuum excavation or soft digging.

"Notification center" means an organization whose membership is open to all operators of underground facilities located within the notification center's designated service area, which maintains a data base, provided by its member operators, that includes the geographic areas in which its member operators desire transmissions of notices of proposed excavation, and which has the capability to transmit, within one hour of receipt, notices of proposed excavation to member operators by teletype, telecopy, personal computer, or telephone.

"Notify," "notice" or "notification" means the completed delivery of information to the person to be notified, and the receipt of same by such person in accordance with this chapter. The delivery of information includes, but is not limited to, the use of any electronic or technological means of data transfer.

"Operator" means any person who owns, furnishes or transports materials or services by means of a utility line.

"Person" means any individual, operator, firm, joint venture, partnership, corporation, association, municipality, or other political subdivision, governmental unit, department or agency, and includes any trustee, receiver, assignee, or personal representative thereof.

"Private sewer lateral" means a privately owned, legally authorized utility line that transports wastewater from one or more buildings to a sewer system utility line owned by a sewer system operator.

"Private water lateral" means a privately owned, legally authorized utility line that supplies water from a water system utility line owned by a water system operator to one or more buildings or properties.

"Sewer system" means a system of utility lines used for conveying wastewater, and includes sewer system laterals but does not include private sewer laterals.

"Sewer system lateral" means a lateral utility line located in the public right-of-way or public sewer easement, owned by a sewer system operator, and used to transport wastewater to the operator's main sewer line.

"Sewer system operator" means an operator of a sewer system.

"Soft digging" means any excavation using tools or equipment that utilize air or water pressure as the direct means to break up soil or earth for removal by vacuum excavation.

"Special project notice" means a valid notice to the notification center by an excavator covering a specific, unique or long-term project.

"Utility line" means any item of public or private property which is buried or placed below ground or submerged for use in connection with the storage or conveyance of water, sewage, telecommunications, electric energy, cable television, oil, petroleum products, gas, or other substances, and includes but is not limited to pipes, sewers, combination storm/sanitary sewer systems, conduits, cables, valves, lines, wires, manholes, attachments, and those portions of poles below ground. The term "sewage" as used herein does not include any gravity storm drainage systems. Except for any publicly owned gravity sewer system within a county which has adopted the urban county executive form of government, the term "utility line" does not include any gravity sewer system or any combination gravity storm/sanitary sewer system within any counties, cities, towns or political subdivisions constructed or replaced prior to January 1, 1995. No excavator shall be held liable for the cost to repair damage to any such systems constructed or replaced prior to January 1, 1995, unless such systems are located in accordance with § 56-265.19.

"Water system" means a system of utility lines used for supplying water, and does not include private water laterals.

"Water system operator" means an operator of a water system.

"Willful" means an act done intentionally, knowingly, and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.

"Working day" means every day, except Saturdays, Sundays, and legal state and national holidays.

B. Unless otherwise specified, all time periods used in this chapter shall be calculated from the time of the original notification to the notification center as provided in § 56-265.17. In addition, all time periods exclude Saturdays, Sundays, and legal state and national holidays.

1979, c. 291; 1980, cc. 696, 710; 1992, c. 192; 1994, c. 890; 1996, c. 79; 2002, c. 841; 2010, cc. 205, 777, 832.

§ 56-265.15:1. Exemptions; routine maintenance

Nothing in this chapter shall apply to:

1. Any hand digging performed by an owner or occupant of a property.

2. The tilling of soil for agricultural purposes.

3. Any excavation done by a railroad when the excavation is made entirely on the land which the railroad owns and on which the railroad operates, provided there is no encroachment on any operator's rights-of-way or easements.

4. An excavation or demolition during an emergency, as defined in § 56-265.15, provided all reasonable precaution has been taken to protect the underground utility lines.

In the case of the state highway systems or streets and roads maintained by political subdivisions, officials of the Department of Transportation or the political subdivision where the use of such highways, roads, streets or other public way is impaired by an unforeseen occurrence shall determine the necessity of repair beginning immediately after the occurrence.

5. Any excavation for routine pavement maintenance, including patch type paving or the milling of pavement surfaces, upon the paved portion of any street, road, or highway of the Commonwealth provided that any such excavation does not exceed a depth of twelve inches (0.3 meter).

6. Any excavation for the purpose of mining pursuant to and in accordance with the requirements of a permit issued by the Department of Mines, Minerals and Energy.

7. Any hand digging performed by an operator to locate the operator's utility lines in response to a notice of excavation from the notification center, provided all reasonable precaution has been taken to protect the underground utility lines.

8. Any installation of a sign that does not involve excavation as defined in § 56-265.15.

1994, c. 890; 1996, c. 79; 2002, c. 841; 2010, cc. 777, 832.

§ 56-265.16. Repealed

Repealed by Acts 1989, c. 448, effective July 1, 1990.

§ 56-265.16:1. Operators to join notification centers; certification

A. Every operator, including counties, cities and towns, but excluding the Department of Transportation, having the right to bury underground utility lines shall join the notification center for the area.

B. Every notification center shall be certified by the Commission. The Commission shall determine the optimum number of notification centers in the Commonwealth. If the Commission determines that there shall be more than one notification center in the Commonwealth, it shall define the geographic area to be served by each notification center.

C. Any corporation desiring to serve as the notification center for an area of the Commonwealth may apply to the Commission to be certified as the notification center for that area. The Commission shall have authority to grant, amend, or revoke certificates under regulations promulgated relating to certification. An application for certification shall include such information as the Commission may reasonably require addressing the applicant's operational plan for the notification center.

D. Every Commission action regarding the optimum number of notification centers, the geographic area to be served by each notification center, the promulgation of notification center certification regulations, and the grant, amendment, or revocation of notification center certifications shall be made in furtherance of the purpose of preventing or mitigating loss of, or damage to, life, health, property or essential public services resulting from damage to underground utility lines. Any action by the Commission to approve or revoke any notification center certification shall:

1. Ensure protection for the public from the hazards that this chapter is intended to prevent or mitigate;

2. Ensure that all persons served by the notification center receive an acceptable level of performance, which level shall be maintained throughout the period of the notification center's certification; and

3. Require the notification center and its agents to demonstrate financial responsibility for any damages that may result from their violation of any provision of this chapter. Such requirement may be met by purchasing and maintaining liability insurance on such terms and in such amount as the Commission deems appropriate.

E. A notification center shall maintain an excavator-operator information exchange system in accordance with notification center certification regulations promulgated by the Commission. The members of a notification center shall be responsible for developing and implementing a public awareness program to ensure that all parties affected by this chapter shall be aware of their responsibilities. There shall be only one notification center certified for each geographic area defined by the Commission.

1989, c. 448; 1992, c. 192; 1994, c. 890; 2001, c. 399.

§ 56-265.17. Notification required prior to excavation or demolition; waiting periods; marking of proposed site

A. Except as provided in subsection G, no person, including operators, shall make or begin any excavation or demolition without first notifying the notification center for that area. Notice to the notification center shall be deemed to be notice to each operator who is a member of the notification center. The notification center shall provide the excavator with the identity of utilities that will be notified of the proposed excavation or demolition. Except for counties, cities, and towns, an excavator who willfully fails to notify the notification center of proposed excavation or demolition shall be liable to the operator whose facilities are damaged by that excavator, for three times the cost to repair the damaged property, provided the operator is a member of the notification center. The total amount of punitive damages awarded under this section, as distinguished from actual damages, shall not exceed $10,000 in any single cause of action.

B. Except in the case of an emergency as defined in § 56-265.15, the excavator may commence work under one of the following conditions:

1. After waiting forty-eight hours, beginning 7:00 a.m. the next working day following notice to the notification center;

2. At any time, if the excavator confirms that all applicable operators have either marked their underground utility lines or reported that no lines are present in the vicinity of the excavation or demolition. The confirmation shall be obtained by contacting or receiving information from the notification center's excavator-operator information exchange system; or

3. If informed by the notification center that no operators are to be notified.

If any operator fails to respond to the excavator-operator information exchange system as required by this chapter, the notification center shall renotify any operator of its failure. This renotification shall not constitute an exemption from the duties of the operator set forth in § 56-265.19.

C. The excavator shall exercise due care at all times to protect underground utility lines. If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until three hours after an additional call is made to the notification center for the area. The operator of any unmarked utility line shall respond within three hours of the excavator's call to the notification center.

D. The excavator's notification shall be valid for fifteen working days from 7:00 a.m. on the next working day following notice to the notification center. Three working days before the end of the fifteen-working-day period, or at any time when line-location markings on the ground become illegible, the excavator intending to excavate shall contact the notification center and request the re-marking of lines. The operator shall re-mark the lines as soon as possible; however, the re-marking of the lines shall be completed within forty-eight hours from 7:00 a.m. on the next working

day following the request for the re-mark. Such re-marking shall be valid for an additional fifteen working days from 7:00 a.m. on the next working day following notice to the notification center.

E. In the event a specific location of the excavation cannot be given as required by subdivision 2 of § 56-265.18, prior to notifying the notification center pursuant to subsection A of this section, the person proposing to excavate or demolish shall mark the route or boundary of the site of the proposed excavation or demolition by means of white paint, if practical.

F. The extent of the excavator's proposed work shall be a work area that can be excavated within fifteen working days from 7:00 a.m. on the next working day following notice to the notification center. The area covered under each notice shall not exceed one mile.

G. An excavator may request a special project notice from the notification center for the purpose of notifying the operators of the excavator's desire to enter into an agreement for locating and protecting the operator's underground utility lines for a specific, unique or long-term project. An excavator using a special project notice shall have complete control over all activities within the project area. The terms and conditions of such agreements must be agreed upon, in writing, by the excavator and the operator before excavation commences. Such agreement and compliance with the terms of the agreement shall constitute an exemption from the requirements of subsections A, B, C, D and E of this section.

1979, c. 291; 1989, c. 448; 1992, c. 192; 1994, c. 890; 2002, c. 841.

§ 56-265.17:1. Notification and procedures for designers

A. Each designer, who prepares drawings and plans for projects requiring excavation or demolition work, may notify the notification center and provide the center with the information required by § 56-265.18 and the designer's professional license number.

B. If a designer notifies the notification center to receive underground utility line information in accordance with § 56-265.17:3, the designer shall:

1. Indicate on the construction drawings, the type of underground utility lines, the horizontal location of these lines as provided by the operators, and the names of the operators of these lines;

2. Consider, when designing a project and preparing drawings therefor, the location of existing underground lines so as to minimize damage or interference with the existing facilities;

3. Indicate, on the construction plans or drawings, the designer ticket number and the notification center's toll-free number; and

4. Request only one designer ticket per project through the notification center at no cost.

2002, c. 841.

§ 56-265.17:2. Procedures for project owners

The project owner shall provide copies of those portions of the drawings that affect the respective operator with underground utility lines in the project area who have responded in accordance with § 56-265.17:3.

2002, c. 841.

§ 56-265.17:3. Procedures for operators in response to a designer notice

An operator, upon notification by a designer in accordance with § 56-265.17:1, shall:

1. Respond to the designer's request for underground utility line information within fifteen working days in accordance with subdivisions 2, 3, and 4 of this section;

2. Provide designers with the operator's name, the type of underground utility line, and the approximate horizontal location of the utility line. The foregoing information may be provided to the designer through the means that include, but are not limited to, field locates, maps, surveys, installation records or other means. If the designer requests field locates, the operator shall provide field locates in accordance with the accuracy set forth in subsection A of § 56-265.19. Marking shall be done by both paint and flags whenever possible;

3. Provide such information about the location of the utility lines to designers for informational purposes only. Operators will not be liable for any incorrect information provided or for the subsequent use of this information, nor will they be subject to civil penalties for the accuracy of the information or marks provided. Any concerns about the accuracy of information or marks should be directed to the appropriate operator; and

4. Respond to the operator-excavator information exchange system by no later than 7:00 a.m. on the sixteenth working day following the designer's notice to the notification center.

2002, c. 841.

§ 56-265.18. Notification requirements

Every notice served by any person on a notification center shall contain the following information:

1. The name of the individual serving such notice.

2. The specific location of the proposed work. In the event a specific description of the location of the excavation cannot be given, the person proposing to excavate or demolish shall comply with subsection E of § 56-265.17.

3. The name, address, telephone number, and telefacsimile number if available, of the excavator or demolisher, to whom notification can be given.

4. The excavator's or demolisher's field telephone number, if one is available.

5. The type and extent of the proposed work.

6. The name of the person for whom the proposed work is being performed.

1979, c. 291; 1980, c. 696; 1989, c. 448; 1994, c. 890; 2002, c. 841.

§ 56-265.19. Duties of operator; regulations

A. If a proposed excavation or demolition is planned in such proximity to the underground utility line that the utility line may be destroyed, damaged, dislocated, or disturbed, the operator shall mark the approximate horizontal location of the underground utility line on the ground to within two feet of either side of the underground utility line by means of stakes, paint, flags, or a combination thereof. The operator shall mark the underground utility line and report the marking status to the excavator-operator information exchange system by no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center, unless the operator is unable to do so due to extraordinary circumstances. If the operator is unable to mark the location within the time allowed under this section due to extraordinary circumstances, the operator shall notify directly the person who proposes to excavate or demolish and shall, in addition, notify the person of the date and time when the location will be marked. The deferral to mark for extraordinary circumstances shall be no longer than 96 hours from 7:00 a.m. on the next working day following notice to the notification center, unless a longer time is otherwise agreed upon by the operator and excavator. The operator shall also inform the notification center of any deferral.

B. If a proposed excavation or demolition is not planned in such proximity to the operator's underground utility lines that the utility line may be damaged, the operator shall so report to the notification center's excavator-operator information exchange system no later than 7:00 a.m. on the third working day following the excavator's notice to the notification center.

C. An operator shall participate in all preplanning and preconstruction meetings originated by state, county or municipal authorities relating to proposed construction projects which may affect the operator's existing or future utility lines and shall cooperate in implementing decisions reached in such preplanning and preconstruction meetings.

D. Any contract locator acting on behalf of an operator and failing to perform the duties imposed by this chapter shall be subject to the liabilities in § 56-265.25 and the civil penalties in § 56-265.32.

E. Locators shall be trained in applicable locating industry standards and practices no less stringent than the National Utility Locating Contractors Association's locator training standards and practices. Each locator's training shall be documented. Such documents shall be maintained by the operator or contract locator.

F. The Commission shall be authorized to adopt regulations designating: (i) letters for each operator to be used in conjunction with marking of underground utility lines, and (ii) symbols for marking of underground utility lines, in compliance with subsection B of § 56-265.17:3. Such letter designation and marking symbols shall be in accordance with industry standards.

G. For underground utility lines abandoned after July 1, 2002, operators shall make a reasonable attempt to keep records of these abandoned utility lines, excluding service lines connected to a single-family dwelling unit. When an operator has knowledge that the operator's abandoned

utility lines may be present within the area of the proposed excavation, the operator shall provide a response to the excavator-operator information exchange system. Such information regarding abandoned lines shall be for informational purposes only. An operator shall not be liable to any person, or subject to civil penalties, as a result of the operator's providing incorrect information regarding abandoned lines or the subsequent use of such information. The excavator-operator information exchange system may refer any person with concerns about the accuracy of information regarding abandoned lines to the appropriate operator.

H. An operator shall respond to an emergency notice as soon as possible but no later than three hours from the excavator's call to the notification center.

1979, c. 291; 1980, c. 696; 1994, c. 890; 1996, c. 79; 2002, c. 841; 2005, c. 395.

§ 56-265.19:1. Private sewer laterals and sewer system laterals

A. Notwithstanding any provision of this chapter to the contrary, the protection of sewer system laterals and private sewer laterals shall be implemented as provided in this section. When an excavation is to take place within a public right-of-way or public sewer easement, the sewer system operator shall exercise reasonable care to mark the approximate horizontal location of sewer system laterals within the public right-of-way or public sewer easement as provided in § 56-265.19.

B. When (i) an excavation is to take place outside the public right-of-way or public sewer easement, (ii) the excavation involves the installation or maintenance of gas or electric utility lines by trenchless technology, (iii) the potential for a conflict with a sewer lateral exists, and (iv) sewer system laterals are located in the public right-of-way:

1. The sewer system operator shall exercise reasonable care to mark the approximate horizontal location of sewer system laterals by:

a. Marking the location of the sewer system lateral where it meets the edge of the right-of-way or public sewer easement, if known; or

b. If the location described in subdivision B 1 a is unknown, marking the location where the sewer system lateral connects to the sewer system main.

2. When the sewer system laterals have been marked in accordance with subdivision B 1 and the excavator reasonably concludes that a private sewer lateral may be impacted by the planned excavation based upon visual evidence, knowledge of the proposed excavation site, or other information available to the excavator, the excavator shall exercise reasonable care to protect the private sewer lateral. For purposes of this subdivision, reasonable care includes the following actions:

a. Reviewing information provided by the private sewer lateral owner;

b. Meeting with the sewer system operator on-site, if the sewer system operator has additional information to provide about the location of private sewer laterals; or

c. Conducting a visual inspection of the proposed excavation site in an effort to determine the probable path of the sewer lateral.

C. When (i) an excavation is to take place within or outside the public right-of-way or public sewer easement, (ii) the excavation involves the installation or maintenance of gas or electric utility lines by trenchless technology, (iii) the potential for a conflict with a sewer lateral exists, and (iv) private sewer laterals are located in the public right-of-way or easement:

1. The sewer system operator shall assist the excavator by one of the following methods, unless the operator marks private sewer laterals in the manner required for its sewer system laterals under subsection B:

a. Provide copies of the best reasonably available records regarding the location of the private sewer laterals by electronic message, mail, facsimile, or other delivery method. If an excavation affects 25 or more private sewer laterals, the sewer system operator's response shall be in accordance with the timelines set forth in § 56-265.17:3. If the provision of records required by this subsection imposes an unreasonable burden or substantial cost upon a sewer system operator, the excavator and the sewer system operator shall endeavor in good faith to reach an agreement to provide the sewer system operator with additional time to provide the records or any other mutually agreeable accommodation.

b. Provide the best reasonably available records on the Internet or another readily accessible electronic system in order that the records may be retrieved by the excavator from a remote location. If the sewer system operator has implemented such a system, then the sewer system operator shall have no further obligations to provide records under subdivision C 1 a.

c. If the sewer system operator has no such records, but has additional information to provide about the location of private sewer laterals, then the sewer system operator shall notify the excavator of such information and, upon request, either meet with the excavator on-site or convey such information to the excavator.

2. When the records have been made available in accordance with subdivision C 1 and the excavator reasonably concludes that a private sewer lateral may be impacted by the planned excavation based upon visual evidence, knowledge of the proposed excavation site, or other information available to the excavator, the excavator shall exercise reasonable care to protect the private sewer lateral. For purposes of this subdivision, reasonable care includes the following actions:

a. Reviewing information provided by the sewer system operator;

b. Reviewing information provided by the private sewer lateral owner;

c. Meeting with the sewer system operator on-site if the sewer system operator has additional information to provide about the location of private sewer laterals; or

d. Conducting a visual inspection of the proposed excavation site in an effort to determine the probable path of the sewer lateral.

D. Sewer system operators shall mark utility lines, other than sewer system laterals and private sewer laterals, as provided by other sections of this chapter.

E. Water system operators shall mark water system utility lines as provided by other sections of this chapter, except that a water system operator shall not be responsible for marking private water laterals.

F. Records regarding the location of private sewer laterals provided on the Internet or otherwise made accessible by an electronic system pursuant to subdivision C 1 b shall also be accessible to other public utilities and cable operators or excavators working on their behalf for purposes of compliance with this chapter.

G. In all excavations, the excavator shall exercise reasonable care to protect underground utility lines.

2010, c. 205.

§ 56-265.20. Repealed

Repealed by Acts 1994, c. 890, effective January 1, 1995.

§ 56-265.20:1. Locating nonmetallic underground utility lines

Notwithstanding the provisions of § 56-257.1, any plastic or other nonmetallic utility lines installed underground on and after July 1, 2002, shall be installed in such a manner as to be locatable by the operator for the purposes of this chapter.

2002, c. 841.

§ 56-265.21. Marking by color

In marking the approximate location of underground utility lines or proposed excavation if required pursuant to subsection E of § 56-265.17 the American Public Works Association color codes shall be used.

1979, c. 291; 1994, c. 890; 2002, c. 841.

§ 56-265.22. Duties of notification center upon notification by person intending to excavate; record of notification made by telephone required

A. The notification center shall, upon receiving notice by a person, notify all member operators whose underground lines are located in the area of the proposed project, excavation or demolition. The notification center shall also indicate the names of those operators being notified to the person providing notice.

B. If the notification required by this chapter is made by telephone, a record of such notification shall be maintained by the operators or notification center notified to document compliance with the requirements of this chapter, and such records shall be maintained in compliance with the applicable statute of limitations.

C. The notification center shall notify excavators, within the time frame allowed by the law to mark underground utility lines, of any responses placed on the excavator-operator information exchange system by a locator. Such notification shall occur by facsimile or other mutually acceptable means of automatically transmitting and receiving this information.

If the excavator cannot provide the notification center with a facsimile number or other mutually acceptable means of automatically transmitting and receiving this information, it shall be the excavator's responsibility to contact the excavator-operator information exchange system after the period allowed by law to mark underground facilities and prior to commencing excavation in order to determine if any responses to the notice have been recorded.

1979, c. 291; 1994, c. 890; 2002, c. 841.

§ 56-265.22:1. Meetings between excavators and operators

A. Any person planning excavation or demolition in such proximity to the underground utility lines that the utility lines may be destroyed, damaged, dislocated, or disturbed may request a meeting with the operator whose underground utility lines are located in the area of the proposed excavation or demolition to discuss the marking of such lines. The project requiring excavation shall be of sufficient complexity to require a pre-marking meeting. The meeting notice shall include all information required by § 56-265.18 and a specific time and location for the meeting.

B. The notification center shall, upon receiving a meeting notice, notify all member operators whose underground utility lines are located in the area of the proposed excavation or demolition. The notification center shall provide to the excavator the names of those operators being notified of the meeting.

C. The operators notified by the notification center shall meet with the excavator by 7:00 a.m. on the third working day following the excavator's meeting notice. If an operator does not agree to the excavator's suggested time and location, the operator shall set up a mutually agreeable time and location to meet no later than 7:00 a.m. on the third working day following the meeting notice.

D. The excavator's meeting notice shall not be the notice to excavate required under § 56-265.17. The notice to excavate required under § 56-265.17 for the project shall not be submitted to the notification center until after the meeting referenced in subsection A of this section has occurred, or after 7:00 a.m. on the third working day following the meeting notice.

2002, c. 841.

§ 56-265.23. Exemption for roadway maintenance operations by the Virginia Department of Transportation and certain counties, cities, and towns

Employees of the Virginia Department of Transportation acting within the scope of their employment, and certain employees of those counties, cities, and towns which maintain their streets or roads in accordance with § 33.2-319 or § 33.2-366 performing street or roadway maintenance operations and acting within the scope of their employment, excavating entirely within the right-of-

way of a public road, street or highway of the Commonwealth shall not be required to comply with the provisions of this chapter if reasonable care is taken to protect the utility lines placed in the right-of-way by permit and if they:

1. Excavate within the limits of the original excavation; on the traveled way, shoulders or drainage features of a public road, street, or highway and any excavation does not exceed eighteen inches (0.45 meter) in depth below the grade existing prior to such excavation; or

2. Are replacing previously existing structures in their previous locations.

1979, c. 291; 1994, c. 890.

§ 56-265.24. Duties of excavator

A. Any person excavating within two feet on either side of the staked or marked location of an operator's underground utility line or demolishing in such proximity to an underground utility line that the utility line may be destroyed, damaged, dislocated or disturbed shall take all reasonable steps necessary to properly protect, support and backfill underground utility lines. For excavations not parallel to an existing underground utility line, such steps shall include, but may not be limited to:

1. Exposing the underground utility line to its extremities by hand digging;

2. Not utilizing mechanized equipment within two feet of the extremities of all exposed utility lines; and

3. Protecting the exposed utility lines from damage.

In addition, for excavations parallel to an existing utility line, such steps shall include, but may not be limited to, hand digging at reasonable distances along the line of excavation. The excavator shall exercise due care at all times to protect underground utility lines when exposing these lines by hand digging.

B. If the markings locating the underground lines become illegible due to time, weather, construction, or any other cause, the person performing the excavation or demolition shall so notify the notification center for the area. Such notification shall constitute an extension under subsection D of § 56-265.17.

C. If, upon arrival at the site of a proposed excavation, the excavator observes clear evidence of the presence of an unmarked utility line in the area of the proposed excavation, the excavator shall not begin excavating until an additional call is made to the notification center for the area pursuant to subsection B of § 56-265.17.

D. In the event of any damage to, or dislocation, or disturbance of any underground utility line including its appurtenances, covering, and coating, in connection with any excavation or demolition, the person responsible for the excavation or demolition operations shall immediately notify the operator of the underground utility line and shall not backfill around the underground utility

line until the operator has repaired the damage or has given clearance to backfill. The operator shall either commence repair of the damage or give clearance to backfill within twenty-four hours, and upon his failure to commence or prosecute with diligence such repair or give clearance, the giving of clearance shall be presumed.

E. If the damage, dislocation, or disturbance of the underground utility line creates an emergency, the person responsible for the excavation or demolition shall, in addition to complying with subsection D of this section, take immediate steps reasonably calculated to safeguard life, health and property.

F. With the exception of designers requesting marking of a site, in accordance with § 56-265.17, no person, including operators, shall request marking of a site through a notification center unless excavation shall commence within thirty working days from the date of the original notification to the notification center. Except for counties, cities, and towns, any person who willfully fails to comply with this subsection shall be liable to the operator for three times the cost of marking its utility line, not to exceed $1,000.

G. Any person performing excavation or demolition shall provide to the operator of the underground utility line in the area of excavation or to the appropriate regulatory authority having jurisdiction, the number issued by the notification center for that excavation site in response to the excavator's notice, within one hour of a request for the number issued by the notification center.

H. If an excavator discovers an unmarked line, the excavator shall protect this line pursuant to subsection C of this section. An excavator shall not remove an abandoned line without first receiving authorization to do so by the operator.

1979, c. 291; 1994, c. 890; 1996, c. 79; 2002, c. 841.

§ 56-265.25. Liability of operator and excavator; penalties

A.1. If any underground utility line is damaged as a proximate result of a person's failure to comply with any provision of this chapter, that person shall be liable to the operator of the underground utility line for the total cost to repair the damaged facilities as that cost is normally computed by the operator, provided the operator is a member of the notification center covering the area in which the damage to the utility line takes place. The liability of such a person for such damage shall not be limited by reason of this chapter.

2. Any person who willfully fails to notify the notification center of proposed excavation or demolition shall be liable to the operator as provided in subsection A of § 56-265.17.

3. If, after receiving proper notice, an operator fails to discharge a duty imposed by any provision of this chapter and an underground utility line of such operator is damaged, as a proximate result of the operator's failure to discharge such duty, by any person who has complied with all of the provisions of this chapter, such person shall not be so liable.

B. If an underground utility line of an operator is damaged, as the proximate result of the operator's failure to comply with any provision of this chapter, by any person who has complied with the provisions of this chapter, the operator shall be liable to such person for the total cost to repair any damage to the equipment or facilities of such person resulting from such damage to the operator's underground utility line.

C. Except as specifically set forth herein, the provisions of this chapter shall not be construed to either abrogate any rights, duties, or remedies existing under law or create any rights, duties, defenses, or remedies in addition to any rights, duties, or remedies existing under law.

1979, c. 291; 1980, c. 696; 1989, c. 448; 1994, c. 890.

§ 56-265.26. Repealed

Repealed by Acts 1994, c. 890, effective January 1, 1995.

§ 56-265.26:1. Utility line depth requirement

Every operator having the right to install underground utility lines shall install such underground utility lines at depths required by accepted industry standards. Such standards shall include, as applicable, standards established by the National Electrical Safety Code, Bellcore Blue Book-Manual of Contractor's Procedures, the Commission's pipeline safety regulations, the Department of Health's waterworks regulations, and the depth standards of the Virginia Cable Telecommunications Association, which shall be established in consultation with the State Corporation Commission no later than July 1, 2002.

2002, c. 841.

§ 56-265.27. Repealed

Repealed by Acts 2015, c. 709, cl. 2.

§ 56-265.28. Sovereign immunity

Nothing in this chapter shall be construed to abrogate the immunity from suit accruing to the Commonwealth, her political subdivisions, agencies, officers or employees, or the officers or employees of her political subdivisions and agencies, as exists prior to July 1, 1980.

1979, c. 291.

§ 56-265.29. Other similar laws

Compliance with the provisions of this chapter shall not exempt any operator or person from the operation of any other applicable laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, unless exempted by such other laws, ordinances, regulations, or rules as a result of such compliance.

1979, c. 291.

§ 56-265.30. Authority of the State Corporation Commission

A. The Commission shall enforce the provisions of the Underground Utility Damage Prevention Act as set out in this chapter. The Commission may promulgate any rules or regulations necessary to implement the Commission's authority to enforce this chapter.

B. Nothing in this chapter shall be construed to authorize the Commission to promulgate any rules or regulations pursuant to its authority to enforce this chapter that require any person, other than jurisdictional gas or hazardous liquid operators, to report to the Commission any probable violation of this chapter or any incident involving damage, dislocation or disturbance of any utility line.

1994, c. 890; 2001, c. 399.

§ 56-265.31. Commission to establish advisory committee

A. The Commission shall establish an advisory committee consisting of representatives of the following entities: Commission staff, utility operator, notification center, excavator, municipality, Virginia Department of Transportation, Board for Contractors, and underground line locator. Persons appointed to the advisory committee by the Commission shall have expertise with the operation of the Underground Utility Damage Prevention Act. The advisory committee shall perform duties which may be assigned by the Commission, including the review of reports of violations of the chapter, and make recommendations to the Commission.

B. The members of the advisory committee shall be immune, individually and jointly, from civil liability for any act or omission done or made in performance of their duties while serving as members of such advisory committee, but only in the absence of willful misconduct.

1994, c. 890; 1996, c. 79.

§ 56-265.32. Commission to impose civil penalties for certain violations; establishment of Underground Utility Damage Prevention Special Fund

A. The Commission may, by judgment entered after a hearing on notice duly served on any person not less than 30 days before the date of the hearing, impose a civil penalty not exceeding $2,500 for each violation, if it is proved that the person violated any of the provisions of this chapter as a result of a failure to exercise reasonable care. Any proceeding or civil penalty undertaken pursuant to this section shall not prevent nor preempt the right of any party to obtain civil damages for personal injury or property damage in private causes of action. This subsection shall not authorize the Commission to impose civil penalties on any county, city, town, or other political subdivision. However, the Commission shall inform the counties, cities, towns, and other political subdivisions of reports of alleged violations involving the locality or political subdivision and, at the request of the locality or political subdivision, suggest corrective action.

B. If the Commission asserts there is recurring noncompliance with any of the provisions of this chapter by a county, city, town, or other political subdivision, the Commission, upon written notice to the chairman of such operator's board or, in the case of a city or town, the mayor of such operator's council, and to such operator's chief executive officer, may require a written response by

such person or his designee. Such response shall be made within 30 days of the operator's receipt of written notice from the Commission. The response shall confirm that the operator will comply promptly or explain why it disputes any assertion by the Commission of noncompliance. If the operator is not able to return to compliance promptly, the operator shall describe its plan to achieve compliance in a corrective action plan to be submitted to the Commission no later than 60 days after the receipt of the written notice. Following submittal of a corrective action plan, the Commission may convene a hearing for the purpose of receiving additional evidence, determining whether noncompliance has occurred, and determining further suggested corrective action. The Commission may also convene such a hearing if the operator fails to provide a written response or a corrective action plan as required by this subsection, or provides a response that disputes the Commission's assertions. Nothing in this section shall limit the Commission's powers under this chapter with respect to persons who are not counties, cities, towns, or political subdivisions of the Commonwealth.

C. The Underground Utility Damage Prevention Special Fund (hereinafter referred to as Special Fund) is hereby established as a revolving fund to be used by the Commission for administering the regulatory program authorized by this chapter. The Special Fund shall be composed entirely of funds generated by the enforcement of this chapter. Excess funds shall be used to support any one or more of the following: (i) public awareness programs established by a notification center pursuant to subsection B of § 56-265.16:1; (ii) training and education programs for excavators, operators, line locators, and other persons; and (iii) programs providing incentives for excavators, operators, line locators, and other persons to reduce the number and severity of violations of the Act. The Commission shall determine the appropriate allocation of any excess funds among such programs, and shall establish required elements for any program established under clause (ii) or (iii).

D. All civil penalties collected pursuant to this section shall be deposited into the Underground Utility Damage Prevention Special Fund. Interest earned on the fund shall be credited to the Special Fund. The Special Fund shall be established on the books of the Commission comptroller and any funds remaining in the Underground Utility Damage Prevention Special Fund at the end of the fiscal year shall not revert to the general fund, but shall remain in the Special Fund.

1994, c. 890; 2001, c. 351; 2002, c. 348; 2010, c. 205.

Chapter 11 - EXPRESS COMPANIES [Repealed]

§§ 56-266 through 56-272. Repealed
Repealed by Acts 1996, cc. 114 and 157.

Chapter 12 - MOTOR VEHICLE CARRIERS GENERALLY

§§ 56-273 through 56-338. Repealed
Repealed by Acts 1995, cc. 744 and 803.

Chapter 12.1 - HOUSEHOLD GOODS CARRIERS [Repealed]

§§ 56-338.1 through 56-338.18. Repealed
Repealed by Acts 1995, cc. 744 and 803.

Chapter 12.2 - PETROLEUM TANK TRUCK CARRIERS [Repealed]

§§ 56-338.19 through 56-338.39. Repealed
Repealed by Acts 1995, cc. 744 and 803.

Chapter 12.3 - SIGHT-SEEING CARRIERS [Repealed]

§§ 56-338.40 through 56-338.49. Repealed
Repealed by Acts 1995, cc. 744 and 803.

Chapter 12.4 - SPECIAL OR CHARTER PARTY CARRIERS [Repealed]

§§ 56-338.50 through 56-338.64. Repealed
Repealed by Acts 1995, cc. 744 and 803.

Chapter 12.5 - RESTRICTED PARCEL CARRIERS [Repealed]

§§ 56-338.65 through 56-338.84. Repealed
Repealed by Acts 1995, cc. 744 and 803.

Chapter 12.6 - MOTOR VEHICLES OF RAILROAD COMPANIES [Repealed]

§§ 56-338.85 through 56-338.92. Repealed
Repealed by Acts 1977, c. 628, effective January 1, 1981.

Chapter 12.7 - CARRIERS BY MOTOR LAUNCH [Repealed]

§§ 56-338.93 through 56-338.103. Repealed
Repealed by Acts 1995, cc. 744 and 803.

Chapter 12.8 - LIMOUSINES AND EXECUTIVE SEDANS [Repealed]

§§ 56-338.104 through 56-338.127. Repealed
Repealed by Acts 1995, cc. 744 and 803.

Chapter 13 - RAILROAD CORPORATIONS

Article 1 - CREATION, CHANGES OF CORPORATE STRUCTURE, ETC

§§ 56-339 through 56-344. Repealed
Repealed by Acts 1956, c. 435.

§ 56-345. Repealed
Repealed by Acts 1996, cc. 114 and 157.

§ 56-345.1. Notice; consolidation, merger, abandonments, or discontinuances
Any railroad company operating in the Commonwealth that submits an application to the federal government for consolidation, merger, abandonment, or discontinuance shall, contemporaneously with such application, notify the Commission and the Governor of such action.

1996, cc. 114, 157.

Article 2 - POWERS

§ 56-346. Certain powers conferred by law on railroad corporations
In addition to the powers conferred by Title 13.1, every corporation of this Commonwealth organized to conduct a railroad business shall have power to cause to be made such examinations and surveys for its proposed railroad as are necessary to the selection of the most advantageous route or routes, or for the improvement or straightening of its line or change of location, for constructing or providing additional tracks or facilities or for any other work or thing mentioned in § 56-347; and for such purposes, by its officers and servants, to enter upon the lands or waters of any person, but subject to responsibility for all damages that may be done thereto.

Code 1919, § 3857; 1920, p. 305; 1944, p. 534; Michie Suppl. 1946, § 3857a; 1956, c. 435.

§ 56-347. Power of condemnation; limitation
In addition to the powers conferred by Title 13.1, every corporation of this Commonwealth organized to conduct a railroad business shall have the power to acquire by the exercise of the right of eminent domain any lands or estates or interests therein, sand, earth, gravel, water or other material, structures, rights-of-way, easements or other interests in lands, including lands under water and riparian rights, of any person, which are deemed necessary for the purposes of construction, reconstruction, alteration, straightening, relocation, operation, maintenance, improvement or repair of its lines, facilities or works including depots, stations, shops, yards, industrial spurs, switches and sidetracks, terminals or additional tracks or facilities, and for all other necessary railroad purposes and purposes incidental thereto, for its use in serving the public, including permanent, temporary, continuous, periodical or future use, whenever such corporation cannot agree upon the terms of purchase or settlement with any such person because of the incapacity of such person or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because any such person cannot with reasonable diligence be found or is unknown or is a nonresident of the Commonwealth, or is unable to convey valid title to such property. Such proceedings shall be conducted in the manner provided by Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 and shall be subject to the provisions of § 25.1-102. Provided, however, such corporation shall not take by condemnation proceedings a strip of land for its right-of-way within sixty feet of the dwelling house of any person except (a) when the court having jurisdiction of the condemnation proceeding finds, after notice of motion to be granted authority to do so to the owner of such dwelling house, given in the manner provided in §§ 25.1-209, 25.1-210, and 25.1-212, and a hearing thereon, that it would otherwise be impractical, without unreasonable expense,

to construct the proposed works of the corporation at another location; or (b) in case of occupancy of the streets or alleys, public or private, of any county, city or town, in pursuance of permission obtained from the board of supervisors of such county or the corporate authorities of such city or town; or (c) in case of occupancy of the highways of this Commonwealth or of any county, in pursuance of permission obtained from the authorities having jurisdiction over such highways.

Code 1919, § 3857; 1920, p. 307; 1944, p. 536; Michie Suppl. 1946, § 3857a; 1956, c. 435; 1962, c. 221; 2003, c. 940.

§ 56-348. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§§ 56-349 through 56-351. Repealed

Repealed by Acts 1956, c. 435.

§ 56-352. Railroad to have an insurable interest in property along its route

Every railroad company is hereby invested with an insurable interest in the property upon the route operated by it, and may procure insurance thereupon in its own behalf for protection against any damage to such property by fire or otherwise, for which such company shall or might be liable.

Code 1919, § 4018.

§ 56-353. Railroad company may appoint police agents

The president or any other executive officer of any railroad company incorporated by this Commonwealth may, with the approval of the circuit court of any county or the corporation court of any city through which the road passes or has its chief office, appoint one or more police agents, who shall have authority in all cases in which the rights of such railroad company are involved to exercise within the Commonwealth all powers which can be lawfully exercised by any police officer for the preservation of the peace, the arrest of offenders and disorderly persons, and for the enforcement of laws against crimes; and such president or other executive officer may remove any such agent at his pleasure; but, any court giving such consent may at any time revoke it.

Code 1919, § 3944; 1930, p. 787.

§ 56-354. Conductors, etc., to be conservators of the peace

Conductors and engineers of railroad passenger trains, and station and depot agents, shall be conservators of the peace. Each shall have the same power to make arrests that other conservators of the peace have except that the conductors and engineers of passenger trains shall only have such power on board their respective trains and on the property of their companies while on duty and the agents at their respective places of business. Conductors, engineers, and agents may cause any person so arrested by them to be detained and delivered to the proper authorities for trial as soon as practicable.

Code 1919, § 3944; 1930, p. 788; 1996, cc. 114, 157.

Article 3 - EXTENSIONS; CONNECTIONS; CROSSING OTHER RAILROADS, ROADS, ETC

§ 56-355. Repealed

Repealed by Acts 1956, c. 435.

§ 56-355.1. Repealed

Repealed by Acts 2015, c. 256, cl. 9.

§ 56-355.2. Definitions

"Public road authority" as used in this chapter means any appropriate governing body which has responsibility for the construction and maintenance of public highways.

"Overpass" as used in this chapter means a grade separation structure in which the public highway passes above and across the railroad.

"Underpass" as used in this chapter means the railroad passes above and across the public highway.

"Highway" as used in this chapter means any public highway, road, or street maintained by the Virginia Department of Transportation or for which maintenance payments are made pursuant to §§ 33.2-319 and 33.2-366.

1996, cc. 114, 157.

§§ 56-356 through 56-358. Repealed

Repealed by Acts 1956, c. 435.

§§ 56-359 through 56-361. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-362. Right of railroad to cross watercourse, intervening railroad, etc

Any railroad corporation created or doing business under the laws of this Commonwealth, which shall have fully located the route of its railway, may, in the construction of such railway on such route, cross any canal, navigable stream, or watercourse between its termini, but in such manner as not unreasonably to impede the navigation and use thereof; and may also cross any railway or railroad intervening, in the manner and upon the terms prescribed by §§ 56-17 to 56-32, and 56-363.

Code 1919, § 3999; 1996, cc. 114, 157.

§ 56-363. Crossing of a railroad or public highway by another railroad; crossing of a railroad by a public highway

It is hereby declared to be the policy of the Commonwealth that all crossings of one railroad by another, or a public highway by a railroad, or a railroad by a public highway, shall, wherever reasonably practicable, pass above or below the existing facility. And every railroad hereafter constructed across another railroad or across a public highway, and every public highway hereafter

constructed across a railroad, shall, wherever it is reasonably practicable, and does not involve an unreasonable expense, all the circumstances of the case considered, pass above or beneath the existing structure at a sufficient elevation or depression, as the case may be, with easy grades, so as to admit of safe speedy travel over each.

If constructing a crossing either above or below the existing structure is not practical and involves an unreasonable expense, the responsible governing body constructing a new public crossing at grade, in accordance with the laws of the Commonwealth of Virginia, shall take precautions to provide for the safe movement of traffic. It is the policy of the Commonwealth to limit the number of new public at grade crossings and to eliminate unnecessary crossings.

Code 1919, § 3972; 1996, cc. 114, 157.

§§ 56-364, 56-365. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-365.1. Closing and or consolidation of grade crossings

Whenever the public safety requires that an existing crossing of a railroad by a public highway at grade be eliminated or that multiple grade crossings be consolidated, either the public road authority or the affected railroad may petition the Commonwealth Transportation Board to provide funding for and to require the elimination of the existing grade crossing as a condition of participating in the funding. Upon a finding that the public safety requires elimination of the existing grade crossing, and the Commonwealth Transportation Board funds are available for the improvement, the Commonwealth Transportation Board may order the elimination of the crossing or the consolidation of multiple grade crossings. The affected railroad may contribute to the cost of eliminating or consolidating grade crossings. The Commonwealth may apply for, receive, and contribute any available federal or other funds for the elimination or consolidation of grade crossings.

1996, cc. 114, 157.

§ 56-366. Repealed

Repealed by Acts 1952, c. 398.

§ 56-366.1. Proceedings to avoid or eliminate grade crossings by grade separation or to widen, strengthen, remodel, relocate or replace existing crossing structures on public highways

Whenever a road in the primary or secondary state highway system or a public highway maintained by a locality (i) crosses a railroad, (ii) is projected across a railroad, or (iii) is to be so changed as to cross a railroad, or an existing overpass or underpass crossing of any such road and a railroad is in need of widening, strengthening, remodeling, relocating or replacing, and funds are (or are to be) allocated by the Commonwealth Transportation Board or public road authority for payment of the locality's or state's portion of the cost of constructing such an overpass or underpass structure or for widening, strengthening, remodeling, relocating or replacing such an

existing structure, the Commissioner of Highways or representative of the public road authority may agree with the railroad company or companies involved, on such terms and conditions as he shall deem in the best interests of the Commonwealth or locality regarding the plans and specifications, the method and manner of construction and the division of costs and maintenance responsibility of any such separation of grade structure. In case of a separation of grade by structure at a new, or an existing, grade crossing, the project, except in special cases and under special circumstances to be mutually agreed upon by the Commissioner of Highways, the public road authority, and the railroad company or companies involved, shall be deemed to start at points on each side of the tracks of the railroad or railroads where the grade, under the proposed plans and specifications, leaves the ground line to go over or under, as the case may be, the tracks of the railroad or railroads.

In the event the Commissioner of Highways, the public road authority, and the railroad company or companies involved are unable to agree on (i) the necessity for the construction of such underpass or overpass structure or for the widening, strengthening, remodeling, relocating or replacing of any existing overpass or underpass structure, (ii) the plans and specifications for and method or manner of construction thereof, or (iii) the portion of the work, if any, to be done and the share of the cost of such project, if any, to be borne by each of the railroad company or companies involved, the Commissioner of Highways or the public road authority shall petition the State Corporation Commission setting forth the plans and specifications for and the method and manner of construction of such project and the facts which in his opinion justify the elimination of the crossing, the erection of a new separation of grade structure or the widening, strengthening, remodeling, relocating or replacing of an existing structure and the maintenance responsibility. Copies of the petition and the plans and specifications shall forthwith be served by the State Corporation Commission on the railroad company or companies involved. Within twenty days after service on it of such petition and plans and specifications, the railroad company or companies shall file an answer with the State Corporation Commission setting out its objections to the proposed project and the Commission shall hear and determine the matter as other matters are heard and determined by that body. The Commission shall consider all the facts and circumstances surrounding the case and shall determine (a) whether public necessity and convenience justifies or requires the construction of such new separation of grade structure or whether an existing structure is so dangerous to or insufficient to take care of traffic on the highway as to require the widening, strengthening, remodeling, relocating or replacing proposed, (b) whether the plans and specifications or method and manner of construction are proper and appropriate, and (c) what portion of the work, if any, to be done and what share of the cost of such project, if any, to be borne by each of the railroad company or companies involved (excluding the cost of right-of-way) is fair and reasonable, having regard to the benefits, if any, accruing to such railroad or railroads from the elimination of such grade crossing or the widening, strengthening, remodeling, relocating or replacing any existing overpass or underpass structure, and either dismiss the proceeding as against the

railroad company or companies involved or enter an order deciding and disposing of all of the matters hereinbefore submitted to its jurisdiction.

Grade crossings shall be closed when replaced by a new public highway. However, the Commonwealth Transportation Board or the public road authority may authorize the continued use of the crossing for a period of two years following the construction of the new highway to familiarize the public with the new route.

1952, c. 398; 1996, cc. 114, 157; 2015, c. 256.

§ 56-366.2. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-366.3. Proceedings to alter, rebuild or replace existing grade separation structure destroyed or rendered unusable

In the event an existing overpass or crossing over a railroad is destroyed or rendered unusable or otherwise becomes necessary to alter, rebuild, or replace, which overpass or crossing is maintained by a railroad company, such company shall immediately notify the Commissioner of Highways, or the public road authority of its intent to formulate plans for such alteration, rebuilding, or replacement. The Commissioner or the public road authority shall, as soon as practicable after receipt of such notice, determine if, in consideration of the needs of the state systems of highways, the work to be done on such existing separation structure should encompass any upgrading of such overpass. Upon reaching such decision, the Commissioner or the public road authority shall forthwith notify the company thereof.

If the Commissioner or representative of the public road authority determines that upgrading is not necessary, the company, within six months of notice thereof, shall, in consultation with the Commissioner or representative of the public road authority, formulate and submit plans to the Commissioner or representative of the public road authority for the necessary work. As soon as the plans are submitted the Commissioner or representative of the public road authority shall review the same and after determining the plans are satisfactory, shall notify the railroad to begin construction by a specified date and to complete such construction within a specified time limit after considering public safety, convenience and necessity and the amount, nature and extent of the planned construction. All costs of necessary work, including formulation of plans, where upgrading is not necessary, shall be borne by the company. In the event there is a disagreement as to the design, method of construction and date of completion, such dispute shall be resolved under the procedural provisions of § 56-366.1.

If the Commissioner or public road authority determines that upgrading is necessary or desirable, the same procedure for coordination with the company shall apply except that the parties may agree that the Commissioner or representative of the public road authority formulate, and execute plans for such work, in consultation with such company. Disputes as to matters in this regard,

including allocation of cost, shall also be resolved by petition to the State Corporation Commission and any new overpass shall be maintained in accordance with § 56-368.1.

When it is necessary only to repair any overpass, maintained by such railroad, the railroad shall perform all work and bear all costs in connection therewith.

All duties under this section shall be performed as expeditiously as possible. Nothing herein shall be construed in any way to limit the authority of the Commissioner or representative of the public road authority over public highways and overpasses.

1977, c. 443; 1996, cc. 114, 157.

§§ 56-367, 56-368. Repealed

Repealed by Acts 1952, c. 398.

§ 56-368.1. Subsequent maintenance of underpasses and overpasses

After the work specified in §§ 56-366.1 and 56-366.3 regarding underpasses and overpasses has been done, the maintenance, including drainage, of any underpass hereafter so constructed, except the pavement thereof, shall be the sole responsibility of the railroad company and the maintenance of any overpass hereafter so constructed shall be the sole responsibility of the Department of Transportation or the public road authority; provided, that the railroad company shall not be responsible for any damage to an underpass caused by operations on the highway, and the Department of Transportation or the public road authority shall not be responsible for any damage to an overpass caused by the operations of the railroad company; and further provided, that the provisions herein as to maintenance of overpasses and underpasses shall also be construed as applicable in the case of those structures previously built on the primary system under agreement between the railroad company and the Department of Transportation or the public road authority; and further provided that the provisions herein as to maintenance by a railroad company shall not be applicable in the case of any underpass hereafter constructed without eliminating a crossing of a railroad and a highway grade, but the maintenance of such structures, including highway drainage and pavement therefor, shall be the sole responsibility of the Department of Transportation or the public road authority.

1924, p. 147; 1926, p. 399; 1930, p. 75; 1934, p. 265; Michie Code 1942, § 3974a; 1948, p. 1003; 1962, c. 538; 1996, cc. 114, 157.

§ 56-369. Elimination of public grade crossings by change of alignment of public highways or construction of replacement public highways

Whenever the Commissioner of Highways or the appropriate public road authority in improving the alignment of public highways proposes to change the alignment of the highway or construct a replacement public highway and thereby permanently eliminate as a public crossing one or more crossings of a railroad at grade, he may agree with the railroad company involved, on such terms and conditions as he or the representative of the public road authority shall deem in the best interest of the Commonwealth or locality regarding the plans and specifications, the method and

manner of construction and the division of costs of so changing the alignment of the highway. Grade crossings shall be closed when replaced by a new public highway. However, the Commonwealth Transportation Board or the public road authority may authorize the continued use of the crossing for a period of two years following the construction of the new public highway to familiarize the public with the new route.

In the event the Commissioner of Highways or the public road authority and the railroad company are unable to agree (i) on the necessity for such change in the alignment of the highway, or (ii) the plans and specifications for the method and manner of construction thereof, or (iii) the portion of the work, if any, to be done and the share of the cost of such project, if any, to be borne by the railroad company involved, the Commissioner of Highways or the public road authority shall petition the State Corporation Commission setting forth the plans and specifications for the method and manner of changing the alignment of the public highway and the facts which, in his opinion, justify the proposed elimination as a public crossing of one or more crossings of the railroad at grade. Copies of the petition and the plans and specifications shall forthwith be served by the State Corporation Commission on the railroad company involved. Within twenty days after service on it of such petition and plans and specifications, the railroad company involved shall file an answer with the State Corporation Commission setting out its objections to the proposed project and the Commission shall hear and determine the matter as other matters are heard and determined by that body. The Commission shall consider all the facts and circumstances surrounding the case and shall determine (a) whether public necessity and convenience justifies or requires the proposed change in the alignment of the highway which shall not, in respect to any particular project within the meaning of this section, exceed five miles in length, (b) whether the plans and specifications or method and manner of construction are proper and appropriate, and (c) what portion of the work, if any, to be done and what share of the cost of such project, if any, to be borne by the railroad company involved is fair and reasonable, having regard to the benefits, if any, accruing to such railroad from the elimination of such grade crossing or crossings, and either dismiss the proceeding as against the railroad company involved or enter an order deciding and disposing of all of the matters hereinbefore submitted to its jurisdiction, provided, however, that the share of the cost of such project which the Commission may find proper to be borne by the railroad under the provisions of this section, shall not exceed what the Commission might otherwise decide would be the proportion of the cost of constructing an overpass or underpass structure or structures at the point or points where such public grade crossing or crossings are to be eliminated.

1930, p. 891; Michie Code 1942, § 3974b; 1952, c. 399; 1996, cc. 114, 157.

Article 4 - DUTIES

§ 56-370. Repealed

Repealed by Acts 1956, c. 435.

§§ 56-371 through 56-382. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-383. Railroad company may construct and maintain telegraph or telephone line
Any railroad company may construct and maintain along the line of its improvement an electric telegraph or telephone for its own use and that of the public, and may make reasonable charges on messages and intelligence conveyed thereby.

Code 1919, § 3943.

§§ 56-384 through 56-389. Repealed
Repealed by Acts 1996, cc. 114 and 157.

Article 5 - SEGREGATION OF RACES, ETC

§§ 56-390 through 56-404. Repealed
Repealed by Acts 1970, c. 731.

Article 6 - HIGHWAY CROSSINGS

§ 56-405. Railroad companies to maintain grade crossings of public highways and approaches; repair by Commissioner of Highways or public road authority; recovery of cost from railroad company
At every crossing, now existing or hereafter established, of a public road by a railroad or of a railroad by a public highway at grade, it shall be the duty of the railroad company to keep such crossing in good repair to the full width of the public highway, and to maintain such crossing in a smooth condition so as to admit of reasonable and safe travel over the same, and it shall also be the duty of the railroad company to maintain and keep in good repair that portion of the highway located between points two feet on either side of the extreme rails. A railroad may request that a public highway be closed for grade crossing maintenance activities, and the representative of the Commissioner of Highways or the representative of the appropriate public road authority may approve such closing where a reasonable detour is available. Any railroad company violating the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not less than $10 nor more than $500.

The Commissioner of Highways or the representative of the public road authority, whenever he or it shall ascertain that any such crossing is not being properly maintained, shall notify the railroad company involved in writing to repair the crossing forthwith; the railroad company upon receipt of notice may request a conference on the condition of the crossing and the need, if any, for the repair of such crossing and such conference shall be held within thirty days after receipt of the Commissioner's or the public road authority's notice. After the conference if the Commissioner or the public road authority is of the opinion that such repairs are required and the railroad is not willing to proceed promptly with such repairs, he or the public road authority may repair the same or cause it to be repaired and recover from the railroad company the actual cost of such work including any administration and engineering cost.

If no conference is requested by the railroad company within the thirty-day period, the Commissioner or the public road authority with advance notice may repair the crossing or cause it to be repaired and recover from the railroad company the actual cost of such work including any administration and engineering cost.

In any action under this section to recover the cost of the repair of any such crossing, the need for, and reasonableness of, the repairs may be put in issue.

Nothing herein shall be construed as placing a duty on the railroad company to construct or reconstruct any such crossing in the event any such crossing is relocated or the highway approaches thereto are widened or reconstructed.

Code 1919, § 3973; 1952, c. 99; 1960, c. 544; 1968, c. 226; 1978, c. 214; 1996, cc. 114, 157.

§ 56-405.01. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-405.02. Railroads to adjust certain public highways at grade crossings

When adjustments are made to railway trackage grade which crosses public rights-of-way in use as a public highway or street in any locality, the railway company making such adjustments to their trackage shall also make initial adjustments to those public highways or streets so affected thereby to maintain a safe vertical relationship between trackage and street surfaces and to insure positive storm drainage such as existed prior to such repairs. After making such initial adjustments the responsibility for the continuing maintenance of the areas within such public highways and streets so adjusted shall be controlled by § 56-405.

The cost of all such initial street improvements necessitated by railway trackage adjustments shall be the responsibility of the railway company making such initial adjustments irrespective of whether or not the street improvements extended beyond railway right-of-way.

1984, c. 439; 1996, cc. 114, 157.

§ 56-405.1. Agreements with Commissioner of Highways or public road authority representative for maintenance and repair of public grade crossings

Whenever the Commissioner of Highways or representative of the appropriate public road authority determines that it is in the best interest of the public to assist a railroad in its grade crossing maintenance and repair activities, he is authorized to enter into an agreement with the railroad company for the repair or maintenance of any crossing of a railroad and a public highway or for the sale of materials to the railroad company for the repair and maintenance of any such crossing. Any such agreement shall provide for the railroad company to bear the cost of the repair or maintenance or material furnished and such other conditions as the Commissioner of Highways or representative of the appropriate public road authority deems necessary or advisable to protect the interest of the public.

1968, c. 175; 1996, cc. 114, 157.

§ 56-405.2. Construction and maintenance of crossbucks

Every railroad company shall cause signal boards, hereinafter referred to as crossbucks, well supported by posts or otherwise and approved by the Department of Transportation at such heights as to be easily seen by travelers from both directions of the public highway, and not obstructing travel, containing in capital letters, at least five inches high, the inscription "railroad crossing," to be placed, and constantly maintained, at each public highway at or near, and on both sides of, each place where it is crossed by the railroad at the same level. The requirements of this section in localities that maintain their own streets may be waived at specific crossings on the petition of any such company to both the Commissioner of Highways and the public road authority if both the Commissioner and the public road authority determine that any such crossing has or will have other adequate warning devices or that the placement of new crossbucks will not enhance the safety of the traveling public. Neither official action nor failure to act as hereinabove provided shall impair the power of the Commissioner or the public road authority to require crossbucks at specific public crossings should a subsequent determination of their need be made.

The cost of erecting crossbucks placed at a public highway for the first time or whenever the Commissioner or the public road authority determines an upgrade of the standards is required may be paid or supplemented from federal funds when available to the Department of Transportation for such purpose at the sole discretion of the Commissioner of Highways. But the election of the Commissioner not to participate in such cost shall not relieve any company from the obligation of this section.

This section shall apply as to cities and towns in the case of new crossbucks beginning July 1, 1977.

1977, c. 226; 1996, cc. 114, 157.

§ 56-405.3. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-406. Repealed

Repealed by Acts 1977, c. 226.

§ 56-406.1. Proceedings for installation and maintenance of automatically operated gates, signals and other automatic crossing warning devices

Railroads shall cooperate with the Virginia Department of Transportation and the Department of Rail and Public Transportation in furnishing information and technical assistance to enable the Commonwealth to develop plans and project priorities for the elimination of hazardous conditions at any crossing of a public highway which crosses at grade including, but not limited to, grade crossing elimination, reconstruction of existing grade crossings, and grade crossing improvements. The Commonwealth shall provide each locality a listing of grade crossing safety needs for its consideration. Information collected and analyses undertaken by the designated state agencies are subject to 23 U.S.C. § 409. A railroad shall not unilaterally select or determine the type of grade

crossing warning system to be installed at any crossing of a public highway and railroad at grade. The railroad shall only install or upgrade a grade crossing warning system at any crossing of a public highway and railroad at grade pursuant to an agreement with the Virginia Department of Transportation or representative of the appropriate public road authority authorized to enter into such agreements. A railroad is not required but is permitted to upgrade, at its own expense, components of any public highway at grade warning system when such upgrade is incidental to a railroad improvement project relating to track, structures or train control systems.

When required by the Commissioner of Highways or representative of the appropriate public road authority, every railroad company shall cause a grade crossing warning device including flashing lights approved by the Department of Transportation at such heights as to be easily seen by travelers, and not obstructing travel, to be placed, and maintained at each public highway at or near each place where it is crossed by the railroad at the same level. Such warning device shall be automatically activated by the approaching train so as to be clearly discernible to travelers approaching the railroad crossing from each direction at a distance of two-hundred feet. Such warning devices shall be erected at the initiative of the appropriate public road authority only when required by ordinance or resolution adopted by the Commissioner or the appropriate public road authority thereof stating that such political subdivision will pay the full initial installation cost of such warning devices and that maintenance costs will be fixed as provided in § 56-406.2. A certified copy of such ordinance or resolution shall be delivered to such railroad company, and such railroad company shall forthwith install such warning devices at the full initial cost of such public road authority. The cost of such installation and maintenance of such warning devices may be shared by agreement between such railroad company and the Commissioner of Highways or the appropriate public road authority, when initiating such installation. The railroad shall be responsible for the continuing maintenance of the warning devices.

In the event that such Commissioner or representative of the appropriate public road authority and the railroad company or companies involved are unable to agree on (i) the necessity for such grade crossing warning device, or (ii) the plans and specifications for and the method and manner of construction or operation thereof, or (iii) the share of the cost of construction, if any, to be borne by the railroad company or companies involved, then the Commissioner of Highways or representative of the appropriate public road authority, as the case may be, shall petition the State Corporation Commission setting forth the grade crossing warning devices desired and the plans and specifications for and the method and manner of construction and operation of the devices desired and the facts which, in the opinion of the petitioner, justify the requiring of the same. Copies of the petition and plans and specifications shall be forthwith served by the State Corporation Commission on the railroad company or companies involved. Within twenty days after service on it of such petition and plans and specifications, each such railroad company shall file an answer with the State Corporation Commission setting out its objections to the proposed project, and the Commission shall hear and determine the matter as other matters are heard and determined by

that body. The Commission shall consider all the facts and circumstances surrounding the case and shall determine (a) whether public necessity justifies or requires the proposed warning devices, (b) whether the plans and specifications or the method and manner of construction and operation be proper and appropriate, and (c) what share of the cost of the project, if any, to be borne by any railroad company involved is fair and reasonable, having regard to the benefits, if any, accruing to such railroad company from providing such grade crossing warning devices, and either dismiss the proceeding as against such railroad company or enter an order deciding and disposing of all of the matters hereinbefore submitted to its jurisdiction.

1952, c. 400; 1954, c. 122; 1962, c. 527; 1996, cc. 114, 157.

§ 56-406.2. Proceeding for fixing cost of maintaining such warning devices at public grade crossings

Whenever any automatically operated gate, signal or other automatic crossing warning device has been or may hereafter be installed at any highway, road or street grade crossing by any railroad company, the Commissioner of Highways or the public road authority may agree with the railroad company involved as to the division of the cost of the future maintenance of any such device or devices. The basis for the division of costs shall be determined by the Department of Rail and Public Transportation utilizing the calculated average maintenance cost of all previous warning device maintenance performed and documented by all railroads operating in Virginia. In the event that the Commissioner or the public road authority and the railroad company involved are unable to agree upon the share of the cost of maintenance of any such device or devices to be borne by the railroad company, if any, then such railroad company may file a petition with the State Corporation Commission setting forth the crossing protection provided at such crossing, the terms of the contract and/or the conditions of the order of said Commission or the public road authority under which it was constructed and installed and the estimated future annual cost of maintaining the same. Copies of such petition shall forthwith be served by the State Corporation Commission upon the Commissioner of Highways or the public road authority who shall, within twenty days after service of such petition, file an answer thereto setting out reasons for declining to participate in the future cost of maintaining such warning device or devices as requested by the railroad company, and the Commission shall thereupon hear and determine the matter as other matters are heard and determined by that body. The Commission shall consider all the facts and circumstances surrounding the case and shall determine what share of the cost of the future maintenance of such warning device or devices, if any, shall be borne by the railroad company and/or the Commonwealth Transportation Board or the public road authority, having regard to the benefits, if any, accruing to such railroad company from the continued maintenance of such protection of said public highway, road or street grade crossing, and either dismiss the proceeding or enter an order deciding and disposing of the matters therein submitted to its jurisdiction.

1956, c. 626; 1962, c. 528; 1996, cc. 114, 157.

§ 56-407. Repealed

Repealed by Acts 1956, c. 164.

§ 56-408. Signs similar to crossing signs prohibited

No device or sign which is in the form of a railroad crossing signboard shall be erected or permitted to remain on or near any of the public roads of this Commonwealth, except as required by § 56-405.2.

Any person who shall erect such a device or sign, as aforesaid, and every sign owner who shall permit such a device or sign to remain on or near the public roads of this Commonwealth, and every landowner or tenant in possession who shall knowingly permit such a sign to remain on his land in view of any public road, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than $5 nor more than $100.

1918, p. 128; Michie Code 1942, § 3985a; 1956, c. 164.

§§ 56-409, 56-410. Repealed

Repealed by Acts 1954, c. 122.

§ 56-411. Removal of brush and trees from right-of-way

Every railway company operating in this Commonwealth shall be required to clear from its right-of-way trees and brush for 100' on each side of public road crossings at grade when such trees or brush would otherwise obstruct the view of approaching trains.

Every railway company violating the provisions of this section shall be fined not more than $500 for each offense, to be imposed by the State Corporation Commission after due notice and hearing upon the company or the employee so offending.

1918, p. 452; Michie Code 1942, § 3986a; 1996, cc. 114, 157.

§ 56-412. When trains shall be stopped before getting to railroad crossing

Whenever railroads cross each other on the same grade in this Commonwealth, the trains shall be brought to a full stop at least fifty feet before getting to the crossing.

The provisions of this section shall not be applicable where the crossings of such roads are regulated by derailing switches, or other safety appliances, which prevent collision at crossings, nor where a flagman or watchman is stationed, or signal tower is located, and signals that the trains may cross in safety.

Code 1919, § 3987.

§ 56-412.1. Railroad cars obstructing street or road; standing vehicle on railroad track

It shall be unlawful for any railroad company, or any receiver or trustee operating a railroad, to obstruct for a longer period than five minutes the free passage on any street or road by standing cars or trains across the same, except a passenger train while receiving or discharging passengers, but a passway shall be kept open to allow normal flow of traffic; nor shall it be lawful to stand any wagon or other vehicle on the track of any railroad which will hinder or endanger a moving train; provided that when a train has been uncoupled, so as to make a passway, the time necessarily

required, not exceeding three minutes, to pump up the air after the train has been recoupled shall not be included in considering the time such cars or trains were standing across such street or road. Any such railroad company, receiver or trustee, violating any of the provisions of this section shall be fined not less than $100 nor more than $500; provided that the fine may be $100 for each minute beyond the permitted time but the total fine shall not exceed $500.

This section shall not apply when the train is stopped due to breakdown, mechanical failure or emergency.

1958, c. 242; 1976, c. 89.

§ 56-412.2. Ordinances conflicting with § 56-412.1

No city, town or county shall adopt any ordinance, order or resolution in conflict with the provisions of § 56-412.1 and all ordinances, orders or resolutions of any city, town or county heretofore adopted in conflict with such section are hereby repealed to the extent of such conflict.

1958, c. 242.

§ 56-412.3. Maintenance of certain roadways by Buchanan County

The Board of Supervisors of Buchanan County is hereby authorized to maintain roadways located within the right-of-way of railroads pursuant to an agreement between Buchanan County and the railroad. However, nothing in this section shall obligate Buchanan County or the railroad to enter into any such agreement, nor shall Buchanan County or the railroad be precluded from including in any agreement any term, condition, or other lawful contractual provision. Any agreement made between Buchanan County and a railroad shall result in the complete immunity of the railroad from suit for any acts of the County in maintaining the roadways within the right-of-way of the railroad. The Board of Supervisors of Buchanan County shall cause all such roadways to be appropriately posted to warn users of such roadways that they are present on such roadways at their own risk.

2010, c. 256.

Article 7 - SAFETY PROVISIONS

§ 56-413. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-413.01. Locomotive and rail car standards

All locomotives and rail cars operating over the tracks of a railroad company are subject to Federal Railroad Administration jurisdiction and shall be maintained in accordance with federal standards. Locomotives designed with spark arrestors shall be cleaned and maintained on a regularly scheduled basis.

1996, cc. 114, 157.

§§ 56-413.1, 56-413.2. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-414. Bell and whistle or horn; when sounded

Every railroad company shall provide each locomotive passing upon its road with a bell of ordinary size and steam whistle or horn, and such whistle or horn shall be sharply sounded outside cities and towns at least twice at a distance of not less than 300 yards nor more than 600 yards from the place where the railroad crosses upon the same level any public highway or crossing, and such bell shall be rung or whistle or horn sounded continuously or alternately until the locomotive has reached such highway crossing, and shall give such signals in cities and towns as their local governing bodies may require.

The governing body of any county, city, or town may by ordinance require locomotives to sound their whistle upon approaching designated railroad trestles or bridges having lengths of 100 feet or more. Notice of any such requirement shall be given by registered mail to the registered agent of the railroad operating in the affected county, city, or town. Affected railroads shall comply with any such ordinance within 30 days of receiving the notice.

The governing body of any county, city, or town may, by ordinance adopted following a public hearing, petition the State Corporation Commission to enter an order, pursuant to the Commission's Rules of Practice and Procedure, requiring locomotives to sound their whistle or horn at specifically identified private crossings in the same manner as required for public crossings. If the Commission should deem the blowing of the locomotive whistle at such private crossings to be necessary in the interest of safety under all relevant circumstances, then it shall enter an order. The affected railroad shall comply with the order within 90 days of receipt by its registered agent of notice sent by registered mail and the locality must first install stop signs on both sides of such private crossing, to be paid for by the locality or the landowner. The Commission may establish and collect a fee, not to exceed its actual costs, from applicants for an order to sound locomotive whistles pursuant to this section.

Code 1919, § 3958; 1950, p. 944; 1956, c. 164; 1993, c. 483; 2003, c. 287.

§ 56-415. Penalty for violation of § 56-414

Every officer or employee of any railway company, whose duty it shall be to carry out any of the provisions of § 56-414 and shall fail to do so, shall be punished by a fine not exceeding ten dollars for each offense.

Code 1919, § 3960.

§ 56-416. Effect of failure to give statutory signals

If the employees in charge of any railroad engine or train fail to give the signals required by law on approaching a grade crossing of a public highway not protected with an automatically operating gate, operating wigwag signal or other operating electrical or operating automatic crossing protection device, the fact that a traveler on such highway failed to exercise due care in approaching such crossing shall not bar recovery for an injury to or death of such traveler, nor for an injury to or the destruction of property in his charge, where such injury, death, or destruction results from a

collision on such crossing between such engine or train and such traveler or the property in his charge, respectively; but the failure of the traveler to exercise such care may be considered in mitigation of damages.

Code 1919, § 3959; 1964, c. 621.

§ 56-417. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-417.1. Clearance to be provided in construction, etc., of railroad structures

No railroad, nor any person, firm or corporation operating any railroad shall hereafter construct or erect any track, building, sign, guidepost, switch stand or structure of any kind unless there is sufficient clearance provided for the safety of any employee or servant in the normal and customary operations of such railroad or any part thereof. The State Corporation Commission may inspect any such track or structure of any railroad in this Commonwealth, and upon complaint, or on its own motion and after timely notice to the railroad company affected and a hearing thereon, by proper order or orders, may require any railroad to make such changes as may be found necessary to safeguard and preserve the safety of its employees, servants and the general public. Provided, however, that this section shall not apply to any track, building, sign, guidepost, switch stand or structure of any kind in existence prior to January 1, 1953, nor to any private or industrial siding; provided, further, however, that any private or industrial siding constructed after January 1, 1953, shall, as far as practical, conform to the foregoing provisions.

1952, c. 710.

§ 56-418. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-419. Duplicate switch keys of railroads; unlawful making, etc.; punishment

It shall be unlawful for any person to make, buy, sell, or give away to any other person any duplicate key to any lock belonging to, or in use by, any railroad company in this Commonwealth on its switches or switch tracks, except upon the written order of that officer of the railroad company whose duty it is to distribute and issue switch lock keys to the employees of such railroad company. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor.

Code 1919, § 4019.

§ 56-419.1. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-419.2. Safety requirements applicable to vehicles transporting railroad employees

A. As used in this section "motor vehicle" shall mean any motor vehicle designed for highway use, owned or operated by a railroad, whether or not it is used on the highways of this Commonwealth.

B. No motor vehicle shall be used for transporting one or more railroad employees three miles or more to or from a work situs unless such motor vehicle is constructed and maintained so as to provide safe transportation for such employees.

C. The requirement of safe transportation as set out hereinabove shall include, but not be limited to, the construction and maintenance of motor vehicles so as:

1. To provide an enclosure providing full cover from the elements for all railroad employees being so transported. Such enclosure shall be heated.

2. To provide within said enclosure fixed seats with backs for all railroad employees being so transported.

3. To provide a means to effectively communicate to the driver of the motor vehicle the emergency needs of the railroad employees being so transported.

D. The provisions of this section shall not apply to any motor vehicle when an emergency arises and such vehicle must be used to meet such an emergency.

E. The failure of any railroad company to correct any violation of this section within seven days from receipt of written notice thereof shall subject said company to the penalty provided by § 56-449; provided, however, any unsafe vehicle shall be removed immediately from service until repaired.

1977, c. 628.

§§ 56-420 through 56-425. Repealed
Repealed by Acts 1988, c. 7.

Article 8 - RIGHTS-OF-WAY; FIRES; FENCES; CATTLE GUARDS, ETC

§ 56-426. Repealed
Repealed by Acts 1984, c. 227.

§ 56-426.1. Repealed
Repealed by Acts 1988, c. 891.

§ 56-427. Repealed
Repealed by Acts 1996, cc. 114 and 157.

§ 56-428. Railroads liable for damage from fires set out by their engines or trains
Whenever any person sustains damage from fire occasioned by sparks or coals dropped or thrown from the engine or train of any railroad company, such company shall be liable for the damage so sustained, whether such fire originated on the company's right-of-way or not.

Code 1919, § 3992; 1996, cc. 114, 157.

§ 56-429. Company to erect fences along roadbed; cattle guards, etc

Upon the written request by certified mail to the registered agent of the railroad in question of any landowner whose land adjoins the railroad and whose land is otherwise enclosed for the purpose of maintaining livestock, every railroad company shall cause fences to be erected along its line and on both sides of its roadbed and shall keep such fences in proper repair. Such fence shall be adequate to enclose livestock. The owners of adjoining lands may connect their fences with such fences at such places as they may deem proper. In erecting such fences the company shall, at the termini of those portions of the roadbed which it is required to fence, and on each side of all public and private crossings, construct across its roadbed and keep in good repair cattle guards reasonably sufficient to turn all kinds of livestock, with which its fences shall be connected. Such cattle guards at private crossings may be dispensed with if the company erects sufficient gates and maintains them in good order.

Such fences shall be constructed on the request of the landowner, in writing, by certified mail, to the registered agent of such railroad. If the company refuses or fails, for 180 days after such request, to construct or maintain the fences at the place designated, the owner, having given ten days' notice in writing to such registered agent, may apply to the circuit court of the county or city in which any such point is located for the appointment of three disinterested freeholders, whose duty it shall be to go on the land and determine whether the proposed fence shall be constructed. Their decision shall be in writing, and shall be forthwith returned to and filed in the office of the clerk of such court. If such decision is that the fence ought to be constructed, the company shall, within sixty days thereafter, construct the same. Upon its failure so to do, it shall pay to the landowner fifty dollars for every day of such failure. Any style of fence approved by the State Corporation Commission shall, if properly constructed and maintained, be deemed a sufficient fence within the meaning of this chapter. Any delay in construction or maintenance caused by inclement weather, war, strikes, acts of God, national emergencies or failure of any local, state, or federal governmental agencies to grant permits shall extend the aforesaid period.

Any such company may erect gates or bars instead of the cattle guards required by this section, if, in the judgment of the company, the hazard to trains at such crossings requires gates or bars as a safeguard to life and property on the trains. If such fence, cattle guard or gate is destroyed or damaged due to the negligence of the landowner, the landowner shall be solely responsible for restoring or repairing such fence, cattle guard or gate.

The circuit court of the county or city wherein any such fence or cattle guard, or any portion thereof, is to be erected or built pursuant to this section shall have jurisdiction through its power to grant equitable relief to compel the erection of any such fence, or building of any such cattle guards along or adjoining lands or lots actually enclosed.

Code 1919, § 3946; 1994, c. 352.

§ 56-430. Construction of § 56-429; burden of proof

Section 56-429, so far as it relates to fencing, shall not apply to any part of a railroad located within the corporate limits of a city or town, or between the terminals of switches, or spur tracks, not exceeding 350 yards from the depot, either way, nor to any part of a railroad at a place where there is a cut or embankment with sides sufficiently steep to prevent the passage of stock at such place; nor in an action by an adjacent owner to recover for stock killed or injured on the track shall it apply to a company which has compensated the owner for making and keeping in repair the necessary fencing, but the burden of proving the fact of such compensation shall be on the company, and no report of any commissioners shall be received as proof thereof, unless it shall plainly appear on the face of the report, or from other evidence in connection therewith, that an estimate was made by such commissioners for the fencing, and the expense for the same entered into, and constituted a part of the damages reported and actually paid.

Code 1919, § 3947.

§ 56-431. When company not liable for injury on enclosed track

No railroad company shall be liable for any injury to any person or property on such part of its track as may be enclosed according to the provisions of this chapter, unless it be made to appear that the person or property was thereon by express permission of the company, or through the negligence of its employees, agents or servants, or unless the injury was willful or the result of gross negligence on the part of the company, its servants, agents, or employees.

Code 1919, § 3948.

§ 56-432. Liability for injury on track not enclosed

In any action or suit against a railroad company for an injury to any property on any part of its tracks not enclosed according to the provisions of this chapter it shall not be necessary for the claimant to show that the injury was caused by the negligence of the company, its employees, agents, or servants.

Code 1919, § 3949.

§ 56-433. Cattle guards; remedy of aggrieved landowner; penalty

Every railroad company whose road passes through any enclosed lands in this Commonwealth shall construct and keep in good order cattle guards reasonably sufficient to prevent the passage of livestock of every kind over such land, at any point where a fence may be necessary or proper, whether it is a division fence between contiguous farms or between different parcels or tracts belonging to the same person, or a fence along a public highway. Such cattle guards shall be constructed on the request of the landowner, in writing, by certified mail, to the registered agent of such railroad. If the company refuses or fails, for ninety days after such request, to construct or maintain the cattle guards at the place designated, the owner, having given ten days' notice in writing to the registered agent, may apply to the circuit court of the county or city in which any such point is located for the appointment of three disinterested freeholders, whose duty it shall be to go on the land and determine whether the proposed cattle guard shall be constructed. Their

decision shall be in writing, and shall be forthwith returned to and filed in the office of the clerk of such court. If such decision is that the cattle guard ought to be constructed, the company shall, within ninety days thereafter, construct the same. Upon its failure so to do, it shall pay to the landowner fifty dollars for every day of such failure. Any style of cattle guard approved by the State Corporation Commission shall, if properly constructed and maintained, be deemed a sufficient cattle guard within the meaning of this chapter. Any delay in construction or maintenance caused by inclement weather, war, strikes, acts of God, national emergencies or failure of any local, state, or federal governmental agencies to grant permits shall extend the aforesaid period.

Code 1919, § 3950; 1994, c. 352.

§ 56-434. When cattle guards may be discontinued

Every railroad company, after erecting the fences mentioned in § 56-429, may discontinue all cattle guards enclosed by such fences, except such as are provided for at public or private crossings, and in lieu thereof the owners of contiguous lands may connect their fences with those of the company at such place or places as they may desire.

Code 1919, § 3951.

§ 56-435. Appeal from general district court to circuit court in cattle-guard cases

In all suits brought before the general district court against railroad companies to recover penalties for failure to construct cattle guards as required by law, either party shall have the right of appeal to the circuit court of the county where such suit is brought, from the judgment of the general district court, without regard to the amount in controversy.

Code 1919, § 3954; 2005, c. 839.

§ 56-436. Board of appraisers to appraise injured or killed livestock; duty of appraisers

Whenever any horses, cattle, or other livestock are killed or injured, or other property damaged, by the cars or locomotives upon any railroad, it shall be lawful for the owner thereof or for the railroad company to have the property examined and the damages assessed by a board of appraisers in the following manner:

Either party, his agent or attorney, may appoint one person as the appraiser in his behalf, and notify the other party; such notice, when intended for the railroad company, shall be sufficient if given by certified mail to the registered agent of such railroad. Then the party so notified shall appoint an appraiser on his behalf, and the two appraisers shall select a third appraiser. These three persons shall constitute a board of appraisers to examine and appraise the property so injured or damaged, and shall examine the horses or other livestock so killed, or injured, or the other property so damaged, and affix a value upon the same if killed, or assess the damages to the same if injured, and make a written report, carefully describing the horses, cattle, or other livestock or property, stating whether killed or injured, and also setting out the valuation or assessment of damages made by them. Such report shall be returned to the office of the clerk of the

circuit court of the county or city in which such livestock was killed or injured, who shall file and preserve the same.

Code 1919, § 3994; 1994, c. 352.

§ 56-437. Effect of appraisal in case of suit; costs

If the railroad company fails, for sixty days after such report is so returned to such clerk, to pay to the owner the full amount assessed by the board of appraisers under § 56-436, and the cost attending the assessment, the owner shall have the right to institute suit on the original cause of action. If, upon the trial, he recovers a verdict for an amount equal to or greater than the amount assessed in his favor by the board of appraisers, it shall be the duty of the court to render judgment in his favor for the amount of such verdict, and costs of suit and, of such appraisement, and ten percent damages in addition thereto. If the owner recovers less than the amount so assessed, judgment shall be rendered in his favor for the amount of the verdict and costs of suit and appraisement; but if the company has offered to pay the award, and the owner has refused to accept the same, and he recovers a verdict for an amount less than such assessment, judgment shall be rendered in his favor for the amount of his recovery, but the cost of the appraisement and action shall be taxed against him.

Code 1919, § 3995; 1994, c. 352.

§ 56-438. Fee of appraisers

Appraisers appointed pursuant to the provisions of § 56-436 shall receive for their services each the sum of one dollar.

Code 1919, § 3996; 1994, cc. 352, 432.

§ 56-439. Application of §§ 56-436 through 56-438

The provisions of §§ 56-436 through 56-438 shall not apply to any railroad company which has its line of road enclosed with fences and cattle guards, as required by law.

Code 1919, § 3997.

§ 56-439.1. Notice of injury or death of certain livestock; penalty

Whenever any horses, cattle, or other livestock are injured or killed by the cars or locomotives operating on a railroad, the section master or employee of the railroad having charge of the road at the place where the injury or death occurred shall, if he knows of the incident or should have known of it, within seventy-two hours, notify the owner of the animal or animals or the local law-enforcement agency of the injury or death and the location of the incident in relationship to state routes as well as railroad mile posts. Disposal of any such animal or animals without proper notification shall constitute a Class 1 misdemeanor.

1994, c. 352.

§ 56-440. Penalty for failure to remove cause of complaint in cities or towns

If any railroad, when directed so to do by a valid order of the State Corporation Commission, shall refuse or fail to remove the cause of complaint of the authorities of any incorporated city or town in which such railroad is located, as to the physical condition or operation of such railroad, it shall, in the discretion of the Commission, be fined not less than $10 nor more than $1,000.

Code 1919, § 4001.

Article 9 - LIABILITY TO EMPLOYEES

§ 56-441. Liability for injury to employee

Every corporation operating a railroad in this Commonwealth, whether such corporation be created under the laws of this Commonwealth or otherwise, shall be liable in damages for any and all injury sustained by any employee of such corporation under the following circumstances:

(1) When such injury results from the wrongful act, neglect or default of an agent or officer of such corporation superior to the employee injured, or of a person employed by such corporation having the right to control or direct the services of such employee injured, or the services of the employee by whom he is injured; and

(2) When such injury results from the wrongful act, neglect or default of a coemployee engaged in another department of labor from that of the employee injured or of a coemployee (notwithstanding the fact that the party injured had the right to direct the services of the coemployee) in the performance of any duty on or about the same or another train of cars, or on or about an engine, or of a coemployee who has charge of any switch, signal point or locomotive engine, or who is charged with dispatching trains or transmitting telegraphic or telephonic orders.

When it shall appear in the evidence at the trial of any action for damages that the accident occurred while the employee was working on an engine or on a car standing upon a track it shall be no defense to such action for the defendant railroad to show that such engine or car was guarded by a derailer or a blue flag or in any other manner. Knowledge by any employee injured of the defective or unsafe character or condition of any machinery, ways, appliances or structures of such corporation shall not of itself be a bar to recovery for any injury or death caused thereby.

When death, whether instantaneous or otherwise, results from any injury to any employee of such corporation received as aforesaid, the personal representatives of such employee shall have a right of action therefor against such corporation and may recover damages in respect thereof.

Any contract or agreement, express or implied, made by any such employee to waive the benefit of this section or any part thereof shall be null and void, and this section shall not be construed to deprive any such employee or his personal representative of any right or remedy to which he is now entitled under the laws of this Commonwealth.

The provisions of this section shall always be so restricted in their application as not to conflict with any of the provisions of the Constitution or laws of the United States and as if necessary limitation upon their interpretation had been herein expressed in each case.

1926, p. 853; Michie Code 1942, § 4019a.

Article 10 - EXCURSIONS AND PICNICS

§§ 56-442 through 56-444. Repealed

Repealed by Acts 1980, c. 142.

Article 11 - MISCELLANEOUS

§ 56-445. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-446. Information to State Corporation Commission; penalty

Every railroad company in this Commonwealth shall, at all times, on request, furnish to the State Corporation Commission any information required by it concerning the track and ancillary facilities or operation of the road, or any other report lawfully required by the Commission and particularly copies of all of its timetables upon such road and other roads with which its business is connected. Copies of information provided to federal agencies are acceptable. Any railroad willfully refusing or failing to furnish any such information in compliance with a Commission order or who willfully or unlawfully hinders, delays, or obstructs the Commission in the discharge of the duties imposed upon it by the Constitution, or by law, shall, in the discretion of the Commission, be fined not less than $10 nor more than $1,000. Each day of such refusal, hindrance, delay, or obstruction shall be considered a separate offense. Fine amounts are to be specified in the order.

Code 1919, § 4002; 1996, cc. 114, 157.

§ 56-446.1. Limitations on passenger rail transportation liability

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

"Authority" means a political subdivision of the Commonwealth that is comprised of two transportation commissions of the Commonwealth collectively engaged in providing, directly or indirectly, passenger rail transportation services to the general public.

"Claim" means a claim, action, suit, or request for damages, whether compensatory, punitive, or otherwise, made by or on behalf of any rail passenger arising out of the provision of passenger rail services against an authority or a railroad, against a member of an authority's governing body, or against a director, officer, employee, affiliate engaged in railroad operations, or agent of an authority or a railroad, for property damage, personal injury, bodily injury, or death.

"Passenger rail services" means the transportation of rail passengers by or on behalf of an authority, and all related services performed by a railroad or an authority, including services performed by a railroad on behalf of an authority, pursuant to a contract with the authority arising from or in connection with the transportation of rail passengers.

"Railroad" means a railroad company or railroad corporation that has entered into any contracts or operating agreements of any kind with an authority for the provision of passenger rail services.

B. An authority may contract with any railroad to allocate financial responsibility for claims against the railroad or the authority arising from or in connection with any incident or accident of any kind related to the provision of passenger rail services, which may include but not be limited to executing indemnity agreements, notwithstanding any other statutory, common law, public policy, or other prohibition against same, and regardless of the nature of the claim or the conduct giving rise to such claim.

C. The aggregate liability of the authority and any applicable railroad, including the authority or railroad's governing board, directors, officers, employees, affiliates engaged in railroad operations, or an agent of an authority, for all claims of rail passengers arising from a single incident or accident of any kind involving passenger rail services or incidental services related thereto for property damage, personal injury, bodily injury, and death shall be limited to $250 million per single incident or accident.

D. This section shall not affect the damages that may be recovered under the Federal Employers' Liability Act of 1908 (45 U.S.C. § 51 et seq.), as amended.

E. This section shall not affect the damages that may be recovered for a claim if it can be shown that the accident or injury occurred as a result of willful and wanton conduct, felonious criminal conduct, or gross negligence on the part of the railroad.

F. The limitation on aggregate liability provided in this section shall be modified each year, beginning in January, 2011, and continuing each January thereafter, by adjusting the amount of the limitation by a percentage equal to the percentage change in the medical care component of the Consumer Price Index, as published by the Bureau of Labor Statistics, over that component published for the previous December.

G. The Virginia Division of Risk Management shall be designated to examine the history of claims made and amounts recovered against the Virginia Railway Express arising from or in connection with the provision of passenger rail service in the Commonwealth, and to provide a complete review of those findings to the General Assembly by November 30, 2010.

2006, cc. 774, 807.

§§ 56-447 through 56-451. Repealed

Repealed by Acts 1996, cc. 114 and 157.

§ 56-451.1. Keeping unused tracks in place

If a railroad company discontinues operations on all or any portion of its line of railroad (other than yard tracks, passing sidings, or tracks unneeded because of the diversion of traffic over parallel or other substitute tracks), it shall notify the governing body of any city, town or county directly served by the portion of line so discontinued. Retention of such track in place shall be in accordance with federal rules and regulations.

1960, c. 443; 1996, cc. 114, 157.

§ 56-451.2. Repealed
Repealed by Acts 1987, c. 495.

Chapter 14 - STEAMSHIP COMPANIES [Repealed]

§§ 56-452, 56-453. Repealed
Repealed by Acts 1970, c. 243.

§§ 56-454 through 56-456. Repealed
Repealed by Acts 1996, cc. 114 and 157.

§ 56-457. Repealed
Repealed by Acts 1971, Ex. Sess., c. 25.

Chapter 14.1 - SIGHT-SEEING CARRIERS BY BOAT [Repealed]

§§ 56-457.1 through 56-457.10. Repealed
Repealed by Acts 1995, cc. 744 and 803.

Chapter 15 - TELEGRAPH AND TELEPHONE COMPANIES

Article 1 - ERECTION OF LINES; RIGHTS-OF-WAY; EMINENT DOMAIN, ETC

§ 56-458. Right to erect lines parallel to railroads; occupation of roads, streets, etc.; location of same
A. Every telegraph company and every telephone company incorporated by this or any other state, or by the United States, may construct, maintain and operate its line along and parallel to any of the railroads of the Commonwealth, and shall have authority to occupy and use the public parks, roads, works, turnpikes, streets, avenues and alleys in any of the counties, with the consent of the board of supervisors or other governing authority thereof, or in any incorporated city or town, with the consent of the council thereof, and the waterways within this Commonwealth, for the erection of poles and wires, or cables, or the laying of underground conduits, portions of which they may lease, rent, or hire to other like companies; provided, however, that if the road or street be in the State Highway System or the secondary system of state highways, the consent of the board of supervisors or other governing authority of any county shall not be necessary, but a permit for such occupation and use shall first be obtained from the Commonwealth Transportation Board.

B. No locality or the Commonwealth Transportation Board shall impose any fees on a certificated provider of telecommunications service for the use of public rights-of-way except in the manner prescribed in § 56-468.1; provided, however, the provisions of § 56-468.1 shall not apply to providers of commercial mobile radio services.

C. No locality or the Commonwealth Transportation Board shall impose on certificated providers of telecommunications service, whether by franchise, ordinance or other means, any restrictions

or requirements concerning the use of the public rights-of-way (including but not limited to the permitting process; notice, time and location of excavations and repair work; enforcement of the statewide building code; and inspections), which are (i) unfair or unreasonable or (ii) any greater than those imposed on the following users of the public rights-of-way: all providers of telecommunications services and nonpublic providers of cable television, electric, natural gas, water and sanitary sewer services. For purposes of this subsection, "restrictions or requirements concerning the use of the public rights-of-way" shall not include any existing franchise fee or the Public Rights-of-Way Use Fee.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the Commonwealth Transportation Board of a certificated provider of telecommunications services to use the public rights-of-way shall be granted or denied within forty-five days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. No locality receiving directly or indirectly a Public Rights-of-Way Use Fee or the Commonwealth Transportation Board shall require a certificated provider of telecommunications services to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the Public Rights-of-Way Use Fee. This shall not limit the ability of localities, their authorities or commissions which provide utility services, or the Commonwealth Transportation Board to enter into voluntary pole attachment, conduit occupancy or conduit construction agreements with certificated providers of telecommunications service. Any locality, other than a city or town electing to continue to enforce an existing franchise, ordinance or other form of consent under subsection J of § 56-468.1, or the Commonwealth Transportation Board may continue to use pole attachments and conduits utilized as of December 31, 1997. Any pole attachment or conduit occupancy fees charged by certificated providers of telecommunications services for this use shall be waived for facilities in place as of December 31, 1997, and shall be waived for future extensions in cities with populations between 60,000 and 70,000, so long as the locality or the Commonwealth Transportation Board continues to use these facilities on such poles or in such conduits solely for their internal communications needs. The fee waiver is for the occupancy fees only, does not cover any relocation, rearrangement or other make-ready costs, and does not apply to any county, city or town that has obtained a certificate pursuant to § 56-265.4:4.

Code 1919, § 4035; 1926, p. 907; 1997, cc. 474, 515; 1998, cc. 742, 758; 2002, cc. 479, 489; 2006, c. 780.

§ 56-458.1. Relocation of lines or works of certain public utilities acquired by Commonwealth Transportation Board

Whenever a telegraph or telephone company, or any company mentioned in Chapter 10 (§ 56-232 et seq.) of this title, shall be required by the Commonwealth Transportation Board, or the

Commissioner of Highways, to remove any part of its lines or works off of the right-of-way of a road now or hereafter included in either state highway system, or if any right-of-way, property or interest therein used and occupied by such company with its lines or works, or part thereof, is acquired by the Commonwealth Transportation Board, or the Commissioner of Highways, for the uses of either such highway system, or if such company is notified by such Board or Commissioner of the desire of such Board or Commissioner to acquire such right-of-way, property, or interest therein, used and occupied by such company with its lines or works, or part thereof, for the uses of either such highway system, such company may relocate its lines or works, or the part or parts thereof affected. If unable to agree with the owner or owners for the right-of-way, or property, or interest therein for such relocation, such company, in addition to its other powers, shall have the right to acquire such rights-of-way, or property, or interest therein for the purpose of such relocation of its lines or works, or part or parts thereof in the manner provided by the laws of this Commonwealth for the exercise of the right of eminent domain.

1926, p. 507; Michie Code 1942, § 4384a.

§ 56-459. Removal of old line not required by this chapter

Nothing in this chapter shall be construed as authorizing the Commonwealth Transportation Board to require the removal of the lines and works of any telegraph or telephone company from any street or road in either state highway system which such company is occupying by consent of the appropriate board of supervisors or other governing authority obtained under Chapter 159 of the Code of 1919 prior to June 22, 1926, without permitting such company to occupy some other part of the right-of-way existing or acquired for such street or road.

1926, p. 909; Michie Code 1942, § 4038.

§ 56-460. How consent of appropriate authorities obtained; terms of use

The consent required under § 56-458, when given, shall be by ordinance regularly adopted by the council or other governing body of the city or town, or by resolution regularly adopted and spread upon the minutes by the board of supervisors or other governing authority of the county, in which such line is to be located, or, if such consent is to be given by the Commonwealth Transportation Board, by an order spread upon the minutes of the Board. Such use of the public parks, roads, turnpikes, streets, avenues, and alleys in any of the cities or towns or counties of this Commonwealth shall be subject to such terms, regulations and restrictions as may be imposed by the corporate authorities of any such city or town, or the board of supervisors or other governing authority of any such county, except that if the road or street be in either state highway system, as now or hereafter established, any occupation and use thereof under the provisions of this chapter, whether by consent heretofore or hereafter obtained, shall be subject to such terms, regulations and restrictions as may be imposed by the Commonwealth Transportation Board not in conflict in incorporated cities and towns with any vested contractual rights of such company with such city or town.

Code 1919, § 4037; 1926, p. 908.

§ 56-461. Cost to Commonwealth in connection with construction of line to be paid by company

The actual costs and expenses of the Commonwealth in the investigation by the Commonwealth Transportation Board of the application of any company for a permit, and in the supervision of the construction or installation of any of the works of the company, under the provisions of this chapter, shall be borne by such company, and paid before commencing the use of any road or street in either state highway system, under any permit of the Commonwealth Transportation Board, under the provisions of this chapter, which sum shall be paid into the state treasury to the credit of the state highway fund.

Code 1919, § 4037; 1926, p. 909.

§ 56-462. Franchise to occupy parks, streets, etc.; imposition of terms, conditions, etc., as to use of streets, etc., and construction thereon

A. No incorporated city or town shall grant to any such telegraph or telephone corporation the right to erect its poles, wires, or cables, or to lay its conduits upon or beneath its parks, streets, avenues, or alleys until such company shall have first obtained, in the manner prescribed by the laws of this Commonwealth, the franchise to occupy the same. Any city or town may impose upon any such corporation any terms and conditions consistent herewith and supplemental hereto, as to the occupation and use of its parks, streets, avenues, and alleys, and as to the construction and maintenance of the facilities of such company along, over, or under the same, that the city or town may deem expedient and proper. The Department of Transportation may also impose upon any such company any terms, rules, regulations, requirements, restrictions and conditions consistent herewith and supplemental hereto, as to the occupation and use of roads and streets in either state highway system, and as to the construction, operation or maintenance of the works along, over, or under the same, which the Department may deem expedient and proper, but not in conflict, in incorporated cities and towns, with any vested contractual rights of any such company with such city or town.

B. No locality or the Department of Transportation shall impose any fees on a certificated provider of telecommunications service for the use of public rights-of-way except in the manner prescribed in § 56-468.1; however, the provisions of § 56-468.1 shall not apply to providers of commercial mobile radio services.

C. No locality or the Department of Transportation shall impose on certificated providers of telecommunications service, whether by franchise, ordinance or other means, any restrictions or requirements concerning the use of the public rights-of-way (including but not limited to the permitting process; notice, time and location of excavations and repair work; enforcement of the statewide building code; and inspections), which are (i) unfair or unreasonable or (ii) any greater than those imposed on the following users of the public rights-of-way: all providers of telecommunications services and nonpublic providers of cable television, electric, natural gas, water and sanitary sewer services. For purposes of this subsection, "restrictions or requirements

concerning the use of the public rights-of-way" shall not include any existing franchise fee or the Public Rights-of-Way Use Fee.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the Department of Transportation of a certificated provider of telecommunications services to use the public rights-of-way shall be granted or denied within 45 days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. No locality receiving directly or indirectly a Public Rights-of-Way Use Fee or the Department of Transportation shall require a certificated provider of telecommunications services to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the Public Rights-of-Way Use Fee. This shall not limit the ability of localities, their authorities or commissions which provide utility services, or the Department of Transportation to enter into voluntary pole attachment, conduit occupancy or conduit construction agreements with certificated providers of telecommunications service. Any locality, other than a city or town electing to continue to enforce an existing franchise, ordinance or other form of consent under subsection J of § 56-468.1, or the Department of Transportation may continue to use pole attachments and conduits utilized as of December 31, 1997. Any pole attachment or conduit occupancy fees for this use shall be waived for facilities in place as of December 31, 1997, and shall be waived for future extensions in cities with populations between 60,000 and 70,000, so long as the locality or the Department of Transportation continues to use these facilities on such poles or in such conduits solely for their internal communications needs. The fee waiver is for the occupancy fees only, does not cover any relocation, rearrangement or other make-ready costs, and does not apply to any county, city or town that has obtained a certificate pursuant to § 56-265.4:4.

Code 1919, § 4038; 1926, p. 909; 1971, Ex. Sess., c. 40; 1997, cc. 474, 515; 1998, cc. 742, 758; 2002, cc. 479, 489; 2006, c. 780; 2013, cc. 585, 646.

§ 56-463. Company may contract for right-of-way, etc

Every telegraph or telephone company and every cable operator that has a franchise to use the public rights-of-way in a locality may contract with any person, the owner of lands, or of any interest, franchise, privilege, or easement therein or in respect thereto, over which such line is proposed to be constructed, for the right-of-way for erecting, repairing, and preserving its poles and other structures necessary for operating its line, and in the case of telegraph or telephone companies, for sufficient land for the erection and occupation of offices at suitable distances along its line for the public accommodation. No such company or operator may be required by the Commission or other governmental regulatory entity to accept any such interest, franchise, privilege, or easement that restricts the services that may legally be offered by the company or operator.

Code 1919, § 4039; 2009, c. 331.

§ 56-464. Right of eminent domain

If the company and such owner cannot agree on the terms of such contract, the company may acquire such right-of-way in the manner provided by the laws of this Commonwealth for the exercise of the right of eminent domain. The title which may be acquired by a telegraph or telephone company under this section shall be only to a right-of-way for the purpose stated in § 56-463; and no right-of-way acquired by any such company under this or the preceding sections of this chapter shall be to the exclusion of other like companies from having or acquiring a like right-of-way over the same lands.

Code 1919, § 4040.

§ 56-465. Preceding sections subject to repeal or change at pleasure

The preceding sections of this chapter and also §§ 56-466, 56-467 and 56-484 shall be subject to repeal, alteration, or modification, and the rights and privileges acquired thereunder shall be subject to revocation or modification by the General Assembly at its pleasure.

Code 1919, § 4041.

§ 56-466. Location of posts, poles, cables and conduits; height of wires, etc

All posts, poles, wires, cables and conduits which shall be erected by any authority in the preceding sections of this chapter conferred shall be so located as in no way to obstruct or interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the public parks, roads, turnpikes, streets, avenues, alleys, railroads, or waters in or upon which the same may be erected, and all wires fastened upon posts or poles erected as aforesaid shall be placed at a height of not less than eighteen feet above all road crossings, and twenty-three feet above railroad crossings, and no conduits shall be laid nor posts or poles erected upon the soil or property of any person without first obtaining the consent of the owner thereof, nor shall any such wires or cables be strung across the soil, property, or premises of any person, or attached to or connected with any shade or ornamental tree, or any private building, without the consent of the owner thereof.

Such poles, wires, cables and conduits shall not in anywise damage private property without compensation therefor, nor in any way obstruct the navigation of any stream, or impair or endanger the use thereof by the public, or by any person or corporation entitled to the use of the same. Such conduits shall be laid at such distance below the surface of any public park, road, turnpike, street, avenue, or alley, and at such distance from the outside of any gas or water main or other conduit already laid under such public park, road, turnpike, street, avenue, or alley, as may be prescribed by the proper municipal, county, or state authorities.

Code 1919, §§ 4035, 4038; 1926, pp. 908, 909; 1976, c. 268.

§ 56-466.1. Pole attachments; cable television systems and telecommunications service providers

A. As used in this section:

"Cable television system" means any system licensed, franchised or certificated pursuant to Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 that transmits television signals, for distribution to subscribers of its services for a fee, by means of wires or cables connecting its distribution facilities with its subscriber's television receiver or other equipment connecting to the subscriber's television receiver, and not by transmission of television signals through the air.

"Electric cooperative" means a utility services cooperative formed under or subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1.

"Pole attachment" means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, right-of-way or similar facility owned or controlled by a public utility.

"Public utility" has the same meaning ascribed thereto in § 56-232.

"Rearrangement" means work performed at the request of a telecommunications service provider or cable television system to, on or in an existing pole, duct, conduit, right-of-way or similar facility owned or controlled by a public utility that is necessary to make such pole, duct, conduit, right-of-way, or similar facility usable for a pole attachment. "Rearrangement" shall include replacement, at the request of a telecommunications service provider or cable television system, of the existing pole, duct, conduit, right-of-way, or similar facility if the existing pole, duct, conduit, right-of-way, or similar facility does not contain adequate surplus space or excess capacity and cannot be rearranged so as to create the adequate surplus space or excess capacity required for a pole attachment.

"Telecommunications service provider" means any public service corporation or public service company that holds a certificate of public convenience and necessity to furnish local exchange telephone service or interexchange telephone service.

B. Upon request by a telecommunications service provider or cable television system to a public utility, both the public utility and the telecommunications service provider or cable television system shall negotiate in good faith to arrive at a mutually agreeable contract for attachments to the public utility's poles by the telecommunications service provider or cable television system.

C. After entering into a contract for attachments to its poles by any telecommunications service provider or cable television system, a public utility shall permit, upon reasonable terms and conditions and the payment of reasonable annual charges and the cost of any required rearrangement, the attachment of any wire, cable, facility or apparatus to its poles or pedestals, or the placement of any wire, cable, facility or apparatus in conduit or duct space owned or controlled by it, by such telecommunications service provider or cable television system that is authorized by law, to construct and maintain the attachment, provided that the attachment does not interfere, obstruct or delay the service and operation of the public utility or create a safety hazard.

D. Notwithstanding the provisions of subsection C, a public utility providing electric utility service may deny access by a telecommunications service provider or cable television system to any pole, duct, conduit, right-of-way, or similar facility owned or controlled, in whole or in part, by such public utility, provided such denial is made on a nondiscriminatory basis on grounds of insufficient capacity or reasons of safety, reliability, or generally applicable engineering principles.

E. This section shall not apply to any pole attachments regulated pursuant to 47 U.S.C. § 224.

F. The Commission is authorized to determine just and reasonable rates, and terms and conditions of service, excluding safety and debt collection, for attachments to electric cooperative poles by telecommunications service providers or cable television systems if, following good faith negotiations to do so, the parties cannot reach agreement thereon; however, the Commission shall not determine rates or terms and conditions for any existing agreement until it expires or is terminated pursuant to its own terms. The terms of an expired or terminated agreement shall continue to govern while good faith negotiations or Commission review pursuant to this section are pending. Such determinations shall be made in accordance with the following:

1. Just and reasonable pole attachment rates and terms and conditions of service to be determined by the Commission shall include, without limitation, rearrangement and make-ready costs, pole replacement costs, and all other costs directly related to pole attachments and maintenance, replacement, and inspection of poles or pole attachments, and right of way maintenance essential to pole attachments, provided however, that cost recovery for rearrangement, make-ready and pole replacement shall be addressed in terms and conditions, and shall not be included in annual rental rates;

2. In determining pole attachment rates, the Commission shall consider (i) any effect of such rates on the deployment or utilization, or both, of broadband and other telecommunications services, (ii) the interests of electric cooperatives' members, and (iii) the overall public interest;

3. The Commission may develop and utilize alternative forms of dispute resolution for purposes of addressing disputes (i) arising under this subsection and (ii) falling within the scope of the Commission's authority established hereunder;

4. The Commission is authorized to assess reasonable application fees to recover appropriate Commission costs of proceedings arising under this subsection; and

5. The Commission is authorized to develop, if necessary, rules and regulations, including a definition of good faith negotiations, to implement this section.

2001, c. 76; 2006, cc. 73, 76; 2012, cc. 545, 674.

§ 56-467. Restoring condition of ground

The portions of the surface of the parks, roads, turnpikes, streets, avenues, or alleys, or of any pavements opened up or disturbed in erecting, repairing, laying or replacing poles, wires, or cables, or in repairing conduits under the provisions of this chapter shall be immediately restored

to and maintained in good condition by the company doing such work; and in case of the failure of such company to restore and maintain the same, the corporate authorities of the city or town, or the board of supervisors or other governing authority of the county, or the chairman of the Commonwealth Transportation Board, as the case may be, may properly restore and maintain the same, and the costs thereof may be recovered by the city or town, or county, or Commonwealth, from such company, in any court of competent jurisdiction.

Code 1919, § 4037; 1926, p. 908.

§ 56-468. Endangering life or limb by stringing wires across other works

Whoever shall hereafter erect, string, or maintain wires for any telephone or telegraph lines, over or across the works, in this Commonwealth, of any company chartered as a work of internal improvement in any manner so as to endanger the lives or limbs of the employees of such company, or other person, shall, for each offense, be fined not less than $100 nor more than $500.

Code 1919, § 4049.

. (Contingent expiration -- see Editor's note) Public Rights-of-Way Use Fee

A. As used in this article:

"Access lines" are defined to include residence and business telephone lines and other switched (packet or circuit) lines connecting the customer premises to the public switched telephone network for the transmission of outgoing voice-grade telecommunications services. Centrex, PBX, or other multistation telecommunications services will incur a Public Rights-of-Way Use Fee on every line or trunk (Network Access Registrar or PBX trunk) that allows simultaneous unrestricted outward dialing to the public switched network. ISDN Primary Rate Interface services will be charged five Public Rights-of-Way Use Fees for every ISDN Primary Rate Interface network facility established by the customer. Other channelized services in which each voice-grade channel is controlled by the telecommunications service provider shall be charged one fee for each line that allows simultaneous unrestricted outward dialing to the public switched telephone network. Access lines do not include local, state, and federal government lines; access lines used to provide service to users as part of the Virginia Universal Service Plan; interstate and intrastate dedicated WATS lines; special access lines; off-premises extensions; official lines internally provided and used by providers of telecommunications service for administrative, testing, intercept, and verification purposes; and commercial mobile radio service.

"Cable operator" and "cable system" have the same meanings as contained in subsection A of § 15.2-2108.1:1.

"Centrex" means a business telephone service offered by a local exchange company from a local central office; a normal single line telephone service with added custom calling features including but not limited to intercom, call forwarding, and call transfer.

"ISDN Primary Rate Interface" means digital communications service containing 24 bearer channels, each of which is a full 64,000 bits-per-second.

"Locality" has the same meaning as contained in § 15.2-102.

"Network Access Register" means a central office register associated with Centrex service that is required in order to complete a call involving access to the public switched telephone network outside the confines of that Centrex company. Network Access Register may be incoming, outgoing, or two-way.

"New installation of telecommunications facilities" or "new installation" includes the construction of new pole lines and new conduit systems, and the burying of new cables in existing public rights-of-way. New installation does not include adding new cables to existing pole lines and conduit systems.

"PBX" means public branch exchange and is telephone switching equipment owned by the customer and located on the customer's premises.

"PBX trunk" means a connection of the customer's PBX switch to the central office.

"Provider of local telecommunications service" means a public service corporation or locality holding a certificate issued by the State Corporation Commission to provide local exchange telephone service and any other person who provides local telephone services to the public for a fee, other than a CMRS provider as that term is defined in § 56-484.12.

"Provider of telecommunications service" means a public service corporation or locality holding a certificate issued by the State Corporation Commission to provide local exchange or interexchange telephone service to the public for a fee and any other person who provides local or long distance telephone services to the public for a fee, other than a CMRS provider as that term is defined in § 56-484.12.

"Public highway" means, for purposes of computing the Public Rights-of-Way Use Fee, the centerline mileage of highways and streets which are part of the primary state highway system as defined in § 33.2-100, the secondary state highway system as defined in §§ 33.2-100 and 33.2-324, the highways of those cities and certain towns defined in § 33.2-319 and the highways and streets maintained and operated by counties which have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and which have not elected to return.

"Subscriber" means a person who receives video programming, as defined in 47 U.S.C. § 522(20), distributed by a cable operator, as defined in subsection A of § 15.2-2108.1:1, and does not further distribute it.

B. 1. Notwithstanding any other provisions of law, there is hereby established a Public Rights-of-Way Use Fee to replace any and all fees of general application (except for zoning, subdivision, site plan and comprehensive plan fees of general application) otherwise chargeable to a provider of telecommunications service by the Commonwealth Transportation Board or a locality in connection with a permit for such occupation and use granted in accordance with § 56-458 or § 56-

462. Cities and towns whose public streets and roads are not maintained by the Virginia Department of Transportation, and any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932, may impose the Public Rights-of-Way Use Fee on the ultimate end-users of local telecommunications service only by local ordinance. Localities, their authorities or commissions, and the Commonwealth Transportation Board may allow providers of telecommunications services and cable operators to use their electric poles or electric conduits in exchange for payment of a fee.

2. The Public Rights-of-Way Use Fee established by this section is hereby imposed on all cable operators that use the public rights-of-way.

C. The amount of the Public Rights-of-Way Use Fee shall be calculated annually by the Department of Transportation (VDOT), based on the calculations described in subsection D of this section. In no year shall the amount of the fee be less than $0.50 per access line per month.

D. The annual rate of the Public Rights-of-Way Use Fee shall be calculated by multiplying the number of public highway miles in the Commonwealth by a highway mileage rate (as defined in subsection E of this section), and by adding the number of feet of new installations in the Commonwealth (multiplied by $1 per foot), and dividing this sum by the total number of access lines in the Commonwealth. The monthly rate shall be this annual rate divided by 12.

E. The annual multiplier per mile is $425 per mile beginning July 1, 2001 and thereafter.

F. The data used for the calculation in subsection D shall be based on the following information and schedule: (i) all providers of telecommunications services shall remit to VDOT by December 1 of each year data indicating the number of feet of new installations made during the one-year period ending September 30 of that year, which shall be auditable by affected localities, and the number of access lines as of September 30 of that year, which shall be auditable by affected localities; and (ii) the public highway mileage from the most recently published VDOT report. By the following January 15, VDOT shall calculate the Public Rights-of-Way Use Fee to be used in the fiscal year beginning the next ensuing July 1 and report it to all affected localities and providers of local telecommunications services.

G. A provider of local telecommunications service shall collect the Public Rights-of-Way Use Fee on a per access line basis and the cable operator shall collect the Public Rights-of-Way Use Fee on a per subscriber basis by adding the fee to each ultimate end user's monthly bill for local telecommunications service or cable service. A company providing both local telecommunications service and cable service to the same ultimate end user may collect only one Public Rights-of-Way Use Fee from that ultimate end user based on (i) the local telecommunications service if the locality in which the ultimate end user resides has imposed a Public Rights-of-Way Use Fee on local telecommunications service or (ii) cable service if the locality in which the subscriber resides has not imposed a Public Rights-of-Way Use Fee on local telecommunications service. The Public

Rights-of-Way Use Fee shall, when billed, be stated as a distinct item separate and apart from the monthly charge for local telecommunications service and cable service. Until the ultimate end user pays the Public Rights-of-Way Use Fee to the local telecommunications service provider or cable operator, the Public Rights-of-Way Use Fee shall constitute a debt of the consumer to the locality, VDOT, or the Department of Taxation, as may be applicable. If any ultimate end user or subscriber refuses to pay the Public Rights-of-Way Use Fee, the local telecommunications service provider or cable operator shall notify the locality, VDOT, or the Department of Taxation, as appropriate. All fees collected in accordance with the provisions of this section shall be deemed to be held in trust by the local telecommunications service provider and the cable operator until remitted to the locality, VDOT, or the Department of Taxation, as applicable.

H. Within two months after the end of each calendar quarter, each provider of local telecommunications service shall remit the amount of Public Rights-of-Way Use Fees it has billed to ultimate end users during such preceding quarter, as follows:

1. The provider of local telecommunications service shall remit directly to the applicable locality all Public Rights-of-Way Use Fees billed in (i) cities; (ii) towns whose public streets and roads are not maintained by VDOT; and (iii) any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that has elected not to return, provided, however, that such counties shall use a minimum of 10% of the Public Rights-of-Way Use Fees they receive for transportation construction or maintenance purposes. Any city currently subject to § 15.2-3530 shall use a minimum of 90% of the Public Rights-of-Way Use Fees it receives for transportation construction or maintenance purposes.

2. The Public Rights-of-Way Use Fees billed in all other counties shall be remitted by each provider of local telecommunications service to VDOT. VDOT shall allocate the total amount received from providers to the construction improvement program of the secondary system of state highways. Within such allocation to the secondary system, VDOT shall apportion the amounts so received among the several counties, other than those described in clause (iii) of subdivision 1, on the basis of population, with each county being credited a share of the total equal to the proportion that its population bears to the total population of all such counties. For purposes of this section the term "population" shall mean either population according to the latest United States census or the latest population estimate of the Weldon Cooper Center for Public Service of the University of Virginia, whichever is more recent. Such allocation and apportionment of Public Rights-of-Way Use Fees shall be in addition to, and not in lieu of, any other allocation of funds to such secondary system and apportionment to counties thereof provided by law.

I. The Public Rights-of-Way Use Fee billed by a cable operator shall be remitted to the Department of Taxation for deposit into the Communication Sales and Use Tax Trust Fund by the twentieth day of the month following the billing of the fee.

J. Any locality with a franchise agreement, ordinance implementing a franchise agreement or other form of consent allowing the use of the public rights-of-way by a provider of local telecommunications service, existing prior to July 1, 1998, or any city or town with an ordinance or code section imposing a franchise fee or charge on a provider of local telecommunications service in effect as of February 1, 1997, may elect to continue enforcing such existing franchise, ordinance or code section or other form of consent in lieu of receiving the Public Rights-of-Way Use Fee; provided, however, that such city or town does not (i) discriminate among telecommunications service providers and (ii) adopt any additional rights-of-way management practices that do not comply with §§ 56-458 C and 56-462 C. The Public Rights-of-Way Use Fee shall not be imposed in any such locality.Any locality electing to adopt the Public Rights-of-Way Use Fee by ordinance shall notify all affected providers of local telecommunications service no later than March 15 preceding the fiscal year. Such notice shall be in writing and sent by certified mail from such locality to the registered agent of the affected provider or providers of local telecommunications service.

1998, cc. 742, 758; 2002, cc. 479, 489; 2006, c. 780.

§ 56-468.2. Reimbursement for relocation costs

A. After July 1, 1998, certificated providers of telecommunications services shall receive reimbursement for eligible relocation costs incurred at the direction of a locality that imposes by ordinance the Public Rights-of-Way Use Fee or the Department of Transportation for new installations as defined in § 56-468.1 in any public rights-of-way in accordance with §§ 56-458 and 56-462 on the basis of age and according to the following schedule. Such reimbursement shall be received from either (i) the locality that granted the permit or franchise to use such right-of-way or (ii) the Commonwealth Transportation Board if the road or street is in the primary or secondary state highway system:

1. For the first three years after the completion of the installation, the certificated provider of telecommunications service shall be reimbursed 100 percent of the eligible cost for the relocation of facilities installed in the public rights-of-way.

2. For the fourth through sixth year after the completion of the installation, the certificated provider of telecommunications service shall be reimbursed 50 percent of the eligible cost for the relocation of facilities installed in the public rights-of-way.

3. Beginning in the seventh year, the certificated provider of telecommunications service shall be responsible for the cost of relocating facilities installed in the public rights-of-way.

Such reimbursement shall be received from either (i) the locality that granted the permit or franchise to use such right-of-way or (ii) the Commonwealth Transportation Board if the road or street is in the primary or secondary state highway system.

B. The amount of relocation reimbursement in any fiscal year to be reimbursed under this section shall not exceed the amount of Public Rights-of-Way Use Fees received by that locality either directly or through its secondary highway fund apportionment in the preceding fiscal year. For

facilities relocated in 1998 and 1999 at the direction of the locality or the Commonwealth Transportation Board, this limit on relocation reimbursement shall be the estimated annualized fees to be collected in that locality in 1998 for 1998 relocations and in 1999 for 1999 relocations. If the relocation reimbursement limit will be exhausted on a relocation project where two or more certificated providers of telecommunications service are eligible for relocation reimbursement, then the moneys available under the cap shall be shared by those eligible providers by prorating the reimbursement based on the reimbursement to which each provider would be entitled absent the limit.

1998, cc. 742, 758; 2015, c. 256.

Article 2 - DUTIES IN REGARD TO MESSAGES; NEGLIGENCE; DAMAGES

§§ 56-469 through 56-477. Repealed

Repealed by Acts 2011, cc. 738 and 740, cl. 2.

Article 3 - SUPERVISION BY COMMISSION

§ 56-478. Repealed

Repealed by Acts 1973, c. 376.

§ 56-478.1. Repealed

Repealed by Acts 2011, cc. 738 and 740, cl. 2.

§ 56-479. Commission to make rules; require connection between companies; inspect lines and buildings

The Commission shall keep itself fully informed of the condition of all the telephone companies of this Commonwealth as to the manner in which they are operated with reference to the accommodation of the public and shall, from time to time, make and enforce such requirements, rules and regulations as in its judgment will promote the efficiency of the service to be rendered, and to that end may require physical connection to be made between two or more lines at such place and in such manner as in its judgment the public service requires, having due regard to the interest of the companies to be affected thereby, as well as the effect upon their ability to render the best service to the public. The Commission may inspect and regulate the character of lines, buildings and other equipment used in the reception and transmission of messages, and may prohibit the paralleling of the lines of one company by those of another if in its judgment the efficiency of the service by either company or the public convenience will be injuriously affected.

Code 1919, § 4055.

§ 56-479.1. Long distance service; change of carriers; prior authorization

No telephone company shall cause the long distance carrier designation of any telephone customer to be changed following such customer's initial selection thereof when establishing or reestablishing telephone service, without having first received a statement from the long distance carrier that such carrier has received a letter of agency or letter of authorization or an electronic

authorization by use of an 800 number or an oral authorization verified by an independent third party, or any other means of authorization that is approved by the Federal Communications Commission.

1996, c. 476.

§ 56-479.2. Anti-competitive acts; injunctive relief

A. No telecommunications service provider shall engage in anti-competitive acts or practices in connection with its provision of telecommunications services including price discrimination, predatory pricing or tying arrangements, as such terms are commonly applied in antitrust law.

B. Any telecommunications service provider injured or threatened with injury by a violation of any of the provisions of this section or § 15.2-2160 may maintain a cause of action for injunctive relief, damages, or both, and for reasonable costs and attorney's fees before the circuit court for the locality in which the injury occurs.

2002, cc. 479, 489.

§ 56-479.3. Authorization and verification for products, goods, and services to be billed on a telephone bill

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

"Billing agent" means any entity that submits charges for products, goods, or services to the billing carrier on behalf of itself or any service provider.

"Billing carrier" means any telephone company that issues a telephone bill directly to customers.

"Service provider" means any entity that offers products, goods, and services to a customer and that directly or indirectly charges to or collects from a customer's bill received from a billing carrier an amount for such products, goods, or services.

B. This section does not apply to (i) products, goods, or services offered by or bundled with the services of a telephone company or its affiliates; (ii) telephone calls that are customer initiated by dialing 1+, 0+, 0-, or 1010XXX or that a customer accepts as collect; or (iii) commercial mobile radio services.

C. No service provider or billing agent shall willfully (i) add products, goods, or services not authorized by any customer or (ii) charge or attempt to collect charges from any customer for any such products, goods, or services without the customer's authorization. A customer is not liable for an amount charged through a billing carrier by a service provider or a billing agent without the authorization of the customer.

D. A service provider or billing agent shall obtain verification of a customer's authorization before submitting charges for products, goods, or services directly or indirectly to the billing carrier. The verification may be in written, oral, or electronic form and shall be verified by an independent third party. The service provider shall retain the verification for a minimum of two years.

E. A billing carrier shall not enter into an agreement to bill for any charges for products, goods, or services for a service provider or billing agent unless that agreement requires the service provider or billing agent to comply with subsection D.

2010, c. 322.

§ 56-480. Rates, etc., on file with Commission not to be questioned in courts; revision; proof

The reasonableness, justice and validity of any rate, charge, rule, regulation or requirement on file with the Commission for any telephone company shall not be questioned in any suit brought by any person in the courts of this Commonwealth against any such telephone company, wherein is involved the charges of such company for the transmission of messages, or the efficiency of the public service and in all the courts of this Commonwealth they shall be conclusively presumed to be reasonable, just and valid.

All such schedules, rules, regulations and requirements shall be received and held in all such suits as prima facie the schedules, rules, regulations and requirements of the Commission without further proof than the production of the schedules desired to be used as evidence, with a certificate of the clerk of the Commission that the same is a true copy of the schedule, rule, regulation or requirement on file with the Commission and so offered in evidence.

Code 1919, § 4056; 1973, c. 378.

§ 56-480.1. Time limit on institution of approved rates

No telephone company shall institute a rate for service contained within the official tariff of the company more than three years from the date such rate is approved by the State Corporation Commission.

1975, c. 550.

§ 56-480.2. Operator assistance at pay stations

No telephone company shall require the deposit of money in any pay station as a prerequisite to reaching the operator from such station.

1979, c. 71.

§ 56-481. Repealed

Repealed by Acts 2011, cc. 738 and 740, cl. 2.

§ 56-481.1. Rates, charges, and regulations for interexchange telephone service

If under Chapter 10.1 (§ 56-265.1 et seq.) a certificate of public convenience and necessity is issued to a telephone company to provide interexchange service, the Commission may, if it determines that such service will be provided on a competitive basis, approve rates, charges, and regulations as it may deem appropriate for the telephone company furnishing the competitive service, provided such rates, charges, and regulations are nondiscriminatory and in the public interest. In making such determination, the Commission may consider (i) the number of companies providing the service; (ii) the geographic availability of the service from other companies; (iii) the quality of

service available from other companies; and (iv) any other factors the Commission considers relevant to the public interest. The Commission is authorized to promulgate any rules necessary to implement this provision; provided that any such rules so promulgated shall be uniformly applicable to all telephone companies that are subject to the provisions of this section. The Commission shall permit the detariffing of interexchange service.

1984, c. 721; 2011, cc. 738, 740.

§ 56-481.2. Rates, charges and regulations for local exchange telephone services provided by new entrants

If, under subsection B of § 56-265.4:4, a certificate of public convenience and necessity is issued to a new entrant to provide local exchange telephone service, the Commission shall at the same time adopt a form of regulation for the new entrant's local exchange services and, upon application pursuant to § 56-235.5, for the incumbent local exchange telephone company, that does not regulate the earnings of either. In approving the form of regulation of the new entrant's local exchange services, the Commission shall do so in a manner that is equitable to the new entrant and the incumbent local exchange telephone company and in the public interest. In determining the appropriate form of regulation for the new entrant, the Commission shall: (i) consider whether the form of regulation reasonably protects the affordability of basic local exchange telephone service, as such service is defined by the Commission, and reasonably assures the continuation of quality local exchange telephone service; and (ii) find that such action will not unreasonably prejudice or disadvantage any class of telephone company customers or telephone service providers, including the new entrant and incumbent local exchange telephone company, and is in the public interest. In approving the appropriate form of regulation for the new entrant, the Commission may take such action as it deems appropriate in the public interest, with due consideration being given to the competitiveness of the services, including deregulation and detariffing the services. Nothing in this section shall be construed to deprive the Commission of its power to modify the form of regulation, after notice and an opportunity for hearing, if it finds that competition or the potential for competition no longer effectively regulates the price of a service. Except as provided for in this section and in subsection B of § 56-265.4:4, no other provision of law relating to the regulation of rates, charges, and regulation of local exchange telephone services shall apply to the provision of such services by new entrants.

1995, cc. 22, 35, 187; 2001, c. 75.

§ 56-482. Agreements between telephone companies to be submitted to Commission

Upon demand of either party thereto or any person affected thereby all arrangements and agreements whatever between two or more telephone companies doing business in this Commonwealth, affecting or regulating the division of charges, earnings, or the manner of transmission of messages over their respective lines, or the physical connection between the lines of such companies, shall be submitted to the Commission for inspection insofar as they may affect

the efficiency of the public service and the ability of the respective companies to best serve the public and be subject to its approval.

Code 1919, § 4053.

§ 56-482.1. Reports required of interexchange telephone companies

Each interexchange telephone company shall provide to the Commission in a timely manner any report or information concerning its usage of local exchange telephone services and facilities required under the effective access charge tariffs or schedules of a local exchange telephone company. The Commission shall prescribe rules and regulations to effectuate the purpose of this section. The requirement to provide any reports pursuant to such rules and regulations, other than reports required by the Commission to calculate the special revenue tax imposed under § 58.1-2660, shall expire on December 31 of each year unless extended by an order of the Commission issued after notice and an opportunity for a hearing.

1984, c. 721; 2011, cc. 738, 740.

§ 56-482.2. Penalties

Any interexchange company which willfully and knowingly fails to provide on time a report required by § 56-482.1 or willfully and knowingly understates the volume or type of use of service or facilities in such report shall be liable to the local exchange telephone company covered by such report. In the case of an unprovided report, the liability shall be two times the amount of the charges for the services and facilities as actually used. In the case of an understated report, the liability shall be for two times the difference between the charges for the services and facilities as actually used and the charges as computed on the basis of an understated report.

1984, c. 721.

§ 56-483. Refusal or neglect to make reports; obstructing Commission in discharge of duties; violations in general

Every officer, agent or employee of any telephone company, who shall willfully neglect or refuse to make and furnish any report lawfully required by the Commission for the purposes of this chapter or who shall willfully or unlawfully delay or obstruct the Commission in the discharge of the duties imposed upon it by the Constitution or laws of this Commonwealth, or the rules, regulations and requirements of the Commission, connected with the objects and purposes of this chapter, shall be fined not exceeding $500 for each offense; and any telephone company which violates any of the provisions of this chapter or refuses to conform to or obey any lawful rule, order, regulation, or requirement of the Commission relating to the provisions of this chapter may, when not otherwise provided by law, be fined by the Commission in its discretion, in a sum not exceeding $10,000 for each offense and each day such company or corporation continues to violate any lawful rule, order or regulation prescribed by the Commission shall be a separate offense. Such penalty shall be imposed and enforced upon like proceedings and in like manner as

are those prescribed for the violation of law or the rules and regulations of the Commission by transportation companies.

Code 1919, § 4057; 2000, c. 986.

§ 56-484. Foreign companies to obtain license

Every telephone or telegraph company, not incorporated by the laws of this Commonwealth, shall, as a condition precedent to the enjoyment of any right or privilege granted by this chapter, first obtain from the Commission a license to do business in this Commonwealth, and pay the fees and taxes imposed by law for such license.

Code 1919, § 4036.

Article 4 - EXTENSION AND REDUCTION OF TELEPHONE SERVICE

§ 56-484.1. Definitions

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

A."Commission" shall mean the State Corporation Commission.

B."Exchange" shall mean a geographical area established for the administration of communication services and consisting of one or more central offices together with associated facilities used in providing telephone exchange service. Exchanges are identified in the tariffs of the telephone companies as filed with the Commission.

C."Local service area" shall mean the entire area composed of an exchange or exchanges within which are located the telephones which a customer may call at the rates and charges specified for local exchange service in the tariffs of the telephone companies as filed with the Commission.

1976, c. 265.

§ 56-484.2. Extension or reduction upon poll of certain subscribers

A. Upon petition of five percent but in no case less than twenty-five of the subscribers in an established telephone exchange for an extension or reduction of their local service area to include or exclude a contiguous local exchange or exchanges, or upon resolution of the governing body of a county for a countywide local service area, the Commission shall estimate the approximate change in the monthly rate for service which will result from such extension or reduction. In the case of a governing body resolution for countywide calling, the Commission, prior to estimating the approximate rate change, shall determine which exchanges within the county have a community of interest calling percentage that is fifty percent or greater in at least one direction to at least one other exchange within the county. The Commission shall then undertake to estimate the approximate change in the monthly rate for service that will result from such expanded local calling area for each such exchange. The Commission shall order the affected company or companies to poll those subscribers whose monthly rate for service would change if the proposed changes were adopted. However, polls shall not be required in the exchange or exchanges to which the petitioners

desire an extension of local service if (i) any resulting rate increases in any twelve-month period do not, in the aggregate, exceed five percent of the existing monthly one-party residential flat rate service for the affected exchange to which the petitioners desire an extension of local service or (ii) any resulting rate increases in any twelve-month period, in the aggregate, exceed five percent solely due to rate regrouping. No more than one petition for a poll from the same group of subscribers or resolution from the governing body of a county shall be considered by the Commission during any three-year period. For purposes of determining the exchanges that will be polled pursuant to this subsection, "community of interest calling percentage" means the percentage of customers in an exchange that make one or more calls per month to another exchange within the county.

B. If a poll is required pursuant to subsection A and a majority of the subscribers are in favor of the proposed change, or if the Commission determines that a majority of subscribers voting are in favor of the proposed change, the Commission shall order the extension or reduction of their local service area. For the purposes of this section, the number of subscribers in an established telephone exchange shall be deemed to be the number of subscribers in an exchange as of January 1 of the calendar year when the petition is submitted to the Commission. Telephone subscribers shall be given thirty-five days from the day ballots are placed in the U.S. mail to return their survey form. Upon completion of the poll, results shall be duly certified to the Commission.

C. If a poll is not required pursuant to subsection A, the Commission shall require notice to customers in exchanges in which polls are not required and shall convene a hearing on the proposed extension or reduction of the local calling area if the lesser of five percent or 150 of the customers within such exchanges request a hearing. The Commission may convene a hearing under this subsection on its own motion without regard to the number of customers who request a hearing.

D. Where the governing body of a county passes a resolution for a countywide local service area under subsection A and the poll for such service is defeated, the governing body shall reimburse the affected company or companies for the costs of the poll.

E. The Commission shall give the highest priority to petitions or resolutions presented under subsection A that involve exchanges in rural areas.

1976, c. 265; 1978, c. 232; 1985, c. 382; 1990, c. 339; 1993, c. 974; 1994, cc. 180, 347; 1995, c. 466; 1996, c. 272.

§ 56-484.3. Powers of Commission not restricted; rules and regulations

Nothing in this article shall restrict or alter the power of the Commission to change service areas on its own, on petition of any telephone company, or on petition of any subscriber. The Commission shall promulgate all rules and regulations necessary to implement the provisions of this chapter.

1976, c. 265.

Article 5 - TELECOMMUNICATIONS RELAY SERVICE

§§ 56-484.4 through 56-484.6. Repealed

Repealed by Acts 2006, c. 780, cl. 2, effective January 1, 2007. For expiration of repeal, see Editor's notes.

§ 56-484.7. Repealed

Repealed by Acts 1996, c. 68.

Article 5.1 - PROVISION OF CERTAIN COMMUNICATIONS SERVICES

§ 56-484.7:1. Offering of communications services

A. A county, city, town, electric commission or board, industrial development authority, or economic development authority, other than one in a locality that (i) is eligible to provide telecommunications services pursuant to § 15.2-2160 and (ii) has a population in excess of 30,000, may offer qualifying communications services, or enter into public-private partnerships to offer such qualifying communications services, in accordance with the provisions of this article. For purposes of this article, a "qualifying communications service" is a communications service, which shall include but is not limited to, high-speed data service and Internet access service, of general application, but excluding any cable television or other multi-channel video programming services. The county, city, town, electric commission or board, industrial development authority, or economic development authority shall demonstrate in its petition that the qualifying communications services do not meet the standard set forth in § 56-484.7:2 within the geographic area specified in the petition. No such services shall be offered unless, prior to offering such services: (i) the county, city, town, electric commission or board, industrial development authority or economic development authority petitions the Commission to approve the offering of such qualifying communications services within a specified geographic area and (ii) the Commission, after notice and an opportunity for hearing in the affected area, issues a written order approving the petition or fails to approve or disapprove the petition within 60 days after notice. The 60-day period may be extended by Commission order for a period not to exceed an additional 60 days. The petition shall be deemed approved if the Commission fails to act within 60 days after notice or any extended period ordered by the Commission.

B. Each county, city, town, electric commission or board, industrial development authority, or economic development authority that provides communications services pursuant to this article shall provide nondiscriminatory access to for-profit providers of communications services on a first-come, first-served basis to rights-of-way, poles, conduits or other permanent distribution facilities owned, leased or operated by the county, city, town, electric commission or board, industrial development authority, or economic development authority unless the facilities have insufficient capacity for such access and additional capacity cannot reasonably be added to the facilities.

C. The prices charged by a county, city, town, electric commission or board, industrial development authority, or economic development authority for providing communications services

shall not be set at a price for the service lower than the prices charged by any incumbent provider for a functionally equivalent service that is as generally available from such incumbent as it is from such governmental entity.

D. No county, city, town, electric commission or board, industrial development authority, or economic development authority providing such qualifying communications services shall acquire by eminent domain the facilities or other property of any communications service provider to offer cable, telephone, data transmission or other information or online programming services.

E. The Commission may promulgate rules necessary to implement this section.

1999, c. 916; 2002, cc. 479, 489; 2003, cc. 677, 711.

§ 56-484.7:2. Approval

The Commission shall find that it is in the public interest to approve the offering of qualifying communications services as defined in § 56-484.7:1 unless it shall be demonstrated to the Commission and found that, within the geographic area specified in the petition: (i) the qualifying communications service specified in the petition as provided for in § 56-484.7:1 is readily and generally in the specified geographic area available from each of three or more nonaffiliated companies and is functionally equivalent for consumers in that specified geographic area to one or more services offered by each of the three or more competitors; (ii) the petition is not in compliance with the requirements of § 56-484.7:1; or (iii) the offering of the proposed qualifying communications services will not benefit consumers.

1999, c. 916; 2002, cc. 479, 489; 2003, c. 711.

§ 56-484.7:3. Repealed

Repealed by Acts 2002, cc. 479 and 489.

§ 56-484.7:4. Revocation of Commission approval

The Commission may revoke its approval of a petition under § 56-484.7:1 no earlier than five years after such approval if it finds (i) that the factors described in § 56-484.7:2 on which the approval was based no longer exist or are no longer being satisfied, or (ii) that the petitioner has not made satisfactory progress toward making generally available the qualifying communications services specified in the petition. If the Commission finds that such approval should be revoked, it shall determine a date by which the county, city, town, electric commission or board, or authority shall cease to offer such qualifying communications services. In determining such date the Commission shall allow a reasonable time for the entity to offer its equipment, infrastructure and other assets related to such qualifying communications services for sale at fair market value, which shall be deemed to be no less than the amount of the indebtedness, for such equipment, infrastructure and other assets related to such qualifying communications services. The provisions of this section shall not apply to the use of telecommunications equipment and services for intragovernmental purposes as specified in § 15.2-1500.

2002, cc. 479, 489; 2003, c. 711.

Article 6 - WIRELESS ENHANCED PUBLIC SAFETY TELEPHONE SERVICE ACT

§§ 56-484.8 through 56-484.11. Repealed

Repealed by Acts 2000, c. 1064.

Article 7 - ENHANCED PUBLIC SAFETY TELEPHONE SERVICES ACT

§ 56-484.12. Definitions

As used in this article, unless the context requires a different meaning:

"Automatic location identification" or "ALI" means a telecommunications network capability that enables the automatic display of information defining the geographical location of the telephone used to place a wireless enhanced 9-1-1 call.

"Automatic number identification" or "ANI" means a telecommunications network capability that enables the automatic display of the telephone number used to place a wireless Enhanced 9-1-1 call.

"Board" means the 9-1-1 Services Board created pursuant to this article.

"Chief Information Officer" or "CIO" means the Chief Information Officer appointed pursuant to § 2.2-2005.

"Coordinator" means the Virginia Public Safety Communications Systems Coordinator employed by the Division.

"CMRS" means mobile telecommunications service as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"CMRS provider" means an entity authorized by the Federal Communications Commission to provide CMRS within the Commonwealth.

"Division" means the Division of Public Safety Communications created in § 2.2-2031.

"Emergency services IP network" or "ESInet" means a shared public safety agency-managed Internet protocol (IP) network that (i) is used for emergency services communications, (ii) provides an IP transport infrastructure that is capable of carrying voice and data and that supports next generation 9-1-1 service core functions such as routing and location validation of emergency service requests, and (iii) is engineered, managed, and intended to support emergency public safety communications and 9-1-1 service.

"Enhanced 9-1-1 service" or "E-911" means a service consisting of telephone network features and PSAPs provided for users of telephone systems enabling such users to reach a PSAP by dialing the digits "9-1-1." Such service automatically directs 9-1-1 emergency telephone calls to the appropriate PSAPs by selective routing based on the geographical location from which the emergency call originated and provides the capability for ANI and ALI features.

"FCC order" means Federal Communications Commission Order 94-102 (61 Federal Register 40348) and any other FCC order that affects the provision of E-911 service to CMRS customers.

"Local exchange carrier" means any public service company granted a certificate to furnish public utility service for the provision of local exchange telephone service pursuant to Chapter 10.1 (§ 56-265.1 et seq.) of Title 56.

"Next generation 9-1-1 service" or "NG9-1-1" means a service that (i) consists of coordinated intrastate 9-1-1 IP networks serving residents of the Commonwealth with the routing of emergency service requests, by voice or data, across public safety ESInets; (ii) automatically directs 9-1-1 emergency telephone calls and other emergency service requests in data formats to the appropriate PSAPs by routing using geographical information system data; (iii) provides for ANI and ALI features; and (iv) interconnects with enhanced 9-1-1 service.

"9-1-1 service" includes E-911 and NG9-1-1.

"Place of primary use" has the meaning as defined in the federal Mobile Telecommunications Sourcing Act, 4 U.S.C. § 124, as amended.

"Postpaid CMRS" means CMRS that is not prepaid CMRS, as defined in § 56-484.17:1.

"Public safety answering point" or "PSAP" means a facility (i) equipped and staffed on a 24-hour basis to receive and process 9-1-1 calls or (ii) that intends to receive and process 9-1-1 calls and has notified CMRS providers in its jurisdiction of its intention to receive and process such calls.

"VoIP service" means interconnected voice over Internet protocol service as defined in the Code of Federal Regulations, Title 47, Part 9, section 9.3, as amended.

"Wireless E-911 CMRS costs" means all reasonable, direct recurring and nonrecurring capital costs and operating expenses incurred by CMRS providers in designing, upgrading, leasing, purchasing, programming, installing, testing, administering, delivering, or maintaining all necessary data, hardware, software and local exchange telephone service required to provide wireless E-911 service, which have been sworn to by an authorized agent of a CMRS provider.

"Wireless E-911 Fund" means a dedicated fund consisting of all moneys collected pursuant to the wireless E-911 surcharge, all prepaid wireless E-911 charges collected pursuant to § 56-484.17:1, and any additional funds otherwise allocated or donated to the Wireless E-911 Fund.

"Wireless E-911 service" means the E-911 service required to be provided by CMRS providers pursuant to the FCC order.

"Wireless E-911 surcharge" means a monthly fee of $0.75 billed with respect to postpaid CMRS customers by each CMRS provider and CMRS reseller on each CMRS device capable of two-way interactive voice communication.

2000, c. 1064; 2001, c. 529; 2002, c. 68; 2003, cc. 160, 341, 981, 1021; 2005, c. 942; 2006, cc. 739, 780; 2010, cc. 466, 566; 2011, cc. 120, 138; 2016, c. 361.

§ 56-484.12:1. Notice to subscribers of lack of access to E-911

Each provider of Voice-over-Internet protocol service in the Commonwealth shall provide to its subscribers in the Commonwealth any notice that the provider is required to give to its subscribers by the Federal Communications Commission concerning a subscriber's lack of access to E-911 services. This requirement is met when a provider of Voice-over-Internet protocol service in the Commonwealth provides any such notice as required by the Federal Communications Commission.

2006, c. 691.

§ 56-484.12:2. Plan for access to E-911

If the Federal Communications Commission requires all providers of Voice-over-Internet protocol service to prepare and file with it a plan setting forth how the provider proposes to develop and implement the capability for users of Voice-over-Internet protocol service to have enhanced 9-1-1 service, then any provider of Voice-over-Internet protocol service in the Commonwealth shall submit a copy of such plan to the Commission and the Board within 90 days of filing the plan with the Federal Communications Commission.

2006, c. 691.

§ 56-484.13. 9-1-1 Services Board; membership; terms; compensation

A. The E-911 Services Board, formerly the Wireless E-911 Services Board, is hereby continued as the 9-1-1 Services Board. The Board shall exercise the powers and duties conferred in this article.

B. The 9-1-1 Services Board shall:

1. Support and assist PSAPs in the provision of 9-1-1 operations and services, including through provision of funding and development of best practices;

2. Plan, promote, and assist in the statewide development, deployment, and maintenance of an emergency services IP network that will support future 9-1-1 and other public safety applications and technologies; and

3. Consult and coordinate with PSAPs, state and local public bodies in the Commonwealth, public bodies in other states, CMRS providers, VoIP service providers affiliated with cable companies, and other entities as needed in the exercise of the Board's powers and duties.

C. The Board shall consist of 16 members as follows: the Director of the Virginia Department of Emergency Management, who shall serve as chairman of the Board; the Comptroller, who shall serve as the treasurer of the Board; the Chief Information Officer; and the following 13 members to be appointed by the Governor: one member representing the Virginia State Police; one member representing a local exchange carrier providing E-911 service in Virginia; one member representing VoIP service providers affiliated with cable companies and authorized to transact business in Virginia; two members representing wireless service providers authorized to do business in Virginia; three county, city, or town PSAP directors or managers representing diverse regions of

Virginia; one Virginia sheriff; one chief of police; one fire chief; one emergency medical services manager; and one finance officer of a county, city, or town.

D. The Commonwealth Interoperability Coordinator shall serve as an advisor to the Board in the exercise of the powers and duties conferred in this article so as to ensure, among other matters, that enhanced wireless emergency telecommunications services and technologies are compliant with the statewide interoperability strategic plan.

E. All members appointed by the Governor shall serve five-year terms. The CIO and the Comptroller shall serve terms coincident with their terms of office. No gubernatorial appointee shall serve more than two consecutive terms.

F. A majority of the Board shall constitute a quorum. The Board shall meet at least quarterly or at the call of its chairman.

G. Members of the Board shall serve without compensation; however, members of the Board shall be reimbursed for expenses as provided in §§ 2.2-2813 through 2.2-2826.

H. The Division shall provide staff support to the Board. The Geographic Information Network Division created in § 2.2-2026 and the Virginia Department of Transportation shall provide such technical advice as the Board requires.

2000, c. 1064; 2003, cc. 981, 1021; 2006, c. 739; 2009, c. 613; 2011, c. 138; 2012, c. 36; 2016, c. 361.

§ 56-484.14. Powers and duties of the 9-1-1 Services Board

The 9-1-1 Services Board shall have the power and duty to:

1. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, including purchase agreements payable from (i) the Wireless E-911 Fund and (ii) other moneys appropriated for the provision of 9-1-1 services.

2. Pursue all legal remedies to enforce any provision of this article, or any contract entered into pursuant to this article.

3. Develop a comprehensive, statewide enhanced 9-1-1 plan for wireless E-911, VoIP E-911, and any other future communications technologies accessing 9-1-1 for emergency purposes. In constructing and periodically updating this plan as appropriate, the Board shall monitor trends and advances in enhanced wireless, VoIP, and other emergency telecommunications technologies, plan and forecast future needs for these enhanced technologies, and formulate strategies for the efficient and effective delivery of 9-1-1 services in the future.

4. Grant such extensions of time for compliance with the provisions of § 56-484.16 as the Board deems appropriate.

5. Take all steps necessary to inform the public of the use of the digits "9-1-1" as the designated emergency telephone number and the use of the digits "#-7-7" as a designated non-emergency telephone number.

6. Report annually to the Governor, the Senate Committee on Finance and the House Committee on Appropriations, and the Virginia State Crime Commission on (i) the state of enhanced 9-1-1 services in the Commonwealth, (ii) the impact of, or need for, legislation affecting enhanced 9-1-1 services in the Commonwealth, and (iii) the need for changes in the E-911 funding mechanism provided to the Board, as appropriate.

7. Provide advisory technical assistance to PSAPs and state and local law enforcement, and fire and emergency medical services agencies, upon request.

8. Collect, distribute, and withhold moneys from the Wireless E-911 Fund as provided in this article.

9. Develop a comprehensive single, statewide electronic addressing database to support geographic data and statewide base map data programs pursuant to § 2.2-2027.

10. Receive such funds as may be appropriated for purposes consistent with this article and such gifts, donations, grants, bequests, or other funds as may be received from, applied for or offered by either public or private sources.

11. Manage other moneys appropriated for the provision of enhanced emergency telecommunications services.

12. Perform all acts necessary, convenient, or desirable to carrying out the purposes of this article.

13. Drawing from the work of 9-1-1 professional organizations, in its sole discretion, publish best practices for PSAPs. These best practices shall be voluntary and recommended by a subcommittee composed of PSAP representatives.

14. Develop or adopt and publish standards for an emergency services IP network and core NG9-1-1 services on that network to ensure that enhanced public safety telephone services seamlessly interoperate within the Commonwealth and with surrounding states.

15. Monitor developments in 9-1-1 service and multiline telephone systems and the impact of such technologies upon the implementation of Article 8 (§ 56-484.19 et seq.). The Board shall include its assessment of such impact in the annual report filed pursuant to subdivision 6.

2000, c. 1064; 2005, c. 942; 2006, c. 739; 2007, c. 427; 2011, c. 138; 2015, cc. 502, 503; 2016, c. 361.

§ 56-484.15. Wireless Carrier E-911 Cost Recovery Subcommittee established

A. There is hereby established a Wireless Carrier E-911 Cost Recovery Subcommittee of the Board. The Subcommittee shall (i) meet only to determine whether costs submitted by CMRS providers are reasonable and direct to the provision of wireless E-911 service and (ii) review only those

documents necessary to determine whether costs submitted by CMRS providers are reasonable and direct to the provision of wireless E-911 service.

B. The Subcommittee shall consist of the following eight members from the Board: the representative of the Virginia State Police; the three PSAP directors or managers; the finance officer of a county, city or town; the CIO, the Director of the Virginia Department of Emergency Management, who shall serve as the Subcommittee's chairman; and the Comptroller.

C. Staff to the Subcommittee shall be provided by the Division of Public Safety Communications created pursuant to § 2.2-2031.

D. Unless otherwise ordered by a court of competent jurisdiction, no member or staff of the Subcommittee shall release or disclose the contents of documents used to determine whether costs submitted by CMRS providers are reasonable and direct to the provision of wireless E-911 service.

2000, c. 1064; 2003, cc. 981, 1021; 2006, c. 739; 2009, c. 613.

§ 56-484.16. Local emergency telecommunications requirements; use of digits "9-1-1."

A. On or before July 1, 2003, every county, city or town in the Commonwealth shall be served by an E-911 system, unless an extension of time has been granted by the Board.

B. The digits "9-1-1" shall be the designated emergency telephone number in Virginia. No public safety agency shall advertise or otherwise promote the use of any number for emergency response service other than "9-1-1".

2000, c. 1064; 2001, c. 713; 2005, c. 942.

§ 56-484.17. Wireless E-911 Fund; uses of Fund; enforcement; audit required

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Wireless E-911 Fund (the Fund). The Fund shall be established on the books of the Comptroller. 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. Except as provided in § 2.2-2031, moneys in the Fund shall be used for the purposes stated in subsections C through D. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Tax Commissioner or the Chief Information Officer of the Commonwealth.

B. Each CMRS provider and each CMRS reseller shall collect a wireless E-911 surcharge from each of its customers whose place of primary use is within the Commonwealth. However, no surcharge shall be imposed on federal, state and local government agencies. A payment equal to all wireless E-911 surcharges shall be remitted within 30 days to the Department of Taxation. The Department of Taxation, after subtracting its direct costs of administration, shall deposit all remitted wireless E-911 surcharges into the state treasury. The Comptroller shall as soon as practicable deposit such moneys into the Fund. Each CMRS provider and CMRS reseller may retain an amount equal to

three percent of the wireless E-911 surcharges collected to defray the costs of collecting the surcharges. State and local taxes shall not apply to any wireless E-911 surcharge collected from customers. Surcharges collected from customers shall be subject to the provisions of the federal Mobile Telecommunications Sourcing Act (4 U.S.C. § 116 et seq., as amended).

The CMRS provider and CMRS reseller shall collect the surcharge through regular periodic billing.

C. Beginning July 1, 2012, 60 percent of the Wireless E-911 Fund shall be distributed on a monthly basis to the PSAPs according to each PSAP's average pro rata distribution from the Wireless E-911 Fund for fiscal years 2007-2012, taking into account any funding adjustments made pursuant to subsection E. On or before July 1, 2017, and every five years thereafter, the Department of Taxation shall recalculate the distribution percentage for each PSAP based on the cost and call load data of the PSAP for the previous five fiscal years, which data shall continue to be received by the Board and then reported to the Department of Taxation. The distribution from the Wireless E-911 Fund shall be made on a monthly basis to the PSAPs according to such distribution percentage beginning July 1 of such fiscal year.

D. Using 30 percent of the Wireless E-911 Fund, the Board shall provide payment to CMRS providers of wireless E-911 CMRS costs. For these purposes each CMRS provider shall submit to the Board on or before December 31 of each year an estimate of wireless E-911 CMRS costs it expects to incur during the next fiscal year of counties and municipalities in whose jurisdiction it operates. The Board shall review such estimates and advise each CMRS provider on or before the following March 1 whether its estimate qualifies for payment hereunder and whether the Wireless E-911 Fund is expected to be sufficient for such payment during said fiscal year. A CMRS provider with an approved estimate of costs shall submit its request for payment of such costs no later than four months after the end of the fiscal year in which the cost was incurred. If the portion of the Fund designated for CMRS provider cost payments is insufficient to provide full payment to each CMRS provider for its costs, no unpaid cost shall be paid in the following fiscal year. The remaining 10 percent of the Fund and any remaining funds for the previous fiscal year from the 30 percent for CMRS providers shall be distributed to PSAPs or on behalf of PSAPs based on grant requests received by the Board each fiscal year. The Board shall establish criteria for receiving and making grants from the Fund, including procedures for determining the amount of a grant and payment schedule; however, the grants must be to the benefit of wireless E-911. Any grant funding that has not been committed by the Board by the end of the fiscal year shall be distributed to the PSAPs based on the same distribution percentage used during the fiscal year in which the funding was collected; however, the Board may retain some or all of this uncommitted funding for an identified funding need in the next fiscal year or for a reserve balance pursuant to a reserve balance policy adopted by the Board.

E. After the end of each fiscal year, on a schedule adopted by the Board, the Board shall audit the grant funding received by all recipients to ensure it was utilized in accordance with the grant requirements. For the fiscal year ending June 30, 2005, the Board shall determine whether

qualifying payments to PSAP operators and CMRS providers during the preceding fiscal year exceeded or were less than the actual wireless E-911 PSAP costs or wireless E-911 CMRS costs of any PSAP operator or CMRS provider. Each funding recipient shall provide such verification of such costs as may be requested by the Board. Any overpayment shall be refunded to the Board or credited to payments during the then current fiscal year, on such schedule as the Board shall determine. If payments are less than the actual costs reported, the Board may include the additional funding in the then current fiscal year.

F. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the Wireless E-911 Fund. The cost of such audit shall be borne by the Board and be payable from the Wireless E-911 Fund, as appropriate. The Board shall furnish copies of the audits to the Governor, the Public Safety Subcommittees of the Senate Committee on Finance and the House Committee on Appropriations, and the Virginia State Crime Commission.

G. The special tax authorized by § 58.1-1730 shall not be imposed on consumers of CMRS.

2000, c. 1064; 2001, c. 529; 2002, c. 68; 2003, c. 341; 2004, c. 167; 2005, c. 942; 2006, cc. 739, 780; 2010, cc. 466, 566; 2011, cc. 162, 630; 2012, cc. 25, 165, 672.

§ 56-484.17:1. Collection of prepaid wireless E-911 charge at point of sale; rate established

A. As used in this section, unless the context requires a different meaning:

"Dealer" means a person who sells prepaid CMRS to an end user.

"Department" means the Department of Taxation.

"End user" means a person who purchases prepaid CMRS in a retail transaction.

"Prepaid CMRS" means CMRS that allows a caller to dial 911 to access the 911 system, which CMRS service is required to be paid for in advance and is sold in predetermined units or dollars of which the number declines with use in a known amount.

"Prepaid wireless E-911 charge" means the charge that is required to be collected by a dealer from an end user in the amount established under subsection B.

"Retail transaction" means the purchase of prepaid CMRS from a dealer for any purpose other than resale. If more than one item or article of prepaid CMRS is purchased by an end user, then each item or article purchased shall be deemed to be a separate retail transaction.

B. The prepaid wireless E-911 charge:

1. Shall be $0.50 per retail transaction.

2. Shall be collected by the dealer from the end user with respect to each retail transaction occurring in the Commonwealth. The amount of the prepaid wireless E-911 charge shall be either separately stated on an invoice, receipt, or other similar document that is provided to the end user by the dealer or otherwise disclosed by the dealer to the end user. For purposes of this subdivision, a retail transaction that is effected in person by an end user at a business location of the dealer

shall be treated as occurring in the Commonwealth if that business location is in the Commonwealth, and any other retail transaction shall be treated as occurring in the Commonwealth if treated as occurring in the Commonwealth for purposes of the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.).

3. Is the liability of the end user and not of the dealer or of any CMRS provider, except that the dealer shall be liable to remit to the Department all prepaid wireless E-911 charges that the dealer collects from end users as provided in subsection E, including all prepaid wireless E-911 charges that the dealer is deemed to have collected in cases in which the charge has not been separately stated on an invoice, receipt, or other similar document provided to the end user by the dealer.

C. The amount of the prepaid wireless E-911 charge that is collected by a dealer from an end user shall not be included in the base for measuring any fee, tax, surcharge, or other charge that is imposed by the Commonwealth, any political subdivision of the Commonwealth, or any intergovernmental agency.

D. Except as otherwise expressly provided herein, the charge imposed pursuant to this section shall be collected by the Tax Commissioner and shall be implemented, enforced, and collected in the same manner as retail sales and use taxes are implemented, enforced, and collected under the Virginia Retail Sales and Use Tax Act (§ 58.1-600 et seq.). However, as provided in subdivision B 3, the prepaid wireless E-911 charge shall be the liability of the end user and not of the dealer or of any CMRS provider, except that the dealer shall be liable to remit to the Department all prepaid wireless E-911 charges that the dealer collects from end users. A dealer shall be permitted to deduct and retain five percent of prepaid wireless E-911 charges that are collected by the dealer from end users if such charges were not delinquent at the time of remittance to the Department. Nothing herein shall be construed or interpreted as limiting or restricting the discount provided under § 58.1-622 with regard to prepaid CMRS that is taxable under the Virginia Retail Sales and Use Tax Act.

The Department, after subtracting its direct costs of administration, shall deposit all remitted prepaid wireless E-911 charges into the state treasury. The Comptroller shall as soon as practicable deposit such moneys into the Wireless E-911 Fund for use by the Board in accordance with the purposes permitted by this article.

E. The Department shall develop and publish guidelines implementing the provisions of this section and shall update the guidelines as deemed necessary by the Tax Commissioner. The Tax Commissioner shall notify every dealer holding a certificate of registration under § 58.1-613 when the guidelines and any updates are published. The development and publication of the guidelines shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Among other items, the guidelines shall include provisions exempting small dealers, as defined solely by the Department, from the otherwise mandatory requirement under this section to dis-

close the prepaid wireless E-911 charge to the end user. The guidelines shall define a "small dealer" based, in part or in whole, upon the extent to which the dealer sells prepaid CMRS.

F. The provisions of this section shall apply to retail transactions occurring on or after January 1, 2011.

2010, cc. 466, 566.

§ 56-484.18. Designation of official State Police access number; blocking caller identification prohibited

A. Telephone number #77 is hereby designated as an official access number for wireless telephone usage in the Commonwealth for access to designated offices of the Department of State Police and shall be used solely for official business.

B. No caller shall block caller identification or other essential information on calls made to telephone number #77. Where technically feasible, wireline and wireless telephone providers shall provide calling party number identification for all wireless #77 calls. Any communications services provider, as defined in § 58.1-647, including mobile service, in this Commonwealth shall not be liable for any civil damages for any act or omission resulting from rendering such service with or without charge related to #77 calls unless such act or omission was the result of such service provider's gross negligence or willful misconduct.

2000, c. 771; 2006, c. 780.

Article 8 - EMERGENCY CALLS ON MULTILINE TELEPHONE SYSTEMS

§ 56-484.19. Definitions

As used in this article:

"Alternative method of providing call location information" means a method of maintaining and operating a multiline telephone system that ensures that:

1. Emergency calls from a telephone station provide the PSAP with sufficient location identification information to ensure that emergency responders are dispatched to a location at the facility from which the emergency call was placed, from which location emergency responders will be able to ascertain the telephone station where the emergency call was placed (i) by being able to view all of the telephone stations in the area contiguous to the telephone station from which the emergency call was placed or (ii) by the activation of an alerting system at the facility, which activation is triggered by the placing of the emergency call, and which readily allows arriving emergency responders to determine the physical location of the telephone station from which the emergency call was placed. A light or alarm located near the telephone station is an example of such an alerting system;

2. Emergency calls from a telephone station, in addition to reaching a PSAP, connect to or otherwise notify a switchboard operator, attendant, or other designated on-site individual who is cap-

able of giving the PSAP the location of the telephone station from which the emergency call was placed; or

3. Calls to the digits "9-1-1" from a telephone station connect to a private emergency answering point.

An alternative method of providing call location information shall also be deemed to be provided, as a result of the imputed ability of emergency responders to readily locate all telephone stations from which the emergency call could have been placed, when emergency calls provide calling party information corresponding to a contiguous area containing the telephone from which the emergency call was placed, of fewer than 7,000 square feet, located on one or more floors.

"Automatic location identification" or "ALI" means the automatic display at a PSAP of information defining the emergency call location, which information shall identify the floor name or number, room name or number, building name or number, cubicle name or number, and office name or number, as applicable, or imparts other information that is sufficiently specific to provide the emergency responders with the ability to locate the telephone station from which the emergency call was placed.

"Automatic number identification" or "ANI" means the automatic display at a PSAP of a telephone number that a PSAP may use to call the telephone station from which the emergency call was placed.

"Calling party information" means information that is delivered by the MLTS provider to the PSAP that is used to provide the ANI and ALI function.

"Central office system" means a business telephone service offered by a provider of communications services that provides features similar to a private branch exchange by transmitting data over telecommunications equipment or cable lines.

"Emergency call" means a telephone call that enables the user to reach a PSAP by dialing the digits "9-1-1" and, if applicable, any additional digit or digits that must be dialed in order to permit the user to access the public switched telephone network.

"Emergency call location" means the location of the telephone station on an MLTS from which an emergency call is placed and to which a PSAP may dispatch emergency responders based upon ALI provided via the emergency call.

"Emergency responders" means fire services, law enforcement, emergency medical services, and other public services or agencies that may be dispatched by a PSAP in response to an emergency call.

"Enhanced 9-1-1 service" means a service consisting of telephone network features and PSAPs that (i) enables users of telephone systems to reach a PSAP by making an emergency call; (ii) automatically directs emergency calls to the appropriate PSAPs by selective routing based on the geo-

graphical location from which the emergency call originated; and (iii) provides the capability for ANI and ALI features.

"Facility" means real estate and improvements used principally for or as a (i) hotel as defined in § 35.1-1, (ii) college or university dormitory, (iii) medical care facility as defined in § 32.1-102.1, (iv) group home or other residential facility licensed by the Department of Behavioral Health and Developmental Services or Department of Social Services, (v) assisted living facility as defined in § 63.2-100, (vi) apartment complex or condominium where shared tenant telephone service is provided, (vii) commercial or government office building, (viii) manufacturing, processing, assembly, warehouse, or distribution establishment, or (ix) retail establishment.

"MLTS provider" means a person who operates a facility at which telephone service is provided, with or without compensation, through a multiline telephone system.

"MLTS service provider" means a person offering or operating third party services that combine communications services, private branch exchange or central office systems, and multiline telephone systems where such services are provided to an MLTS provider on a fee-for-service basis.

"Multiline telephone system" or "MLTS" means a telephone system, including network-based or premises-based systems, whether owned or leased by a public or private entity, operated in the Commonwealth, that serves a facility, has more than one telephone station, and is comprised of common control units, telephones, and control hardware and software that share a common interface to the public switched telephone network, whether by a private branch exchange or central office system, without regard to whether the system utilizes VoIP technology.

"Person" includes any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Portable VoIP services" includes any MLTS utilizing a VoIP service and providing an end user with the capability to use the service at a location independent of the original physical location of telephone stations on the MLTS.

"Private emergency answering point" means an answering point that is equipped and staffed during all hours that the facility is occupied to provide adequate means of responding to calls to the digits "9-1-1" from telephones on a multiline telephone system by reporting incidents to a PSAP in a manner that identifies the emergency response location from which the call to the answering point was placed.

"Public safety answering point" or "PSAP" means a communications operation operated by or on behalf of a governmental entity that is equipped and staffed on a 24-hour basis to receive and process telephone calls for emergency assistance from an individual by dialing, in addition to any digits required to obtain an outside line, the digits "9-1-1."

"Public switched telephone network" means the worldwide, interconnected networks of equipment, lines, and controls assembled to establish circuit-switched voice communication paths between calling and called parties.

"Retail establishment" means any establishment selling goods or services to the ultimate user or consumer of those goods or services, not for the purpose of resale, but for that user's or consumer's personal rather than business use.

"Telephone call" means the use of a telephone to initiate an ordinary voice transmission placed through the public switched telephone network.

"Telephone station" means a telephone on a multiline telephone system, from which a call may be placed to a PSAP by dialing, in addition to any digits required to access the public switched telephone network, the digits "9-1-1." However, in any medical care facility or licensed assisted living facility, "telephone station" includes any telephone on a multiline telephone system located in an administrative office, nursing station, lobby, waiting area, or other area accessible to the general public but does not include a telephone located in the room of a patient or resident.

"VoIP service" has the same meaning ascribed to it in § 56-484.12.

2007, c. 427; 2008, c. 853; 2009, cc. 813, 840.

§ 56-484.20. Charges for emergency calls

The MLTS provider of any multiline telephone system shall maintain and operate the MLTS in such manner that an individual placing an emergency call from a telephone station on the MLTS is not charged for the call.

2007, c. 427.

§ 56-484.21. Instructions for emergency calling

Commencing July 1, 2009, the MLTS provider of any multiline telephone system shall either (i) demonstrate or provide written instructions to each new user of the MLTS how to place an emergency call from a telephone station or (ii) provide written instructions at each telephone station that inform an individual how to place an emergency call from the telephone station. Written instructions provided to a new user or provided at a telephone station shall include the telephone station's street address and such additional information regarding the location of the telephone station that is sufficiently specific to permit an emergency responder with the information to locate the telephone station.

2007, c. 427.

§ 56-484.22. Access to PSAPs from telephone stations on MLTS

Commencing July 1, 2009, the MLTS provider of any multiline telephone system shall maintain and operate the MLTS in such manner that a telephone call made by dialing the digits "9-1-1" and, if applicable, any additional digit or digits that must be dialed in order to permit the user to

access the public switched telephone network, from any telephone on the MLTS is routed to a PSAP.

2007, c. 427.

§ 56-484.23. Provision of emergency call information

A. The MLTS provider of any multiline telephone system that is acquired or installed on or after July 1, 2009, commencing on the date of its installation, shall maintain and operate the MLTS in a manner that ensures that each emergency call placed from any telephone station on the MLTS provides either (i) calling party information to the 9-1-1 network that connects to the PSAP or (ii) an alternative method of providing call location information.

B. Notwithstanding the requirements of subsection A, the MLTS provider of any multiline telephone system using portable VoIP services that is acquired or installed on or after July 1, 2009, commencing on the date of its installation, shall make all reasonable efforts to maintain and operate the MLTS in a manner that ensures that each emergency call placed from any telephone station on the MLTS provides either: (i) calling party information to the 9-1-1 network that connects to the PSAP or (ii) an alternative method of providing call location information.

C. The MLTS provider shall arrange to update the automatic location identification database with appropriate master street address guide, valid address and callback information corresponding to the calling party information for each telephone station. Such updates shall be provided as soon as practicable for new MLTS installations or within one business day of record completion of the actual changes for previously installed systems. When an MLTS provider obtains service through a MLTS service provider, the MLTS service provider shall be responsible for meeting this requirement.

2007, c. 427; 2008, c. 853.

§ 56-484.24. Liability

A. An MLTS provider, its employees or agents shall not be liable to any person for damages incurred as a result of any act or omission by it, except gross negligence or intentional, willful or wanton misconduct, in connection with maintaining or operating the MLTS in a manner required by this article.

B. A telecommunications service provider, its employees or agents shall not be liable to any person for damages incurred as the result of the release of information not in the public record, including, but not limited to, unpublished or unlisted telephone numbers, to a PSAP, its employees or agents, or to emergency responders, made in connection with an emergency call.

2007, c. 427.

§ 56-484.25. Exemption for certain counties

Notwithstanding any provision of this article to the contrary, the provisions of §§ 56-484.22 and 56-484.23 shall not apply with respect to any multiline telephone system located in a county that

is not served by an enhanced 9-1-1 service system, until the later to occur of (i) 120 days after the date an enhanced 9-1-1 service system for the county commences operating or (ii) July 1, 2009.

2007, c. 427.

Chapter 16 - TELEPHONE COOPERATIVES ACT

§ 56-485. Short title

This chapter may be cited as the "Telephone Cooperatives Act."

1950, p. 588; 1956, c. 434.

§ 56-486. Who may form cooperative; purpose

Any number of natural persons not less than five may, by executing, filing and recording a certificate as hereinafter set forth, form a cooperative, either with or without capital stock, not organized for pecuniary profit, for the purpose of promoting and encouraging the fullest possible use of telephone service by making telephone service and facilities available at the lowest cost consistent with sound economy and prudent management of the business of such cooperatives.

1950, p. 588; 1956, c. 434.

§ 56-487. Definitions

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

(1) "Cooperative" shall mean a telephone corporation formed under this chapter.

(2) "Municipality" shall mean any city or incorporated town of the Commonwealth.

(3) "Person" shall mean and include natural persons, firms, associations, cooperatives, corporations, business trusts, partnerships and bodies politic.

(4) "Telephone service" shall mean and include service over wire or cable lines, including voice carrier, service by voice carrier system over electric distribution and transmission lines, service over radio circuits, and any other service involving the transmission of voice, video or data between fixed points.

(5) "Acquire" shall mean and include construct, acquire by purchase, lease, devise, gift or the exercise of the power of eminent domain, or other mode of acquisition.

(6) "System" shall mean and include any plant, works, system, facilities, or properties, or any part or parts thereof, together with all appurtenances thereto, used or useful in connection with the transmission of voice, video or data.

(7) "Obligations" shall mean and include bonds, interim certificates or receipts, notes, debentures, and all other evidences of indebtedness either issued or the payment thereof assumed by a cooperative.

(8) "Federal agency" shall mean and include the United States of America, the President of the United States of America, and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

(9) "Improve" shall mean and include construct, reconstruct, improve, replace, extend, enlarge, alter, better or repair.

(10) "Board" shall mean the board of directors of a cooperative formed under this chapter.

(11) "Member" shall mean and include each person admitted to membership in the cooperative pursuant to law or its bylaws.

1950, p. 588; 1956, c. 434; 1996, c. 708.

§ 56-488. Certificate of incorporation

The certificate of incorporation shall be entitled and endorsed "Certificate of Incorporation of the . . . . . Telephone Co-operative" (the blank space being filled in with the distinguishing part of the name of the cooperative) and shall state:

(1) The name of the cooperative, which name need not contain the word "corporation" or "incorporated" but shall be such as to distinguish it from any other cooperative.

(2) A reasonable designation of the territory in which its operations are principally to be conducted.

(3) The location of its principal office and post-office address thereof.

(4) The maximum number of directors, not less than five.

(5) The names and post-office addresses of the officers and directors who are to manage the affairs of the cooperative for the first year of its existence, or until their successors are chosen.

(6) The period, if any, limited for the duration of the cooperative.

(7) The terms and conditions upon which persons shall be admitted to membership in the cooperative, and in the case of a cooperative incorporating with capital stock a statement of the maximum and minimum amount of the capital stock of the cooperative, and its division into shares.

The certificate of incorporation may also contain any provision not inconsistent with Title 13.1 which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the cooperative; and any provision as to the plan of financial organization, or relating to the internal regulation or government of the cooperative, its directors and members.

1950, p. 589; 1956, c. 434.

§ 56-489. Limitation of use of words "telephone cooperative."

The words "telephone cooperative" shall not be used in the corporate names of corporations other than those formed pursuant to the provisions of this chapter.

1950, p. 590; 1956, c. 434.

§ 56-490. Filing certificate of incorporation

The natural persons executing the certificate of incorporation shall be residents of the territory in which the principal operations of the cooperative are to be conducted who intend to use telephone service to be furnished by the cooperative. The certificate of incorporation shall be subscribed by at least five such persons and acknowledged by them before an officer authorized by the law of this Commonwealth to take and certify acknowledgments of deeds and conveyances. When so acknowledged the certificate shall be filed in accordance with the provisions of Article 3 (§ 13.1-618 et seq.) of Chapter 9 of Title 13.1, and when so filed the articles of incorporation, or certified copies thereof, shall be received in all the courts of this Commonwealth and elsewhere as prima facie evidence of the facts contained therein, and of the due incorporation of the cooperative. All of the provisions of the Virginia Stock Corporation Act (§ 13.1-601 et seq.) and the Virginia Nonstock Corporation Act (§ 13.1-801 et seq.) insofar as not inconsistent with this chapter are hereby made applicable to such cooperatives, and as soon as the charter is lodged for recordation in the office of the State Corporation Commission, the proposed cooperative described therein, under its designated name, shall be and constitute a body corporate with all of the applicable powers provided for in § 56-49. A cooperative need not have a registered office or a registered agent.

1950, p. 590; 1956, c. 434.

§ 56-491. Board of directors; officers

Every cooperative formed hereunder shall have a board of directors of five or more members, which shall constitute the governing body of the cooperative. The directors, other than those named in the certificate of incorporation, shall be elected annually by the members entitled to vote, unless the bylaws provide that, in lieu of electing the whole number of directors annually, the directors shall be divided into either two or three classes at the first or any subsequent annual meeting, each class to be as nearly equal in number as possible, with the term of office of the directors of the first class to expire at the next succeeding annual meeting, the term of the second class to expire at the second succeeding annual meeting, and the term of the third class, if any, to expire at the third succeeding annual meeting; and that at each annual meeting after such classification a number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting where the bylaws provide for two classes of directors; or until the third succeeding annual meeting where the bylaws provide for three classes of directors. The directors must be members of the cooperative. The board of directors shall have authority to fix the compensation of directors. Directors shall be entitled to reimbursement for expenses incurred by them in the performance of their duties. The directors shall elect annually from their own number a president and one or more vice-presidents. They shall also elect a secretary and a treasurer, who need not be directors or members, and may combine the offices of secretary and treasurer and designate the combined office as secretary-treasurer.

1950, p. 590; 1956, c. 434; 1974, c. 73; 1978, c. 236.

§ 56-492. Powers of board of directors

The board of directors of a cooperative shall have power to do all things necessary and incidental in conducting the business of the cooperative, including but not limited to:

(1) If authorized by the certificate of incorporation, or by resolution of its members, the power to adopt and amend bylaws for the management and regulation of the affairs of the cooperative, subject, however, to the right of such members to alter or repeal such bylaws. The bylaws of a cooperative may make provisions, not inconsistent with law or its certificate of incorporation regulating the admission, suspension or expulsion of members; the transfer of memberships, the fees and dues of members and the termination of memberships on nonpayment of dues or otherwise; the number, times and manner of choosing, qualifications, terms of office, official designations, powers, duties and compensation of its officers; defining a vacancy in the board or in any office and the manner of filling it; the number of members to constitute a quorum at meetings, the date of the annual meeting and the giving of notice thereof and the holding of special meetings and the giving of notice thereof; the terms and conditions upon which the cooperative is to render service to its members, the disposition of the revenues and receipts of the cooperative; regular and special meetings of the board and the giving of notice thereof.

(2) To appoint agents and employees and to fix their compensation and the compensation of the officers of the cooperative.

(3) To execute all instruments.

(4) To make its own rules and regulations as to its procedure.

1950, p. 591; 1956, c. 434; 1974, c. 73; 2001, c. 386.

§ 56-493. Membership; voting; nonprofit operation

A cooperative may issue to its members certificates of membership. Only members shall be entitled to vote at the meetings of the members of the cooperative. A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member, appointing some other member to cast his vote, or may vote by his duly authorized attorney-in-fact, who shall be a member. If a member is not voting in person, by proxy, or by attorney-in-fact, the spouse of such member shall be entitled to vote for the member, in person or by proxy, if permitted by the articles of incorporation or bylaws. No proxy shall be valid after eleven months from its date unless otherwise provided in the proxy. When directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail. The liability of each member shall be limited to the unpaid portion of his membership fee or subscription to capital stock, and any unpaid bills for telephone service from the cooperative. The equity of members of a nonstock cooperative shall be in proportion to the revenue paid the cooperative by each member. A cooperative shall be operated on a nonprofit basis for the mutual benefit of its members. The bylaws of the cooperative or its contract with its members shall contain such provisions relative to the disposition of revenues and

receipts as may be necessary and appropriate to establish and maintain its nonprofit and cooperative character.

1950, p. 591; 1956, c. 434; 1968, c. 100; 1992, c. 6; 1996, c. 708.

§ 56-494. Service to members; to nonmembers

Except as hereinafter provided, the corporate purpose of each cooperative formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such person uses telephone service supplied by the cooperative and shall have complied with the terms and conditions in respect to membership contained in the bylaws of the cooperative. Should the cooperative acquire any telephone facilities already dedicated or devoted to the public use it may, for the purpose of continuing existing service and avoiding hardship, continue to serve the persons served directly from such facilities at the time of such acquisition without requiring that such persons become members.

The rates to such nonmembers shall be on a cost basis similar to those charged members.

1950, p. 592; 1956, c. 434; 1996, c. 708.

§ 56-495. Powers granted corporation

Each corporation formed under this chapter shall have power to do any and all acts or things necessary or incidental for carrying out the purpose for which it was formed, including, but not limited to:

1. To furnish or provide telephone service or any of the facilities necessary therefor in connection with the furnishing or providing of such service with others both within and without this Commonwealth and to provide such services or facilities as may be incidental or related to providing telephone service.

2. To sue and be sued.

3. To have a seal and alter the same at pleasure.

4. To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.

5. To acquire, own and dispose of shares or interests in other entities engaged in communications businesses.

6. To render service and to acquire, own, operate, maintain and improve a system or systems.

7. To accept gifts or grants of money, or property, real or personal, from any person, municipality or federal agency and to accept voluntary and uncompensated services.

8. To sell, lease, mortgage or otherwise encumber or dispose of all or any part of its property, as hereinafter provided.

9. To contract debts, borrow money and to issue or assume the payment of bonds, and other obligations.

10. To fix, maintain and collect reasonable fees, rents, tolls and other charges for services rendered.

11. To exercise all the powers set forth in § 56-49, including the power of eminent domain as prescribed for other public service corporations by general law.

12. To issue nonassessable nonvoting common and preferred capital stock and pay annually noncumulative dividends thereon not exceeding four percent and no cooperative operating hereunder shall pay annually more than four percent interest on membership capital.

13. To perform any and all of the foregoing acts and to do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

1950, p. 592; 1956, c. 434; 1989, c. 185; 2001, c. 386.

§ 56-496. Disposition of property

No cooperative may sell, lease or dispose of any of its property other than property which, in the judgment of the board, is neither necessary nor useful in operating or maintaining the cooperative's system and which in any one year shall not exceed ten per centum in value of the value of all the property of the cooperative, unless authorized so to do by the votes of at least a two-thirds majority of its members; provided, however, that a cooperative: (i) may mortgage or otherwise encumber its assets by a vote of at least two-thirds of its board of directors; or (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.

1950, p. 593; 1956, c. 434; 1979, c. 103.

§ 56-497. Issue of obligations

A cooperative shall have the power and is hereby authorized, from time to time, to issue its obligations in anticipation of its revenues for any corporate purpose. Such obligations may be authorized by resolution of the board, and may bear such date or dates, mature at such time or times, not exceeding fifty years from their respective dates, bear such interest, be payable at such times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption, not exceeding par and accrued interest, as such resolution may provide. Such obligations may be sold in such manner and upon such terms as the board may determine at not less than par and accrued interest. Pending the preparation or execution of definitive bonds, or obligations, interim receipts or certificates or temporary bonds may be delivered to purchasers of such obligations.

1950, p. 593; 1956, c. 434; 1979, c. 129.

§ 56-498. Covenants

In connection with the issuance of any obligations a cooperative may make covenants or agreements and do any and all acts or things that a corporation can make or do under the laws of the Commonwealth of Virginia.

1950, p. 593; 1956, c. 434.

§ 56-499. Purchase of own obligations

A cooperative shall have power out of any funds available therefor to purchase any obligations issued by it at a price not exceeding the principal amount thereof and accrued interest thereon. All bonds so purchased shall be cancelled.

1950, p. 593; 1956, c. 434.

§ 56-500. Consolidation or merger

Any two or more cooperatives created under the provisions of this chapter may consolidate or merge into a single corporation in the manner prescribed by Title 13.1, which consolidated or merged corporation shall exercise all the powers and authority and shall be vested with all the rights, franchises and privileges of each of the corporations so consolidated or merged.

1950, p. 594; 1956, c. 434.

§§ 56-501, 56-501.01. Repealed

Repealed by Acts 1998, c. 252.

§ 56-501.1. Payment of certain patronage capital to spouse or next of kin of deceased person

When there is held by any telephone cooperative, engaged in the business of furnishing telephone service, any patronage capital to the credit of a deceased person, in an amount not exceeding $500, upon whose estate there shall have been no qualification, it shall be lawful for such telephone cooperative, after 120 days from the death of such person, to pay such balance to his or her spouse, and if none, to his or her next of kin, whose receipt therefor shall be a full discharge and acquittance to such telephone cooperative to all persons whomsoever on account of such patronage capital.

1979, c. 442.

§ 56-502. Regulation by State Corporation Commission

Every cooperative organized under this chapter shall be subject to the jurisdiction of the State Corporation Commission with respect to telephone services and facilities in the same manner and to the same extent as are other similar utilities under the laws of Virginia, except that (i) the Commission shall have no jurisdiction over the rates, service quality and types of service offerings of the cooperative to its members; (ii) a cooperative shall not be required to file a local service tariff with the Commission; and (iii) where a cooperative establishes a cable television system, it shall be subject to Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2.

1950, p. 594; 1956, c. 434; 1985, c. 405; 1996, c. 708; 1998, c. 252; 2001, c. 386; 2006, cc. 73, 76.

§ 56-503. Dissolution

A cooperative created hereunder may be dissolved in the manner prescribed by Article 16 (§ 13.1-742 et seq.) of Chapter 9 or Article 13 (§ 13.1-902 et seq.) of Chapter 10 of Title 13.1.

1950, p. 594; 1956, c. 434.

§ 56-504. Charter amendments

A cooperative created hereunder may amend its certificate of incorporation to change its corporate name, to increase or reduce the number of its directors or change any other provision therein, provided that no cooperative shall amend its certificate of incorporation to embody therein any purpose, power or provision which would not be authorized if its original certificate including such additional or changed purpose, power or provision were offered for filing at the time a certificate under this section is offered. Such amendment may be accomplished in the method prescribed by law for corporations generally.

1950, p. 594; 1956, c. 434.

§ 56-505. Charter fees

The general laws of Virginia relating to fees and other charges in connection with issuing charters, amendments thereto, consolidations and dissolutions of corporations organized on a mutual basis or without capital stock, shall apply to cooperatives organized under the provisions of this chapter.

1950, p. 595; 1956, c. 434.

§ 56-506. Construction of chapter; conflicting laws

This chapter is to be liberally construed and the enumeration of any object, purpose, power, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things, and any provisions of other laws in conflict with the provisions of this chapter shall not apply to cooperatives operating hereunder.

1950, p. 595; 1956, c. 434.

§ 56-507. Adoption of provisions by existing corporation

Any Virginia corporation engaged in the furnishing of telephone service in the Commonwealth may come under the provisions of this chapter by filing with the Commission a certificate of adoption in the manner provided by paragraph (b) of § 13.1-334, and relinquishing all rights and powers granted by the former charter.

1950, p. 595; 1956, c. 434.

§ 56-508. Extension of service to territory not being served

If, from any rural territory not now being served, application be made to the State Corporation Commission by a group of five or more persons, natural or artificial, to require an extension of telephone service to such territory, the Commission shall, if necessary to accomplish the purposes sought, fix a time for hearing upon the application, on such terms and conditions as the

Commission prescribes, and, if it be established to the satisfaction of the Commission that a proper guaranteed revenue for a sufficient number of years will accrue to any company which may be required to construct the desired extension, and that a reasonable return will accrue to the company constructing the extension, then the Commission is authorized to require the nearest, or most advantageously located public telephone company to such territory to construct such extension to such point or points in such territory and to serve such customer or customers therein, as in its judgment is deemed right and proper.

1950, p. 595; 1956, c. 434.

Chapter 16.1 - RADIO COMMON CARRIERS [Repealed]

§§ 56-508.1 through 56-508.7. Repealed
Repealed by Acts 1995, c. 281.

Chapter 16.2 - CELLULAR MOBILE RADIO COMMUNICATIONS CARRIERS [Repealed]

§§ 56-508.8 through 56-508.14. Repealed
Repealed by Acts 1995, c. 281.

Chapter 16.3 - PAY TELEPHONE REGISTRATION ACT

§ 56-508.15. Registration required for intrastate pay telephone service; pay telephone instruments disconnected upon suspension or revocation of registration
A. No person shall sell or resell intrastate telephone service through pay telephone instruments without either being registered pursuant to this chapter with the State Corporation Commission or holding a certificate of public convenience and necessity pursuant to Chapter 10.1 (§ 56-265.1 et seq.) of this title. Upon suspension or revocation of any registration, certificated carriers shall disconnect pay telephone instruments of the registrant as directed by order of the Commission.

B. All persons engaged in the sale or resale of intrastate telephone service through pay telephone instruments as of July 1, 1993, shall, within the following 180 days, either acquire Commission registration or demonstrate to the Commission possession of a certificate of public convenience and necessity pursuant to Chapter 10.1 of this title.

C. As used in this chapter, "intrastate telephone service" means telephone calls that originate and terminate within the Commonwealth.

1993, c. 140 .

§ 56-508.16. Commission authorized to promulgate regulations
A. The State Corporation Commission may promulgate regulations necessary to implement the provisions of this chapter.

B. Without limiting the Commission's authority to promulgate other necessary regulations, the Commission's regulations implementing this chapter may, among other things, authorize the Commission:

1. To levy and collect reasonable registration or other fees;

2. To establish service and rate criteria for registered or certificated persons; and

3. To suspend or revoke registration, or to levy fines or impose other sanctions, for failure to comply with such regulations.

1993, c. 140 .

Chapter 17 - STATE OPERATION OF PUBLIC UTILITIES

§ 56-509. Declaration of policy [Not set out]

Not set out. (1952, c. 696.)

§ 56-510. Duty of Governor when there is threat of curtailment, interruption, etc., of operation

Whenever in the judgment of the Governor there is an imminent threat of substantial curtailment, interruption or suspension in the operation of any public utility hereinabove mentioned he shall promptly make an investigation to determine whether, in his opinion, an actual curtailment, interruption or suspension of operation will constitute a serious menace or threat to the public health, safety or welfare, and if he concludes that it will, he shall forthwith issue an executive proclamation so declaring and stating that at the time of such curtailment, interruption or suspension of operation he will take immediate possession of the utility, its plant and equipment, or so much thereof as may be necessary, for the use of and operation by the Commonwealth. Where the Governor finds it advisable for effectuation of the purposes hereof he may by proclamation advance or defer such taking of possession.

1952, c. 696.

§ 56-511. Power of Governor to possess and operate utility

The Governor may possess and operate such properties in the manner hereinafter provided and through such department or agency of the Commonwealth as he may designate.

1952, c. 696.

§ 56-512. Employment of utility employees by Commonwealth; information to be furnished

If the Governor shall issue a proclamation of intention to take possession of and operate any such utility as provided herein, he shall immediately ascertain what positions of employment are necessary to be filled in order to operate the same to such extent as may be required to protect the public safety and welfare, and the duties incident to each such position, and shall ascertain from those persons then employed in such positions whether they will accept employment by the Commonwealth to perform like duties for the Commonwealth. Any such person who will accept

employment by the State shall be entitled to be employed and to continue in such employment for such time as the Governor may determine. It shall be the duty of the management of any such utility to provide promptly and furnish to the Governor, upon his request, detailed information with respect to the positions necessary to be filled and the duties incident to or pertaining to each such position, and the name of the person presently holding same.

1952, c. 696.

§ 56-513. Replacement of utility employees unwilling to work for Commonwealth

In the event that any person or persons then employed by the utility in any such necessary positions shall fail to indicate an intention to work for the Commonwealth in operating the utility, when inquiry is made of such person by the Governor or his agent, the Governor shall immediately institute measures to employ another person or other persons to perform the required duties of anyone not indicating such intention. No person who upon such inquiry fails to indicate intention to work for the Commonwealth may thereafter claim the right to employment by the Commonwealth provided in § 56-512.

1952, c. 696.

§ 56-514. Status as employee of utility unaffected by acceptance or refusal of employment by Commonwealth

The status of no person as an employee of the utility shall be affected by either his acceptance of employment by the Commonwealth or by his refusal of such employment.

1952, c. 696.

§ 56-515. Entry upon property of utility after proclamation of intention to take possession

After any proclamation of intention to take possession, the Governor may, by and through agents designated by him, enter upon the property of the utility with prospective employees and familiarize them with the nature of the work incident to the positions in which it is contemplated they will be employed and train them to discharge the duties thereof. The management of the utility and all state departments, institutions and agencies shall cooperate with the Governor in the operation of the utility and in the securing and training of persons for employment in such operation.

1952, c. 696.

§ 56-516. When possession of utility to be delivered; procedure upon refusal of possession

Unless the management of the utility believes that the Governor is mistaken in his conclusion as to the curtailment, interruption or suspension of operation, actual possession of the utility, its properties and facilities, shall be delivered at the time stated in the executive proclamation. In the event of refusal of possession, upon application of the Governor any court of record of any county or city in which the utility's main executive offices in this Commonwealth are located, or the judge thereof in vacation, shall issue a rule requiring the authorized representatives of such utility to show cause why possession should not be delivered at the time stated in the executive proclamation. The rule shall be given preference over all other matters pending before such court.

After reasonable notice, the court or judge shall hear the parties and determine as promptly as possible the question of fact relating to the curtailment, interruption or suspension of the operation of the utility and whether the facts require the delivery of possession and render judgment requiring or denying delivery of possession as the case may be.

1952, c. 696.

§ 56-517. Interference with or obstruction of Governor, state representative or agent

No person, organization or association or any bargaining representative of the employees or any representative or agent of the management of the utility shall interfere with or obstruct the Governor, or any state representative or agent designated by him, in his efforts to secure or contract for the services of the officers and employees of the utility or of any person to engage in or continue the operation of the utility, or shall encourage or solicit any such persons not to render such services or shall interfere in or obstruct the training of prospective employees in the operation of the utility by the Governor or by the designated state representatives. Upon seizure of any utility as provided herein the establishment or conduct of a picket line near or adjacent to any work engaged in or proposed to be engaged in by any such persons employed or sought to be employed by the Commonwealth in its operation of such utility shall be deemed an unlawful obstruction of the exercise of an essential function of the state government and a violation of this section; and all persons ordering, directing, encouraging or participating in any such picketing shall be guilty of violating this section.

1952, c. 696.

§ 56-518. Expense of operation, etc.; payment of revenues, etc., into state treasury

The expense of operating any utility pursuant to the provisions of this chapter, and of training prospective employees or otherwise preparing to operate the same shall be paid out of the appropriation for criminal charges upon such authorizations as the Governor may prescribe, and all funds, revenues or reimbursements derived from or received as a result of such operations shall be paid into the state treasury and credited to such appropriation, or, after full reimbursement of such appropriation for expenditures therefrom, additional funds may be credited to such other appropriations as the Governor may direct, and subsequent disbursements in carrying out the purposes of this chapter may be made therefrom.

1952, c. 696.

§ 56-519. Previously established salaries, wages, conditions of employment, etc., to be observed; collective bargaining

During the period of the Commonwealth's operation of any utility, pursuant to the provisions of this chapter, the Governor shall observe the utility's previously established salaries, wages, conditions of employment, practices as to merit or length of service increases and as to promotions; it being the intent of this chapter that any disputes as to such matters shall be settled by collective bargaining between the parties to such disputes.

1952, c. 696.

§ 56-520. Collection and disposition of revenues accruing from utility

The Governor may provide in such manner as he deems appropriate for the collection of the gross revenues accruing from the utility during the time of its operation by the Commonwealth. After payment of proper operating expenses and reimbursement of the Commonwealth for all expenses incurred in preparing to operate same and making allowances of the additional items as provided in § 56-523 in defining net income, eighty-five per centum of the net income shall be paid to the utility as compensation for the temporary use of its business, facilities and properties. The amount of money so paid shall in nowise control the amount of just compensation to be allowed the utility. In the event of disagreement as to the amount of payments under this section, either party may, by appropriate petition, submit the matter to the State Corporation Commission with the right of appeal from its decision to the Supreme Court.

1952, c. 696.

§ 56-521. Restoring possession to utility

Whenever the authorized representatives of any such utility shall notify the Governor, in writing, stating that the utility is in position to and can and will resume operations and render normal public service, and shall satisfy the Governor, or his designated agent of the correctness of such statement, the Governor, or such agent, upon the request of the utility management, shall restore to the possession of the utility its properties and facilities. In the event that the Governor or such agent for any reason refuses such restoration of possession, the utility shall have the right to have a rule issued by the circuit court in the City of Richmond, or the judge thereof in vacation, to show cause why such possession should not be restored. The rule shall provide for 10 days' notice to the Governor or such agent before cause is required to be shown. The decision of such court, or the judge thereof in vacation, on such question shall be final as to conditions then existing, but shall not be a bar to subsequent requests by the utility for restoration of possession. Nothing in this section shall be construed as denying to the Governor the right to restore possession at any time when, in his judgment, the public interest so requires.

1952, c. 696; 2005, c. 681.

§ 56-522. Compensation to utility

The utility shall be entitled to receive reasonable, proper and lawful compensation for the use of its business, facilities and properties by the Commonwealth. In the event the parties in interest are unable to agree upon the amount of such compensation either party may file a petition in the court rendering judgment requiring delivery of possession of the utility, or in the event no such judgment was rendered, in any court mentioned in § 56-516, for the purpose of having the same judicially determined. The court shall, without a jury, hear such evidence and argument of counsel as may be deemed appropriate and render judgment thereon or may, subject to the provisions of § 8.01-607, refer to a commissioner such questions as are considered proper and act upon the commissioner's report as permitted in the statutes and rules governing commissioners' proceedings.

An appeal shall be to the Supreme Court from any final judgment of the court rendered under this section. If the amount of compensation so determined shall be less than the sum paid to the utility under the provisions of § 56-520 the utility shall return the excess by paying the same to the State Treasurer to be credited as the Governor may direct in accordance with the provisions of § 56-518.

1952, c. 696; 2005, cc. 681, 885.

§ 56-523. Definitions

The words "utilities" or "public utilities" when used in this chapter shall be construed to mean any person, partnership, association or corporation, engaged in the business of furnishing electric power, water, light, heat, gas, transportation or communication, or any one or more of them, to the people of Virginia.

"Net income" with respect to operation of a utility by the Commonwealth shall be construed to mean the gross revenues derived from such operation after deducting therefrom:

(1) The costs of operation and maintenance of the utility,

(2) The amount of depreciation during the time of such operation based on the amount allowed in the utility's federal income tax return,

(3) Federal, state, and local taxes which would be payable by the utility, if the properties were operated by it,

(4) Interest on the indebtedness of the utility, and

(5) Payments for the cost of insurance.

All of such items shall be prorated on an annual basis in proportion to the time the plant is operated by the Commonwealth.

1952, c. 696.

§ 56-524. Penalties

Any person violating any of the provisions of §§ 56-512, 56-515 or § 56-517 shall be guilty of a misdemeanor and upon conviction of same shall be fined not less than $10 nor more than $1,000, and may be imprisoned in jail for not more than 12 months.

1952, c. 696.

§ 56-525. Injunction against violation of chapter

In addition to the remedies herein provided, the Governor is hereby authorized to apply to the Circuit Court of the City of Richmond or to any court mentioned in § 56-516 for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person, organization, association or corporation from violating any provision of this chapter irrespective of whether or not there exists an adequate remedy at law.

1952, c. 696.

§ 56-526. Duty of Commonwealth's attorneys and Attorney General; employment of special counsel

It shall be the duty of every attorney for the Commonwealth to whom the Governor shall report any violation of §§ 56-512, 56-515 or § 56-517 to cause proceedings to be prosecuted without delay for the fines and penalties in such cases. The Attorney General shall be charged with the duty of enforcing all other provisions of this chapter and shall represent the Governor in all matters arising thereunder. Whenever he shall deem it in the best interest of the Commonwealth the Attorney General may employ special counsel to assist him in carrying out the duties imposed by this section and the expenses so incurred shall be considered as an expense of operation of the utility and paid in accordance with the provisions of § 56-518.

1952, c. 696.

§ 56-527. Chapter not applicable to certain carriers

With the exception of ferries nothing in this chapter shall apply to any express company, sleeping car company, common carrier engaged in interstate commerce by railroad or by air or to any company which is directly or indirectly owned or controlled by any carrier by railroad.

1952, c. 696; 1954, c. 108.

§ 56-528. Governor's powers as commander in chief not impaired

Nothing in this chapter shall be considered or construed as in any way questioning or impairing the constitutional or statutory powers of the Governor as commander in chief of the land and naval forces of the Commonwealth.

1952, c. 696.

Chapter 18 - WASHINGTON METROPOLITAN AREA TRANSIT REGULATION COMPACT [Repealed]

§§ 56-529, 56-530. Repealed

Repealed by Acts 2014, c. 805, cl. 11, effective October 1, 2014.

Chapter 19 - SMALL INVESTOR-OWNED TELEPHONE UTILITY ACT

§ 56-531. Definitions

As used in this chapter, which may be cited as the "Small Investor-Owned Telephone Utility Act":

"Commission" means the "State Corporation Commission."

"Small investor-owned telephone utility" means any investor-owned public utility (other than a cooperative) which serves fewer than 100,000 access lines in Virginia and which owns, manages, or controls any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages, either directly or indirectly, to or for the public.

1986, c. 337; 1987, c. 295; 1998, c. 64.

§ 56-532. Tariff filings

A. Any change in any rate, toll, charge, fee, rule, or regulation (hereafter collectively referred to as tariffs) of a small investor-owned telephone utility shall become effective thirty days after notice has been mailed to each customer unless:

1. A protest or objection is filed by the lesser of 5 percent or 150 customers subject to a small investor-owned telephone utility's tariffs; or

2. The Commission acts, on its own motion, to investigate the utility's tariffs after at least thirty days' notice by the utility to the Commission and to the public.

B. Whenever the lesser of 5 percent or 150 customers subject to a small investor-owned telephone utility's tariffs file a protest or objection to any change in any schedule of that utility's tariffs, the Commission may suspend the enforcement of any or all of the proposed tariffs for a period not exceeding 150 days from the date of the filing of those tariffs with the Commission and shall convene a hearing to determine whether the proposed tariffs are reasonable and just. At the conclusion of the hearing, the Commission may fix and order substituted tariffs as shall be just and reasonable.

C. Notice of the suspension of any proposed tariff and the scheduling of a hearing shall be given by the Commission to the small investor-owned telephone utility prior to the expiration of the thirty days' notice to the Commission and to the public as prescribed in subsection A of this section. If the proceeding has not been concluded and an order made at the expiration of the suspension period, after notice to the Commission by the utility making the filing, the proposed tariffs shall go into effect. Where increased rates, tolls, or charges are thus made effective, the Commission shall by order:

1. Require the small investor-owned telephone utility to furnish a bond, which at the Commission's discretion may bear interest at a rate specified by the Commission, in order to refund any amounts ordered by the Commission;

2. Require the utility to keep detailed accounts of all amounts received by reason of such increase; and

3. Upon completion of the hearing and decision, order the small investor-owned telephone utility to refund the portion of such increased rates, tolls, or charges found by the Commission's decision to be unjustified.

D. The Commission may, acting on its own motion, suspend the utility's proposed tariffs. The Commission shall give notice of its intention to suspend the proposed tariffs to the small investor-owned telephone utility within thirty days' notice after the filing of these proposed tariffs.

E. The Commission is authorized to promulgate any rules necessary to implement this section.

1986, c. 337.

§ 56-533. Regulation by State Corporation Commission

Every small investor-owned telephone utility shall be subject to Chapters 1 (§ 56-1 et seq.), 2 (§ 56-49 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), 10.3 (§ 56-265.14 et seq.) and 15 (§ 56-458 et seq.) of this title, except that the obligations of small investor-owned telephone utilities as to tariff filings shall be defined by this chapter. Small investor-owned telephone utilities shall also be subject to Chapters 3 (§ 56-55 et seq.) and 4 (§ 56-76 et seq.) of this title when they have affiliated interests as defined in § 56-76.

1986, c. 337.

§ 56-534. Construction of chapter; conflicting laws

This chapter is to be liberally construed, and any provisions of other laws in conflict with the provisions of this chapter shall not apply to small investor-owned telephone utilities operating hereunder.

1986, c. 337.

Chapter 20 - VIRGINIA HIGHWAY CORPORATION ACT OF 1988

§ 56-535. Title

This chapter may be cited as the "Virginia Highway Corporation Act of 1988."

1988, c. 649.

§ 56-536. Definitions

As used in this chapter, unless the context requires a different meaning:

"Board" means the Commonwealth Transportation Board.

"Certificate" means the certificate of authority awarded pursuant to this chapter which allows operation of a roadway.

"Commission" means the State Corporation Commission.

"Department" means the Virginia Department of Transportation.

"Highway" means the entire width between the boundary lines of every way or place of whatever nature open to the use of the public under the provisions of this chapter for purposes of vehicular travel in this Commonwealth.

"Operation" means all functions and pursuits of the operator of any roadway under this chapter which are directly or indirectly related to acquisition, approval, construction, enlargement, maintenance, patrolling, toll collections, or connections of the roadway or highway with any other highway or with any street, road or alley. This term shall also include, without limitation, management and administrative functions attendant to actual physical operation of the roadway and management of the affairs of the operator.

"Operator" means the person who submits to the Commission an application for authority to construct, operate or enlarge a roadway, and which, after issuance of a certificate of authority, is responsible for operation of any roadway under the provisions of this chapter.

"Person" includes any natural person, corporation, partnership, joint venture, and any other business entity; however, "person" shall not include the state or any local government or agency thereof, or any municipal corporation or other corporate body.

"Roadway" means that portion of a highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. A highway may include two or more roadways if divided by a physical barrier or barriers or unpaved areas. "Roadway," as used in this chapter, shall include only privately owned or operated highways for use of which a toll or similar single-use charge is imposed.

"Toll" means the fee charged by the operator for a single use of all or a portion of the roadway.

1988, c. 649; 1991, c. 272 .

§ 56-537. Policy [Not set out]

Not set out. (1988, c. 649; 1993, c. 732 .)

§ 56-538. Prerequisite for construction and operation

No person may construct, operate or enlarge any roadway, as defined in § 56-536, within the Commonwealth without first having obtained a certificate of authority from the Commission authorizing such construction, operation or enlargement.

1988, c. 649.

§ 56-539. Certificate of authority

Any person may apply to the Commission for a certificate of authority to construct or operate a roadway, or to extend or enlarge a roadway for which a certificate has been issued under this chapter. If the Commission determines in writing, after notice and opportunity for a hearing, that the application is complete, that approval of the application is in the public interest, and that the applicant has complied with the provisions of this chapter, it shall approve the application, with or without modification, unless it receives a duly adopted resolution of the governing body of any jurisdiction through which the roadway passes, which requests that the Commission deny the application, in which case the Commission shall do so. If the application is approved the operator shall construct the roadway. Upon completion of construction and the opening of the roadway to the public, the roadway shall be kept at all times open for use by the public and made accessible to the public, upon payment of the toll established by the operator; provided that the roadway may be partially or completely closed, temporarily, with the concurrence of the Department, to protect the public safety or for reasonable construction or maintenance procedures. The certificate of authority may be transferred with the approval of the Commission if the Commission finds the transfer to be in the public interest after consultation with the Board and notice to the governing body of any jurisdiction through which the roadway passes.

1988, c. 649; 1991, c. 272 .

§ 56-540. Application

The Commission may charge a reasonable application fee to cover the costs of processing, reviewing, and approving or denying the application. The application for a certificate of authority shall contain the following material and information:

1. The geographic area to be served by the roadway and a topographic map indicating the route of the roadway;

2. A list of the property owners through whose property the roadway or highway will pass or whose property will abut the roadway or highway;

3. The method by which the operator will secure all right-of-way required for the roadway, including a description of the nature of the interest in the lands to be acquired, which shall provide, at a minimum, for permanent dedication for transportation purposes, except that in cases in which the Department would not have authority to condemn land because of the identity of the owner, the interest to be acquired shall be of the same type and duration as that which the Department would obtain under the circumstances;

4. The comprehensive plan or plans for all counties, cities, and towns through which the roadway will pass and an analysis which shows that the roadway conforms to these comprehensive plans. To the extent that the roadway conforms to such plans, the fact that the operator is not the Commonwealth shall not affect the construction and operation of the roadway;

5. The operator's plan for financing the proposed construction or enlargement of the roadway, including proposed tolls to be charged for use of the roadway, projected amounts to be collected from such tolls and anticipated traffic volume and detailed plans for distribution of funds, including the priority in which necessary expenditures will be made. The plan for financing may be structured to include, without limitation, provisions for the issuance of debt, equity, or other securities, lease financing, the pledge of revenues or other assets or rights of the operator, or any combination thereof;

6. The operator's plan for operation of the proposed roadway or enlargement thereof;

7. A list of all permits and approvals required for construction of the roadway from local, state, or federal agencies and a schedule for securing such approvals;

8. An overall description of the project, the project design, and all proposed interconnections with the state highway system, including any interstate highway, or secondary system of highways or the streets or roads of any county, city, or town not within the state highway system, accompanied by a copy of the approval of the project, the roadway design and interconnections from the Board, as well as the county, city, or town for connection with a street or road not under state control;

9. A list of public utility facilities to be crossed and plans for such crossings or relocations of such facilities;

10. A certificate of the operator that the roadway will be designed and constructed to meet Department standards, and substantially in accordance with a proposed timetable which is agreeable to the Department, and that the operator will provide a design, review, and inspection agreement with the Department which shall provide that the Department shall authorize construction upon review and approval of the plans and specifications for the roadway and its interconnection with other roads, and that it shall inspect periodically the progress of the construction work to ensure its compliance with the Department standards; and

11. Completion and performance bonds in form and amount satisfactory to the Commission, which amounts shall be set after consultation with the Department.

1988, c. 649; 1990, c. 180; 1991, c. 272 .

§ 56-541. Eminent domain

The power of eminent domain shall not be exercised by the operator for the purpose of acquiring any lands or estates or interests therein, nor any other property used by the operator for the construction or enlargement of a roadway pursuant to this chapter.

1988, c. 649; 1991, c. 272 .

§ 56-542. Powers of the Commission

A. As used in this section:

"CPI" means the Consumer Price Index -- U.S. City Averages for All Urban Consumers, All Items (not seasonally adjusted) as reported by the U.S. Department of Labor, Bureau of Labor Statistics; however, if the CPI is modified such that the base year of the CPI changes, the CPI shall be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, and if the CPI is discontinued or revised, such other historical index or computation approved by the Commission shall be used for purposes of this section that would obtain substantially the same result as would have been obtained if the CPI had not been discontinued or revised.

"Real GDP" means the Annual Real Gross Domestic Product as reported by the U.S. Department of Commerce, Bureau of Economic Analysis.

B. The Commission shall have the power to regulate the operator under this title as a public service corporation. The Commission shall also have the power, and be charged with the duties of reviewing and approving or denying the application, of supervising and controlling the operator in the performance of its duties under this chapter and title, and of correcting any abuse in the performance of the operator's public duties.

C. Pursuant to § 56-36, the Commission shall require annually from the operator a verified report describing the nature of its contractual and other relationships with individuals or entities

contracting with the operator for the provision of significant financial, construction, or maintenance services. The Commission shall review the report and such other materials as it shall deem necessary for the purpose of determining improper or excessive costs, and shall exclude from the operator's costs any amounts which it finds are improper or excessive. Included in such review shall be consideration of contractual relationships between the operator and individuals or entities that are closely associated or affiliated with the operator to assure that the terms of such contractual relationships are no less favorable or unfavorable to the operator than what it could obtain in an arm's-length transaction.

D. The Commission also shall have the duty and authority to approve or revise the toll rates charged by the operator. Initial rates shall be approved if they appear reasonable to the user in relation to the benefit obtained, not likely to materially discourage use of the roadway and provide the operator no more than a reasonable rate of return as determined by the Commission. Thereafter, the Commission, upon application, complaint or its own initiative, and after investigation, may order substituted for any toll being charged by the operator, a toll which is set at a level which is reasonable to the user in relation to the benefit obtained and which will not materially discourage use of the roadway by the public and which will provide the operator no more than a reasonable return as determined by the Commission.

E. If a change in the ownership of the facility or change in control of an operator occurs, whether or not accompanied by the issuance of securities as defined in subsection A of § 56-57 and § 56-65.1, the Commission, in any subsequent proceeding to set the level of a toll charged by the operator, shall ensure that the price paid in connection with the change in ownership or control, and any costs and other factors attributable to or resulting from the change in ownership or control, if they would contribute to an increase in the level of the toll, are excluded from the Commission's determination of the operator's reasonable return, in order to ensure that a change in ownership or control does not increase the level of the toll above that level that would otherwise have been required under subsection D or subdivision I 3 if the change in ownership or control had not occurred. As used in this subsection, "control" has the same meaning as provided in § 56-88.1.

F. Pursuant to § 56-36, the Commission shall require an operator to provide copies of annual audited financial statements for the operator, together with a statement of the operator's ownership. The operator shall file such statement within four months from the end of the operator's fiscal year.

G. The proceeds and funding provided to the operator from any future bond indenture or similar credit agreement must be used for the purpose of refinancing existing debt, acquiring, designing, permitting, building, constructing, improving, equipping, modifying, maintaining, reconstructing, restoring, rehabilitating, or renewing the roadway property, and for the purpose of paying reasonable arm's-length fees, development costs, and expenses incurred by the operator or a related individual or entity in executing such financial transaction, unless otherwise authorized by the Commission.

H. The Commission may charge a reasonable annual fee to cover the costs of supervision and controlling the operator in the performance of its duties under this chapter and pursuant to this section.

I. Effective January 1, 2013, through January 1, 2020, and notwithstanding any other provision of law:

1. Upon application of and public notification by the operator, filed not more often than once within any 12-month period, the Commission shall approve to become effective within 45 days any request to increase tolls by a percentage that (i) is equal to the increase in the CPI, as defined in subsection A, from the date the Commission last approved a toll increase, plus one percent, (ii) is equal to the increase in the real GDP, as defined in subsection A, from the date the Commission last approved a toll increase, or (iii) 2.8 percent, whichever is greatest, which increase in the tolls approved by the Commission is hereafter referred to as the "annual percentage increase."

2. The operator additionally may request in an application made pursuant to subdivision I 1, and the Commission shall further approve, an addition to the toll increase to allow the operator to include, in its tolls, the amount by which its local property taxes paid in the immediately preceding calendar year increased by more than the annual percentage increase above such payments for the previous calendar year.

3. Any request by the operator for an increase in the toll rates by a greater percentage than as provided in subdivision I 1 shall be considered for approval by the Commission only upon presentation of an independent grade traffic and revenue study and a finding by the Commission that (a) toll rates subject to the preceding paragraph will not be sufficient to permit the operator to maintain the minimum coverage ratio set forth in the rate covenant provisions of its bond indenture or similar credit agreement, (b) such greater proposed tolls are reasonable to the user in relation to the benefit obtained and will not materially discourage use of the roadway by the public, and (c) such greater proposed tolls provide the operator no more than a reasonable rate of return as determined by the Commission; however, the Commission shall not approve an increase in the toll rates pursuant to this subdivision that exceeds the percentage increase necessary to permit the operator to maintain the minimum coverage ratio described in clause (a). Such request by an operator shall not be made as a result of a change in control of the operator or the project roadway. As used herein, a "change in control of the operator" means the sale or transfer of 25 percent or more of the assets of the operator or the acquisition or disposal of 25 percent or more of the outstanding shares of stock of the operator, if it is a corporation, or analogous interest if the operator is another form of entity.

1988, c. 649; 1991, c. 272; 2008, cc. 841, 844.

§ 56-543. Powers and duties of roadway operator

A. The operator shall have all power allowed by law generally to persons having the same form of organization as the operator, including, without limitation, the authority to operate the roadway

and charge tolls for the use thereof, and may pledge any revenue net of operational expenses realized from tolls charged for the use of the roadway in order to secure repayment of any obligations incurred for the construction, enlargement or operation of such roadway. Any financing of the acquisition, construction, enlargement, or operation of the roadway may be in such amounts and upon such terms and conditions as may be deemed necessary or appropriate by the operator to provide for the acquisition, construction, enlargement, and operation of the roadway, issuance costs, other financing obligations, and reasonable reserves. The Commonwealth shall not obligate its full faith and credit on any financing of the operator. Assumption of operation of the project shall not obligate the Commonwealth to pay any obligation of the operator whether secured or otherwise, from sources other than toll revenue. Subject to applicable permit requirements, the operator shall have the authority to cross any canal or navigable watercourse so long as the crossing does not unreasonably interfere with navigation and use of the waterway. In operating the roadway, the operator may:

1. Classify traffic according to reasonable categories for assessment of tolls; and

2. With the consent of the Department, make and enforce reasonable regulations, including regulations:

a. Which set maximum and minimum speeds that shall conform to Department and state practices;

b. Which exclude undesirable vehicles or cargoes or materials from the use of the roadway; or

c. Which establish commuter lanes for use during all or any part of a day and limit the use of such lanes to certain traffic.

3. The enumeration of powers in this subsection shall not limit the power of the operator to do anything it deems necessary and appropriate in the operation of the roadway, provided that the practice is reasonable and nondiscriminatory. The powers granted to the operator in this subsection shall not be deemed to limit the authority of the Commission to regulate the operator under this title.

B. The operator shall have the following duties:

1. It shall file and maintain at all times with the Commission an accurate schedule of rates charged to the public for use of all or any portion of the roadway and it shall also file and maintain a statement that such rates will apply uniformly to all users within any such reasonable classification as the operator may elect to implement. These rates shall be neither applied nor collected in a discriminatory fashion, and free vehicular passage shall be permitted to those persons referred to in subsection A of § 33.2-613.

2. It shall construct and maintain the roadway for anticipated use according to appropriate standards of the Department for public highways operated and maintained by the Department, and enlarge or expand the road when unsatisfied demand for use of the roadway makes it economically

feasible to do so. The operator shall agree with the Department for inspection of construction work by the Department at appropriate times during any construction or enlargement. In addition, it shall cooperate fully with the Department in establishing any interconnection with the roadway that the Department may make.

3. It shall contract with the Commonwealth for enforcement of the traffic and public safety laws by state authorities, and may similarly contract with appropriate local authorities for those portions of the roadway within the local jurisdiction.

1988, c. 649; 1991, c. 272; 1993, c. 732 .

§ 56-544. Board approval; inspection agreement with Department

A. The applicant for a certificate of authority to construct or enlarge a roadway pursuant to this chapter shall first secure the approval of the Board for the project, the project construction costs, the location and design of the roadway, and its connection with any road under the jurisdiction of the Board, at proper and convenient places, in order to provide for the convenience of the public. The Board shall approve or deny approval by the later to occur of (i) sixty days following receipt of a description of the proposed location and design of the roadway and its connection with all other roads, or (ii) forty-five days following the conduct of a hearing contemplated by subsection B of § 33.2-208, if such a hearing is held and provided that the notice requirements of that section are fulfilled by the Department within thirty days of receipt of the application, a project design, and a description of the project and the public need for the project. The Board shall approve the project and its interconnections with other roads if there is a public need for a road project of the type proposed and the project and its interconnections are compatible with the existing road network. It shall approve the project construction costs if they are reasonable. If interconnections with an interstate highway or other federal facility are contemplated, the Board's approval shall be conditioned upon ultimate approval of any interconnection if such federal approvals are required and have not been obtained by the time the Board acts. Approval of the roadway design shall not be withheld if it conforms materially with Department practices for toll facilities of similar size and with similar usage patterns. In making its determinations, the Board shall keep in mind the public interest, which may include, without limitation, such considerations as the relative speed of the construction of the project and the allocation of the technical, financial and human resources of the Department. The approval granted by the Board shall be conditioned upon subsequent compliance by the applicant with the agreement contemplated by subsection B of this section. If the roadway is to be built partially or completely along existing state highway right-of-way, the Board shall grant the applicant authority to use such right-of-way only after approval of this use of the right-of-way by the General Assembly.

B. If approval of the project, project design, and connections of the roadway is granted by the Board, the Department shall thereafter enter into a comprehensive agreement with the operator which provides, inter alia, that the Department shall review and approve plans and specifications for the roadway if they conform to state practices; that the Department will inspect and approve

construction of the roadway if it conforms to the plans and specifications or state construction and engineering standards; that the Department will, throughout the life of the roadway project, monitor the maintenance practices of the operator and take such actions as are appropriate to ensure the performance of maintenance obligations; and that the Department shall be reimbursed its direct project costs, by the operator, for the services performed by the Department. The agreement shall also provide, inter alia, that the operator will establish and fund accounts which shall ensure that funds are available to meet the obligations of the operator; including reasonable reserves for contingencies and maintenance replacement activities. The approval of plans and specifications, and construction may be undertaken in phases, but no construction may commence until approval of plans including that phase of construction. The services for which the Department shall be reimbursed include project development costs, such as those attendant to preparation of environmental impact statements, which are necessary for the construction of the roadway by a private operator but have been performed by the Department. The agreement may include a provision that the Department will perform services necessary for project development on behalf of the operator, and in such a case, the Department shall be fully reimbursed by the operator for its direct costs.

1988, c. 649; 1991, c. 272 .

§ 56-545. Insurance; sovereign immunity

Any operator who constructs, operates or enlarges a roadway pursuant to this chapter shall secure and maintain a policy or policies of public liability insurance in form and amount satisfactory to the Commission and sufficient to insure coverage of tort liability to the public and employees, and to enable the continued operation of the roadway. Proofs of coverage and copies of policies shall be filed with the Commission. Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth with respect to its participation or approval of all or any part of the roadway application or operation, including but not limited to interconnection of the roadway with the state highway system. Counties, cities and towns through which a roadway passes shall possess sovereign immunity with respect to roadway construction and operation.

1988, c. 649.

§ 56-546. Local approvals

A. Prior to the issuance of a certificate of authority by the Commission and contemporaneously with the filing of any application materials with the Commission, the applicant shall provide the local governing body of each jurisdiction through which any part of the roadway passes with the application information and materials required by § 56-540 and an overall description of the project and its benefits. The governing body may participate in procedures conducted by the Board or the Commission concerning the application.

B. When the operator wishes to occupy lands owned by any county, city, town, or any agency or instrumentality of the federal government, including the streets or alleys of a city or town, or the roads of any county, it shall first obtain a franchise allowing such occupancy or it may obtain the

necessary interests through grant or other appropriate conveyance to the operator for a period of time, in the case of a franchise, not to exceed the term of the certificate.

C. Where the applicant wishes to interconnect with the streets of any city or town, or the road system of any county, and the locality is willing to allow the interconnection, it shall submit appropriate plans for the connection to the governing body, which shall approve the connection if it determines that the connection meets all appropriate engineering requirements.

D. The operator and the county, city, or town may also agree on any supplemental or related matters in addition to the matters specified in § 15.2-2026, according to such terms and conditions as are reasonable, appropriate, and in the public interest, and any such county, city, or town is hereby enabled to enter into such an agreement.

E. Prior to commencement of construction, the operator shall survey and plat the right-of-way in accordance with local requirements.

1988, c. 649; 1990, c. 180 .

§ 56-547. Utility crossings

The applicant shall include in the application a list of public utility facilities and rights-of-way to be crossed or otherwise affected in the construction of the roadway and a plan and schedule for such crossings. The operator and each public utility whose works are to be crossed or affected shall each have the duty to cooperate fully with the other in planning and arranging of the manner of the crossing or relocation of the facilities. Any public service corporation possessing the powers of eminent domain is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the roadway or which must be relocated to the extent that such moving or relocation is made necessary by construction of the roadway, which shall be construed to include construction of temporary facilities for the purpose of providing service during the period of construction. Should the applicant or operator and the public utility whose facilities are to be crossed or relocated not be able to agree upon a plan for such crossing or any necessary relocation, either party may request the Commission to inquire into the need for the crossing or relocation and to decide whether such crossing or relocation should be compelled, and if so, the manner in which such crossing or relocation is to be accomplished and any damages due either party arising out of the crossing or relocation. The Commission may in its discretion employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne equally by the applicant and the public utility, unless the Commission determines that it would be unjust, in which case the cost shall be borne as the Commission decides. Railroads shall be included within the scope of the term "public utility" for purposes of this section.

1988, c. 649.

§ 56-548. Highway and roadway crossings

No crossing of a railway, highway, street, road or alley shall be at grade, but shall pass above or below the railway, highway, street, road, or alley, and such crossings are hereby permitted, subject to the provisions of this chapter.

1988, c. 649.

§ 56-549. Default

In the event of material and continuing default in the performance of the operator's construction or operation duties or failure of the operator to comply with the terms of its agreement with the Department, in either case, after notice thereof and an opportunity to cure, or in the event that construction has not begun within two years of the issuance of a certificate, the Commission, after a hearing in which the applicant or operator has notice and opportunity to participate, may revoke the certificate of authority for the roadway, declare a default in the construction or operation of the roadway, and make or cause to be made the appropriate claim or claims under any completion or performance bonds, or take such other action as it may deem appropriate under the circumstances. The Department may participate in or initiate such proceedings. In case of revocation of a certificate, the applicant or operator shall thereafter be without any authority to construct or operate the roadway, and the Department may take over construction and operation of the roadway, and may proceed thereafter to take any steps which are in the public interest, including completion of construction or additions to the roadway, closing the roadway, or any intermediate step. The Department shall receive the full proceeds of any payments due to claims against bonding companies or sureties for this purpose. In addition, in such event, the operator shall grant to the Department all of its right, title and interest in the assets of the operator. Nothing herein shall be construed to limit the Department's exercise of the power of eminent domain. In either case, the operator may obtain compensation from the Department for such assets, except that the Department shall first deduct from the value of such assets all of its costs incurred in connection with completion or fulfillment of the unperformed obligations of the operator including the payment of any obligations assumed by the Department, and any other costs associated with the events contemplated in this section. The Department shall take into account moneys received from the proceeds of any payment or completion bond in calculating the amount due the operator.

1988, c. 649; 1991, c. 272 .

§ 56-550. Police powers; violations of law

A. The roadways and highways constructed or operated under this chapter may be policed in whole or in part by officers of the Department of State Police, even though all or some portion of any such projects lie within the corporate limits of a municipality or other political subdivision, and just as if the roadway and highway were a part of the state highway system. The operator and the Department of State Police shall agree upon reasonable terms and conditions pursuant to which the activities contemplated in this section may take place. Such officers shall be under the exclusive control and direction of the Superintendent of State Police and shall be responsible for the preservation of public peace, prevention of crime, apprehension of criminals, protection of the rights

of persons and property, and enforcement of the laws of the Commonwealth, within the limits of any highway and roadway. All other police officers of the Commonwealth and of each county, city, town or other political subdivision of the Commonwealth through which any roadway, or portion thereof, extends shall have the same powers and jurisdiction within the limits of such roadways and highways as they have beyond such limits and shall have access to the highway and roadway at any time for the purpose of exercising such powers and jurisdiction. This authority does not extend to the private offices, buildings, garages and other improvements of the operator to any greater degree than the police power extends to any other private buildings and improvements.

B. The traffic and motor vehicle laws of the Commonwealth shall apply to persons and motor vehicles on the roadway or highway, as shall Chapter 8 (§ 33.2-800 et seq.) of Title 33.2, and the powers of arrest of police officers shall be the same as those applying to conduct on the state highway system. Punishment for offenses shall be as prescribed by law for conduct occurring on the state highway system.

1988, c. 649.

§ 56-551. Termination of certificate; dedication of assets

Within ninety days of the completion and closing of the original permanent financing, the operator shall provide full details of the financing, including the terms of all bonds, to the Commission; and shall certify the term of the original permanent financing and its termination date. The Commission may require that the operator provide copies of any relevant documents, and shall review the financing and determine the date of termination of the original permanent financing. After establishing this date, the Commission shall enter an order terminating the operator's authority pursuant to the certificate of authority on a date which shall be ten years from the end of the term of the original permanent financing. At the request of the operator or the Department, or on its own initiative, the Commission may revise its order to modify the date for termination of the certificate of authority in order to take into account any refinancing of the original permanent financing, where the refinancing or modification is in the public interest, or any refinancing for the purpose of expansion, or early termination of the original permanent financing. Upon the termination of the certificate of authority, the authority and duties of the operator under this chapter shall cease, and the highway assets and improvements of the operator shall be dedicated to the Commonwealth for highway purposes.

1988, c. 649; 1991, c. 272 .

§ 56-552. Improvement Fund

There shall be a fund established by the Commonwealth Transportation Board, from the toll revenues described in this section, for the purpose of funding transportation improvements which are related to or affected by the toll road. Toll rates shall be set in multiples of five cents; however, the Commission shall order that that percentage of each toll by which the toll established exceeds that necessary to provide the operator with an amount necessary to meet the operator's obligations under § 56-543 and earn a reasonable return shall be committed to the fund. In addition

the operator, the Board, and the local governments through which the road passes may jointly petition the Commission to establish an additional toll amount to be committed to this fund.

1988, c. 649.

Chapter 21 - HAZARDOUS LIQUID PIPELINE SAFETY ACT

§ 56-553. Title

This chapter may be cited as the "Hazardous Liquid Pipeline Safety Act of 1994."

1994, c. 512.

§ 56-554. Definitions

For the purposes of this chapter:

"Hazardous liquid" means "hazardous liquid" and "highly volatile liquid" as defined in 49 C.F.R. § 195.2 .

"Person" means an individual, corporation, partnership, association or other business entity or a trustee, receiver, assignee, or personal representative of any of these.

"Pipeline operator" means a person who owns and operates pipeline facilities as defined in 49 C.F.R. § 195.2 .

"Interstate pipeline" and "intrastate pipeline" shall have the same meanings as defined in 49 C.F.R. § 195.2 .

1994, c. 512.

§ 56-555. Commission to implement the federal Hazardous Liquid Pipeline Safety Act

A. The Commission is authorized to act for the United States Secretary of Transportation to implement the federal Hazardous Liquid Pipeline Safety Act, 49 U.S.C. § 60101 et seq., with respect to intrastate and interstate pipelines located within the Commonwealth to the extent authorized by certification or agreement with the Secretary under Section 205 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 60106). To carry out its responsibilities under this section, the Commission shall have the same powers as given the Secretary in Sections 210 and 211 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. §§ 60108, 60117 and 60120).

B. For the purposes of intrastate pipelines, any person failing or refusing to obey Commission orders relating to the adoption or enforcement of regulations for the design, construction, operation and maintenance of pipeline facilities and temporary or permanent injunctions issued by the Commission shall be fined such sums not exceeding the fines and penalties specified by § 208 (a) (1) of the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 60122 et seq.), as amended.

C. The Commission shall assess and collect from every hazardous liquid pipeline operator an inspection fee to be used by the Commission for administering the regulatory program authorized by this section. For purposes of interstate pipelines, such fees shall be computed based on the number of inspection man-days devoted to each pipeline operator to determine the operator's

compliance with any provision of, or order or agreement issued under, the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 60101 et seq.), and shall not exceed the costs of inspection and investigation under this section. The costs shall not include expenses reimbursed by the federal government. The number of planned inspections conducted on each interstate pipeline operator shall be reasonable under the circumstances and prioritized by risk to the public or to the environment.

D. The authority granted to the Commission under this section to conduct inspections of interstate pipeline operators and facilities in the Commonwealth shall not extend to any official, employee, or agent of any political subdivision in the Commonwealth. No political subdivision shall have the authority to seek reimbursement for the cost of monitoring the inspections conducted by the Commission under this section. Nothing in this subsection, however, shall be deemed to impair or limit the police powers of such political subdivisions otherwise provided by law.

E. The authority of the Commission to act as an agent for the United States Secretary of Transportation with respect to interstate hazardous liquid pipelines shall become effective the first day of July next after the date the Commission receives a formal delegation of authority from the Secretary.

1994, c. 512.

Chapter 22 - PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995 [Repealed]

§§ 56-556 through 56-575. Repealed

Repealed by Acts 2014, c. 805, cl. 11, effective October 1, 2014.

Chapter 22.1 - THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002

§ 56-575.1. Definitions

As used in this chapter, unless the context requires a different meaning:

"Affected jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located.

"Appropriating body" means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 56-575.9.

"Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

"Interim agreement" means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

"Lease payment" means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

"Material default" means any default by the private entity in the performance of its duties under subsection E of § 56-575.8 that jeopardizes adequate service to the public from a qualifying project.

"Operate" means to finance, maintain, improve, equip, modify, repair, or operate.

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity, or other business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

"Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any services designed to increase the productivity or efficiency of the responsible public entity through the use of technology or other means, (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; (ix) any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or (x) any solid waste management facility as defined in § 10.1-1400 that produces electric energy derived from solid waste.

"Responsible public entity" means a public entity that has the power to develop or operate the applicable qualifying project.

"Revenues" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service contract" means a contract entered into between a public entity and the private entity pursuant to § 56-575.5.

"Service payments" means payments to the private entity of a qualifying project pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"User fees" mean the rates, fees or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to § 56-575.9.

2002, c. 571; 2003, c. 1034; 2005, cc. 618, 865; 2007, cc. 649, 764; 2008, cc. 273, 731; 2009, cc. 754, 762.

§ 56-575.2. Declaration of public purpose

A. The General Assembly finds that:

1. There is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of education facilities, technology infrastructure and other public infrastructure and government facilities within the Commonwealth that serve a public need and purpose;

2. Such public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;

3. There are inadequate resources to develop new education facilities, technology infrastructure and other public infrastructure and government facilities for the benefit of citizens of the Commonwealth, and there is demonstrated evidence that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

4. Financial incentives exist under state and federal tax provisions that promote public entities to enter into partnerships with private entities to develop qualifying projects;

5. Authorizing private entities to develop or operate one or more qualifying projects may result in the availability of such projects to the public in a more timely or less costly fashion, thereby serving the public safety, benefit, and welfare.

B. An action under § 56-575.4 shall serve the public purpose of this chapter if such action facilitates the timely development or operation of qualifying projects.

C. It is the intent of this chapter, among other things, to encourage investment in the Commonwealth by private entities and facilitate the bond financing provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 or other similar financing mechanisms, private capital and other funding sources that support the development or operation of qualifying projects, to the end that financing for qualifying projects be expanded and accelerated to improve and add to the convenience of the public, and such that public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services that are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof.

2002, c. 571; 2003, c. 1034; 2005, c. 865.

§ 56-575.3. Prerequisite for operation of a qualifying project

A. Any private entity seeking authorization under this chapter to develop or operate a qualifying project shall first obtain approval of the responsible public entity under § 56-575.4. Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § 56-575.4 or the responsible public entity may request proposals or invite bids pursuant to subsection B of § 56-575.4.

B. Any facility, building, infrastructure or improvement included in a proposal as a part of a qualifying project shall be identified specifically or conceptually.

C. Upon receipt by the responsible public entity of a proposal submitted by a private entity initiating the approval process pursuant to subsection A of § 56-575.4, the responsible public entity shall determine whether to accept such proposal for consideration in accordance with § 56-575.16. If the responsible public entity determines not to accept for consideration the proposal submitted by the private entity pursuant to subsection A of § 56-575.4, it shall return the proposal, together with all fees and accompanying documentation, to the private entity.

D. The responsible public entity may reject any proposal initiated by a private entity pursuant to subsection A of § 56-575.4 at any time. If the responsible public entity rejects a proposal initiated by a private entity that purports to develop specific cost savings, the public entity shall specify the basis for the rejection.

2002, c. 571; 2003, cc. 292, 1034; 2005, c. 865; 2011, c. 308.

§ 56-575.3:1. Adoption of guidelines by responsible public entities

A. A responsible public entity shall, prior to requesting or considering a proposal for a qualifying project, adopt and make publicly available guidelines that are sufficient to enable the responsible public entity to comply with this chapter. Such guidelines shall be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible public entity.

B. For a responsible public entity that is an agency or institution of the Commonwealth, the guidelines shall include, but not be limited to:

1. Opportunities for competition through public notice and availability of representatives of the responsible public entity to meet with private entities considering a proposal;

2. Reasonable criteria for choosing among competing proposals;

3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement;

4. Authorization for accelerated selection and review and documentation timelines for proposals involving a qualifying project that the responsible public entity deems a priority;

5. Financial review and analysis procedures that shall include, at a minimum, a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project. These procedures shall also include requirements for the disclosure of such analysis to the appropriating body for review prior to execution of an interim or comprehensive agreement;

6. Consideration of the nonfinancial benefits of a proposed qualifying project;

7. A mechanism for the appropriating body to review a proposed interim or comprehensive agreement prior to execution, which shall be in compliance with applicable law and the provisions of subsection I of § 56-575.4 pertaining to the approval of qualifying projects;

8. Establishment of criteria for (i) the creation of and the responsibilities of a public-private partnership oversight committee with members representing the responsible public entity and the appropriating body or (ii) compliance with the requirements of Chapter 42 (§ 30-278 et seq.) of Title 30. Such criteria shall include the scope, costs, and duration of the qualifying project, as well as whether the project involves or impacts multiple public entities. The oversight committee, if formed, shall be an advisory committee to review the terms of any proposed interim or comprehensive agreement;

9. Analysis of the adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition pursuant to subsection G of § 56-575.4;

10. Establishment of criteria, key decision points, and approvals required to ensure that the responsible public entity considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement; and

11. The posting and publishing of public notice of a private entity's request for approval of a qualifying project, including (i) specific information and documentation to be released regarding the nature, timing, and scope of the qualifying project pursuant to subsection A of § 56-575.4; (ii) a reasonable time period as determined by the responsible public entity to encourage competition

and public-private partnerships in accordance with the goals of this chapter, such reasonable period not to be less than 45 days, during which time the responsible public entity shall receive competing proposals pursuant to subsection A of § 56-575.4; and (iii) a requirement for advertising the public notice in the Virginia Business Opportunities publication and posting a notice on the Commonwealth's electronic procurement website shall be included.

C. For a responsible public entity that is not an agency or institution of the Commonwealth the guidelines may include the provisions set forth in subsection B in the discretion of such public entity. However, the guidelines of a responsible public entity that is not an agency or institution of the Commonwealth shall include:

1. A requirement that it engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the responsible public entity, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying project unless the governing body of the responsible public entity determines that such analysis of a request by a private entity for approval of a qualifying project shall be performed by employees of the responsible public entity; and

2. A mechanism for the appropriating body to review a proposed interim or comprehensive agreement prior to execution.

2005, c. 865; 2007, c. 764.

§ 56-575.4. Approval of qualifying projects by the responsible public entity

A. A private entity may request approval of a qualifying project by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the qualifying project;

2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity;

3. A statement setting forth the method by which the private entity proposes to secure necessary property interests required for the qualifying project;

4. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction;

5. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings;

7. A statement setting forth the private entity's general plans for financing the qualifying project including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity;

8. The names and addresses of the persons who may be contacted for further information concerning the request;

9. User fees, lease payments, and other service payments over the term of the interim or comprehensive agreement pursuant to § 56-575.9 or 56-575.9:1 and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time; and

10. Such additional material and information as the responsible public entity may reasonably request.

B. The responsible public entity may request proposals or invite bids from private entities for the development or operation of qualifying projects.

C. The responsible public entity may grant approval of the development or operation of the education facility, technology infrastructure or other public infrastructure or government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if the responsible public entity determines that the project serves the public purpose of this chapter. The responsible public entity may determine that the development or operation of the qualifying project as a qualifying project serves such public purpose if:

1. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;

2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and

3. The private entity's plans will result in the timely development or operation of the qualifying project.

In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing and evaluating the request, including without limitation, reasonable attorney's fees and fees for financial, technical, and other necessary advisors or consultants.

E. The approval of the responsible public entity shall be subject to the private entity's entering into an interim or comprehensive agreement pursuant to § 56-575.9 with the responsible public entity.

F. In connection with its approval of the qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend such date from time to time.

G. The responsible public entity shall take appropriate action to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 11 of § 2.2-3705.6.

H. Nothing in this chapter or in an interim or comprehensive agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the Commonwealth.

I. Prior to entering into the negotiation of an interim or comprehensive agreement, each responsible public entity that is an agency or institution of the Commonwealth shall submit copies of detailed proposals to the Public-Private Partnership Advisory Commission as provided by Chapter 42 (§ 30-278 et seq.) of Title 30.

J. Any proposed comprehensive agreement for a qualifying project where the responsible public entity is an agency or institution of the Commonwealth that (i) creates state tax-supported debt, (ii) requires a level of appropriation significantly beyond the appropriation received by the responsible public entity in the most recent appropriation act, or (iii) significantly alters the Commonwealth's discretion to change the level of services or the funding for such services over time, shall be reviewed by the appropriating body prior to execution.

2002, c. 571; 2003, c. 1034; 2004, c. 690; 2005, c. 865; 2007, c. 764.

§ 56-575.5. Service contracts

In addition to any authority otherwise conferred by law, any public entity may contract with a private entity for the delivery of services to be provided as part of a qualifying project in exchange for such service payments and other consideration as such public entity may deem appropriate.

2002, c. 571; 2005, c. 865.

§ 56-575.6. Affected local jurisdictions

A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § 56-575.4 shall notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction.

B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project shall, within sixty days after receiving such notice, submit any comments it may have in writing on the proposed qualifying project to the responsible public entity and indicate whether the facility is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. Such com-

ments shall be given consideration by the responsible public entity prior to entering a comprehensive agreement pursuant to § 56-575.9 with a private entity.

2002, c. 571.

§ 56-575.7. Dedication of public property

Any public entity may dedicate any property interest, including land, improvements, and tangible personal property, that it has for public use in a qualifying project if it finds that so doing will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the public entity or reducing the delivery time of a qualifying project. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law governing such conveyances, to the private entity subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the private entity to develop or operate the qualifying project. The property interests that the public entity may convey to the private entity in connection with a dedication under this section may include licenses, franchises, easements, or any other right or interest the public entity deems appropriate.

2002, c. 571; 2005, c. 865.

§ 56-575.8. Powers and duties of the private entity

A. The private entity shall have all power allowed by law generally to a private entity having the same form of organization as the private entity and shall have the power to develop or operate the qualifying project and collect lease payments, impose user fees or enter into service contracts in connection with the use thereof.

B. The private entity may own, lease or acquire any other right to use or operate the qualifying project.

C. Any financing of the qualifying project may be in such amounts and upon such terms and conditions as may be determined by the private entity. Without limiting the generality of the foregoing, the private entity may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying project.

D. In operating the qualifying project, the private entity may:

1. Make classifications according to reasonable categories for assessment of user fees; and

2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to similar facilities.

E. The private entity shall:

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity, all in accordance with the provisions of the interim or comprehensive agreement pursuant to § 56-575.9 or 56-575.9:1;

2. Keep the qualifying project open for use by the members of the public at all times, or as appropriate based upon the use of the facility, after its initial opening upon payment of the applicable user fees, lease payments, or service payments; provided that the qualifying project may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance activities. In the event that a qualifying project is technology infrastructure, access may be limited as determined by the conditions of the interim or comprehensive agreement;

3. Maintain, or provide by contract for the maintenance or upgrade of the qualifying project, if required by the interim or comprehensive agreement;

4. Cooperate with the responsible public entity in making best efforts to establish any interconnection with the qualifying project requested by the responsible public entity; and

5. Comply with the provisions of the interim or comprehensive agreement and any lease or service contract.

F. Nothing shall prohibit an private entity of a qualifying project from providing additional services for the qualifying project to public or private entities other than the responsible public entity so long as the provision of additional service does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the interim or comprehensive agreement as provided for in § 56-575.9 or 56-575.9:1.

2002, c. 571; 2003, c. 1034; 2005, c. 865.

§ 56-575.9. Comprehensive agreement

A. Prior to developing or operating the qualifying project, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:

1. Delivery of maintenance, performance and payment bonds, letters of credit in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible public entity and in compliance with § 2.2-4337 for those components of the qualifying project that involve construction;

2. Review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standards acceptable to the responsible public entity. This shall not be construed as requiring the private entity to complete design of a qualifying project prior to the execution of a comprehensive agreement;

3. Inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement;

4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage) or self-insurance, each in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;

5. Monitoring of the practices of the private entity by the responsible public entity to ensure that the qualifying project is properly maintained;

6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;

7. Filing of appropriate financial statements on a periodic basis; and

8. Policies and procedures governing the rights and responsibilities of the responsible public entity and the private entity in the event the comprehensive agreement is terminated or there is a material default by the private entity. Such policies and guidelines shall include conditions governing assumption of the duties and responsibilities of the private entity by the responsible public entity and the transfer or purchase of property or other interests of the private entity by the responsible public entity.

B. The comprehensive agreement shall provide for such user fees, lease payments, or service payments as may be established from time to time by agreement of the parties. A copy of any service contract shall be filed with the responsible public entity. In negotiating user fees under this section, the parties shall establish payments or fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees, lease payments, or service payments provided for comply with this chapter. User fees or lease payments established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the private entity from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the private entity under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the private entity and the persons specified therein as

providing financing for the qualifying project. The comprehensive agreement may contain such other lawful terms and conditions to which the private entity and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the private entity to develop or operate one or more qualifying projects. The comprehensive agreement may also contain provisions where the authority and duties of the private entity under this chapter shall cease, and the qualifying project is dedicated to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

E. Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.

F. When a responsible public entity that is not an agency or authority of the Commonwealth enters into a comprehensive agreement pursuant to this chapter, it shall within 30 days thereafter submit a copy of the comprehensive agreement to the Auditor of Public Accounts.

G. The comprehensive agreement may provide for the development or operation of phases or segments of the qualifying project.

2002, c. 571; 2003, c. 1034; 2004, c. 986; 2005, c. 865.

§ 56-575.9:1. Interim agreement

Prior to or in connection with the negotiation of the comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. Such interim agreement may (i) permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying project, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities; (ii) establish the process and timing of the negotiation of the comprehensive agreement; and (iii) contain any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate.

2005, c. 865.

§ 56-575.10. Federal, state and local assistance

A. Any financing of a qualifying facility may be in such amounts and upon such terms and conditions as may be determined by the parties to the interim or comprehensive agreement. Without limiting the generality of the terms and conditions of the financing, the private entity and the responsible public entity may propose to utilize any and all funding resources that may be available to them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations, enter into leases, access any designated trust funds, borrow or accept grants from any state infrastructure bank, and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying facility.

B. The responsible public entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any contracts required to receive such assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality thereof.

2002, c. 571; 2005, c. 865.

§ 56-575.11. Material default; remedies

A. In the event of a material default by the private entity, the responsible public entity may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title and interest in such qualifying project, subject to any liens on revenues previously granted by the private entity to any person providing financing thereof.

B. Any responsible public entity having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has provided financing for the qualifying project, and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

C. The responsible public entity may terminate, with cause, the interim or comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity.

D. The responsible public entity may make or cause to be made any appropriate claims under the maintenance, performance, or payment bonds; or lines of credit required by subsection A 1 of § 56-575.9.

E. In the event the responsible public entity elects to take over a qualifying project pursuant to subsection A, the responsible public entity may develop or operate the qualifying project, impose user fees, impose and collect lease payments for the use thereof and comply with any service contracts as if it were the private entity. Any revenues that are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the qualifying project, including compensation to the responsible public entity for its services in operating and maintaining the qualifying project. The right to receive such payment, if any, shall be considered just compensation for the qualifying project. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of

the private entity by the election to take over the qualifying project. Assumption of operation of the qualifying project shall not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues.

2002, c. 571; 2003, c. 1034; 2005, c. 865.

§ 56-575.12. Condemnation

At the request of the private entity, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the private entity.

2002, c. 571; 2005, c. 865.

§ 56-575.13. Utility crossing

The private entity and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other entity in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying project or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which shall be construed to include construction of, renovation to, or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the private entity. Should the private entity and any such public service company, public utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the private entity. Such determination shall be made by the Commission within ninety days of notification by the private entity that the qualifying project will cross utilities subject to the Commission's jurisdiction.

2002, c. 571; 2005, c. 865.

§ 56-575.14. Police powers; violations of law

All police officers of the Commonwealth and of each affected local jurisdiction shall have the same powers and jurisdiction within the limits of such qualifying project as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying project at any time for the purpose of exercising such powers and jurisdiction.

2002, c. 571.

§ 56-575.15. Sovereign immunity

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying project or its operation, including but not limited to interconnection of the qualifying project with any other infrastructure or project. Counties, cities and towns in which a qualifying project is located shall possess sovereign immunity with respect to its design, construction, and operation.

2002, c. 571.

§ 56-575.16. Procurement

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and any interpretations, regulations, or guidelines of the Division of Engineering and Buildings of the Department of General Services or the Virginia Information Technologies Agency, including the Capital Outlay Manual and those interpretations, regulations or guidelines developed pursuant to §§ 2.2-1131, 2.2-1132, 2.2-1133, 2.2-1149, and 2.2-1502, except those developed by the Division or the Virginia Information Technologies Agency in accordance with this chapter when the Commonwealth is the responsible public entity, shall not apply to this chapter. However, a responsible public entity may enter into a comprehensive agreement only in accordance with guidelines adopted by it as follows:

1. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with procurement through competitive sealed bidding as set forth in § 2.2-4302.1 and subsection B of § 2.2-4310.

2. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as set forth in § 2.2-4302.2 and subsection B of § 2.2-4310. Such responsible public entity shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and government comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; and (ix) other criteria that the responsible public entity deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted

by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity, or priority of the project; (ii) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the responsible Governor's Secretary, or the Governor, shall be required before the responsible public entity may enter into a comprehensive agreement pursuant to this subdivision.

3. Nothing in this chapter shall authorize or require that a responsible public entity obtain professional services through any process except in accordance with guidelines adopted by it that are consistent with the procurement of "professional services" through competitive negotiation as set forth in § 2.2-4302.2 and subsection B of § 2.2-4310.

4. A responsible public entity shall not proceed to consider any request by a private entity for approval of a qualifying project until the responsible public entity has adopted and made publicly available guidelines pursuant to § 56-575.3:1 that are sufficient to enable the responsible public entity to comply with this chapter.

5. A responsible public entity that is a school board or a county, city, or town may enter into an interim or comprehensive agreement under this chapter only with the approval of the local governing body.

2002, c. 571; 2003, cc. 292, 968, 1034; 2004, c. 986; 2005, c. 865; 2006, c. 936; 2007, c. 764; 2013, c. 583.

§ 56-575.17. Posting of conceptual proposals; public comment; public access to procurement records

A. Conceptual proposals submitted in accordance with subsection A or B of § 56-575.4 to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, authorities, departments, institutions, and other units of state government, posting shall be on the Department of General Services' centralized electronic procurement website; and

2. For responsible public entities that are local bodies, posting shall be on the responsible public entity's website or on the Department of General Services' central electronic procurement website. In addition, such public bodies may publish in a newspaper of general circulation in the area in which the contract is to be performed a summary of the proposals and the location where copies of the proposals are available for public inspection. Such local public bodies are encouraged to utilize

the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. The responsible public entity shall hold a public hearing on the proposals during the proposal review process, but not later than 30 days prior to entering into an interim or comprehensive agreement.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, a responsible public entity shall make available the proposed agreement in a manner provided in subsection A.

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, upon request. For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

G. The provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement.

2006, c. 936; 2008, c. 667; 2009, c. 762; 2011, c. 332.

§ 56-575.17:1. Contributions and gifts; prohibition during approval process

A. No private entity that has submitted a bid or proposal to a public entity that is an executive branch agency directly responsible to the Governor and is seeking to develop or operate a qualifying project pursuant to this chapter, and no individual who is an officer or director of such a private entity, shall knowingly provide a contribution, gift, or other item with a value greater than $50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the

Governor for an executive branch agency with jurisdiction over the matters at issue, following the submission of a proposal under this chapter until the execution of a comprehensive agreement thereunder. The provisions of this section shall apply only for any proposal or an interim or comprehensive agreement where the stated or expected value of the contract is $5 million or more.

B. Any person who knowingly violates this section shall be subject to a civil penalty of $500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

2010, c. 732; 2011, c. 624.

§ 56-575.18. Auditor of Public Accounts

The Auditor of Public Accounts shall periodically review interim and comprehensive agreements entered into pursuant to this chapter to ensure compliance with the provisions of this chapter. Copies of the agreements and supporting documents must be electronically filed with the Auditor of Public Accounts. Electronic agreements shall be made available in the online database maintained pursuant to § 30-133.

2007, c. 764; 2009, c. 762.

Chapter 23 - VIRGINIA ELECTRIC UTILITY REGULATION ACT

§ 56-576. Definitions

As used in this chapter:

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

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

"Combined heat and power" means a method of using waste heat from electrical generation to offset traditional processes, space heating, air conditioning, or refrigeration.

"Commission" means the State Corporation Commission.

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

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

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

"Curtailment" means inducing retail customers to reduce load during times of peak demand so as to ease the burden on the electrical grid.

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

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

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

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

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

"Energy efficiency program" means a program that reduces the total amount of electricity that is required for the same process or activity implemented after the expiration of capped rates. Energy efficiency programs include equipment, physical, or program change designed to produce measured and verified reductions in the amount of electricity required to perform the same function and produce the same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs that result in improvements in lighting design, heating, ventilation, and air conditioning systems, appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use or losses of electricity and otherwise improve internal operating efficiency in generation, transmission, and distribution systems; and (iii) customer engagement programs that result in measurable and verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs include demand response, combined heat and power and waste heat recovery, curtailment, or other programs that are designed to reduce electricity consumption so long as they reduce the total amount of electricity that is required for the same process or activity. Utilities shall be authorized to install and operate such advanced

metering technology and equipment on a customer's premises; however, nothing in this chapter establishes a requirement that an energy efficiency program be implemented on a customer's premises and be connected to a customer's wiring on the customer's side of the inter-connection without the customer's expressed consent.

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

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

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

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

"In the public interest," for purposes of assessing energy efficiency programs, describes an energy efficiency program if, among other factors, the net present value of the benefits exceeds the net present value of the costs as determined by the Commission upon consideration of the following four tests: (i) the Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator Test); (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall include an analysis of all four tests, and a program or portfolio of programs shall not be rejected based solely on the results of a single test. In addition, an energy efficiency program may be deemed to be "in the public interest" if the program provides measurable and verifiable energy savings to low-income customers or elderly customers.

"Measured and verified" means a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and peak demand savings. This may include the protocol established by the United States Department of Energy, Office of Federal Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects, measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

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

"New underground facilities" means facilities to provide underground distribution service. "New underground facilities" includes underground cables with voltages of 69 kilovolts or less, pad-

mounted devices, connections at customer meters, and transition terminations from existing overhead distribution sources.

"Peak-shaving" means measures aimed solely at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

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

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power. Renewable energy shall also include the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass.

"Renewable thermal energy" means the thermal energy output from (i) a renewable-fueled combined heat and power generation facility that is (a) constructed, or renovated and improved, after January 1, 2012, (b) located in the Commonwealth, and (c) utilized in industrial processes other than the combined heat and power generation facility or (ii) a solar energy system, certified to the OG-100 standard of the Solar Ratings and Certification Corporation or an equivalent certification body, that (a) is constructed, or renovated and improved, after January 1, 2013, (b) is located in the Commonwealth, and (c) heats water or air for residential, commercial, institutional, or industrial purposes.

"Renewable thermal energy equivalent" means the electrical equivalent in megawatt hours of renewable thermal energy calculated by dividing (i) the heat content, measured in British thermal units (BTUs), of the renewable thermal energy at the point of transfer to a residential, commercial, institutional, or industrial process by (ii) the standard conversion factor of 3.413 million BTUs per megawatt hour.

"Renovated and improved facility" means a facility the components of which have been upgraded to enhance its operating efficiency.

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

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

"Revenue reductions related to energy efficiency programs" means reductions in the collection of total non-fuel revenues, previously authorized by the Commission to be recovered from customers by a utility, that occur due to measured and verified decreased consumption of electricity caused by energy efficiency programs approved by the Commission and implemented by the utility, less

the amount by which such non-fuel reductions in total revenues have been mitigated through other program-related factors, including reductions in variable operating expenses.

"Solar energy system" means a system of components that produces heat or electricity, or both, from sunlight.

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

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

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

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

1999, c. 411; 2000, c. 991; 2001, c. 421; 2007, cc. 888, 933; 2008, cc. 272, 883; 2009, cc. 748, 824; 2012, cc. 46, 200, 210, 821; 2013, c. 494; 2014, cc. 212, 548.

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

A. Retail competition for the purchase and sale of electric energy shall be subject to the following provisions:

1. 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. The generation of electric energy shall be subject to regulation as specified in this chapter.

3. From January 1, 2004, until the expiration or termination of capped rates, 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. After the expiration or termination of capped rates, and subject to the provisions of subdivisions 4 and 5, only individual retail customers of electric energy within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded five megawatts but did not exceed one percent of the customer's incumbent electric utility's peak load during the most recent calendar year unless such customer had noncoincident peak demand in excess of 90 megawatts in calendar year 2006 or any year thereafter, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric

energy within the Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving the exclusive service territory in which such a customer is located, subject to the following conditions:

a. If such customer does not purchase electric energy from licensed suppliers after that date, such customer shall purchase electric energy from its incumbent electric utility.

b. Except as provided in subdivision 4, the demands of individual retail customers may not be aggregated or combined for the purpose of meeting the demand limitations of this provision, any other provision of this chapter to the contrary notwithstanding. For the purposes of this section, each noncontiguous site will nevertheless constitute an individual retail customer even though one or more such sites may be under common ownership of a single person.

c. If such customer does purchase electric energy from licensed suppliers after the expiration or termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the incumbent electric utility without giving five years' advance written notice of such intention to such utility, except where such customer demonstrates to the Commission, after notice and opportunity for hearing, through clear and convincing evidence that its supplier has failed to perform, or has anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of the customer, and that such customer is unable to obtain service at reasonable rates from an alternative supplier. If, as a result of such proceeding, the Commission finds it in the public interest to grant an exemption from the five-year notice requirement, such customer may thereafter purchase electric energy at the costs of such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the remainder of the five-year notice period, after which point the customer may purchase electric energy from the utility under rates, terms and conditions determined pursuant to § 56-585.1. However, such customer shall be allowed to individually purchase electric energy from the utility under rates, terms, and conditions determined pursuant to § 56-585.1 if, upon application by such customer, the Commission finds that neither such customer's incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility. Any customer that returns to purchase electric energy from its incumbent electric utility, before or after expiration of the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the Commission pursuant to subdivision C 1.

d. The costs of serving a customer that has received an exemption from the five-year notice requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as

determined pursuant to the provisions of subdivision A 2 of § 56-585.1. The methodology established by the Commission for determining such costs shall ensure that neither utilities nor other retail customers are adversely affected in a manner contrary to the public interest.

4. After the expiration or termination of capped rates, two or more individual nonresidential retail customers of electric energy within the Commonwealth, whose individual demand during the most recent calendar year did not exceed five megawatts, may petition the Commission for permission to aggregate or combine their demands, for the purpose of meeting the demand limitations of subdivision 3, so as to become qualified to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth under the conditions specified in subdivision 3. The Commission may, after notice and opportunity for hearing, approve such petition if it finds that:

a. Neither such customers' incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility; and

b. Approval of such petition is consistent with the public interest.

If such petition is approved, all customers whose load has been aggregated or combined shall thereafter be subject in all respects to the provisions of subdivision 3 and shall be treated as a single, individual customer for the purposes of said subdivision. In addition, the Commission shall impose reasonable periodic monitoring and reporting obligations on such customers to demonstrate that they continue, as a group, to meet the demand limitations of subdivision 3. If the Commission finds, after notice and opportunity for hearing, that such group of customers no longer meets the above demand limitations, the Commission may revoke its previous approval of the petition, or take such other actions as may be consistent with the public interest.

5. After the expiration or termination of capped rates, individual retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted:

a. To purchase electric energy provided 100 percent from renewable energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, other than any incumbent electric utility that is not the incumbent electric utility serving the exclusive service territory in which such a customer is located, if the incumbent electric utility serving the exclusive service territory does not offer an approved tariff for electric energy provided 100 percent from renewable energy; and

b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in effect on the date there is filed with the Commission a tariff for the incumbent electric utility

that serves the exclusive service territory in which the customer is located to offer electric energy provided 100 percent from renewable energy, for the duration of such agreement.

6. A tariff for one or more classes of residential customers filed with the Commission for approval by a cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided 100 percent from renewable energy if it provides undifferentiated electric energy and the cooperative retires a quantity of renewable energy certificates equal to 100 percent of the electric energy provided pursuant to such tariff. A tariff for one or more classes of nonresidential customers filed with the Commission for approval by a cooperative on or after July 1, 2012, shall be deemed to offer a tariff for electric energy provided 100 percent from renewable energy if it provides undifferentiated electric energy and the cooperative retires a quantity of renewable energy certificates equal to 100 percent of the electric energy provided pursuant to such tariff. For purposes of this section, "renewable energy certificate" means, with respect to cooperatives, a tradable commodity or instrument issued by a regional transmission entity or affiliate or successor thereof in the United States that validates the generation of electricity from renewable energy sources or that is certified under a generally recognized renewable energy certificate standard. One renewable energy certificate equals 1,000 kWh or one MWh of electricity generated from renewable energy. A cooperative offering electric energy provided 100 percent from renewable energy pursuant to this subdivision that involves the retirement of renewable energy certificates shall disclose to its retail customers who express an interest in purchasing energy pursuant to such tariff (i) that the renewable energy is comprised of the retirement of renewable energy certificates, (ii) the identity of the entity providing the renewable energy certificates, and (iii) the sources of renewable energy being offered.

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

C.1. 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.

2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the management and control of an incumbent electric utility's transmission assets to a regional transmission entity after approval of such transfer by the Commission under § 56-579, retail customers of such utility (a) purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such minimum stay obligations by agreeing to purchase electric energy at the market-based costs of such utility or default providers after a period of obtaining electric energy from another supplier. Such costs shall include (i) the actual expenses of procuring such electric

energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology of ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for hearing and after review of any plan filed by such utility to procure electric energy to serve such customers. The methodology established by the Commission for determining such costs shall be consistent with the goals of (a) promoting the development of effective competition and economic development within the Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585, however, any such customers exempted from any applicable minimum stay periods as provided in subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent electric utilities, or from any distributor required to provide default service under subsection B of § 56-585, at the capped rates established under § 56-582, unless such customers agree to satisfy any minimum stay period then applicable while obtaining retail electric energy at capped rates.

4. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this subsection, which rules and regulations shall include provisions specifying the commencement date of such minimum stay exemption program.

1999, c. 411; 2001, c. 748; 2003, cc. 795, 990; 2004, c. 827; 2007, cc. 888, 933; 2010, cc. 326, 397.

§ 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.

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.

1999, c. 411; 2007, cc. 888, 933.

§ 56-579. Regional transmission entities

A. As set forth in § 56-577, each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which hereafter may be referred to as "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 prior to July 1, 2004, and without obtaining, following notice and hearing, the prior approval of the Commission, as hereinafter provided. However, each incumbent electric utility shall file an application for approval pursuant to this section by July 1, 2003, and shall transfer management and control of its transmission assets to a regional transmission entity by January 1, 2005, subject to Commission approval as provided in this section.

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 that 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 that consumers' needs for economic and reliable transmission are met and (ii) meeting the transmission needs of electric generation suppliers both within and without this Commonwealth, including those that do not own, operate, control or have an entitlement to transmission capacity.

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 Federal Energy Regulatory Commission 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; or

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

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

F. Any request to the Commission for approval of such transfer of ownership or control of or responsibility for transmission facilities shall include a study of the comparative costs and benefits thereof, which study shall analyze the economic effects of the transfer on consumers, including the effects of transmission congestion costs. The Commission may approve such a transfer if it finds, after notice and hearing, that the transfer satisfies the conditions contained in this section.

G. The Commission shall report annually to the Commission on Electric Utility Regulation its assessment of the practices and policies of the RTE. Such report shall set forth actions taken by the Commission regarding requests for the approval of any transfer of ownership or control of transmission facilities to an RTE, including a description of the economic effects of such proposed transfers on consumers.

1999, c. 411; 2001, c. 576; 2003, cc. 885, 990; 2007, cc. 888, 933; 2008, c. 883.

§ 56-580. Transmission and distribution of electric energy

A. Subject to the provisions of § 56-585.1, the Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

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

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution, or transmission services, to the extent necessary to prevent impairment of competition. Nothing in this chapter shall prevent an incumbent electric utility from offering metering options to its customers.

D. The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest. In review of a 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 on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1, unless exempt as a small renewable energy project for which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated

as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. The Commission shall complete any proceeding under this section, or under any provision of the Utility Facilities Act (§ 56-265.1 et seq.), involving an application for a certificate, permit, or approval required for the construction or operation by a public utility of a small renewable energy project as defined in § 10.1-1197.5, within nine months following the utility's submission of a complete application therefore. Small renewable energy projects as defined in § 10.1-1197.5 are in the public interest and in determining whether to approve such project, the Commission shall liberally construe the provisions of this title.

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. Subject to the provisions of § 56-585.1, the Commission shall continue to exercise its 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, or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any such electric utility unless (i) that municipality or that authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 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 eligible to purchase electric energy from any supplier in accordance with § 56-577 if that retail customer is outside the geographic area that was served by such municipality as of July 1, 1999, except (a) 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 or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 pursuant to the terms of a franchise agreement between the municipality and the incumbent public utility, or (b) where the geographic area served by an electric utility owned or operated by a municipality is changed pursuant to mutual agreement between the municipality and the affected incumbent public utility in accordance with § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 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.

G. The applicability of all provisions of this chapter except § 56-594 to any investor-owned incumbent electric utility supplying electric service to retail customers on January 1, 2003, whose service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any other service territory in any jurisdiction to customers who have the right to receive retail electric energy from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates established pursuant to § 56-582 for the duration of the capped rate period established thereunder, and (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs pursuant to Chapter 10 (§ 56-232 et seq.) of this title.

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

1999, c. 411; 2000, c. 991; 2001, cc. 738, 748, 755; 2002, c. 483; 2003, c. 719; 2004, cc. 262, 827; 2006, cc. 811, 819, 929, 941; 2007, cc. 877, 888, 933; 2009, cc. 808, 854.

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

A. After the expiration or termination of capped rates except as provided in § 56-585.1, the Commission shall regulate the rates of investor-owned incumbent electric utilities for the transmission of electric energy, to the extent not prohibited by federal law, and for the generation of electric energy and the distribution of electric energy to retail customers pursuant to § 56-585.1.

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.

1999, c. 411; 2000, c. 991; 2007, cc. 888, 933.

§ 56-581.1. Repealed

Repealed by Acts 2007, cc. 888 and 933, cl. 2.

§ 56-582. Rate caps

A. The Commission shall establish capped rates, effective January 1, 2001, 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 January 1, 2002. 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 and purchased power costs pursuant to § 56-249.6, and, if applicable, in accordance with the terms of any Commission order approving the divestiture of generation assets pursuant to § 56-590, (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, (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 § 56-231.33, and (vi) with respect to incumbent electric utilities that were not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, the Commission shall adjust such utilities' capped rates, not more

than once in any 12-month period, for the timely recovery of their incremental costs for transmission or distribution system reliability and compliance with state or federal environmental laws or regulations to the extent such costs are prudently incurred on and after July 1, 2004. Any adjustments pursuant to § 56-249.6 and clause (i) of this subsection by an incumbent electric utility that transferred all of its generation assets to an affiliate with the approval of the Commission pursuant to § 56-590 prior to January 1, 2002, shall be effective only on and after July 1, 2007. 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 its capped rates, as established and adjusted from time to time pursuant to subsections A and B, are continued after January 1, 2004, an incumbent electric utility that 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, during the period January 1, 2004, through June 30, 2007, for approval of a one-time change in its rates, and if the capped rates are continued after July 1, 2007, such incumbent electric utility may at any time after July 1, 2007, petition the Commission for approval of a one-time change in its rates. Any change in rates pursuant to this subsection by an incumbent electric utility that divested its generation assets with approval of the Commission pursuant to § 56-590 prior to January 1, 2002, shall be in accordance with the terms of any Commission order approving such divestiture. Any petition for changes to capped rates filed pursuant to this subsection shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title.

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 former § 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. The capped rates established pursuant to this section shall expire on December 31, 2008, unless sooner terminated by the Commission pursuant to the provisions of subsection C; however, rates after the expiration or termination of capped rates shall equal capped rates until such rates are changed pursuant to other provisions of this title.

1999, c. 411; 2000, cc. 942, 991; 2001, c. 748; 2004, c. 827; 2007, cc. 888, 933; 2008, c. 883.

§ 56-583. Repealed

Repealed by Acts 2007, cc. 888 and 933, cl. 2.

§ 56-584. Stranded costs

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

1999, c. 411; 2007, cc. 888, 933.

§ 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 during the 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. Availability of default service shall expire upon the expiration or termination of capped rates.

B. A distributor shall have the obligation and right to be the supplier of default services in its certificated service territory, and shall do so, in a safe and reliable manner, at rates determined pursuant to subsection C; however, the Commission may not require a distributor, or affiliate thereof, to provide any such services outside the territory in which such distributor provides service.

C. Until the expiration or termination of capped rates, the rates for default service shall equal the capped rates established pursuant to subdivision A 2 of § 56-582.

D. 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. 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.

1999, c. 411; 2000, c. 991; 2001, c. 748; 2003, c. 885; 2004, c. 827; 2007, cc. 888, 933.

§ 56-585.1. Generation, distribution, and transmission rates after capped rates terminate or expire

A. During the first six months of 2009, the Commission shall, after notice and opportunity for hearing, initiate proceedings to review the rates, terms and conditions for the provision of generation, distribution and transmission services of each investor-owned incumbent electric utility. Such proceedings shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.), except as modified herein. In such proceedings the Commission shall determine fair rates of return on common equity applicable to the generation and distribution services of the utility. In so doing, the Commission may use any methodology to determine such return it finds consistent with the public interest, but such return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility, nor shall the Commission set such return more than 300 basis points higher than such average. The peer group of the utility shall be determined in the manner prescribed in subdivision 2 b. The Commission may increase or decrease such combined rate of return by up to 100 basis points based on the generating plant performance, customer service, and operating efficiency of a utility, as compared to nationally recognized standards determined by the Commission to be appropriate for such purposes. In such a proceeding, the Commission shall determine the rates that the utility may charge until such rates are adjusted. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points below the combined rate of return as so determined, it shall be authorized to order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such combined rate of return. If the Commission finds that the utility's combined rate of return on common equity is more than 50 basis points above the combined rate of return as so determined, it shall be authorized either (i) to order reductions to the utility's rates it finds appropriate, provided that the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than the fair rates of return on common equity applicable to the generation and distribution services; or (ii) to direct that 60 percent of the amount of the utility's earnings that were more than 50 basis points above the fair combined rate of return for calendar year 2008 be credited to customers' bills, in which event such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order and be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the

same relationship as the last approved allocation of revenues used to design base rates. Commencing in 2011, the Commission, after notice and opportunity for hearing, shall conduct biennial reviews of the rates, terms and conditions for the provision of generation, distribution and transmission services by each investor-owned incumbent electric utility, subject to the following provisions:

1. Rates, terms and conditions for each service shall be reviewed separately on an unbundled basis, and such reviews shall be conducted in a single, combined proceeding. The first such review shall utilize the two successive 12-month test periods ending December 31, 2010. However, the Commission may, in its discretion, elect to stagger its biennial reviews of utilities by utilizing the two successive 12-month test periods ending December 31, 2010, for a Phase I Utility, and utilizing the two successive 12-month test periods ending December 31, 2011, for a Phase II Utility, with subsequent proceedings utilizing the two successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted. For purposes of this section, a Phase I Utility is an investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, and a Phase II Utility is an investor-owned incumbent electric utility that was bound by such a settlement.

2. Subject to the provisions of subdivision 6, fair rates of return on common equity applicable separately to the generation and distribution services of such utility, and for the two such services combined, shall be determined by the Commission during each such biennial review, as follows:

a. The Commission may use any methodology to determine such return it finds consistent with the public interest, but such return shall not be set lower than the average of the returns on common equity reported to the Securities and Exchange Commission for the three most recent annual periods for which such data are available by not less than a majority, selected by the Commission as specified in subdivision 2 b, of other investor-owned electric utilities in the peer group of the utility subject to such biennial review, nor shall the Commission set such return more than 300 basis points higher than such average.

b. In selecting such majority of peer group investor-owned electric utilities, the Commission shall first remove from such group the two utilities within such group that have the lowest reported returns of the group, as well as the two utilities within such group that have the highest reported returns of the group, and the Commission shall then select a majority of the utilities remaining in such peer group. In its final order regarding such biennial review, the Commission shall identify the utilities in such peer group it selected for the calculation of such limitation. For purposes of this subdivision, an investor-owned electric utility shall be deemed part of such peer group if (i) its principal operations are conducted in the southeastern United States east of the Mississippi River in either the states of West Virginia or Kentucky or in those states south of Virginia, excluding the state of Tennessee, (ii) it is a vertically-integrated electric utility providing generation, transmission and distribution services whose facilities and operations are subject to state public

utility regulation in the state where its principal operations are conducted, (iii) it had a long-term bond rating assigned by Moody's Investors Service of at least Baa at the end of the most recent test period subject to such biennial review, and (iv) it is not an affiliate of the utility subject to such biennial review.

c. The Commission may, consistent with its precedent for incumbent electric utilities prior to the enactment of Chapters 888 and 933 of the Acts of Assembly of 2007, increase or decrease the utility's combined rate of return based on the Commission's consideration of the utility's performance.

d. In any Current Proceeding, the Commission shall determine whether the Current Return has increased, on a percentage basis, above the Initial Return by more than the increase, expressed as a percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the date on which the Commission determined the Initial Return. If so, the Commission may conduct an additional analysis of whether it is in the public interest to utilize such Current Return for the Current Proceeding then pending. A finding of whether the Current Return justifies such additional analysis shall be made without regard to any enhanced rate of return on common equity awarded pursuant to the provisions of subdivision 6. Such additional analysis shall include, but not be limited to, a consideration of overall economic conditions, the level of interest rates and cost of capital with respect to business and industry, in general, as well as electric utilities, the current level of inflation and the utility's cost of goods and services, the effect on the utility's ability to provide adequate service and to attract capital if less than the Current Return were utilized for the Current Proceeding then pending, and such other factors as the Commission may deem relevant. If, as a result of such analysis, the Commission finds that use of the Current Return for the Current Proceeding then pending would not be in the public interest, then the lower limit imposed by subdivision 2 a on the return to be determined by the Commission for such utility shall be calculated, for that Current Proceeding only, by increasing the Initial Return by a percentage at least equal to the increase, expressed as a percentage, in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, since the date on which the Commission determined the Initial Return. For purposes of this subdivision:

"Current Proceeding" means any proceeding conducted under any provisions of this subsection that require or authorize the Commission to determine a fair combined rate of return on common equity for a utility and that will be concluded after the date on which the Commission determined the Initial Return for such utility.

"Current Return" means the minimum fair combined rate of return on common equity required for any Current Proceeding by the limitation regarding a utility's peer group specified in subdivision 2 a.

"Initial Return" means the fair combined rate of return on common equity determined for such utility by the Commission on the first occasion after July 1, 2009, under any provision of this subsection pursuant to the provisions of subdivision 2 a.

e. In addition to other considerations, in setting the return on equity within the range allowed by this section, the Commission shall strive to maintain costs of retail electric energy that are cost competitive with costs of retail electric energy provided by the other peer group investor-owned electric utilities.

f. The determination of such returns shall be made by the Commission on a stand-alone basis, and specifically without regard to any return on common equity or other matters determined with regard to facilities described in subdivision 6.

g. If the combined rate of return on common equity earned by the generation and distribution services is no more than 50 basis points above or below the return as so determined or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, such return is no more than 70 basis points above or below the return as so determined, such combined return shall not be considered either excessive or insufficient, respectively. However, for any test period commencing after December 31, 2012, for a Phase II Utility, and after December 31, 2013, for a Phase I Utility, if the utility has, during the test period or periods under review, earned below the return as so determined, whether or not such combined return is within 70 basis points of the return as so determined, the utility may petition the Commission for approval of an increase in rates in accordance with the provisions of subdivision 8 a as if it had earned more than 70 basis points below a fair combined rate of return, and such proceeding shall otherwise be conducted in accordance with the provisions of this section.

h. Any amount of a utility's earnings directed by the Commission to be credited to customers' bills pursuant to this section shall not be considered for the purpose of determining the utility's earnings in any subsequent biennial review.

3. Each such utility shall make a biennial filing by March 31 of every other year, beginning in 2011, consisting of the schedules contained in the Commission's rules governing utility rate increase applications; however, if the Commission elects to stagger the dates of the biennial reviews of utilities as provided in subdivision 1, then each Phase I Utility shall commence biennial filings in 2011 and each Phase II Utility shall commence biennial filings in 2012. Such filing shall encompass the two successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted, and in every such case the filing for each year shall be identified separately and shall be segregated from any other year encompassed by the filing. If the Commission determines that rates should be revised or credits be applied to customers' bills pursuant to subdivision 8 or 9, any rate adjustment clauses previously implemented pursuant to subdivision 5 or those related to facilities utilizing simple-cycle combustion turbines described in subdivision 6, shall be combined with the utility's costs, revenues and investments until the

amounts that are the subject of such rate adjustment clauses are fully recovered. The Commission shall combine such clauses with the utility's costs, revenues and investments only after it makes its initial determination with regard to necessary rate revisions or credits to customers' bills, and the amounts thereof, but after such clauses are combined as herein specified, they shall thereafter be considered part of the utility's costs, revenues, and investments for the purposes of future biennial review proceedings. A Phase I Utility shall delay for one year the filing of its biennial review from March 31, 2013, to March 31, 2014, and shall not defer on its books for future recovery any costs incurred during calendar year 2011, other than as provided in subdivision 7 or § 56-249.6, and its subsequent biennial filing shall be made by March 31, 2016, and every two years thereafter.

4. The following costs incurred by the utility shall be deemed reasonable and prudent: (i) costs for transmission services provided to the utility by the regional transmission entity of which the utility is a member, as determined under applicable rates, terms and conditions approved by the Federal Energy Regulatory Commission, and (ii) costs charged to the utility that are associated with demand response programs approved by the Federal Energy Regulatory Commission and administered by the regional transmission entity of which the utility is a member. Upon petition of a utility at any time after the expiration or termination of capped rates, but not more than once in any 12-month period, the Commission shall approve a rate adjustment clause under which such costs, including, without limitation, costs for transmission service, charges for new and existing transmission facilities, administrative charges, and ancillary service charges designed to recover transmission costs, shall be recovered on a timely and current basis from customers. Retail rates to recover these costs shall be designed using the appropriate billing determinants in the retail rate schedules.

5. A utility may at any time, after the expiration or termination of capped rates, but not more than once in any 12-month period, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the following costs:

a. Incremental costs described in clause (vi) of subsection B of § 56-582 incurred between July 1, 2004, and the expiration or termination of capped rates, if such utility is, as of July 1, 2007, deferring such costs consistent with an order of the Commission entered under clause (vi) of subsection B of § 56-582. The Commission shall approve such a petition allowing the recovery of such costs that comply with the requirements of clause (vi) of subsection B of § 56-582;

b. Projected and actual costs for the utility to design and operate fair and effective peak-shaving programs. The Commission shall approve such a petition if it finds that the program is in the public interest; provided that the Commission shall allow the recovery of such costs as it finds are reasonable;

c. Projected and actual costs for the utility to design, implement, and operate energy efficiency programs, including a margin to be recovered on operating expenses, which margin for the purposes

of this section shall be equal to the general rate of return on common equity determined as described in subdivision 2. The Commission shall only approve such a petition if it finds that the program is in the public interest. As part of such cost recovery, the Commission, if requested by the utility, shall allow for the recovery of revenue reductions related to energy efficiency programs. The Commission shall only allow such recovery to the extent that the Commission determines such revenue has not been recovered through margins from incremental off-system sales as defined in § 56-249.6 that are directly attributable to energy efficiency programs.

None of the costs of new energy efficiency programs of an electric utility, including recovery of revenue reductions, shall be assigned to any customer that has a verifiable history of having used more than 10 megawatts of demand from a single meter of delivery. Nor shall any of the costs of new energy efficiency programs of an electric utility, including recovery of revenue reductions, be incurred by any large general service customer as defined herein that has notified the utility of non-participation in such energy efficiency program or programs. A large general service customer is a customer that has a verifiable history of having used more than 500 kilowatts of demand from a single meter of delivery. Non-participation in energy efficiency programs shall be allowed by the Commission if the large general service customer has, at the customer's own expense, implemented energy efficiency programs that have produced or will produce measured and verified results consistent with industry standards and other regulatory criteria stated in this section. The Commission shall, no later than November 15, 2009, promulgate rules and regulations to accommodate the process under which such large general service customers shall file notice for such an exemption and (i) establish the administrative procedures by which eligible customers will notify the utility and (ii) define the standard criteria that must be satisfied by an applicant in order to notify the utility. In promulgating such rules and regulations, the Commission may also specify the timing as to when a utility shall accept and act on such notice, taking into consideration the utility's integrated resource planning process as well as its administration of energy efficiency programs that are approved for cost recovery by the Commission. The notice of non-participation by a large general service customer, to be given by March 1 of a given year, shall be for the duration of the service life of the customer's energy efficiency program. The Commission on its own motion may initiate steps necessary to verify such non-participants' achievement of energy efficiency if the Commission has a body of evidence that the non-participant has knowingly misrepresented its energy efficiency achievement. A utility shall not charge such large general service customer, as defined by the Commission, for the costs of installing energy efficiency equipment beyond what is required to provide electric service and meter such service on the customer's premises if the customer provides, at the customer's expense, equivalent energy efficiency equipment. In all relevant proceedings pursuant to this section, the Commission shall take into consideration the goals of economic development, energy efficiency and environmental protection in the Commonwealth;

d. Projected and actual costs of participation in a renewable energy portfolio standard program pursuant to § 56-585.2 that are not recoverable under subdivision 6. The Commission shall approve

such a petition allowing the recovery of such costs as are provided for in a program approved pursuant to § 56-585.2;

e. Projected and actual costs of projects that the Commission finds to be necessary to comply with state or federal environmental laws or regulations applicable to generation facilities used to serve the utility's native load obligations. The Commission shall approve such a petition if it finds that such costs are necessary to comply with such environmental laws or regulations; and

f. Projected and actual costs, not currently in rates, for the utility to design, implement, and operate programs approved by the Commission that accelerate the vegetation management of distribution rights-of-way. No costs shall be allocated to or recovered from customers that are served within the large general service rate classes for a Phase II Utility or that are served at subtransmission or transmission voltage, or take delivery at a substation served from subtransmission or transmission voltage, for a Phase I Utility.

The Commission shall have the authority to determine the duration or amortization period for any adjustment clause approved under this subdivision.

6. To ensure the generation and delivery of a reliable and adequate supply of electricity, to meet the utility's projected native load obligations and to promote economic development, a utility may at any time, after the expiration or termination of capped rates, petition the Commission for approval of a rate adjustment clause for recovery on a timely and current basis from customers of the costs of (i) a coal-fueled generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as described in § 15.2-6002, regardless of whether such facility is located within or without the utility's service territory, (ii) one or more other generation facilities, (iii) one or more major unit modifications of generation facilities, or (iv) one or more new underground facilities to replace one or more existing overhead distribution facilities of 69 kilovolts or less located within the Commonwealth; however, subject to the provisions of the following sentence, the utility shall not file a petition under clause (iv) more often than annually and, in such petition, shall not seek any annual incremental increase in the level of investments associated with such a petition that exceeds five percent of such utility's distribution rate base, as such rate base was determined for the most recently ended 12-month test period in the utility's latest biennial review proceeding conducted pursuant to subdivision 3 and concluded by final order of the Commission prior to the date of filing of such petition under clause (iv). In all proceedings regarding petitions filed under clause (iv), the level of investments approved for recovery in such proceedings shall be in addition to, and not in lieu of, levels of investments previously approved for recovery in prior proceedings under clause (iv). Such a petition concerning facilities described in clause (ii) that utilize nuclear power, facilities described in clause (ii) that are coal-fueled and will be built by a Phase I Utility, or facilities described in clause (i) may also be filed before the expiration or termination of capped rates. A utility that constructs any such facility, or purchases any facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services

sourced, in whole or in part, from one or more Virginia businesses, shall have the right to recover the costs of the facility, as accrued against income, through its rates, including projected construction work in progress, and any associated allowance for funds used during construction, planning, development and construction or acquisition costs, life-cycle costs, costs related to assessing the feasibility of potential sites for new underground facilities, and costs of infrastructure associated therewith, plus, as an incentive to undertake such projects, an enhanced rate of return on common equity calculated as specified below; however, in determining the amounts recoverable under a rate adjustment clause for new underground facilities, the Commission shall not consider, or increase or reduce such amounts recoverable because of (a) the operation and maintenance costs attributable to either the overhead distribution facilities being replaced or the new underground facilities or (b) any other costs attributable to the overhead distribution facilities being replaced. Notwithstanding the preceding sentence, the costs described in clauses (a) and (b) thereof shall remain eligible for recovery from customers through the utility's base rates for distribution service. A utility filing a petition for approval to construct or purchase a facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses may propose a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. A utility seeking approval to construct or purchase a generating facility shall demonstrate that it has considered and weighed alternative options, including third-party market alternatives, in its selection process. The costs of the facility, other than return on projected construction work in progress and allowance for funds used during construction, shall not be recovered prior to the date a facility constructed by the utility and described in clause (i), (ii), or (iii) begins commercial operation, the date the utility becomes the owner of a purchased generation facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, or the date new underground facilities are classified by the utility as plant in service. Such enhanced rate of return on common equity shall be applied to allowance for funds used during construction and to construction work in progress during the construction phase of the facility and shall thereafter be applied to the entire facility during the first portion of the service life of the facility. The first portion of the service life shall be as specified in the table below; however, the Commission shall determine the duration of the first portion of the service life of any facility, within the range specified in the table below, which determination shall be consistent with the public interest and shall reflect the Commission's determinations regarding how critical the facility may be in meeting the energy needs of the citizens of the Commonwealth and the risks involved in the development of the facility. After the first portion of the service life of the facility is concluded, the utility's general rate of return shall be applied to such facility for the remainder of its service life. As used herein, the service life of the facility shall be deemed to begin on the date a facility constructed by the utility and described in clause (i), (ii), or (iii) begins commercial operation, the date the utility

becomes the owner of a purchased generation facility consisting of at least one megawatt of generating capacity using energy derived from sunlight and located in the Commonwealth and that utilizes goods or services sourced, in whole or in part, from one or more Virginia businesses, or the date new underground facilities are classified by the utility as plant in service, and such service life shall be deemed equal in years to the life of that facility as used to calculate the utility's depreciation expense. Such enhanced rate of return on common equity shall be calculated by adding the basis points specified in the table below to the utility's general rate of return, and such enhanced rate of return shall apply only to the facility that is the subject of such rate adjustment clause. Allowance for funds used during construction shall be calculated for any such facility utilizing the utility's actual capital structure and overall cost of capital, including an enhanced rate of return on common equity as determined pursuant to this subdivision, until such construction work in progress is included in rates. The construction of any facility described in clause (i) is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. The construction or purchase by a utility of one or more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that does not exceed 500 megawatts, that use energy derived from sunlight and are located in the Commonwealth, regardless of whether any of such facilities are located within or without the utility's service territory, is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this title. A utility may enter into short-term or long-term power purchase contracts for the power derived from sunlight generated by such generation facility prior to purchasing the generation facility. In determining whether to approve petitions for rate adjustment clauses for new underground facilities, and in determining the level of costs to be recovered thereunder, the Commission shall liberally construe the provisions of this title and shall give due consideration to the public policy goals of increased electric service reliability and reduced outage times associated with the replacement of existing overhead distribution facilities with new underground facilities. The basis points to be added to the utility's general rate of return to calculate the enhanced rate of return on common equity, and the first portion of that facility's service life to which such enhanced rate of return shall be applied, shall vary by type of facility, as specified in the following table:

Type of Generation Facility	Basis Points	First Portion of Service Life
Nuclear-powered	200	Between 12 and 25 years
Carbon capture compatible, clean-coal powered	200	Between 10 and 20 years
Renewable powered, other than landfill gas powered	200	Between 5 and 15 years
Coalbed methane gas powered	150	Between 5 and 15 years

Landfill gas powered200Between 5 and 15 years

Conventional coal or combined-

cycle combustion turbine 100Between 10 and 20 years

For generating facilities other than those utilizing nuclear power or those utilizing energy derived from offshore wind, as of July 1, 2013, only those facilities as to which a rate adjustment clause under this subdivision has been previously approved by the Commission, or as to which a petition for approval of such rate adjustment clause was filed with the Commission, on or before January 1, 2013, shall be entitled to the enhanced rate of return on common equity as specified in the above table during the construction phase of the facility and the approved first portion of its service life.

For generating facilities within the Commonwealth utilizing nuclear power or those utilizing energy derived from offshore wind projects located in waters off the Commonwealth's Atlantic shoreline, such facilities shall continue to be eligible for an enhanced rate of return on common equity during the construction phase of the facility and the approved first portion of its service life of between 12 and 25 years in the case of a facility utilizing nuclear power and for a service life of between 5 and 15 years in the case of a facility utilizing energy derived from offshore wind, provided, however, that, as of July 1, 2013, the enhanced return for such facilities shall be 100 basis points, which shall be added to the utility's general rate of return as determined under subdivision 2. Thirty percent of all costs of such a facility utilizing nuclear power that the utility incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this subdivision at such time as the Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in the test periods under review in the utility's next biennial review filed after July 1, 2014. Thirty percent of all costs of such a facility utilizing energy derived from offshore wind that the utility incurred between July 1, 2007, and December 31, 2013, and all of such costs incurred after December 31, 2013, may be deferred by the utility and recovered through a rate adjustment clause under this subdivision at such time as the Commission provides in an order approving such a rate adjustment clause. The remaining 70 percent of all costs of such a facility that the utility incurred between July 1, 2007, and December 31, 2013, shall not be deferred for recovery through a rate adjustment clause under this subdivision; however, such remaining 70 percent of all costs shall be recovered ratably through existing base rates as determined by the Commission in the test periods under review in the utility's next biennial review filed after July 1, 2014.

In connection with planning to meet forecasted demand for electric generation supply and assure the adequate and sufficient reliability of service, consistent with § 56-598, planning and development activities for a new nuclear generation facility or facilities are in the public interest.

In connection with planning to meet forecasted demand for electric generation supply and assure the adequate and sufficient reliability of service, consistent with § 56-598, planning and development activities for a new utility-owned and utility-operated generating facility or facilities utilizing energy derived from sunlight with an aggregate capacity of 500 megawatts, or from offshore wind, are in the public interest.

Neither generation facilities described in clause (ii) that utilize simple-cycle combustion turbines nor new underground facilities shall receive an enhanced rate of return on common equity as described herein, but instead shall receive the utility's general rate of return during the construction phase of the facility and, thereafter, for the entire service life of the facility. No rate adjustment clause for new underground facilities shall allocate costs to, or provide for the recovery of costs from, customers that are served within the large power service rate class for a Phase I Utility and the large general service rate classes for a Phase II Utility. New underground facilities are hereby declared to be ordinary extensions or improvements in the usual course of business under the provisions of § 56-265.2.

As used in this subdivision, a generation facility is (1) "coalbed methane gas powered" if the facility is fired at least 50 percent by coalbed methane gas, as such term is defined in § 45.1-361.1, produced from wells located in the Commonwealth, and (2) "landfill gas powered" if the facility is fired by methane or other combustible gas produced by the anaerobic digestion or decomposition of biodegradable materials in a solid waste management facility licensed by the Waste Management Board. A landfill gas powered facility includes, in addition to the generation facility itself, the equipment used in collecting, drying, treating, and compressing the landfill gas and in transmitting the landfill gas from the solid waste management facility where it is collected to the generation facility where it is combusted.

For purposes of this subdivision, "general rate of return" means the fair combined rate of return on common equity as it is determined by the Commission from time to time for such utility pursuant to subdivision 2. In any proceeding under this subdivision conducted prior to the conclusion of the first biennial review for such utility, the Commission shall determine a general rate of return for such utility in the same manner as it would in a biennial review proceeding.

Notwithstanding any other provision of this subdivision, if the Commission finds during the biennial review conducted for a Phase II Utility in 2018 that such utility has not filed applications for all necessary federal and state regulatory approvals to construct one or more nuclear-powered or coal-fueled generation facilities that would add a total capacity of at least 1500 megawatts to the amount of the utility's generating resources as such resources existed on July 1, 2007, or that, if all such approvals have been received, that the utility has not made reasonable and good faith

efforts to construct one or more such facilities that will provide such additional total capacity within a reasonable time after obtaining such approvals, then the Commission, if it finds it in the public interest, may reduce on a prospective basis any enhanced rate of return on common equity previously applied to any such facility to no less than the general rate of return for such utility and may apply no less than the utility's general rate of return to any such facility for which the utility seeks approval in the future under this subdivision.

7. Any petition filed pursuant to subdivision 4, 5, or 6 shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the utility. Any costs incurred by a utility prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition and that are related to subdivision 5 a, or that are related to facilities and projects described in clause (i) of subdivision 6, or that are related to new underground facilities described in clause (iv) of subdivision 6, shall be deferred on the books and records of the utility until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is later. Except as otherwise provided in subdivision 6, any costs prudently incurred on or after July 1, 2007, by a utility prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition and that are related to facilities and projects described in clause (ii) of subdivision 6 that utilize nuclear power, or coal-fueled facilities and projects described in clause (ii) of subdivision 6 if such coal-fueled facilities will be built by a Phase I Utility, shall be deferred on the books and records of the utility until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clauses, whichever is later. Any costs prudently incurred after the expiration or termination of capped rates related to other matters described in subdivision 4, 5, or 6 shall be deferred beginning only upon the expiration or termination of capped rates, provided, however, that no provision of this act shall affect the rights of any parties with respect to the rulings of the Federal Energy Regulatory Commission in PJM Interconnection LLC and Virginia Electric and Power Company, 109 F.E.R.C. P 61, 012 (2004). A utility shall establish a regulatory asset for regulatory accounting and ratemaking purposes under which it shall defer its operation and maintenance costs incurred in connection with (i) the refueling of any nuclear-powered generating plant and (ii) other work at such plant normally performed during a refueling outage. The utility shall amortize such deferred costs over the refueling cycle, but in no case more than 18 months, beginning with the month in which such plant resumes operation after such refueling. The refueling cycle shall be the applicable period of time between planned refueling outages for such plant. As of January 1, 2014, such amortized costs are a component of base rates, recoverable in base rates only ratably over the refueling cycle rather than when such outages occur, and are the only nuclear refueling costs recoverable in base rates. This provision shall apply to any nuclear-powered generating plant refueling outage commencing after December 31, 2013, and the Commission shall treat the deferred and amortized costs of such regulatory asset as part of the utility's costs for the purpose of proceedings conducted (a) with respect to biennial filings under

subdivision 3 made on and after July 1, 2014, and (b) pursuant to § 56-245 or the Commission's rules governing utility rate increase applications as provided in subsection B. This provision shall not be deemed to change or reset base rates.

The Commission's final order regarding any petition filed pursuant to subdivision 4, 5, or 6 shall be entered not more than three months, eight months, and nine months, respectively, after the date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be applied to customers' bills not more than 60 days after the date of the order, or upon the expiration or termination of capped rates, whichever is later.

8. In any biennial review proceeding, the following utility generation and distribution costs not proposed for recovery under any other subdivision of this subsection, as recorded per books by the utility for financial reporting purposes and accrued against income, shall be attributed to the test periods under review: costs associated with asset impairments related to early retirement determinations made by the utility prior to December 31, 2012, for utility generation plant; costs associated with severe weather events; and costs associated with natural disasters. Such costs shall be deemed to have been recovered from customers through rates for generation and distribution services in effect during the test periods under review unless such costs, individually or in the aggregate, together with the utility's other costs, revenues, and investments to be recovered through rates for generation and distribution services, result in the utility's earned return on its generation and distribution services for the combined test periods under review to fall more than 50 basis points below the fair combined rate of return authorized under subdivision 2 for such periods or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to fall more than 70 basis points below the fair combined rate of return authorized under subdivision 2 for such periods. In such cases, the Commission shall, in such biennial review proceeding, authorize deferred recovery of such costs and allow the utility to amortize and recover such deferred costs over future periods as determined by the Commission. The aggregate amount of such deferred costs shall not exceed an amount that would, together with the utility's other costs, revenues, and investments to be recovered through rates for generation and distribution services, cause the utility's earned return on its generation and distribution services to exceed the fair rate of return authorized under subdivision 2, less 50 basis points, for the combined test periods under review or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, to exceed the fair rate of return authorized under subdivision 2 less 70 basis points. Nothing in this section shall limit the Commission's authority, pursuant to the provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2, following the review of combined test period earnings of the utility in a biennial review, for normalization of nonrecurring test period costs and annualized adjustments for future costs, in determining any appropriate increase or decrease in the utility's rates for generation and distribution services pursuant to subdivision 8 a or 8 c.

If the Commission determines as a result of such biennial review that:

a. The utility has, during the test period or periods under review, considered as a whole, earned more than 50 basis points below a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points below a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, the Commission shall order increases to the utility's rates necessary to provide the opportunity to fully recover the costs of providing the utility's services and to earn not less than such fair combined rate of return, using the most recently ended 12-month test period as the basis for determining the amount of the rate increase necessary. However, the Commission may not order such rate increase unless it finds that the resulting rates are necessary to provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on both its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for determining the permissibility of any rate increase under the standards of this sentence, and the amount thereof;

b. The utility has, during the test period or test periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, the Commission shall, subject to the provisions of subdivision 9, direct that 60 percent of the amount of such earnings that were more than 50 basis points, or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, that 70 percent of the amount of such earnings that were more than 70 basis points, above such fair combined rate of return for the test period or periods under review, considered as a whole, shall be credited to customers' bills. Any such credits shall be amortized over a period of six to 12 months, as determined at the discretion of the Commission, following the effective date of the Commission's order, and shall be allocated among customer classes such that the relationship between the specific customer class rates of return to the overall target rate of return will have the same relationship as the last approved allocation of revenues used to design base rates; or

c. Such biennial review is the second consecutive biennial review in which the utility has, during the test period or test periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31,

2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matter determined with respect to facilities described in subdivision 6, the Commission shall, subject to the provisions of subdivision 9 and in addition to the actions authorized in subdivision b, also order reductions to the utility's rates it finds appropriate. However, the Commission may not order such rate reduction unless it finds that the resulting rates will provide the utility with the opportunity to fully recover its costs of providing its services and to earn not less than a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, using the most recently ended 12-month test period as the basis for determining the permissibility of any rate reduction under the standards of this sentence, and the amount thereof.

The Commission's final order regarding such biennial review shall be entered not more than eight months after the date of filing, and any revisions in rates or credits so ordered shall take effect not more than 60 days after the date of the order. The fair combined rate of return on common equity determined pursuant to subdivision 2 in such biennial review shall apply, for purposes of reviewing the utility's earnings on its rates for generation and distribution services, to the entire two successive 12-month test periods ending December 31 immediately preceding the year of the utility's subsequent biennial review filing under subdivision 3.

9. If, as a result of a biennial review required under this subsection and conducted with respect to any test period or periods under review ending later than December 31, 2010 (or, if the Commission has elected to stagger its biennial reviews of utilities as provided in subdivision 1, under review ending later than December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), the Commission finds, with respect to such test period or periods considered as a whole, that (i) any utility has, during the test period or periods under review, considered as a whole, earned more than 50 basis points above a fair combined rate of return on its generation and distribution services or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points above a fair combined rate of return on its generation and distribution services, as determined in subdivision 2, without regard to any return on common equity or other matters determined with respect to facilities described in subdivision 6, and (ii) the total aggregate regulated rates of such utility at the end of the most recently-ended 12-month test period exceeded the annual increases in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, compounded annually, when compared to the total aggregate regulated rates of such utility as determined pursuant to the biennial review conducted for the base period, the Commission shall, unless it finds that such action is not in the public interest or that the provisions of subdivisions 8 b and c are more consistent with the public interest, direct that any or all earnings for such test period or

periods under review, considered as a whole that were more than 50 basis points, or, for any test period commencing after December 31, 2012, for a Phase II Utility and after December 31, 2013, for a Phase I Utility, more than 70 basis points, above such fair combined rate of return shall be credited to customers' bills, in lieu of the provisions of subdivisions 8 b and c. Any such credits shall be amortized and allocated among customer classes in the manner provided by subdivision 8 b. For purposes of this subdivision:

"Base period" means (i) the test period ending December 31, 2010 (or, if the Commission has elected to stagger its biennial reviews of utilities as provided in subdivision 1, the test period ending December 31, 2010, for a Phase I Utility, or December 31, 2011, for a Phase II Utility), or (ii) the most recent test period with respect to which credits have been applied to customers' bills under the provisions of this subdivision, whichever is later.

"Total aggregate regulated rates" shall include: (i) fuel tariffs approved pursuant to § 56-249.6, except for any increases in fuel tariffs deferred by the Commission for recovery in periods after December 31, 2010, pursuant to the provisions of clause (ii) of subsection C of § 56-249.6; (ii) rate adjustment clauses implemented pursuant to subdivision 4 or 5; (iii) revisions to the utility's rates pursuant to subdivision 8 a; (iv) revisions to the utility's rates pursuant to the Commission's rules governing utility rate increase applications, as permitted by subsection B, occurring after July 1, 2009; and (v) base rates in effect as of July 1, 2009.

10. For purposes of this section, the Commission shall regulate the rates, terms and conditions of any utility subject to this section on a stand-alone basis utilizing the actual end-of-test period capital structure and cost of capital of such utility, unless the Commission finds that the debt to equity ratio of such capital structure is unreasonable for such utility, in which case the Commission may utilize a debt to equity ratio that it finds to be reasonable for such utility in determining any rate adjustment pursuant to subdivisions 8 a and c, and without regard to the cost of capital, capital structure, revenues, expenses or investments of any other entity with which such utility may be affiliated. In particular, and without limitation, the Commission shall determine the federal and state income tax costs for any such utility that is part of a publicly traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.

B. Nothing in this section shall preclude an investor-owned incumbent electric utility from applying for an increase in rates pursuant to § 56-245 or the Commission's rules governing utility rate increase applications; however, in any such filing, a fair rate of return on common equity shall be determined pursuant to subdivision A 2. Nothing in this section shall preclude such utility's recovery of fuel and purchased power costs as provided in § 56-249.6.

C. Except as otherwise provided in this section, the Commission shall exercise authority over the rates, terms and conditions of investor-owned incumbent electric utilities for the provision of generation, transmission and distribution services to retail customers in the Commonwealth pursuant to the provisions of Chapter 10 (§ 56-232 et seq.), including specifically § 56-235.2.

D. The Commission may determine, during any proceeding authorized or required by this section, the reasonableness or prudence of any cost incurred or projected to be incurred, by a utility in connection with the subject of the proceeding. A determination of the Commission regarding the reasonableness or prudence of any such cost shall be consistent with the Commission's authority to determine the reasonableness or prudence of costs in proceedings pursuant to the provisions of Chapter 10 (§ 56-232 et seq.). In determining the reasonableness or prudence of a utility providing energy and capacity to its customers from renewable energy resources, the Commission shall consider the extent to which such renewable energy resources, whether utility-owned or by contract, further the objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and shall also consider whether the costs of such resources is likely to result in unreasonable increases in rates paid by consumers.

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

2007, cc. 888, 933; 2008, c. 476; 2009, c. 824; 2011, cc. 236, 367, 371, 380, 382; 2012, c. 435; 2013, c. 2; 2014, cc. 212, 541, 548, 550; 2015, cc. 37, 599; 2016, c. 3.

§ 56-585.1:1. Transitional Rate Period: review of rates, terms and conditions for utility generation facilities

Notwithstanding the provisions of §§ 56-249.6 and 56-585.1:

A. No biennial reviews of the rates, terms, and conditions for any service of a Phase I Utility, as defined in § 56-585.1, shall be conducted at any time by the State Corporation Commission for the four successive 12-month test periods beginning January 1, 2014, and ending December 31, 2017. No biennial reviews of the rates, terms, and conditions for any service of a Phase II Utility, as defined in § 56-585.1, shall be conducted at any time by the State Corporation Commission for the five successive 12-month test periods beginning January 1, 2015, and ending December 31, 2019. Such test periods beginning January 1, 2014, and ending December 31, 2017, for a Phase I Utility, and beginning January 1, 2015, and ending December 31, 2019, for a Phase II Utility, are collectively referred to herein as the "Transitional Rate Period." Review of recovery of fuel and purchase power costs shall continue during the Transitional Rate Period in accordance with § 56-249.6. Any biennial review of the rates, terms, and conditions for any service of a Phase II Utility occurring in 2015 during the Transitional Rate Period shall be solely a review of the utility's earnings on its rates for generation and distribution services for the two 12-month test periods ending December 31, 2014, and a determination of whether any credits to customers are due for such test periods pursuant to subdivision A 8 b of § 56-585.1. After the conclusion of the Transitional Rate

Period, biennial reviews shall resume for a Phase I Utility in 2020, with the first such proceeding utilizing the two successive 12-month test periods beginning January 1, 2018, and ending December 31, 2019. After the conclusion of the Transitional Rate Period, biennial reviews shall resume for a Phase II Utility, as defined in § 56-585.1, in 2022, with the first such proceeding utilizing the two successive 12-month test periods beginning January 1, 2020, and ending December 31, 2021. Consistent with this provision, (i) no biennial review filings shall be made by an investor-owned incumbent electric utility in the years 2016 through 2019, inclusive, and (ii) no adjustment to an investor-owned incumbent electric utility's existing tariff rates, including any rates adopted pursuant to § 56-235.2, shall be made between the beginning of the Transitional Rate Period and the conclusion of the first biennial review after the conclusion of the Transitional Rate Period, except as may be provided pursuant to § 56-245 or 56-249.6 or subdivisions A 4, 5, or 6 of § 56-585.1.

B. During the Transitional Rate Period, pursuant to § 56-36, the Commission shall have the right at all times to inspect the books, papers and documents of any investor-owned incumbent electric utility and to require from such companies, from time to time, special reports and statements, under oath, concerning their business.

C. 1. Commencing in 2016 and concluding in 2018, the State Corporation Commission, after notice and opportunity for a hearing, shall conduct a proceeding every two years to determine the fair rate of return on common equity to be used by a Phase I Utility as the general rate of return applicable to rate adjustment clauses under subdivisions A 5 or A 6 of § 56-585.1. A Phase I Utility's filing in such proceedings shall be made on or before March 31 of 2016, and 2018.

2. Commencing in 2017 and concluding in 2019, the State Corporation Commission, after notice and opportunity for a hearing, shall conduct a proceeding every two years to determine the fair rate of return on common equity to be used by a Phase II Utility as the general rate of return applicable to rate adjustment clauses under subdivisions A 5 or A 6 of § 56-585.1. A Phase II utility's filing in such proceedings shall be made on or before March 31 of 2017 and 2019.

3. Such fair rate of return shall be calculated pursuant to the methodology set forth in subdivisions A 2 a and b of § 56-585.1 and shall utilize the utility's actual end-of-test-period capital structure and cost of capital, as well as a 12-month test period ending December 31 immediately preceding the year in which the proceeding is conducted. The Commission's final order in such a proceeding shall be entered no later than eight months after the date of filing, with any adjustment to the fair rate of return for applicable rate adjustment clauses under subdivisions A 5 and 6 of § 56-585.1 taking effect on the date of the Commission's final order in the proceeding, utilizing rate adjustment clause true-up protocols as the Commission may in its discretion determine. Such proceeding shall concern only the issue of the determination of such fair rate of return to be used for rate adjustment clauses under subdivisions A 5 and 6 of § 56-585.1, and such determination shall have no effect on rates other than those applicable to such rate adjustment clauses; however, after the final such proceeding for a utility has been concluded, the fair combined rate of return on

common equity so determined therein shall also be deemed equal to the fair combined rate of return on common equity to be used in such utility's first biennial review proceeding conducted after the end of the utility's Transitional Rate Period to review such utility's earnings on its rates for generation and distribution services for the historic test periods.

D. In furtherance of rate stability during the Transitional Rate Period, any Phase II Utility carrying a prior period deferred fuel expense recovery balance on its books and records as of December 31, 2014, shall not recover from customers 50 percent of any such balance outstanding as of December 31, 2014, and the State Corporation Commission shall implement as soon as practicable reductions in the fuel factor rate of any such Phase II Utility to reflect the nonrecovery of any such fuel expense as well as any reduction in the fuel factor associated with the Phase II Utility's current period forecasted fuel expense over recovery for the 2014-2015 fuel year and projected fuel expense for the 2015-2016 fuel year.

E. Except for early retirement plans identified by the utility in an integrated resource plan filed with the State Corporation Commission by September 1, 2014, for utility generation plants, an investor-owned incumbent electric utility shall not permanently retire an electric power generation facility from service during the Transitional Rate Period without first obtaining the approval of the State Corporation Commission, upon petition from such investor-owned incumbent electric utility, and a finding by the State Corporation Commission that the retirement determination is reasonable and prudent. During the Transitional Rate Period, an investor-owned incumbent electric utility shall recover the following costs, as recorded per books by the utility for financial reporting purposes and accrued against income, only through its existing tariff rates for generation or distribution services, except such costs as may be recovered pursuant to § 56-245, § 56-249.6 or subdivisions A 4, A 5, or A 6 of § 56-585.1: (i) costs associated with asset impairments related to early retirement determinations for utility generation facilities resulting from the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the Clean Air Act; (ii) costs associated with severe weather events; and (iii) costs associated with natural disasters.

F. During the Transitional Rate Period:

1. The State Corporation Commission shall submit a report and make recommendations to the Governor and the General Assembly annually on or before December 1 of each year assessing the updated integrated resource plan of any investor-owned incumbent electric utility. The report shall include an analysis of, among other matters, the amount, reliability, and type of generation facilities needed to serve Virginia native load compared to what is then available to serve such load and what may be available to serve such load in the future in view of market conditions and current and pending state and federal environmental regulations. As a part of such report, the State Corporation Commission shall update its estimate of the impact upon electric rates in Virginia of the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the

federal Clean Air Act. The State Corporation Commission shall submit copies of such annual reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation; and

2. The Department of Environmental Quality shall submit a report and make recommendations to the Governor and the General Assembly annually on or before December 1 of each year concerning the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The report shall include an analysis of, among other matters, the impact of such federal regulations on the operation of any investor-owned incumbent electric utility's electric power generation facilities and any changes, interdiction, or suspension of such regulations. The Department of Environmental Quality shall submit copies of such annual reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation.

G. The construction or purchase by an investor-owned incumbent utility of one or more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that does not exceed 500 megawatts, that use energy derived from sunlight and are located in the Commonwealth, regardless of whether any of such facilities are located within or without such utility's service territory, is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this section. Such utility shall utilize goods or services sourced, in whole or in part, from one or more Virginia businesses. The utility may propose a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. An investor-owned incumbent utility may enter into short-term or long-term power purchase contracts for the power derived from sunlight generated by such generation facility prior to purchasing the generation facility.

2015, c. 6.

§ 56-585.1:2. Pilot program for energy assistance and weatherization

Notwithstanding the provisions of §§ 56-249.6 and 56-585.1:

Each Phase I and II Utility shall conduct a pilot program for energy assistance and weatherization for low income, elderly, and disabled individuals in their respective service territories in the Commonwealth. Each pilot program shall be funded by the utility and shall commence September 1, 2015. Each such utility shall report on the status of its pilot program, including the number of individuals served thereby, to the Governor, the State Corporation Commission, and the Chairmen of the House and Senate Commerce and Labor Committees by July 1, 2016, and each year thereafter.

2015, c. 6.

§ 56-585.2. Sale of electricity from renewable sources through a renewable energy portfolio standard program

A. As used in this section:

"Qualified investment" means an expense incurred in the Commonwealth by a participating utility in conducting, either by itself or in partnership with institutions of higher education in the Commonwealth or with industrial or commercial customers that have established renewable energy research and development programs in the Commonwealth, research and development activities related to renewable or alternative energy sources, which expense (i) is designed to enhance the participating utility's understanding of emerging energy technologies and their potential impact on and value to the utility's system and customers within the Commonwealth; (ii) promotes economic development within the Commonwealth; (iii) supplements customer-driven alternative energy or energy efficiency initiatives; (iv) supplements alternative energy and energy efficiency initiatives at state or local governmental facilities in the Commonwealth; or (v) is designed to mitigate the environmental impacts of renewable energy projects.

"Renewable energy" shall have the same meaning ascribed to it in § 56-576, provided such renewable energy is (i) generated in the Commonwealth or in the interconnection region of the regional transmission entity of which the participating utility is a member, as it may change from time to time, and purchased by a participating utility under a power purchase agreement; provided, however, that if such agreement was executed on or after July 1, 2013, the agreement shall expressly transfer ownership of renewable attributes, in addition to ownership of the energy, to the participating utility; (ii) generated by a public utility providing electric service in the Commonwealth from a facility in which the public utility owns at least a 49 percent interest and that is located in the Commonwealth, in the interconnection region of the regional transmission entity of which the participating utility is a member, or in a control area adjacent to such interconnection region; or (iii) represented by renewable energy certificates. "Renewable energy" shall not include electricity generated from pumped storage, but shall include run-of-river generation from a combined pumped-storage and run-of-river facility.

"Renewable energy certificate" means either (i) a certificate issued by an affiliate of the regional transmission entity of which the participating utility is a member, as it may change from time to time, or any successor to such affiliate, and held or acquired by such utility, that validates the generation of renewable energy by eligible sources in the interconnection region of the regional transmission entity or (ii) a certificate issued by the Commission pursuant to subsection J and held or acquired by a participating utility, that validates a qualified investment made by the participating utility.

"Total electric energy sold in the base year" means total electric energy sold to Virginia jurisdictional retail customers by a participating utility in calendar year 2007, excluding an amount equivalent to the average of the annual percentages of the electric energy that was supplied to such customers from nuclear generating plants for the calendar years 2004 through 2006.

B. Any investor-owned incumbent electric utility may apply to the Commission for approval to participate in a renewable energy portfolio standard program, as defined in this section. The Commission shall approve such application if the applicant demonstrates that it has a reasonable

expectation of achieving 12 percent of its base year electric energy sales from renewable energy sources during calendar year 2022, and 15 percent of its base year electric energy sales from renewable energy sources during calendar year 2025, as provided in subsection D.

C. It is in the public interest for utilities that seek to have a renewable energy portfolio standard program to achieve the goals set forth in subsection D, such goals being referred to herein as "RPS Goals." A utility shall receive double credit toward meeting the renewable energy portfolio standard for energy derived from sunlight, from onshore wind, or from facilities in the Commonwealth fueled primarily by animal waste, and triple credit toward meeting the renewable energy portfolio standard for energy derived from offshore wind.

D. Regarding any renewable energy portfolio standard program, the total electric energy sold by a utility to meet the RPS Goals shall be composed of the following amounts of electric energy or renewable thermal energy equivalent from renewable energy sources, as adjusted for any sales volumes lost through operation of the customer choice provisions of subdivision A 3 or A 4 of § 56-577:

RPS Goal I: In calendar year 2010, 4 percent of total electric energy sold in the base year.

RPS Goal II: For calendar years 2011 through 2015, inclusive, an average of 4 percent of total electric energy sold in the base year, and in calendar year 2016, 7 percent of total electric energy sold in the base year.

RPS Goal III: For calendar years 2017 through 2021, inclusive, an average of 7 percent of total electric energy sold in the base year, and in calendar year 2022, 12 percent of total electric energy sold in the base year.

RPS Goal IV: For calendar years 2023 and 2024, inclusive, an average of 12 percent of total electric energy sold in the base year, and in calendar year 2025, 15 percent of total electric energy sold in the base year.

A utility may not apply renewable energy certificates issued pursuant to subsection J to meet more than 20 percent of the sales requirement for the RPS Goal in any year.

A utility may apply renewable energy sales achieved or renewable energy certificates acquired during the periods covered by any such RPS Goal that are in excess of the sales requirement for that RPS Goal to the sales requirements for any future RPS Goals in the five calendar years after the renewable energy was generated or the renewable energy certificates were created, except that a utility shall be able to apply renewable energy certificates acquired by the utility prior to January 1, 2014.

E. A utility participating in such program shall have the right to recover all incremental costs incurred for the purpose of such participation in such program, as accrued against income, through rate adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to, administrative costs, ancillary costs, capacity costs, costs of energy represented by

certificates described in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for funds used during construction until such time as an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected construction work in progress, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1. This subsection shall not apply to qualified investments as provided in subsection K. All incremental costs of the RPS program shall be allocated to and recovered from the utility's customer classes based on the demand created by the class and within the class based on energy used by the individual customer in the class, except that the incremental costs of the RPS program shall not be allocated to or recovered from customers that are served within the large industrial rate classes of the participating utilities and that are served at primary or transmission voltage.

F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable energy from existing renewable energy sources owned by the participating utility or purchased as allowed by contract at no additional cost to customers to the extent feasible. A utility participating in such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007, that is operated by a person that is served within a utility's large industrial rate class and that is served at primary or transmission voltage, except for those persons providing renewable thermal energy equivalents to the utility. A participating utility shall be required to fulfill any remaining deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a prudent manner to be determined by the Commission at the time of approval of any application made pursuant to subsection B. A participating utility may sell renewable energy certificates produced at its own generation facilities located in the Commonwealth or, if located outside the Commonwealth, owned by such utility and in operation as of January 1, 2010, or renewable energy certificates acquired as part of a purchase power agreement, to another entity and purchase lower cost renewable energy certificates and the net difference in price between the renewable energy certificates shall be credited to customers. Utilities participating in such program shall collectively, either through the installation of new generating facilities, through retrofit of existing facilities or through purchases of electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting RPS goals, excluding such fuel used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its share of the total electric energy sold in the base year, as defined in subsection A, for all utilities participating in the RPS program. A utility may use in meeting RPS goals, without limitation, the following sustainable biomass and biomass based waste to energy resources: mill residue, except wood chips, sawdust and bark; pre-commercial soft wood thinning;

slash; logging and construction debris; brush; yard waste; shipping crates; dunnage; non-merchantable waste paper; landscape or right-of-way tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and gas produced from the anaerobic decomposition of animal waste.

G. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section including a requirement that participants verify whether the RPS goals are met in accordance with this section.

H. Each investor-owned incumbent electric utility shall report to the Commission annually by November 1 identifying:

1. The utility's efforts, if any, to meet the RPS Goals, specifically identifying:

a. A list of all states where the purchased or owned renewable energy was generated, specifying the number of megawatt hours or renewable energy certificates originating from each state;

b. A list of the decades in which the purchased or owned renewable energy generating units were placed in service, specifying the number of megawatt hours or renewable energy certificates originating from those units; and

c. A list of fuel types used to generate the purchased or owned renewable energy, specifying the number of megawatt hours or renewable energy certificates originating from each fuel type;

2. The utility's overall generation of renewable energy; and

3. Advances in renewable generation technology that affect activities described in subdivisions 1 and 2.

I. The Commission shall post on its website the reports submitted by each investor-owned incumbent electric utility pursuant to subsection H.

J. The Commission shall issue to a participating utility a number of renewable energy certificates for qualified investments, upon request by a participating utility, if it finds that an expense satisfies the conditions set forth in this section for a qualified investment, as follows:

1. By March 31 of each year, the participating utility shall provide an analysis, as reasonably determined by a qualified independent broker, of the average for the preceding year of the publicly available prices for Tier 1 renewable energy certificates and Tier 2 renewable energy certificates, validating the generation of renewable energy by eligible sources, that were issued in the interconnection region of the regional transmission entity of which the participating utility is a member;

2. In the same annual analysis provided to the Commission, the participating utility shall divide the amount of the participating utility's qualified investments in the applicable period by the average price determined pursuant to subdivision 1;

3. The number of renewable energy certificates to be issued to the participating utility shall equal the product obtained pursuant to subdivision 2; and

4. The Commission shall review and validate the analysis provided by the participating utility within 90 days of submittal of its analysis to the Commission. If no corrections are made by the Commission, then the analysis shall be deemed correct and the renewable energy certificates shall be deemed issued to the participating utility.

Each renewable energy certificate issued to a participating utility pursuant to this subsection shall represent the equivalent of one megawatt hour of renewable energy sales achieved when applied to an RPS Goal.

K. Qualified investments shall constitute reasonable and prudent operating expenses of a participating utility. Notwithstanding subsection E, a participating utility shall not be authorized to recover the costs associated with qualified investments through rate adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1. In any proceeding conducted pursuant to § 56-585.1 or other provision of this title in which a participating utility seeks recovery of its qualified investments as an operating expense, the participating utility shall not be authorized to earn a return on its qualified investments.

L. A participating utility shall not be eligible for a research and development tax credit pursuant to § 58.1-439.12:08 or 58.1-439.12:11 with regard to any expense incurred or investment made by the participating utility that constitutes a qualified investment pursuant to this section.

2007, cc. 888, 933; 2008, c. 651; 2009, c. 744; 2010, c. 850; 2012, cc. 46, 67, 200, 274, 348, 717; 2013, cc. 2, 308, 403; 2014, cc. 420, 465; 2016, cc. 300, 661.

§ 56-585.3. Regulation of cooperative rates after rate caps

A. After the expiration or termination of capped rates, the rates, terms and conditions of distribution electric cooperatives subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1 of this title shall be regulated in accordance with the provisions of Chapters 9.1 (§ 56-231.15 et seq.) and 10 (§ 56-232 et seq.) of this title, as modified by the following provisions:

1. Except for energy related cost (fuel cost), the Commission shall not require any cooperative to adjust, modify, or revise its rates, by means of riders or otherwise, to reflect changes in wholesale power cost which occurred during the capped rate period, other than in a general rate proceeding;

2. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, increase or decrease all classes of its rates for distribution services at any time, provided, however, that such adjustments will not effect a cumulative net increase or decrease in excess of 5 percent in such rates in any three year period. Such adjustments will not affect or be limited by any existing fuel or wholesale power cost adjustment provisions. The cooperative will promptly file any such revised rates with the Commission for informational purposes;

3. Each cooperative may, without Commission approval, upon an affirmative resolution of its board of directors, make any adjustment to its terms and conditions that does not affect the

cooperative's revenues from the distribution or supply of electric energy. In addition, a cooperative may make such adjustments to any pass-through of third-party service charges and fees, and to any fees, charges and deposits set out in Schedule F of such cooperative's Terms and Conditions filed as of January 1, 2007. The cooperative will promptly file any such amended terms and conditions with the Commission for informational purposes;

4. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, make any adjustment to its rates reasonably calculated to collect any or all of the fixed costs of owning and operating its electric distribution system, including without limitation, such costs as are identified as customer-related costs in a cost of service study, through a new or modified fixed monthly charge, rather than through volumetric charges associated with the use of electric energy; however, such adjustments shall be revenue neutral based on the cooperative's determination of the proper intra-class allocation of the revenues produced by its then current rates. The cooperative may elect, but is not required, to implement such adjustments through incremental changes over the course of up to three years. The cooperative shall file promptly revised tariffs reflecting any such adjustments with the Commission for informational purposes; and

5. A cooperative may, at any time after the expiration or termination of capped rates, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the costs described in subdivisions A 5 b and e of § 56-585.1.

B. None of the adjustments described in subdivisions A 2 through A 5 will apply to the rates paid by any customer that takes service by means of dedicated distribution facilities and had non-coincident peak demand in excess of 90 megawatts in calendar year 2006.

C. Nothing in this section shall be deemed to grant to a cooperative any authority to amend or adjust any terms and conditions of service or agreements regarding pole attachments or the use of the cooperative's poles or conduits.

2007, cc. 888, 933; 2009, cc. 401, 824.

§ 56-586. Emergency service provider

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

1999, c. 411.

§ 56-586.1. Electric energy emergencies

A. As used in this section, "electric energy emergency" means an unplanned interruption in the generation or transmission of electricity resulting from a hurricane, ice storm, windstorm, earthquake or similar natural phenomena, or from a criminal act affecting such generation or transmission, act of war or act of terrorism, which interruption is (i) of such severity that minimum levels of reliable service cannot be maintained using resources practicably obtainable from the market and (ii) so imminently and substantially threatening to the health, safety or welfare of residents of this Commonwealth that immediate action of state government is necessary to prevent loss of life, protect the public health or safety, and prevent unnecessary or avoidable damage to property.

B. The Governor is authorized, after finding that an electric energy emergency exists and that appropriate federal and state agencies and appropriate reliability councils cannot adequately address such emergency, to declare an electric energy emergency by filing a written declaration with the Secretary of the Commonwealth. The declaration shall state the counties and cities or utility service areas of the Commonwealth in which the declaration is applicable, or its statewide application. A declared electric energy emergency shall go into immediate effect upon filing and continue in effect for the period prescribed in the declaration, but not more than thirty days. At the end of the prescribed period, the Governor may issue another declaration extending the emergency. The Governor shall terminate such declaration as soon as the basis for such declaration no longer exists.

C. During a declared electric energy emergency, the Governor is authorized, in compliance with guidelines of the Department of Emergency Services promulgated as provided in subsection G, to require any generator or any municipal electric utility that is capable of generating but (i) is not generating or (ii) is not generating at its full potential during such declared electric emergency, to generate, dispatch or sell electricity from a facility that it operates within the Commonwealth, to the Commonwealth for distribution within the areas of the Commonwealth designated in the declaration. The quantity of electricity required to be generated, dispatched or sold, and the duration of such requirements, shall be as determined by the Governor to be necessary to alleviate the electric energy emergency hardship. The Commonwealth shall compensate an entity required to generate, dispatch, or sell electricity pursuant to this subsection, and the operator of any transmission facilities over which the electricity is transmitted, in the manner provided in § 56-522, mutatis mutandis, unless otherwise provided by federal law. The Department of Environmental Quality, the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board shall issue any temporary or emergency permit, order, or variance necessary to authorize any permit amendments or other changes needed to meet the requirements imposed under this section and the Governor may petition the President to declare a regional energy emergency under 42 U.S.C. § 7410 (f) as necessary to suspend enforcement of any provision

of the federal Clean Air Act. Any increased operation required during such declared emergency shall not be counted towards the number of hours of operation allowed during the year. No civil charges or penalties shall be imposed for any violation that occurs as a result of actions taken that are necessary for the required generation, dispatch or sale during the declared electric energy emergency. The foregoing provisions shall apply to all actions the entity takes in connection with such required generation, dispatch or sale during the period of the declared emergency.

D. During a declared electric energy emergency, the Governor may use the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the Commonwealth, and of the political subdivisions thereof, to the maximum extent practicable and necessary to meet the electric energy emergency. The officers and personnel of all such departments, offices, and agencies shall cooperate with and extend such services and facilities to the Governor upon request.

E. During a declared electric energy emergency, the Governor is authorized to request the Secretary of the United States Department of Energy to invoke section 202(C) of the Federal Power Act, 16 U.S.C. § 824a (1935).

F. The General Assembly is authorized by joint resolution to terminate any declaration of an electric energy emergency. The emergency shall be terminated at the time of filing of the joint resolution with the Secretary of the Commonwealth.

G. The Department of Emergency Services, in consultation with the Commission and the Secretary of Commerce and Trade, shall establish guidelines for the implementation of the Governor's powers pursuant to subsection C that protect the public health and safety and prevent unnecessary or avoidable damage to property with a minimum of economic disruption to generators, transmitters and distributors of electricity. Such guidelines shall:

1. Define various foreseeable levels of electric energy emergencies and specify appropriate measures to be taken for each type of electric energy emergency as necessary to protect the public health or safety or prevent unnecessary or avoidable damage to property;

2. Prescribe appropriate response measures for each level of electric energy emergency; and

3. Equitably distribute the burdens and benefits resulting from the implementation of this section among other members of the affected class of persons within all geographic regions of the Commonwealth.

H. During a declared electric energy emergency, the attorney general may bring an action for injunctive or other appropriate relief in the Circuit Court of the City of Richmond to secure prompt compliance. The court may issue an ex parte temporary order without notice that shall enforce the prohibitions, restrictions or actions that are necessary to secure compliance with the guideline, order or declaration.

I. During a declared electric energy emergency, no person shall intentionally violate any guideline adopted or declaration issued pursuant to this section. Any person who violates this section is guilty of a Class 1 misdemeanor.

2002, c. 609.

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

A. As a condition of doing business in the Commonwealth, each person except a default service provider seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth, on and after January 1, 2002, shall obtain a license from the Commission to do so. A license shall not be required solely for the leasing or financing of property used in the sale of electricity to any retail customer in the Commonwealth.

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

B. 1. As a condition of obtaining, retaining and renewing any license issued pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, which may include requirements that such person (i) demonstrate, in a manner satisfactory to the Commission, financial responsibility; (ii) post a bond as deemed adequate by the Commission to ensure that financial responsibility; (iii) pay an annual license fee to be determined by the Commission; and (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and renewing any license pursuant to this section, a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the Commission, including but not limited to requirements that such person demonstrate (i) technical capabilities as the Commission may deem appropriate; (ii) in the case of a person seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth, access to generation and generation reserves; and (iii) adherence to minimum market conduct standards.

2. Any license issued by the Commission pursuant to this section to a person seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth may be conditioned upon the licensee furnishing to the Commission prior to the provision of electric energy to consumers proof of adequate access to generation and generation reserves.

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

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

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

1999, c. 411; 2000, c. 991; 2007, cc. 888, 933.

§ 56-588. Licensing of aggregators

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

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

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

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

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

1999, c. 411; 2000, c. 991.

§ 56-589. Municipal and state aggregation

A. Subject to the provisions of subdivision A 3 of § 56-577, counties, cities, and towns (hereafter municipalities) and other political subdivisions of the Commonwealth may, at their election and upon authorization by majority votes of their governing bodies, aggregate electrical energy and demand requirements for the purpose of negotiating the purchase of electrical energy requirements from any licensed supplier within this Commonwealth, as follows:

1. Any municipality or other political subdivision of the Commonwealth may aggregate the electric energy load of residential, commercial, and industrial retail customers within its boundaries on an opt-in or opt-out basis.

2. Any municipality or other political subdivision of the Commonwealth may aggregate the electric energy load of its governmental buildings, facilities, and any other governmental operations requiring the consumption of electric energy. Aggregation pursuant to this subdivision shall not require licensure pursuant to § 56-588.

3. Two or more municipalities or other political subdivisions within the Commonwealth may aggregate the electric energy load of their governmental buildings, facilities, and any other governmental operations requiring the consumption of electric energy. Aggregation pursuant to this subdivision shall not require licensure pursuant to § 56-588 when such municipalities or other political subdivisions are acting jointly to negotiate or arrange for themselves agreements for their energy needs directly with licensed suppliers or aggregators.

Nothing in this subsection shall prohibit the Commission's development and implementation of pilot programs for opt-in, opt-out, or any other type of municipal aggregation, as provided in § 56-577.

B. The Commonwealth, at its election, may aggregate the electric energy load of its governmental buildings, facilities, and any other government operations requiring the consumption of electric energy for the purpose of negotiating the purchase of electricity from any licensed supplier within the Commonwealth. Aggregation pursuant to this subsection shall not require licensure pursuant to § 56-588.

C. Nothing in this section shall preclude municipalities from aggregating the electric energy load of their governmental buildings, facilities and any other governmental operations requiring the consumption of electric energy for the purpose of negotiating rates and terms, and conditions of service from the electric utility certificated by the Commission to serve the territory in which such buildings, facilities and operations are located, provided, however, that no such electric energy load shall be aggregated for this purpose unless all such buildings, facilities and operations to be aggregated are served by the same electric utility.

1999, c. 411; 2000, c. 991; 2003, c. 795; 2004, c. 827; 2007, cc. 888, 933.

§ 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 are made available for electric service during the capped rate period as provided in § 56-582 and, if applicable, during any period the distributor serves as a default provider as provided for in § 56-585; (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 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 a distributor to offer to provide, and of the Commission to approve if appropriate the provision of, such services on a 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 this subsection, due to an inability to determine, at the time of consideration of the transfer, default service prices under § 56-585.

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

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

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

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

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

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

E. A transaction described in subsection D shall not:

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

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

F. Except as provided in subdivision B 5, nothing in this chapter shall be deemed to abrogate or modify the Commission's authority under Chapter 3 (§ 56-55 et seq.), 4 (§ 56-76 et seq.) or 5 (§ 56-88 et seq.) of this title. However, any person subject to the requirements of subsection D that is also subject to the requirements of Chapter 5 of this title may be exempted from compliance with the requirements of Chapter 5 of this title.

1999, c. 411; 2000, c. 991; 2001, c. 748; 2007, cc. 888, 933.

§ 56-591. Application of antitrust laws

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

1999, c. 411.

§ 56-592. Consumer education and marketing practices

A. The Commission shall develop an electric energy consumer education program designed to provide the following information to retail customers:

1. Information regarding energy conservation, energy efficiency, demand-side management, demand response, and renewable energy;

2. Information concerning demand-side management and demand response programs offered in the Commonwealth to retail customers;

3. Information regarding the matters described in subdivisions 1 and 2 that are specifically designed for the industrial, commercial, residential, and government sectors; and

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

B. The Commission shall complete the development of the consumer education program described in subsection A, and report its findings and recommendations to the Commission on Electric Utility Regulation as frequently as may be required by such Commission concerning:

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

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

3. State agency and nongovernmental entity participation;

4. Program duration;

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

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

C. The Commission shall develop regulations governing marketing practices by public service companies, licensed suppliers, aggregators or any other providers of services made competitive by this chapter, including regulations to prevent unauthorized switching of suppliers, unauthorized

charges, and improper solicitation activities. The Commission shall also establish standards for marketing information to be furnished by licensed suppliers, aggregators or any other providers of services made competitive by this chapter, which information shall include standards concerning:

1. Pricing and other key contract terms and conditions;

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

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

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

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

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

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

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

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

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

E. The Commission shall establish or maintain a complaint bureau for the purpose of receiving, reviewing and investigating complaints by retail customers against public service companies, licensed suppliers, aggregators and other providers of any services made competitive under this chapter. Upon the request of any interested person or the Attorney General, or upon its own motion, the Commission shall be authorized to inquire into possible violations of this chapter and to enjoin or punish any violations thereof pursuant to its authority under this chapter, this title, and under Title 12.1. The Attorney General shall have a right to participate in such proceedings consistent with the Commission's Rules of Practice and Procedure.

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

1999, c. 411; 2003, c. 885; 2008, c. 883.

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

A. The Commission shall establish and implement the consumer education program developed pursuant to subsection A of § 56-592. In establishing such a program, the Commission shall take into account the findings and recommendations of the subgroup on Information/Consumer Education

that was established in conjunction with the Commission's proceeding in Case PUE-2007-00049, that implemented the third enactment of Chapters 888 and 933 of the Acts of Assembly of 2007 .

B. The program shall be designed to (i) enable consumers to make rational and informed choices about the matters described in subsection A of § 56-592, including but not limited to demand side management, energy conservation, and energy efficiency, (ii) help consumers reduce transaction costs in making decisions regarding such matters, and (iii) foster compliance with the consumer protection provisions of this chapter.

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

D. Pursuant to the provisions of § 30-205, the Commission shall provide periodic updates to the Commission on Electric Utility Regulation concerning the program's implementation and operation.

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

2000, c. 991; 2003, c. 885; 2008, c. 883.

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

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

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

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

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

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

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

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

1999, c. 411; 2000, c. 991.

§ 56-594. Net energy metering provisions

A. The Commission shall establish by regulation a program that affords eligible customer-generators the opportunity to participate in net energy metering, and a program, to begin no later than July 1, 2014, for customers of investor-owned utilities and no later than July 1, 2015, for customers of electric cooperatives, to afford eligible agricultural customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners or operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; (v) eligible agricultural customer-generators; or (vi) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest.

B. For the purpose of this section:

"Eligible agricultural customer-generator" means a customer that operates a renewable energy generating facility as part of an agricultural business, which generating facility (i) uses as its sole energy source solar power, wind power, or aerobic or anaerobic digester gas, (ii) does not have an

aggregate generation capacity of more than 500 kilowatts, (iii) is located on land owned or controlled by the agricultural business, (iv) is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (v) is interconnected and operated in parallel with an electric company's transmission and distribution facilities, and (vi) is used primarily to provide energy to metered accounts of the agricultural business. An eligible agricultural customer-generator may be served by multiple meters that are located at separate but contiguous sites, such that the eligible agricultural customer-generator may aggregate in a single account the electricity consumption and generation measured by the meters, provided that the same utility serves all such meters. The aggregated load shall be served under the appropriate tariff.

"Eligible customer-generator" means a customer that owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers on an electrical generating facility placed in service after July 1, 2015; (ii) uses as its total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements. In addition to the electrical generating facility size limitations in clause (i), the capacity of any generating facility installed under this section after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

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

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

C. The Commission's regulations shall ensure that (i) the metering equipment installed for net metering shall be capable of measuring the flow of electricity in two directions and (ii) any eligible customer-generator seeking to participate in net energy metering shall notify its supplier and receive approval to interconnect prior to installation of an electrical generating facility. The electric distribution company shall have 30 days from the date of notification for residential facilities, and 60 days from the date of notification for nonresidential facilities, to determine whether the interconnection requirements have been met. Such regulations shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's electrical generating system, and each electrical generating system of an eligible agricultural customer-

generator, shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in this section and to ensure public safety, power quality, and reliability of the supplier's electric distribution system, an eligible customer-generator or eligible agricultural customer-generator whose electrical generating system meets those standards and rules shall bear all reasonable costs of equipment required for the interconnection to the supplier's electric distribution system, including costs, if any, to (a) install additional controls, (b) perform or pay for additional tests, and (c) purchase additional liability insurance.

D. The Commission shall establish minimum requirements for contracts to be entered into by the parties to net metering arrangements. Such requirements shall protect the eligible customer-generator or eligible agricultural customer-generator against discrimination by virtue of its status as an eligible customer-generator or eligible agricultural customer-generator, and permit customers that are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariffs to participate as an eligible customer-generator or eligible agricultural customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators or eligible agricultural customer-generators served on demand charge-based time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

E. If electricity generated by an eligible customer-generator or eligible agricultural customer-generator over the net metering period exceeds the electricity consumed by the eligible customer-generator or eligible agricultural customer-generator, the customer-generator or eligible agricultural customer-generator shall be compensated for the excess electricity if the entity contracting to receive such electric energy and the eligible customer-generator or eligible agricultural customer-generator enter into a power purchase agreement for such excess electricity. Upon the written request of the eligible customer-generator or eligible agricultural customer-generator, the supplier that serves the eligible customer-generator or eligible agricultural customer-generator shall enter into a power purchase agreement with the requesting eligible customer-generator or eligible agricultural customer-generator that is consistent with the minimum requirements for contracts established by the Commission pursuant to subsection D. The power purchase agreement shall obligate the supplier to purchase such excess electricity at the rate that is provided for such purchases in a net metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator or eligible agricultural customer-generator owns any renewable energy certificates associated with its electrical generating facility; however, at the time that the eligible customer-generator or eligible agricultural customer-generator enters into a power purchase agreement with its supplier, the eligible customer-generator or eligible agricultural customer-generator shall have a one-time option to sell the renewable energy certificates associated with such electrical generating facility to its supplier and be compensated at an amount

that is established by the Commission to reflect the value of such renewable energy certificates. Nothing in this section shall prevent the eligible customer-generator or eligible agricultural customer-generator and the supplier from voluntarily entering into an agreement for the sale and purchase of excess electricity or renewable energy certificates at mutually-agreed upon prices if the eligible customer-generator or eligible agricultural customer-generator does not exercise its option to sell its renewable energy certificates to its supplier at Commission-approved prices at the time that the eligible customer-generator or eligible agricultural customer-generator enters into a power purchase agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and renewable energy certificates from eligible customer-generators or eligible agricultural customer-generators shall be recoverable through its Renewable Energy Portfolio Standard (RPS) rate adjustment clause, if the supplier has a Commission-approved RPS plan. If not, then all costs shall be recoverable through the supplier's fuel adjustment clause. For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-generator or eligible agricultural customer-generator for the purchase of excess electricity and renewable energy certificates and any administrative costs incurred to manage the eligible customer-generator's or eligible agricultural customer-generator's power purchase arrangements. The net metering standard contract or tariff shall be available to eligible customer-generators or eligible agricultural customer-generators on a first-come, first-served basis in each electric distribution company's Virginia service area until the rated generating capacity owned and operated by eligible customer-generators or eligible agricultural customer-generators in the state reaches one percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year, and shall require the supplier to pay the eligible customer-generator or eligible agricultural customer-generator for such excess electricity in a timely manner at a rate to be established by the Commission.

F. Any residential eligible customer-generator or eligible agricultural customer-generator who owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility with a capacity that exceeds 10 kilowatts shall pay to its supplier, in addition to any other charges authorized by law, a monthly standby charge. The amount of the standby charge and the terms and conditions under which it is assessed shall be in accordance with a methodology developed by the supplier and approved by the Commission. The Commission shall approve a supplier's proposed standby charge methodology if it finds that the standby charges collected from all such eligible customer-generators and eligible agricultural customer-generators allow the supplier to recover only the portion of the supplier's infrastructure costs that are properly associated with serving such eligible customer-generators or eligible agricultural customer-generators. Such an eligible customer-generator or eligible agricultural customer-generator shall not be liable for a standby charge until the date specified in an order of the Commission approving its supplier's methodology.

1999, c. 411; 2004, c. 827; 2006, c. 470; 2007, cc. 877, 888, 933; 2009, c. 804; 2011, c. 239; 2013, c. 268; 2015, cc. 431, 432.

§ 56-594.1. Interconnection by farms

A. As used in this section, "eligible farm" means an entity that owns or operates facilities within the Commonwealth for the generation of electric energy, which entity is described in subdivision (b)(10) of § 56-265.1.

B. Eligible farms shall be permitted to connect to the electrical grid in order to feed into the grid electricity generated by the eligible farm from its facilities that generate electricity from a waste-to-energy technology.

C. The Commission shall adopt regulations to implement this section pursuant to § 56-578.

2009, c. 746.

§ 56-595. Repealed

Repealed by Acts 2003, c. 885.

§ 56-596. Consideration of economic development; report

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

B. By September 1 of each year, the Commission shall report to the Commission on Electric Utility Regulation and the Governor on the status of the implementation of this chapter and its recommendations regarding the implementation of the provisions of this chapter. This report shall include the Commission's recommendations for any actions by the General Assembly, the Commission, electric utilities, or any other entity that the Commission considers to be in the public interest.

2001, c. 748; 2003, c. 885; 2008, c. 883.

Chapter 24 - ELECTRIC UTILITY INTEGRATED RESOURCE PLANNING

§ 56-597. Definitions

As used in this chapter:

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

"Electric utility" means any investor-owned public utility that provides electric energy for use by retail customers.

"Integrated resource plan" or "IRP" means a document developed by an electric utility that provides a forecast of its load obligations and a plan to meet those obligations by supply side and demand side resources over the ensuing 15 years to promote reasonable prices, reliable service, energy independence, and environmental responsibility.

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

2008, cc. 476, 603.

§ 56-598. Contents of integrated resource plans

An IRP should:

1. Integrate, over the planning period, the electric utility's forecast of demand for electric generation supply with recommended plans to meet that forecasted demand and assure adequate and sufficient reliability of service, including, but not limited to:

a. Generating electricity from generation facilities that it currently operates or intends to construct or purchase;

b. Purchasing electricity from affiliates and third parties; and

c. Reducing load growth and peak demand growth through cost-effective demand reduction programs;

2. Identify a portfolio of electric generation supply resources, including purchased and self-generated electric power, that:

a. Consistent with § 56-585.1, is most likely to provide the electric generation supply needed to meet the forecasted demand, net of any reductions from demand side programs, so that the utility will continue to provide reliable service at reasonable prices over the long term; and

b. Will consider low cost energy/capacity available from short-term or spot market transactions, consistent with a reasonable assessment of risk with respect to both price and generation supply availability over the term of the plan;

3. Reflect a diversity of electric generation supply and cost-effective demand reduction contracts and services so as to reduce the risks associated with an over-reliance on any particular fuel or type of generation demand and supply resources and be consistent with the Commonwealth's energy policies as set forth in § 67-102; and

4. Include such additional information as the Commission requests pertaining to how the electric utility intends to meets its obligation to provide electric generation service for use by its retail customers over the planning period.

2008, cc. 476, 603.

§ 56-599. Integrated resource plan required

A. Each electric utility shall file an updated integrated resource plan by July 1, 2015. Thereafter, each electric utility shall file an updated integrated resource plan annually by May 1. A copy of each integrated resource plan shall be provided to the Chairmen of the House and Senate Committees on Commerce and Labor and to the Chairman of the Commission on Electric Utility Regulation. All updated integrated resource plans shall comply with the provisions of any relevant order of the Commission establishing guidelines for the format and contents of updated and revised integrated resource plans. Each integrated resource plan shall consider options for maintaining and enhancing rate stability, energy independence, economic development including retention and expansion of energy-intensive industries, and service reliability.

B. In preparing an integrated resource plan, each electric utility shall systematically evaluate, and may propose:

1. Entering into short-term and long-term electric power purchase contracts;

2. Owning and operating electric power generation facilities;

3. Building new generation facilities;

4. Relying on purchases from the short term or spot markets;

5. Making investments in demand-side resources, including energy efficiency and demand-side management services;

6. Taking such other actions, as the Commission may approve, to diversify its generation supply portfolio and ensure that the electric utility is able to implement an approved plan;

7. The methods by which the electric utility proposes to acquire the supply and demand resources identified in its proposed integrated resource plan;

8. The effect of current and pending state and federal environmental regulations upon the continued operation of existing electric generation facilities or options for construction of new electric generation facilities; and

9. The most cost effective means of complying with current and pending state and federal environmental regulations, including compliance options to minimize effects on customer rates of such regulations.

C. The Commission shall analyze and review an integrated resource plan and, after giving notice and opportunity to be heard, the Commission shall make a determination as to whether an IRP is reasonable and is in the public interest.

2008, cc. 476, 603; 2015, c. 6.

Chapter 25 - NATURAL GAS CONSERVATION AND RATEMAKING EFFICIENCY ACT

§ 56-600. Definitions

As used in this chapter:

"Allowed distribution revenue" means the average annual, weather-normalized, nongas commodity revenue per customer associated with the rates in effect as adopted in the applicable utility's last Commission-approved rate case or performance-based regulation plan, multiplied by the average number of customers served.

"Conservation and ratemaking efficiency plan" means a plan filed by a natural gas utility pursuant to this chapter that includes a decoupling mechanism.

"Cost-effective conservation and energy efficiency program" means a program approved by the Commission that is designed to decrease the average customer's annual, weather-normalized consumption or total gas bill, for gas and nongas elements combined, or avoid energy costs or consumption the customer may otherwise have incurred, and is determined by the Commission to be cost-effective upon consideration, among other factors, that the net present value of the benefits exceeds the net present value of the costs under the following four tests: the Total Resource Cost Test, the Program Administrator Test (also referred to as the Utility Cost Test), the Participant Test, and the Ratepayer Impact Measure Test. Such determination shall include an analysis of all four tests, and a program or portfolio of programs shall not be rejected based solely on the results of a single test. Such determination shall also be made (i) with the assignment of administrative costs associated with the conservation and ratemaking efficiency plan to the portfolio as a whole and (ii) with the assignment of education and outreach costs associated with each program in a portfolio of programs to such program and not to individual measures within a program, when such administrative, education, or outreach costs are not otherwise directly assignable. Without limitation, rate designs or rate mechanisms, customer education, customer incentives, and weatherization programs are examples of conservation and energy efficiency programs that the Commission may consider. Energy efficiency programs that provide measurable and verifiable energy savings to low-income customers or elderly customers may also be deemed cost effective. A cost-effective conservation and energy efficiency program shall not include a program designed to convert propane customers to natural gas.

"Decoupling mechanism" means a rate, tariff design or mechanism that decouples the recovery of a utility's allowed distribution revenue from the level of consumption of natural gas by its customers, including (i) a mechanism that adjusts actual nongas distribution revenues per customer to allowed distribution revenues per customer, such as a sales adjustment clause, (ii) rate design changes that substantially align the percentage of fixed charge revenue recovery with the percentage of the utility's fixed costs, such as straight fixed variable rates, provided such mechanism includes a substantial demand component based on a customer's peak usage, or (iii) a combination of clauses (i) and (ii) that substantially decreases the relative amount of nongas distribution revenue affected by changes in per customer consumption of gas.

"Fixed costs" means any and all of the utility's nongas costs of service, together with an authorized return thereon, that are not associated with the cost of the natural gas commodity flowing through and measured by the customer's meter.

"Measure" means an individual item, service, offering, or rebate available to a customer of a natural gas utility as part of the utility's conservation and ratemaking efficiency plan.

"Natural gas utility" or "utility" means any investor-owned public service company engaged in the business of furnishing natural gas service to the public.

"Portfolio" means the program or programs included in a natural gas utility's conservation and ratemaking efficiency plan.

"Program" means a group of one or more related measures for a customer class.

"Revenue-neutral" means a change in a rate, tariff design or mechanism as a component of a conservation and ratemaking efficiency plan that does not shift annualized allowed distribution revenue between customer classes, and does not increase or decrease the utility's average, weather-normalized nongas utility revenue per customer for any given rate class by more than 0.25 percent when compared to (i) the rate, tariff design or mechanism in effect at the time a conservation and ratemaking efficiency plan is filed pursuant to this chapter or (ii) the allocation of costs approved by the Commission in a rate case using the cost of service methodology set forth in § 56-235.2 or a performance-based regulation plan authorized by § 56-235.6, where a plan is filed in conjunction with such case.

2008, c. 639; 2012, cc. 210, 821; 2015, c. 694.

§ 56-601. Natural gas conservation and ratemaking efficiency

A. Consistent with the objectives pertaining to energy issues set forth in § 67-101 and the policy elements stated in § 67-102, it is in the public interest to authorize and encourage the adoption of natural gas conservation and ratemaking efficiency plans that promote the wise use of natural gas and natural gas infrastructure through the development of alternative rate designs and other mechanisms that more closely align the interests of natural gas utilities, their customers, and the Commonwealth generally, and improve the efficiency of ratemaking to more closely reflect the dynamic nature of the natural gas market, the economy, and public policy regarding conservation and energy efficiency. Such alternative rate designs and other mechanisms should, where feasible:

1. Provide utilities with better tools to work with customers to decrease the average customer's annual average weather-normalized consumption of natural gas;

2. Provide reasonable assurance of a utility's ability to recover costs of serving the public, including its cost-effective investments in conservation and energy efficiency as well as infrastructure needed to provide or maintain reliable service to the public;

3. Reward utilities for meeting or exceeding conservation and energy efficiency goals that may be established pursuant to the Virginia Energy Plan (§ 67-100 et seq.);

4. Provide customers with long-term, meaningful opportunities to more efficiently consume natural gas and mitigate their expenditures for the natural gas commodity, while ensuring that the rate design methodology used to set a utility's revenue recovery is not inconsistent with such conservation and energy efficiency goals;

5. Recognize the economic and environmental benefits of efficient use of natural gas; and

6. Preserve or enhance the utility bill savings that customers receive when they reduce their natural gas use.

B. Natural gas utilities are authorized pursuant to this chapter to file natural gas conservation and ratemaking efficiency plans that implement alternative natural gas utility rate designs and other mechanisms, in addition to or in conjunction with the cost of service methodology set forth in § 56-235.2 and performance-based regulation plans authorized by § 56-235.6, that:

1. Replace existing utility rate designs or other mechanisms that promote inefficient use of natural gas with rate designs or other mechanisms that ensure a utility's recovery of its authorized revenues is independent of the amount of customers' natural gas consumption;

2. Provide incentives for natural gas utilities to promote conservation and energy efficiency by granting recovery of the costs associated with cost-effective conservation and energy efficiency programs; and

3. Reward utilities that meet or exceed conservation and energy efficiency goals on a weather-normalized, annualized average customer basis through the implementation of cost-effective conservation and energy efficiency programs.

C. This chapter shall be construed liberally to accomplish these purposes.

2008, c. 639.

§ 56-602. Conservation and ratemaking efficiency plans

A. Notwithstanding any provision of law to the contrary, each natural gas utility shall have the option to file a conservation and ratemaking efficiency plan as provided in this chapter. Such a plan may include one or more residential, small commercial, or small general service classes, but shall not apply to large commercial or large industrial classes of customers. Such plan shall include: (i) a normalization component that removes the effect of weather from the determination of conservation and energy efficiency results; (ii) a decoupling mechanism; (iii) one or more cost-effective conservation and energy efficiency programs; (iv) provisions to address the needs of low-income or low-usage residential customers; and (v) provisions to ensure that the rates and service to non-participating classes of customers are not adversely impacted. Such plan may also include provisions for phased or targeted implementation of rate or tariff design changes, if any, or conservation and energy efficiency programs. The Commission may approve such a plan after such notice and opportunity for hearing as the Commission may prescribe, subject to the provisions of this chapter. Nothing in this subsection shall prevent a natural gas utility from amending a conservation and ratemaking efficiency plan by amending, altering, supplementing, or deleting one or more conservation or energy efficiency programs.

B. The Commission shall approve or deny, within 180 days, a natural gas utility's initial application for any revenue-neutral conservation and ratemaking efficiency plan that allocates annual per-customer fixed costs on an intra-class basis in reliance upon a revenue study or class cost of service study supporting the rates in effect at the time the plan is filed. A plan filed pursuant to this subsection shall not require the filing of rate case schedules. The Commission shall approve or deny, within 120 days, a natural gas utility's application to amend a previously approved plan.

The Commission shall approve such a plan or amendment if it finds that the plan's or amendment's proposed decoupling mechanism is revenue-neutral and is otherwise consistent with this chapter. If the Commission denies such a plan or amendment, it shall set forth with specificity the reasons for such denial and the utility shall have the right to refile, without prejudice, an amended plan or amendment within 60 days, and the Commission shall thereafter have 60 days to approve or deny the amended plan or amendment. The time period for Commission review provided for in this subsection shall not apply if the conservation and ratemaking efficiency plan is filed in conjunction with a rate case using the cost of service methodology set forth in § 56-235.2 or a performance-based regulation plan authorized by § 56-235.6.

C. The Commission shall approve or deny, within 270 days, a natural gas utility's initial application for any revenue-neutral conservation and ratemaking efficiency plan that allocates per-customer fixed costs on an intra-class basis according to a class cost of service study filed with the plan, when such plan is filed in conjunction with a rate case using the cost of service methodology set forth in § 56-235.2 or a performance-based regulation plan authorized by § 56-235.6. The Commission shall approve or deny, within 120 days, a natural gas utility's application to amend a plan previously approved pursuant to this subsection. The Commission shall approve such a plan or amendment if it finds that the plan's or amendment's proposed decoupling mechanism is revenue-neutral, is consistent with this chapter, and is otherwise in the public interest, including any findings required by § 56-235.2 or 56-235.6. If the Commission denies such a plan or amendment, it shall set forth with specificity the reasons for its denial and the utility shall have the right to refile, without prejudice, an amended plan or amendment within 60 days; the Commission shall thereafter have 60 days to approve or deny the amended plan or amendment.

D. The Commission shall allow any natural gas utility that implements a conservation and ratemaking efficiency plan under this chapter to recover, on a timely basis and through its regulated rates charged to its classes of customers participating in the plan, its entire incremental costs associated with cost-effective conservation and energy efficiency programs that are designed to encourage the reduction of annualized, weather-normalized natural gas consumption per customer. Ratemaking treatment may include placing appropriate capital expenditures for technology and program costs in the respective utility's rate base, deferral of such interim incremental costs (which costs would not be subject to an earnings test), or recovering the utility's technology and program costs through another ratemaking methodology approved by the Commission, such as a tracking mechanism. Such conservation and energy efficiency programs may also be jointly conducted or co-sponsored with other utilities, federal, state or local government agencies, nonprofit organizations, trade associations, homebuilders, and other for-profit vendors. Incremental costs recovered pursuant to this subsection shall be in addition to all other costs that the utility is permitted to recover, shall not be considered an offset to other Commission-approved costs of service or revenue requirements, and shall not be included in any computation relative to a performance-based regulation plan revenue sharing mechanism.

E. The Commission shall require every natural gas utility operating under a conservation and rate-making efficiency plan approved pursuant to this chapter to file annual reports showing the year over year weather-normalized use of natural gas on an average customer basis, by customer class, as well as the incremental, independently verified net economic benefits created by the utility's cost-effective conservation and energy-efficiency programs during the previous year.

F. The Commission shall grant recovery, on an annual basis, of a performance-based incentive for delivering conservation and energy efficiency benefits, which shall be included in the utility's respective purchased gas adjustment mechanism. The incentive shall be calculated as a reasonable share of the verified net economic benefits created by the utility's cost-effective conservation and energy efficiency programs, and may be recovered over a period of years equal to the payback period or discounted to net present value and recovered in the first year. In structuring this incentive, the Commission shall create a reasonable opportunity for a utility to earn up to a 15 percent share of such independently verified net economic benefits upon meeting target levels of such benefits set forth in a plan approved by the Commission. The level of net economic benefits to be used as the basis for such calculation shall be the sum of customer savings less utility costs recovered through subsection D, measured over the number of years of the payback period, rounded up to the next highest year. The incentives authorized by this subsection shall be in addition to any other revenue requirements or rates established pursuant to § 56-235.2 or 56-235.6 and independent of any computation of shared revenues under an approved performance-based regulation plan.

G. Unless the context clearly indicates otherwise, nothing in this chapter shall impair the Commission's authority under § 56-234.2, 56-235.2, or 56-235.6; provided, however, that notwithstanding any other provision of law, the Commission shall not reduce an authorized return on common equity or other measure of utility profit as a result of the implementation of a natural gas conservation and ratemaking efficiency plan pursuant to this chapter.

2008, c. 639.

Chapter 26 - STEPS TO ADVANCE VIRGINIA'S ENERGY PLAN (SAVE) ACT

§ 56-603. Definitions

As used in this chapter:

"Commission" means the State Corporation Commission.

"Eligible infrastructure replacement" means natural gas utility facility replacement projects that: (i) enhance safety or reliability by reducing system integrity risks associated with customer outages, corrosion, equipment failures, material failures, or natural forces; (ii) do not increase revenues by directly connecting the infrastructure replacement to new customers; (iii) reduce or have the potential to reduce greenhouse gas emissions; (iv) are commenced on or after January 1, 2010; and (v) are not included in the natural gas utility's rate base in its most recent rate case using the cost of

service methodology set forth in § 56-235.2, or the natural gas utility's rate base included in the rate base schedules filed with a performance-based regulation plan authorized by § 56-235.6, if the plan did not include the rate base.

"Eligible infrastructure replacement costs" includes the following:

1. Return on the investment. In calculating the return on the investment, the Commission shall use the natural gas utility's regulatory capital structure as calculated utilizing the weighted average cost of capital, including the cost of debt and the cost of equity used in determining the natural gas utility's base rates in effect during the construction period of the eligible infrastructure replacement project. If the natural gas utility's cost of capital underlying the base rates in effect at the time its proposed SAVE plan is filed has not been changed by order of the Commission within the preceding five years, the Commission may require the natural gas utility to file an updated weighted average cost of capital, and the natural gas utility may propose an updated weighted average cost of capital. The natural gas utility may recover the external costs associated with establishing its updated weighted average cost of capital through the SAVE rider. Such external costs shall include legal costs and consultant costs;

2. A revenue conversion factor, including income taxes and an allowance for bad debt expense, shall be applied to the required operating income resulting from the eligible infrastructure replacement costs;

3. Depreciation. In calculating depreciation, the Commission shall use the natural gas utility's current depreciation rates;

4. Property taxes; and

5. Carrying costs on the over- or under-recovery of the eligible infrastructure replacement costs. In calculating the carrying costs, the Commission shall use the natural gas utility's regulatory capital structure as determined in subdivision 1 of the definition of eligible infrastructure replacement costs.

"Investment" means costs incurred on eligible infrastructure replacement projects including planning, development, and construction costs; costs of infrastructure associated therewith; and an allowance for funds used during construction. In calculating the allowance for funds used during construction, the Commission shall use the natural gas utility's actual regulatory capital structure as determined in subdivision 1 of the definition of eligible infrastructure replacement costs.

"Natural gas utility" means any investor-owned public service company engaged in the business of furnishing natural gas service to the public.

"Natural gas utility facility replacement project" means the replacement of storage, peak shaving, transmission or distribution facilities used in the delivery of natural gas, or supplemental or substitute forms of gas sources by a natural gas utility.

"SAVE" means Steps to Advance Virginia's Energy Plan.

"SAVE plan" means a plan filed by a natural gas utility that identifies proposed eligible infrastructure replacement projects and a SAVE rider.

"SAVE rider" means a recovery mechanism that will allow for recovery of the eligible infrastructure replacement costs, through a separate mechanism from the customer rates established in a rate case using the cost of service methodology set forth in § 56-235.2, or a performance-based regulation plan authorized by § 56-235.6.

2010, cc. 142, 514.

§ 56-604. Filing of petition with Commission to establish or amend a SAVE plan; recovery of certain costs; procedure

A. Notwithstanding any provisions of law to the contrary, a natural gas utility may file a SAVE plan as provided in this chapter. Such a plan shall provide for a timeline for completion of the proposed eligible infrastructure replacement projects, the estimated costs of the proposed eligible infrastructure projects, and a schedule for recovery of the related eligible infrastructure replacement costs through the SAVE rider, and demonstrate that the plan is prudent and reasonable. The Commission may approve such a plan after such notice and opportunity for hearing as the Commission may prescribe, subject to the provisions of this chapter.

B. The Commission shall approve or deny, within 180 days, a natural gas utility's initial application for a SAVE plan. A plan filed pursuant to this section shall not require the filing of rate case schedules. The Commission shall approve or deny, within 120 days, a natural gas utility's application to amend a previously approved plan. If the Commission denies such a plan or amendment, it shall set forth with specificity the reasons for such denial, and the utility shall have the right to refile, without prejudice, an amended plan or amendment within 60 days, and the Commission shall thereafter have 60 days to approve or deny the amended plan or amendment. The time period for Commission review provided for in this subsection shall not apply if the SAVE plan is filed in conjunction with a rate case using the cost of service methodology set forth in § 56-235.2, or a performance-based regulation plan authorized by § 56-235.6.

C. Any SAVE plan and any SAVE rider that is submitted to and approved by the Commission shall be allocated and charged in accordance with appropriate cost causation principles in order to avoid any undue cross-subsidization between rate classes.

D. No other revenue requirement or ratemaking issues may be examined in consideration of the application filed pursuant to the provisions of this chapter.

E. At the end of each 12-month period the SAVE rider is in effect, the natural gas utility shall reconcile the difference between the recognized eligible infrastructure replacement costs and the amounts recovered under the SAVE rider, and shall submit the reconciliation and a proposed SAVE rider adjustment to the Commission to recover or refund the difference, as appropriate, through an adjustment to the SAVE rider. The Commission shall approve or deny, within 90 days, a natural gas utility's proposed SAVE rider adjustment.

F. A natural gas utility that has implemented a SAVE rider pursuant to this chapter shall file revised rate schedules to reset the SAVE rider to zero, when new base rates and charges that incorporate eligible infrastructure replacement costs previously reflected in the currently effective SAVE rider become effective for the natural gas utility, following a Commission order establishing customer rates in a rate case using the cost of service methodology set forth in § 56-235.2, or a performance-based regulation plan authorized by § 56-235.6.

G. Costs recovered pursuant to this chapter shall be in addition to all other costs that the natural gas utility is permitted to recover, shall not be considered an offset to other Commission-approved costs of service or revenue requirements, and shall not be included in any computation relative to a performance-based regulation plan revenue-sharing mechanism. Further, if the Commission approves (i) an updated weighted average cost of capital for use in calculating the return on investment, (ii) the carrying costs on the over- or under-recovery of the eligible infrastructure replacement costs, (iii) the allowance for funds used during construction, or (iv) any combination thereof, such weighted average cost of capital shall be used only for the purpose of the eligible infrastructure replacement costs for the SAVE rider and shall not be used for any purpose in any other proceeding.

2010, cc. 142, 514.

Chapter 27 - QUALIFIED PROJECTS OF NATURAL GAS UTILITIES

§ 56-605. Definitions

As used in this chapter:

"Eligible infrastructure" means storage, compressed natural gas, liquefied natural gas, transmission and distribution facilities to be used in the delivery of natural gas, or supplemental or substitute forms of gas sources by a natural gas utility.

"Eligible infrastructure development costs" or "EIDC" for a qualifying project shall be comprised of the investment in eligible infrastructure and the following:

1. Return on the investment. In calculating the return on investment, the Commission shall use the natural gas utility's weighted average cost of capital, including the cost of debt and equity, based on its regulatory capital structure used in determining the natural gas utility's base rates in effect during the construction period of the eligible infrastructure development project. The investment will be multiplied by the weighted average cost of capital to determine the return on investment;

2. A revenue conversion factor. Such factor, including income taxes and an allowance for bad debt expense, shall be applied to the required operating income resulting from the eligible infrastructure development costs;

3. Operating and maintenance expense. The amount of operating and maintenance expense utilized in the utility's calculations of justifiable new business plant investment shall be consistent with the natural gas utility's standard line extension tariff provisions;

4. Depreciation. In calculating depreciation, the Commission shall use the natural gas utility's currently approved depreciation rates applicable to each general plant account; and

5. Property taxes.

The foregoing shall be reduced by a base non-gas revenue credit comprised of the non-gas revenue received by the natural gas utility from providing sales or transportation service, or both, to (i) the customer occupying the qualifying project and (ii) any other customer of the natural gas utility served directly from the subject eligible infrastructure that initiates natural gas service before the Commission issues an order establishing or confirming customer rates in a rate case using the cost of service methodology set forth in § 56-235.2 or a performance-based regulation plan authorized by § 56-235.6 which rates include recovery of costs deferred under this chapter.

"Investment" means costs incurred to deploy eligible infrastructure including planning, development, and construction costs and, if applicable, an allowance for funds used during construction. In calculating the allowance for funds used during construction, the Commission shall use the natural gas utility's regulatory capital structure as determined in subdivision 1 of the definition of "eligible infrastructure development costs."

"Natural gas utility" means an investor-owned public service company engaged in the business of furnishing natural gas service to the public.

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

"Qualifying project" means an economic development project requiring natural gas service as to which the natural gas utility has made a good faith determination that the following criteria are satisfied:

1. The location of the proposed project is in an area where adequate natural gas infrastructure is not available;

2. The eligible infrastructure will provide opportunities for increased natural gas usage and economic development benefits in the area to be directly served by the subject eligible infrastructure in addition to those provided by the subject project;

3. Either (i) the person proposing to develop the project or the person that will occupy the proposed project shall provide, prior to the initiation of service, a binding commitment, in the form of a service agreement, precedent agreement, memorandum of understanding, or otherwise, to the natural gas utility regarding capacity needed for a period of at least five years from the date gas is made available, provided that such commitment covers a level of service no less than 50 percent of the capacity of the facilities proposed to be constructed by the natural gas utility to serve such

project or (ii) the natural gas utility receives a financial guaranty from the Commonwealth or an agency or subdivision thereof, the governing body of the locality in which the project is located or an agency or subdivision thereof, or from a developer or any other person other than the proposed occupant of the project, in the amount of at least 50 percent of the estimated investment to be made by the natural gas utility in the proposed project, and otherwise in form and substance satisfactory to the natural gas utility. Without limiting the generality of the foregoing, such financial guaranty may be in the form of a letter of credit issued by a bank or other lending institution licensed to do business in the Commonwealth. Any financial guaranty provided to the natural gas utility shall be released upon the receipt by the natural gas utility of a binding commitment meeting the requirements of clause (i) from a person proposing to develop the project or a person that will occupy the project;

4. The natural gas utility has reasonably and in good faith negotiated with the developer of the project or the person that will occupy the proposed project in an attempt to reach agreement on a commitment for the entire aid to construction otherwise required to cover the cost of the necessary eligible infrastructure; and

5. The projected non-gas revenues from the proposed project will not be sufficient to cover the cost of service associated with the necessary eligible infrastructure after accounting for any aid to construction contributed by the developer of the project or the person that will occupy the proposed project.

A qualifying project may consist of multiple persons proposed to be served through common eligible infrastructure, provided those persons each satisfy the requirement of a service commitment for at least five years from the date gas is made available and collectively they satisfy the capacity commitment of at least 50 percent. For purposes of this chapter and notwithstanding the foregoing, a qualifying project shall not include an economic development project applicable to customers to be served under a special rate or contract approved by the Commission pursuant to the provisions of § 56-235.6 or industrial customers to be provided service pursuant to a negotiated rate permitted by a tariff approved by the Commission.

2012, cc. 51, 202.

§ 56-606. Infrastructure development

Notwithstanding any provision of law to the contrary when the requirements set forth in the definition of qualifying project have been satisfied:

1. The natural gas utility certificated to serve the subject service territory may construct the necessary facilities subject to the provisions of this chapter; and

2. The natural gas utility constructing eligible infrastructure pursuant to subdivision 1 shall be permitted to recover the EIDC necessary to develop the eligible infrastructure for the designated qualifying project or projects in future rates as provided in §§ 56-607 and 56-608. The utility shall

maintain the burden of demonstrating that the criteria set forth in this chapter have been satisfied.

2012, cc. 51, 202.

§ 56-607. Application and administration

A. A natural gas utility shall account for the actual monthly EIDC incurred on the cumulative investment in eligible infrastructure in excess of any aid to construction contributed by the developer of the project or the person that will occupy the proposed project as a deferred cost until new base rates and charges that incorporate EIDC become effective for the natural gas utility, following a Commission order establishing or confirming customer rates in a rate case using the cost of service methodology set forth in § 56-235.2 or a performance-based regulation plan authorized by § 56-235.6. Such deferred cost shall be accounted for as a regulatory asset and shall not be subject to write-off or write-down by the Commission in an earnings test filing made pursuant to Commission rules governing utility rate increases and annual informational filings.

B. The investment for all qualifying projects of a natural gas utility in any year shall not exceed one percent of the natural gas utility's net plant investment that was utilized in establishing base rates in the natural gas utility's most recent rate case. The provisions of this subsection shall not apply, however, to any natural gas utility serving fewer than 1,000 residential customers and fewer than 250 commercial and industrial customers in the year in which it makes an investment for qualifying projects.

C. Deferral of costs recovered pursuant to this chapter shall have no effect on the recovery of any other cost by the natural gas utility and shall not be included in any computation relative to a performance-based regulation plan revenue-sharing mechanism.

2012, cc. 51, 202; 2013, c. 284.

§ 56-608. Certain contracts deemed prudent and reasonable

The transportation and storage quantities of the contracts entered into by a natural gas utility for the acquisition of upstream pipeline capacity to meet the reasonably anticipated service requirements of the qualifying projects and other service requirements to be served through the eligible infrastructure shall be deemed prudent and reasonable.

2012, cc. 51, 202.

§ 56-609. Upstream natural gas supply infrastructure projects

A. As used in this section, unless the context requires a different meaning:

"Eligible natural gas supply infrastructure costs" includes the investment in eligible natural gas supply infrastructure projects and the following:

1. Return on the investment. In calculating the return on investment, the Commission shall use the natural gas utility's then in effect weighted average cost of capital, including the cost of debt and equity, based on its regulatory capital structure used in determining the natural gas utility's

base rates. The investment will be multiplied by the weighted average cost of capital to determine the return on investment;

2. A revenue conversion factor. Such factor, including income taxes, shall be applied to the required operating income resulting from the eligible natural gas supply infrastructure costs;

3. Operating and maintenance expense, which includes the amount of operating and maintenance expense utilized in production wells, processing the gas produced, and gathering, transmission, and distribution lines delivering the gas to a pipeline or distribution system;

4. Depreciation. In calculating depreciation, the Commission shall use the natural gas utility's current depreciation rates for investments in distribution infrastructure, as set out by appropriate asset class. The utility shall propose a basis for recovering for the depreciation or depletion of investments in other asset classes in the natural gas supply investment plan, including investments in natural gas reserves that will deplete based on their useful life or of associated facilities that may be retired upon depletion of natural gas reserves;

5. Property tax, severance tax, and any other taxes or government fees associated with production and transmission of natural gas; and

6. Carrying costs on the over-recovery or under-recovery of the eligible natural gas supply infrastructure costs. In calculating the carrying costs, the Commission shall use the natural gas utility's regulatory capital structure as determined in subdivision 1 of this definition.

"Eligible natural gas supply infrastructure projects" means capital investments in natural gas reserves and upstream pipelines and facilities that, alone or in combination with other projects or strategies, offer reasonably anticipated benefits to customers and markets, which benefits mean (i) savings in the delivered cost of gas versus long-term forward market projections available to the natural gas utility at the time of the capital investment or other alternatives, (ii) a reduction in the utility's overall portfolio price volatility, (iii) reduction in the utility's overall supply risk, or (iv) any combination of the savings or reductions described in clauses (i), (ii), and (iii). Any such customer benefit benchmarks shall be outlined in the natural gas utility's filings with the Commission pursuant to this section.

"Investment" means actual costs incurred on eligible natural gas supply infrastructure projects, including planning, development, and construction costs; actual costs of infrastructure associated therewith; and an allowance for funds used during construction. In calculating the allowance for funds used during construction, the Commission shall use the natural gas utility's actual regulatory capital structure as determined in subdivision 1 of the definition of eligible natural gas supply infrastructure costs.

"Natural gas reserves and upstream pipelines and facilities" means investments in natural gas reserves, production facilities (including equipment required to prepare the natural gas for use), gathering, transmission, and, within the natural gas utility's certificated service territory, any

distribution pipelines necessary to deliver the reserves, and above-ground and below-ground storage used in the delivery of gas to existing natural gas transmission pipelines or distribution systems.

"Natural gas supply investment plan" means a plan filed by a natural gas utility that identifies proposed eligible natural gas supply infrastructure projects and its development of those projects with or without a third party.

B. A natural gas utility shall have the right to recover eligible natural gas supply infrastructure costs on an ongoing basis through the gas cost component of the utility's rate structure or other recovery mechanism approved by the Commission, provided that any such mechanism shall properly allocate costs. Natural gas utilities using the cost of service methodology set forth in § 56-235.2 or a performance-based regulation plan authorized by § 56-235.6 shall be eligible to file a plan. The plan shall include a timeline for the investment and completion of the proposed eligible natural gas supply infrastructure projects; provide for an estimated schedule for recovery of the related eligible natural gas supply infrastructure costs through the gas cost component of the utility's rate structure or other mechanism, including proposed depreciation rates for investments in non-distribution asset classes and how any revenue gains from the use of the pipelines by third parties will be used to offset eligible natural gas supply infrastructure costs; and demonstrate that the plan is in the public interest with due consideration to providing a portion of the utility's delivered supply at prices at or below the long-term projections as available and defined in the natural gas utility's filing, or reduction in the utility's overall supply risk, or reduction in the utility's overall portfolio price volatility, or a combination thereof. No project may provide an annual volume of natural gas that exceeds 12.5 percent of the natural gas utility's annual firm sales demand, and no combination of projects may provide an annual volume of natural gas that exceeds 25 percent of the natural gas utility's annual firm sales demand. The natural gas utility's weather-normalized firm sales demand for the calendar year preceding the application shall be deemed to establish the annual firm sales demand for the purposes of calculating the volume and volumetric limits of projects. In no case shall any investment in reserves exceed 20 years. The Commission shall approve such a plan upon a finding that it is in the public interest after notice and an opportunity for hearing in accordance with the provisions of this chapter.

C. In addition to the items included in the plan as specified in subsection B, the plan may provide the utility with an option to receive the gas or sell the gas at market prices. A utility proposing this option as part of its plan shall propose how any revenue gains from the sale of the gas will be used to reduce the cost of gas to its customers. The Commission shall approve or deny, within 180 days, a natural gas utility's initial application for a natural gas supply infrastructure plan. A plan filed pursuant to this section shall not require the filing of rate case schedules. The Commission shall approve or deny, within 120 days, a natural gas utility's application to amend a previously approved plan. If the Commission denies such a plan or amendment, it shall set forth with specificity the reasons for such denial, and the utility shall have the right to refile, without prejudice,

an amended plan or amendment within 60 days, and the Commission shall thereafter have 60 days to approve or deny the amended plan or amendment. If the plan is filed as part of a general rate case using the cost of service methodology set forth in § 56-235.2 or a performance-based regulation plan authorized by § 56-235.6, then the Commission shall approve or deny the plan concurrent with or as part of the general rate case decision.

D. No other revenue requirement or ratemaking issues shall be examined in consideration of the initial plan filed pursuant to the provisions of this section.

E. A gas utility with an approved natural gas supply infrastructure plan shall annually file a report of the eligible natural gas supply infrastructure investment made, the eligible natural gas supply infrastructure costs incurred and the amount of such costs recovered, the volume of gas delivered to customers or sold to third parties during the 12-month reporting period, and an analysis of the price of gas delivered to the natural gas utility customers and the market cost of gas during the 12-month period. However, such analysis shall not affect a gas utility's right to recover all eligible natural gas supply infrastructure costs as set forth in subsection B. The report shall also identify the balance of over-recovery or under-recovery of the eligible natural gas supply infrastructure costs at the end of the reporting period and the projected investment to be made, the projected infrastructure costs to be incurred, and the projected costs to be recovered during the next 12-month reporting period.

F. Costs recovered pursuant to this section shall be in addition to all other costs that the natural gas utility is permitted to recover and shall not be considered an offset to other Commission-approved costs of service or revenue requirements.

2014, cc. 467, 507.

Chapter 28 - NATURAL GAS SYSTEM EXPANSION INFRASTRUCTURE

§ 56-610. Definitions

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

"Affected customer" means any customer of a natural gas utility receiving service at a premises served by eligible system expansion infrastructure. Any customer receiving natural gas service for which the natural gas utility has received the entire amount required to cover the cost of the eligible system expansion infrastructure as a contribution in aid to construction shall not be considered an affected customer.

"Eligible expansion investment" means that portion of the total capital investment made by a natural gas utility in constructing eligible system expansion infrastructure that is in excess of those costs that would be considered economic under a natural gas utility's economic test, net of any contributions in aid of construction, up to the maximum level of investment per affected customer specified in a system expansion plan.

"Eligible system expansion infrastructure" means natural gas main pipelines and associated facilities, including service lines, meters, and other pertinent facilities, that are constructed and operated by a natural gas utility to deliver natural gas service to affected customers located in an unserved area.

"Eligible system expansion infrastructure costs" includes:

1. Return on investment. In calculating the return on investment, the Commission shall use the natural gas utility's weighted average cost of capital, including the cost of debt and equity, based on its regulatory capital structure used in determining the natural gas utility's base rates in effect during the construction period of the eligible system expansion, applied to eligible expansion investment. The investment, as adjusted for the reserve for depreciation and accumulated deferred income taxes, shall be multiplied by the weighted average cost of capital to determine the return on investment;

2. A revenue conversion factor, which factor, including income taxes and an allowance for bad debt expense, shall be applied to the required operating income resulting from the eligible system infrastructure expansion costs;

3. Education and outreach expense. Such expense shall include costs for education and outreach for increasing program awareness;

4. Depreciation, the calculation of which by the Commission shall be based on the natural gas utility's current depreciation rates applied to eligible expansion investment; and

5. Property taxes attributable to eligible expansion investment.

"Natural gas utility" means any investor-owned public service company engaged in the business of furnishing natural gas service to the public.

"System expansion plan" means a plan filed by a natural gas utility that identifies the level of eligible system expansion infrastructure costs that are projected to be incurred over the term of the plan and provides the calculation of a system expansion rider.

"System expansion rider" means a recovery mechanism that will allow for recovery of the eligible system expansion infrastructure costs from affected customers, through a separate mechanism from the customer rates established in a rate case using the cost-of-service methodology set forth in § 56-235.2 or a performance-based regulation plan authorized by § 56-235.6. A system expansion rider shall be designed to recover eligible system expansion infrastructure costs.

2015, cc. 28, 231.

§ 56-611. Petition to establish or amend expansion plan; cost recovery; procedures

A. Notwithstanding the provisions of § 56-235.4, a natural gas utility may file a system expansion plan as provided in this chapter. Such a plan shall provide for (i) a business rationale explaining that the expansion plan is in the public interest and of benefit to the affected customers served

under the system expansion plan, (ii) the period the system expansion rider is proposed to be in effect, (iii) the estimated eligible system expansion infrastructure costs and a maximum level of investment to be included in the program, (iv) a maximum level of investment per affected customer, (v) the projected number of customers by rate class that will be served by the proposed investment, (vi) a schedule for recovery of the related eligible system expansion infrastructure costs through a system expansion rider, (vii) a methodology for deferral of unrecovered eligible system expansion infrastructure costs, calculated as determined pursuant to § 56-612, (viii) the class or classes of customers eligible to participate in a system expansion plan, and (ix) the period of time that a customer at a premises receiving natural gas service from eligible system expansion infrastructure will be considered an affected customer for purposes of this chapter. The natural gas utility shall demonstrate that the system expansion plan is prudent and reasonable. The Commission may approve such a plan after such notice and opportunity for a hearing as the Commission may prescribe, subject to the provisions of this chapter.

B. The Commission shall approve a natural gas utility's system expansion plan if it finds that the plan (i) includes the components set forth in subsection A, (ii) provides for the recovery of eligible system expansion infrastructure costs in accordance with the provisions of this chapter, and (iii) is prudent and reasonable. In a final order approving a natural gas utility's system expansion plan, the Commission may require the natural gas utility to file an annual report with the Commission demonstrating whether the natural gas utility's recovery of eligible system expansion infrastructure costs pursuant to its system expansion plan complies with the requirements of clause (ii). Upon a finding by the Commission that a natural gas utility's system expansion plan does not comply with the requirements of clause (ii), the Commission may direct, by order, the natural gas utility to exclude from deferral any unrecovered costs in excess of costs that may be recovered by a system expansion rider.

C. The Commission shall act on a natural gas utility's initial application for a system expansion plan within 180 days. Within that time period, the Commission shall approve, deny, or modify the plan as required by the public interest. A plan filed pursuant to this section shall not require the filing of rate schedules typically filed in conjunction with a rate case using the cost-of-service methodology set forth in § 56-235.2 or a performance-based rate regulation plan authorized by § 56-235.6. The Commission shall act on a natural gas utility's application to amend a previously approved plan within 120 days. Within that time period, the Commission shall approve, deny, or modify the amended plan as required by the public interest. If the Commission denies such a plan or amendment or any part thereof, it shall set forth with specificity the reasons for such denial, and the utility shall have the right to refile, without prejudice, an amended plan or amendment within 60 days, and the Commission shall thereafter have 90 days to approve or deny the amended plan or amendment. The time period for Commission review provided for in this subsection shall not apply if the system expansion plan is filed in conjunction with a rate case using

the cost-of-service methodology set forth in § 56-235.2 or a performance-based rate regulation plan authorized by § 56-235.6.

D. Any system expansion plan and any system expansion rider that is submitted to and approved by the Commission shall allocate and charge costs in accordance with the appropriate cost causation principles in order to avoid any undue cross-subsidization between rate classes.

E. No other revenue requirement or ratemaking issues may be examined in consideration of the application filed pursuant to the provisions of this chapter.

F. Costs recovered pursuant to this chapter shall be in addition to all other costs that the natural gas utility is permitted to recover, shall not be considered an offset to other Commission-approved costs of service or revenue requirements, and shall not be included in any computation relative to a performance-based regulation plan revenue-sharing mechanism.

G. A natural gas utility shall have the opportunity to seek recovery of any costs associated with eligible expansion investment not yet recovered at the end of a system expansion plan in a rate case using the cost-of-service methodology set forth in § 56-235.2 or performance-based regulation plan authorized by § 56-235.6. Such recovery shall be subject to Commission approval based upon a determination that the benefits provided by affected customers added under the system expansion plan or plans equal or exceed the impact of recovering such costs from existing customers of the natural gas utility.

H. The provisions of this chapter shall not preclude the filing of other plans or tariff provisions related to extending natural gas infrastructure.

I. The provisions of this chapter shall not apply to interstate pipeline companies regulated by the Federal Energy Regulatory Commission.

2015, cc. 28, 231.

§ 56-612. Deferral of eligible system expansion infrastructure costs

A. A natural gas utility shall account for the difference between actual monthly eligible system expansion infrastructure costs incurred on the cumulative investment in eligible system expansion infrastructure and revenue collected through a system expansion rider as a deferred cost. Such deferred costs shall be accounted for as a regulatory asset and shall not be subject to write-off or write-down by the Commission in an earnings test filing made pursuant to Commission rules governing utility rate increases and annual informational filings.

B. If a natural gas utility collects all of the deferred eligible system expansion infrastructure costs, as well as all eligible expansion investment, through a system expansion rider prior to the expiration of the time period specified in its system expansion plan pursuant to clause (ii) of subsection A of § 56-611, the system expansion rider shall terminate. A natural gas utility may extend the system expansion rider beyond the period it is proposed to be in effect if necessary to recover any uncollected deferral or eligible system expansion infrastructure costs. A natural gas

utility shall notify the Commission of any termination or extension of a system expansion rider at least 60 days prior to its termination or extension. Such termination or extension of the system expansion rider shall be subject to Commission approval.

C. Deferral of costs recovered pursuant to this chapter shall have no effect on the recovery of any other cost by the natural gas utility and shall not be included in any computation relative to a performance-based regulation plan revenue-sharing mechanism.

2015, cc. 28, 231.

§ 56-613. Construction project compliance

In recognition of the importance of environmentally responsible practices when constructing utility infrastructure in the Commonwealth, each construction project that is undertaken pursuant to the provisions of this chapter shall be completed in compliance with the current Annual Standards and Specifications, as amended from time to time, that is filed with the Department of Environmental Quality by the natural gas utility that undertakes the project.

2015, cc. 28, 231.