**COMMONWEALTH OF VIRGINIA**

**STATE CORPORATION COMMISSION**

# Staff Report On Proposed Rules Governing Retail Access To Competitive Energy Services

**CASE NO. PUE010013**

**Division of Energy Regulation**
**Division of Economics and Finance**
**Division of Public Utility Accounting**

**March 13, 2001**

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# Executive Summary

This report presents and discusses the State Corporation Commission Staff's proposed Rules Governing Retail Access To Competitive Energy Markets, included as Attachment A. The Staff recommends that these proposed rules be adopted and effective for the full or phased-in implementation of retail access to electric and natural gas competitive energy services. The Staff also recommends that the Interim Rules Governing Electric and Natural Gas Retail Access Pilot Programs ("Interim Rules"), included as Attachment B, remain in effect at the current time, since they remain applicable to on-going pilot programs.

In developing the proposed rules, the Staff has attempted to balance the objectives of promoting the advancement of competition, affording reasonable consumer protections, and ensuring the equitable treatment of market participants. Procedurally, the Staff, with significant assistance provided by a dedicated work group composed of interested party representatives, reviewed and modified the Commission's Interim Rules, taking into account the experience of Virginia's retail access pilot programs, lessons learned from other states, and the Virginia Electric Utility Restructuring Act ("Restructuring Act")[1] and the provisions of retail supply choice for natural gas customers.[2]

As a result of this process, a few substantive modifications to the existing Interim Rules are proposed, the most significant of which regards a customer's right to cancel a service contract. The Staff proposes eliminating the three-day mail delivery allowance preceding the start of the ten-day period available for a customer to cancel a contract and

[1] Section 56-576 et seq. of the Code of Virginia.
[2] Section 56-235.8 of the Code of Virginia.

allowing a non-residential customer with an annual peak demand greater than 30 kilowatts to contractually waive these cancellation rights. The Staff's proposal includes several editing changes to the Interim Rules for purposes of deleting references to the pilot programs, consistency in terminology, minor refinements, and general clarification.

The Staff's proposal also reorganizes the rules into the following topical sections including: General Provisions; Codes of Conduct; Licensing; Competitive Service Provider Registration with the Local Distribution Company; Customer Information; Marketing; Enrollment and Switching; Billing and Payment; Load Profiling; and Dispute Resolution. The body of this report is organized accordingly.

The Staff proposes several new rules, most notably in the Billing and Payment and Load Profiling sections of the rules. The new proposed billing and payment rules implement the competitive billing options effective January 1, 2002, and establish minimum bill information standards. Such standards require bill information that will support the statewide consumer education effort as well as the advancement of competition in general. The proposed rules include requirements for the use of standardized bill terminology for all bills and the provision of certain "price-to-compare" and historical energy consumption information to small non-shopping customers.

The new proposed load profiling rules provide for the nondiscriminatory treatment of competitive service providers by the local distribution company and require reasonable levels of accuracy and transparency in load profiling activities.

The Staff also proposes the provision of a mass customer list by local distribution companies to competitive service providers for marketing purposes to promote the development of competitive activity. This list would exclude customer telephone

numbers and customers would have the opportunity to have information withheld from the list.

Several of the Staff's proposed rules raise concerns with interested parties, both within and outside of the work group. The Staff attempts to capture major concerns in its discussion of the proposed rules in the body of this report.

# Introduction

On January 10, 2001, the State Corporation Commission ("Commission") initiated the instant proceeding to establish rules for full retail access to competitive energy markets in Virginia, noting the transition schedule for electric retail choice will begin January 1, 2002.[3] The Commission directed the Staff to conduct an investigation and file a report proposing retail access rules by March 6, 2001.[4] The Commission further directed the Staff to strongly consider the input and perspectives of interested parties participating in a work group convened by the Staff and to give due consideration to retail access rules adopted by neighboring states and national or regional uniform business practices.

The work group was assembled by the Staff in recognition of the need to review and modify the Interim Rules Governing Electric and Natural Gas Retail Pilot Programs, approved in Case No. PUE980812, to prepare for the implementation of full retail access. In responding to the Commission's directives, the Staff conducted work group meetings on 17 days between January 10 and February 28, 2001. Approximately 30 organizations were represented at one or more of the meetings. Another 20 organizations followed the work group's progress through e-mail communications. A list of the organizations registered for the work group is included as Attachment C.

[3] In a separate proceeding, Case No. PUE000740, the Commission is considering the establishment of a schedule for electric retail access, which may vary by incumbent utility service territory, both with respect to the implementation date and the length of a phase-in period. In comments submitted in that proceeding, Appalachian Power Company d/b/a AEP, Delmarva Power and Light d/b/a Conectiv, and The Potomac Edison Company d/b/a Allegheny Power express agreement with the recommendation of the Commission Staff ("Staff") for full retail access in their respective service territories effective January 1, 2002. Virginia Electric and Power Company d/b/a Dominion Virginia Power, while expressing disagreement with the Staff's proposed one-year phase-in schedule for retail access in the Company's service territory, indicates agreement with the initiation of such phase-in on January 1, 2002.

The work group was asked to provide assistance to the Staff in developing its proposal by identifying and analyzing issues pertinent to rule development. While the compact schedule did not allow for a consensus-building approach, the Staff attempted to allow for a full discussion of key issues and the expression of perspectives by the work group participants. The Staff found the discussions to be robust and informative and is deeply appreciative of the efforts and contributions of the participants, especially in light of the intensive meeting schedule and frequently shifting agendas.

The Staff filed proposed rules for retail access on March 6, 2001. The following sections of the report discuss the proposed rules.

[4] By Order dated March 1, 2001, the Commission granted a Staff motion requesting an extension of time to file the Staff report on the proposed rules for retail access until March 13, 2001, while retaining the March 6, 2001, filing deadline for the proposed rules.

## Applicability; Definitions
## 20 VAC 5-312-10

The following section is similar to that established under Interim Rules 20 VAC 5-311-10 A and B. The proposed applicability section was expanded to apply beyond the pilot programs to full retail access. The definitions mirror those of the Interim Rules with minor modifications to a few, the addition of several terms regarding the new proposed section 20 VAC 5-312-90, and the deletion of terms applicable to pilot programs.

**A. These regulations are promulgated pursuant to the provisions of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia) and to the provisions of retail supply choice for natural gas customers, § 56-235.8 of the Code of Virginia. The provisions in this chapter apply to suppliers of electric and natural gas services including local distribution companies, competitive service providers, and aggregators, and govern the implementation of retail access to competitive energy services in the electricity and natural gas markets, including the conduct of market participants. The provisions in this chapter shall be effective with the implementation of full or phased-in retail access to competitive energy services in the service territory of each local distribution company.**

**B. The following terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:**

**"Affiliated competitive service provider" means a competitive service provider that is a separate legal entity that controls, is controlled by, or is under common control of, a local distribution company or its parent. For the purpose of this chapter, any unit or division created by a local distribution company for the purpose of acting as a competitive service provider shall be treated as an affiliated competitive service provider and shall be subject to the same provisions and regulations.**

**"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electricity or natural gas supply, or both, or (ii) offers to arrange for, or arranges for, the purchase of electricity or natural gas supply, or both, 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, competitive service providers 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 a competitive service**

**provider supplying electricity or natural gas, or both; (iii) furnishing educational, informational, or analytical services to two or more competitive service providers or aggregators; (iv) providing default service under § 56-585 of the Code of Virginia; (v) conducting business as a competitive service provider licensed under 20 VAC 5-312-40; and (vi) engaging in actions of a retail customer, acting in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electricity or natural gas supply, or both, for consumption by such retail customers.**

**"Billing party" means a competitive service provider, an aggregator, or the local distribution company that transmits a consolidated or separate bill for competitive energy services, aggregation services, or distribution services, directly to a retail customer.**

**"Business day" means any calendar day or computer processing day in the Eastern United States time zone in which the general office of the applicable local distribution company is open for business with the public.**

**"Competitive energy service" means the retail sale of electricity supply service or natural gas supply service, or both, or any other competitive service as provided by legislation or approved by the State Corporation Commission as part of retail access by an entity other than the local distribution company as a regulated utility.**

**"Competitive service provider" means a person, licensed by the State Corporation Commission, that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers, as defined above, but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates.**

**"Competitive transition charge" means the wires charge, as provided by § 56-583 of the Code of Virginia, that is applicable to a retail customer that chooses to procure electricity supply service from a competitive service provider.**

**"Consolidated billing" means the provision of a single bill to a retail customer that includes the billing charges for services rendered by a competitive service provider or an aggregator, or both, and the local distribution company.**

**"Distribution service" means the delivery of electricity or natural gas, or both, through the distribution facilities of the local distribution company to a retail customer.**

**"Electricity supply service" means the generation and transmission of electricity to the distribution facilities of the local distribution company on behalf of a retail customer.**

**"Electronic Data Interchange" (EDI) means computer-to-computer exchange of business information using common standards for high volume electronic transactions.**

**"Local Distribution Company" means an entity regulated by the State Corporation Commission that owns or controls the distribution facilities required for the transportation and delivery of electricity or natural gas to the retail customer.**

**"Natural gas supply service" means the procurement and transportation of natural gas to the distribution facilities of a local distribution company on behalf of a retail customer.**

**"Non-billing party" means a party that provides customer billing information for competitive energy services or aggregation services to the local distribution company for the purpose of consolidated billing.**

**"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any city, county, town, authority or other political subdivision of the Commonwealth.**

**"Price-to-compare" means the portion of the local distribution company's regulated rate applicable to electricity supply service less the competitive transition charge rate.**

**"Residential customer" means any person taking retail distribution service under a residential tariff of the local distribution company.**

**"Retail access" means the opportunity for a retail customer in the Commonwealth to purchase a competitive energy service from a licensed competitive service provider seeking to sell such services to that customer.**

**"Separate billing" means the transmittal of separate bills for services rendered by a competitive service provider, an aggregator, and the local distribution company.**

**"Transmission provider" means an entity regulated by the Federal Energy Regulatory Commission that owns or operates, or both, the transmission facilities required for the delivery of electricity or natural gas to the local distribution company or retail customer.**

**"Virginia Electronic Data Transfer Working Group" (VAEDT) means the group of representatives from electric and natural gas local distribution companies, competitive service providers, the staff of the State Corporation Commission, and the Office of Attorney General whose objective is to formulate guidelines and practices for the electronic exchange of information necessitated by retail access.**

## General Provisions
## 20 VAC 5-312-20

The following proposed rules apply generally to most participants and circumstances expected to be encountered in an evolving competitive energy market. Although they generated some discussion, the proposed rules generally mirror those of the current Interim Rules and received little opposition from work group participants. Several rules were modified and a few rules were added to address experience with the existing pilot programs and retail access available in neighboring states and to comply with anticipated legislation.

**A. A request for a waiver of any of the provisions in this chapter shall be considered by the State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the State Corporation Commission may impose.**

This proposed rule is identical to Interim Rule 20 VAC 5-311-60A and is self-explanatory. A request for such a waiver should be presented in a clear and justifiable manner.

**B. The provisions of this chapter may be enforced by the State Corporation Commission by any means authorized under applicable law or regulation. Enforcement actions may include, without limitation, the refusal to issue any license for which application has been made, and the revocation or suspension of any license previously granted. Any person aggrieved by a violation of these regulations may pursue any civil relief that may be available under state or federal law, including, without limitation, private actions for enforcement of these regulations, without regard to or first pursuing the remedies available from the State Corporation Commission hereunder.**

This proposed rule is similar to Interim Rule 20 VAC 5-311-60H and was not opposed by any work group participant. The proposed rule deleted the reference to license renewal as will be discussed later in section 20 VAC 5-312-40.

**C. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is**

**otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.**

This proposed rule is identical to Interim Rule 20 VAC 5-311-30A.14 and was not opposed by any work group participant. Public safety and reliability remain as two of the fundamental customer concerns while establishing a robust competitive energy market.

**D. The State Corporation Commission maintains the right to inspect the books, papers, records and documents, and to require special reports and statements, of a competitive service provider or an aggregator regarding qualifications to conduct business within the Commonwealth, in support of affiliate transactions, to investigate allegations of violations of this chapter, or to resolve a complaint filed against a competitive service provider or an aggregator.**

This proposed rule remains identical to Interim Rule 20 VAC 5-311-60G and was not opposed by any work group participant. Some discussion was generated on the confidential treatment of data reviewed or requested and the length of time such data may remain exposed. Participants accept the discretion of the State Corporation Commission to determine such matters.

**E. The local distribution company shall provide, pursuant to the prices, terms, and conditions of its tariffs approved by the State Corporation Commission, service to all customers that do not select a competitive service provider and to customers that chose a competitive service provider but whose service is terminated at the request of the customer or by the competitive service provider for any reason.**

Similar to Interim Rule 20 VAC 5-311-30B.3, the proposed rule reflects minor wording changes and is applicable beyond the pilot programs to comply with Section 56-585 of the Code of Virginia.

**F. The local distribution company and a competitive service provider shall not:**

1. **Suggest that the services provided by the local distribution company are of any different quality when competitive energy services are purchased from a particular competitive service provider; or**

2. **Suggest that the competitive energy services provided by a competitive service provider are being provided by the local distribution company rather than the competitive service provider.**

Similar to Interim Rules 20 VAC 5-311-20C.7 and 20 VAC 5-311-30A.11, the proposed rule applies such requirements to both the local distribution company and a competitive service provider and was not opposed by any work group participant.

**G. The local distribution company and a competitive service provider or an aggregator shall establish and advise each other of internal points of contact to address business coordination and customer account issues.**

Although similar to Interim Rule 20 VAC 5-311-20B.1, the new proposed rule requires the local distribution company and a competitive service provider to provide each other with appropriate contact information necessary to effectively coordinate all customer and business issues. Realizing that a single point of contact was problematic, sufficient information should be exchanged to enable each party to contact the other and transact business promptly and efficiently.

**H. The local distribution company, a competitive service provider, or an aggregator shall bear the responsibility for metering as provided by legislation and implemented by the State Corporation Commission.**

Similar to Interim Rule 20 VAC 5-311-60D, the proposed rule applies to metering as may be provided in the future. New proposed rules regarding billing will be addressed later in section 20 VAC 5-312-90. Time constraints surrounding these proposed rules and complexity surrounding the role of metering in the future did not permit adequate review at this time. Such activity should occur in the very near future to fully address the matter as may be provided in pending legislation.

**I. The local distribution company, a competitive service provider, and an aggregator shall fully cooperate with the State Corporation Commission's statewide consumer education campaign.**

Similar to the intent of Interim Rule 20 VAC 5-311-30B.1, and pursuant to Section 56-592 of the Code of Virginia, the proposed rule expects full cooperation from all market participants to assist the State Corporation Commission with equipping customers with information and education to better make informed decisions regarding the evolving competitive energy market.

**J. The local distribution company and a competitive service provider or an aggregator shall adhere to standard practices for exchanging data and information in an electronic medium as specified by the VAEDT and filed with the State Corporation Commission. In the event the parties agree to initially use a means other than those specified by VAEDT, then the competitive service provider or the aggregator shall file a plan with the State Corporation Commission's Division of Economics and Finance to implement VAEDT approved standards within 180 days of the initial retail offering.**

Similar to Interim Rules 20 VAC 5-311-20C.3 and 20 VAC 5-311-30A.15, the proposed rule recognizes the VAEDT as the organization to establish and maintain EDI requirements for market participants to use to transact business in the Commonwealth. Work group participants and members of the VAEDT recognize the benefit of consistent business transactions in exchanging voluminous customer information among market participants. The initial VAEDT documents were filed with the State Corporation Commission in June 2000. The VAEDT shall work with the Utility Industry Group of the Accredited Standards Committee and other regional efforts to maintain consistent EDI requirements. Additionally, the VAEDT shall monitor market and technology advancements and periodically file with the State Corporation Commission revised plans to keep pace with the evolving electronic commerce industry and competitive energy markets.

The proposed rule recognizes the potential need for communication means other than complex EDI systems for smaller or start-up companies entering the energy market. However, the proposed rule supports the VAEDT's objective for all market participants to use EDI transactions, or its successor, as soon as practicable but within approximately six months of initiating business. Such use of consistent transactions and transport protocols will foster a robust competitive energy market sooner and allow market participants to maintain fewer back-office support systems.

The VAEDT recognizes that currently, such systems are not in place for natural gas providers. However, the VAEDT has enjoyed participation and input from natural gas providers in Virginia and is monitoring a few states that are moving forward to develop such EDI transactions. There is also a movement on the national front to establish a national energy standards board that could include developing such systems for the entire energy industry. The VAEDT will also monitor these activities and assist such development. Additional information may be reviewed at the VAEDT's website, http://www.vaedt.org.

**K. The local distribution company and a competitive service provider or an aggregator shall successfully complete EDI testing and receive certification for all EDI transactions, as outlined in the VAEDT EDI Test Plan, prior to actively enrolling customers, except as permitted by subsection J above.**

Although a new proposed rule, the VAEDT established such a requirement for the existing electric pilot programs. The VAEDT EDI Test Plan was initially filed with the State Corporation Commission in June 2000 and updated in December 2000. Pilot experience, implementation of retail access in neighboring states, evolving energy industries and technology advancements challenge the VAEDT to keep pace with necessary market needs. Successful completion of rigid testing requirements enables

market participants to demonstrate the capability of back-office support systems to communicate with each other and properly translate electronic transactions involving voluminous customer information. Additional testing may be required to keep pace with market and technology advancements.

**L. A competitive service provider or aggregator offering billing service that requires the direct delivery of a bill to a customer shall furnish, prior to enrolling the customer, a sample bill produced from the data exchanged in the EDI certification process as described in subsection K above, or a sample bill produced similarly elsewhere, to the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance.**

This new proposed rule expands the VAEDT testing and certification process to include the demonstrated capability of market participants to produce a bill for services rendered to a customer. Staff believes this requirement is necessary to comply with the proposed rules in section 20 VAC 5-312-90 of this chapter pursuant to Section 56-581.1 of the Code of Virginia and to avoid or at least minimize problems that have arisen with other retail access programs across the country.

**M. The local distribution company shall file with the State Corporation Commission's Division of Energy Regulation and Division of Economics and Finance a monthly report of all cancellation requests alleging a customer was enrolled without authorization. Such reports shall include: (i) the approximate date of the enrollment; (ii) the identity of the competitive service provider involved; (iii) the name and address of the customer that cancelled such enrollment; and (iv) a brief statement regarding the customer's explanation for the cancellation. Such reports shall be reviewed by commission staff and regarded as confidential unless and until the State Corporation Commission orders otherwise.**

Similar to latter requirements of Interim Rule 20 VAC 5-311-30B.4, the proposed rule requires incidents alleging “slamming” activities to be reported to the State Corporation Commission in a timely fashion. Such reports will assist Commission Staff in assessing the activities of market participants and in evaluating the effectiveness of the

proposed rules. These reports may also provide Staff a measure of the effectiveness of the Commission's consumer education program.

**N. The local distribution company shall file with the State Corporation Commission's Division of Economics and Finance a quarterly report providing a detailed breakdown of residential and non-residential customer switching activity. Such reports shall include, for the local distribution company, the total number of customers and corresponding amount of load eligible to switch; and, for each competitive service provider, the total number of customers and corresponding amount of load served. Such reports shall be reviewed by commission staff and information specific to individual competitive service providers shall be regarded as confidential unless and until the State Corporation Commission orders otherwise.**

This new proposed rule is designed to assist Commission Staff to review and evaluate the effectiveness of an evolving competitive energy market. Since the local distribution company will be the gatekeeper for all customer switches, Staff believes it is more efficient for the local distribution company to provide the requested data. Such information is particularly important in the early years of the transition to assist evaluation and measurement of items such as market share, market power, customer response, and consumer education. The information may be used to aid the Commission in determining when the evolving energy market might be deemed competitive.

**O. By March 31 of each year, the local distribution company or a competitive service provider providing electricity supply service shall provide a report to its customers and file such report with the State Corporation Commission stating to the extent feasible, fuel mix and emissions data for the prior calendar year. If such data is unavailable, the local distribution company or a competitive service provider shall file a report with the State Corporation Commission stating why it is not feasible to submit any portion of such data.**

Similar to Interim Rule 20 VAC 5-311-20C.4, the proposed rule requires such reporting to comply with Sections 56-592 C and 56-592 D of the Code of Virginia. This rule requires the information to be made available by March 31 of each year for the prior calendar year for local distribution companies and competitive service providers.

**P. A competitive service provider and an aggregator shall file a report with the State Corporation Commission by March 31 of each year to update all information required in the original application for licensure. A $100 administrative fee payable to the State Corporation Commission shall accompany this report.**

This new proposed rule expands beyond the pilot requirements under Interim Rule 20 VAC 5-311-50E. This rule directs a licensed competitive service provider or a licensed aggregator to provide the Commission with an annual update of the information provided on the licensure application form. Such updates will assist Staff in monitoring the technical and financial fitness and associated information of licensed suppliers on an on-going basis and to better understand an evolving energy market. This is particularly important in a volatile wholesale energy market as it relates to providing customers with competitive service offerings. Review of such data may help Staff better understand historic events and activities, as well as the future expectations of an evolving energy market.

**Q. A competitive service provider or an aggregator shall inform the State Corporation Commission within 30 days of the following: (i) any change in its name, address and telephone numbers; (ii) any change in information regarding its affiliate status with the local distribution company; (iii) any changes to information provided pursuant to 20 VAC 5-312-40 A 13; and (iv) any changes to information provided pursuant to 20 VAC 5-312-40 A 15.**

Although similar to Interim Rule 20 VAC 5-311-60F and the previous proposed rule, this proposed rule requires certain key information to be updated as often as necessary to keep Staff apprised of such changes to a licensed provider's status.

**R. If a filing with the State Corporation Commission, made pursuant to this chapter, contains information that the local distribution company, a competitive service provider, or an aggregator claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be maintained under seal unless the**

**State Corporation Commission orders otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission. Filings containing confidential or redacted information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential or redacted information, including supporting material, shall be clearly marked within the filing.**

This new proposed rule provides a vehicle for a market participant to request confidential treatment of certain information provided to the State Corporation Commission. Such data may be necessary to assist the Commission to determine the effectiveness of an evolving energy market and may be deemed competitively sensitive to market participants. This rule does not assure such confidential treatment but merely provides the means for market participants to seek such treatment.

## Codes of Conduct
## 20 VAC 5-312-30

All of the rules classified as codes of conduct address the relationship between affiliated LDCs and CSPs. The participants present at the work group sessions were in disagreement on whether the codes of conduct should apply only to affiliate relationships or whether they should place requirements on the relationship of the LDC with any CSP. Staff received general written comments on this issue from AEP and Allegheny Power. Dominion Retail addressed the issue in relation to two specific rules, D. and G., and its comments are included in the discussion following those rules.

Staff believes codes of conduct should address affiliate relationships because there may be an incentive for affiliated organizations to enter into agreements that are less than arms-length. It is these arrangements that the codes of conduct must be developed to guard against. Staff believes that the requirement to have internal controls in place as well as the pricing required herein will guard against anti-competitive behavior between affiliated organizations.

AEP stated in its written comments that the codes of conduct should apply only to the relationship between affiliated LDCs and CSPs; that tools such as anti-trust laws should address collusion between independent entities; and that broadening the scope of these rules to the LDCs relationship with all CSPs would expand the Commission's regulation of CSPs at a time when regulation should diminish. Allegheny Power provided a mark up of the codes of conduct that suggested that the word affiliate be deleted from most of the rules.

**A. An affiliated competitive service provider may use the name or logo of its affiliated local distribution company in advertising and solicitation materials. A disclaimer shall be used when an affiliated competitive service provider offers**

**services in the certificated service territory of its affiliated local distribution company. Such disclaimer shall clearly and conspicuously disclose that the affiliated competitive service provider is not the same company as the local distribution company. Disclaimers shall not be required, however, on company vehicles, clothing, or trinkets, writing instruments, or similar promotional materials. Upon complaint of any interested person, the Attorney General, staff motion, or on its own motion, the State Corporation Commission may, after notice and an opportunity for hearing, make a determination whether any such usage is misleading, and if so, take appropriate corrective actions.**

Proposed Rule A is similar to Interim Rule 20 VAC 5-311-20B.5. Several LDCs, including written comments by Washington Gas, raised a concern regarding the use of a disclaimer in the advertisements of an affiliated CSP outside of the service territory of the affiliated LDC. They believe that requiring the disclaimer in other geographic locations causes customer confusion and that crafting specific and understandable language to be included in such advertisements is difficult. Staff agrees that this situation may be confusing to consumers and proposes that the rule be revised as proposed above. The revised rule requires an affiliated CSP to include a disclaimer in all advertisements and solicitation materials used or distributed in its affiliated LDC's service territory.

**B. An affiliated competitive service provider shall operate independently of its affiliated local distribution company and shall abide by the following provisions with respect to any competitive energy service it offers in the certificated service territory of the affiliated local distribution company:**

**1. Each affiliated competitive service provider shall implement internal controls to ensure that it and its employees, contractors and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions, do not receive information from an affiliated local distribution company or from entities that provide similar functions for or on behalf of its affiliated local distribution company or affiliated transmission provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this subdivision, "undue advantage" means an advantage that is reasonably likely to adversely affect the development of effective competition within the Commonwealth.**

2. **An affiliated competitive service provider shall file with the State Corporation Commission a revised listing and description of all internal controls required in subdivision B 1 within 10 days of any modification to such controls as was originally provided under 20 VAC 5-312-40 A 8 as part of the requirements of the affiliated competitive service provider's application for license.**

3. **An affiliated competitive service provider shall document each occasion that an employee of its affiliated local distribution company, or of the transmission provider that serves its affiliated local distribution company, becomes one of its employees and each occasion that one of its employees becomes an employee of its affiliated local distribution company or the transmission provider that serves its affiliated local distribution company. Upon staff's request, such information shall be filed with the State Corporation Commission that identifies each such occasion. Such information shall include a listing of each employee transferred and a brief description of each associated position and responsibility.**

Proposed Rule B is similar to Interim Rule 20 VAC 5-311-20B.6. Written comments were received from Dominion Retail stating that this rule should be struck in its entirety because it is duplicative of Interim Rule 20 VAC 5-311-30A.9.

Staff agrees that the proposed rule mirrors Interim Rule 30A.9, which places restrictions on a LDC that performs services for its affiliated CSP. This rule places the same restrictions on an affiliated CSP that performs services on behalf of its affiliated LDC. Staff believes the rule should be maintained to ensure that no affiliated LDC and CSP relationship results in an undue preference.

During work group discussions, one participant stated a concern that this rule leaves a loophole for affiliated companies to pass information indirectly. This participant believes the restriction in subdivision 1 should be on a CSP and all regulated affiliates, thereby making this rule more restrictive. Staff does not propose amending this rule to address relationships between a CSP and all regulated affiliates. These codes of conduct address the relationship between affiliated LDCs and CSPs. Relationships between a

CSP and a regulated affiliate other than the LDC are beyond the scope of these rules. However, Staff believes that such relationships are likely to require Commission approval pursuant to Chapter 4 of Title 56 of the Code of Virginia.

Another work group participant suggested that the word employee in the first sentence of subdivision 1 of this rule be modified to include any party working on behalf of the affiliated CSP. Staff concurs with this change and has inserted the words "contractors or agents" as reflected above.

One final issue discussed briefly in the work group session concerned the requirement of separate employees and facilities. Staff received joint written comments on this issue from the Virginia Committee and the Old Dominion Committee ("the Committees"). This issue was also addressed in the Commission's Final Order adopting the Interim Rules. The Committees state that internal controls will not provide adequate protection against the exchange of competitively sensitive information. They believe that the costs resulting from such separation are necessary for laying the groundwork for effective competition in Virginia. They believe that the retail access rules are the appropriate vehicle for imposing tighter restrictions to prohibit "affiliated entities from engaging in discriminatory behavior toward nonaffiliated units."

Staff does not propose that affiliated LDCs and CSPs be prohibited from sharing services. Staff believes that the requirement of internal controls, together with the pricing requirements incorporated into these codes of conduct, are sufficient to avoid cross-subsidies between these affiliated organizations.

**C. Each affiliated competitive service provider shall maintain separate books of accounts and records.**

Staff proposes no changes to this rule. It should be retained in its current form since no party presented any concerns or issues. This rule is the same as Interim Rule 20 VAC 5-311-20C.6.

**D. The local distribution company shall not give undue preference to an affiliated competitive service provider over the interests of any other competitive service provider related to the provision of electric transmission, distribution, generation, or ancillary services, or natural gas supply or capacity. For purposes of this subsection, "undue preference" means a preference that is reasonably likely to adversely affect the development of effective competition within the Commonwealth.**

Proposed Rule D is the same as Interim Rule 20 VAC 5-311-30A.2. Dominion Retail suggests rewriting the first sentence to prohibit undue preferences to "any" CSP. Dominion Retail argues that this would prevent a LDC from setting up a joint venture or entering into a contractual relationship with another CSP. Staff has not adopted this change. As discussed above, Staff believes the codes of conduct should address the relationships between affiliated companies.

**E. The local distribution company shall provide information related to the transmission, distribution or provision of electricity, ancillary services, or natural gas supply or capacity to an affiliated competitive service provider only if it makes such information available simultaneously, through an electronic bulletin board or similar means of public dissemination, to all other competitive service providers licensed to conduct business in Virginia. This provision shall not apply to daily operational data, information provided in response to inquiries regarding the applicability of tariffs and terms and conditions of service, or similar data provided by the local distribution company to any competitive service provider in the ordinary course of conducting business. Nothing in this provision shall require the local distribution company to disseminate to all competitive service providers information requested and deemed competitively sensitive by a competitive service provider and supplied by the local distribution company.**

Proposed Rule E is the same as Interim Rule 20 VAC 5-311-30A.3. No participant provided comments specific to this rule. During the work group session, participants discussed whether the word "affiliated" should be removed from the first

sentence to make this rule apply to any CSP. As discussed above, Staff believes the codes of conduct should address relationships between the LDC and its affiliated CSP only.

**F. Joint advertising and marketing shall be prohibited between the local distribution company and its affiliated competitive service provider unless made available to all competitive service providers upon the same price, terms, and conditions.**

Proposed Rule F is similar to Interim Rule 20 VAC 5-311-30A.7. The rule has been revised to insert the words "its affiliated" in place of the word "any" competitive service provider. This change is consistent with Staff's position that the codes of conduct address possible anti-competitive behavior between a LDC and its affiliated CSP against unaffiliated CSPs. No written comments were received regarding this rule. At the work group session, one concern regarding the application of the "same price" provision included in this rule was discussed. A LDC asked whether application of this rule would allow a LDC to provide joint marketing and advertising services to the highest bidder. Staff believes that such a practice would not be in compliance with the rule.

**G. The local distribution company shall not condition the provision of any services on the purchase of any other service or product from its affiliated competitive service provider.**

Proposed Rule G is similar to Interim Rule 20 VAC 5-311-30A.8. Again the rule has been revised slightly to address possible anti-competitive behaviors between affiliated organizations. The Committees' comments oppose this change because it does not specifically prohibit a LDC from conditioning the provision of distribution services on the purchase of other LDC services. Staff believes this concern is addressed in § 56-578 of the Restructuring Act, which provides for nondiscriminatory access to a LDC's distribution system for all retail customers, including those using distributed generation.

Dominion Retail recommends that the phrase "or any other competitive service provider" be added to the end of this rule. However, as previously stated, the Staff believes the codes of conduct should address only affiliated relationships.

**H. The local distribution company shall operate independently of any affiliated competitive service provider and shall observe the following requirements with respect to any competitive energy service offered by such affiliated competitive service provider in the local distribution company's certificated service territory:**

**1. Each local distribution company having an affiliated competitive service provider shall develop and implement internal controls to ensure that it and its employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions, do not provide information to an affiliated competitive service provider or to entities that provide similar functions for or on behalf of such an affiliated competitive service provider as would give such affiliated competitive service provider an undue advantage, as defined in subdivision B 1, over non-affiliated competitive service providers.**

**2. An affiliated local distribution company shall file with the State Corporation Commission a listing and description of all internal controls required in subdivision H 1 not later than 30 days prior to implementation or within 10 days of any modification to such controls.**

**3. The local distribution company shall document each occasion that an employee of its affiliated competitive service provider becomes one of its employees and each occasion that one of its employees becomes an employee of its affiliated competitive service provider. Upon staff's request, such information shall be filed with the State Corporation Commission that identifies each such occasion. Such information shall include a listing of each employee transferred and a brief description of each associated position and responsibility.**

Proposed Rule H is similar to Interim Rule 20 VAC 5-311-30A.9. The primary revisions proposed by Staff to this rule are to subdivision 1 and include: (1) removing the reference to pilot programs; (2) adding contractors and agents that may be working on behalf of the LDC and (3) incorporating the definition of the term "undue advantage" by reference rather than by restating it. Written comments regarding this rule were received

from First Energy and Dominion Retail. Dominion Retail recommended modifying local distribution company to include contractors and agents. As discussed, Staff's revisions include this change.

First Energy commented that the term "undue advantage" is vague and unenforceable and that this rule should prohibit a LDC from sharing any information with its affiliated CSP about a nonaffiliated CSP without the written authorization of the unaffiliated CSP. Staff believes the purpose of this rule is to require independent operations between a LDC and its affiliated CSP. For example, if the LDC is aware of a transmission constraint within its service territory, the sharing of this information only with its affiliate would be considered providing the affiliate with an undue advantage. On the other hand, this rule allows the sharing of services provided the LDC puts in place internal controls designed to ensure independent operations. This rule does not specifically address First Energy's concern regarding the LDC sharing information about a CSP with other CSPs. However, proposed rule 20 VAC 5-312-30 E above may address First Energy's concern since it does not require a LDC to disseminate information deemed competitively sensitive by a CSP.

**I. With respect to affiliate transactions, the local distribution company shall abide by the following:**

**1. The local distribution company shall be compensated at the greater of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to an affiliated competitive service provider. An affiliated competitive service provider shall be compensated at the lower of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to the local distribution company. If market price data are unavailable, non-tariffed services, facilities and products shall be compensated at fully distributed cost and the local distribution company shall document its efforts to determine market price data and its basis for concluding that such price data are unavailable. Notification of a**

**determination of the unavailability of market price data shall be included with the report required in subdivision I 2.**

2. **The local distribution company shall file annually, with the State Corporation Commission, a report that shall, at a minimum, include: the amount and description of each type of non-tariffed service provided to or by an affiliated competitive service provider; accounts debited or credited; and the compensation basis used, i.e., market price or fully distributed cost. The local distribution company shall maintain the following documentation for each agreement and arrangement where such services are provided to or by an affiliated competitive service provider and make such documentation available to staff upon request: (i) component costs (i.e., direct or indirect labor, fringe benefits, travel or housing, materials, supplies, indirect miscellaneous expenses, equipment or facilities charges, and overhead); (ii) profit component; and (iii) comparable market values, with supporting documentation.**

Proposed Rule I is similar to Interim Rule 20 VAC 5-311-30A.10. Subdivision 2 of this rule now provides for annual reporting whereas the Interim Rules required semi-annual reporting. With regard to the reporting requirements, the information required by this rule may be included with a LDC's Annual Report of Affiliate Transactions.

AEP, Dominion Retail and Allegheny Power filed written comments in opposition of the asymmetrical pricing requirement of subdivision 1 above. Each stated its belief that this pricing requirement is in conflict with the requirements of the Securities and Exchange Commission that utility holding companies price affiliate transactions at cost. Written comments were also received from the Committees regarding this rule. The Committees believe this rule should be maintained as it protects monopoly ratepayers. During the work group session, the applicability of the Commission's pending affiliate rules case, Case No. PUA980020, was discussed. The participants present agreed that a Commission ruling in that proceeding may require that the pricing requirements in these codes of conduct be revisited.

The following was included in the Interim Rules:

30A.1. The local distribution company shall provide service, information and products to all competitive service providers licensed in Virginia on terms and conditions as set forth in this chapter, as provided in applicable tariffs, and as approved by the State Corporation Commission as part of a pilot program.

Staff has not included a similar rule in this proceeding. Staff believes this rule is unnecessary as it is understood that a LDC must provide service, information and products in compliance with these rules and its tariffs.

## Licensing
## 20 VAC 5-312-40

Licensing of competitive service providers is consistent with the requirements of §§56-587 and 56-588 of the Code of Virginia with respect to retail electric energy suppliers and aggregators and §56-325.8 of the Code of Virginia with respect to natural gas suppliers. In evaluating the licensure requirements set out in the Interim Rules, Staff believes that the Commission must continue to obtain sufficient information to help it fully and fairly assess applications for licensure and to monitor the participants in the emerging competitive markets in Virginia.

In general, the work group agreed that the licensure requirements in the Interim Rules needed only minor changes. The work group identified and grouped all of the Interim Rules related to licensure in order to facilitate an orderly review of the topic. After grouping the rules, the work group narrowed the licensure topics to those that merited further discussion.

General topics that the work group discussed in detail included the evaluation of financial and technical fitness, the term and renewal of licenses, the transition from pilot program licenses to licenses for full or phased-in retail access, and ongoing oversight, monitoring, and reporting of licensed competitive service providers. As the work group discussions progressed and rules were developed to deal with an annual license review and specific competitive service provider reporting requirements, it became apparent that the licensing section was not the most appropriate area for these rules. As a result, the rules related to the annual review of licenses and reporting requirements that were originally grouped with the licensing requirements have been moved to the General section of the rules.

The Staff also identified several issues that it believed might warrant discussion and modification. One of those was the need for any additional financial fitness criteria for competitive service providers planning to offer billing services. Staff initiated a discussion in the work group regarding bonding requirements for every billing service provider since these entities could be collecting state taxes. However, there was little interest in discussing this issue. Most participants believed that it was premature to develop specific bonding requirements for billing service providers at this point, particularly since consolidated billing by competitive service providers will not be effective until January 1, 2003.

A summary of the most salient points in the discussion of each rule is included after the individual rule. Staff, in its discussion of each rule, has noted rules that remain unchanged or evoked little discussion.

**A. Each person applying for a license to conduct business as a competitive service provider or an aggregator, including entities described in § 56-589 A 1 of the Code of Virginia, shall file an original and 15 copies of its application with the Clerk of the State Corporation Commission. If there are any material changes to the applicant's information while the application is pending, the applicant shall inform the State Corporation Commission within 10 calendar days. Each application shall include the following:**

There was not a significant amount of discussion of this section (Interim Rule 20 VAC 5-311-50A). However, based on one party's confusion regarding municipalities' need for a license to provide aggregation services, Staff added a reference to the Restructuring Act, §56-589 A (1). This subsection authorizes municipals and other political subdivisions to aggregate the electric load of residential, commercial and industrial customers within its boundaries but does not exempt the municipal or other political subdivision from licensing requirements.

Related to later discussions about renewal and oversight, Staff noted that the Interim Rules did not require notification of changes to an application that occur during the application process. As a result, Staff added the requirement for notification of such changes within 10 days. Staff believes this requirement is necessary. No participants objected to the proposed changes to this rule.

1. **Legal name of the applicant as well as any trade name.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50A.1.

2. **A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof; e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50A.2.

3. **Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50A.3.

4. **Physical business addresses and telephone numbers of the applicant's principal office and any Virginia office location or locations.**

The work group generally agreed that no change was necessary to the wording of Interim Rule 20 VAC 5-311-50A.4.a. However, the two requirements previously grouped in the Interim Rules as 20 VAC 5-311-50A4.a and b are now proposed as separate rules. The two requirements were not closely related to consider them as subsections of one requirement.

5. **A list of states in which the applicant or an affiliate conducts business related to electricity supply service or natural gas supply service, the names under which such business is conducted, and a description of the businesses conducted.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50A.4.b.

6. **Names of the applicant's affiliates and subsidiaries. If available, applicant shall satisfy this requirement by providing a copy of its most recent form 10K, Exhibit 21 filing with the Securities and Exchange Commission.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50A.5. However, one supplier questioned the need for a listing of all of an applicant's affiliates, including those in businesses other than energy supply. While this issue created much discussion in the earlier Task Force working on the Interim Rules, it did not elicit any discussion in the current work group. Staff believes that it is easier to request Exhibit 21 from SEC Form 10K, or something similar, than to attempt to describe exactly which affiliates would be appropriate to include on an application for licensure.

7. **Disclosure of any affiliate relationships with local distribution companies or competitive service providers, or both, that conduct business in Virginia, and any agreements with the affiliated local distribution company that affect the provision of competitive energy services within the Commonwealth of Virginia.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50A.6.

8. **If an affiliated competitive service provider, a description of internal controls the applicant has designed to ensure that it and its employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions, do not receive information from an affiliated local distribution company or from entities that provide similar functions for or on behalf of its affiliated local distribution company or affiliated transmission provider as would give such affiliated competitive service provider an undue advantage over non-**

**affiliated competitive service providers. For purposes of this subdivision, "undue advantage" means an advantage that is reasonably likely to adversely affect the development of effective competition in the Commonwealth.**

The work group generally agreed that only minor changes were necessary to Interim Rule 20 VAC 5-311-50A.7. One change, the addition of contractors and agents to employees in the second line, was made by Staff to make this rule consistent with the modified rules in the Codes of Conduct section.

9. **Toll-free telephone number of the customer service department.**

In Interim Rule 20 VAC 5-311-50A.8, an applicant was required to provide the telephone number of its customer service department or the title and telephone number of the customer service contact person. Staff suggested a change to the Interim Rules requiring applicants to provide the toll-free telephone number, as required in 20 VAC 5-312-70C.7, on the application for a license. This telephone number can then be included on the Commission's Supplier List on its website. The work group did not offer any opposition to this change. The remaining customer contact information previously required in Interim Rule 20 VAC 5-311-50A.8 will be obtained, if necessary, from the company's designated liaison with the State Corporation Commission, provided in proposed rule A.10 below.

10. **Name, title, address, telephone number, facsimile number, and e-mail address of the company liaison with the State Corporation Commission.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50A.9.

11. **Name, title, and address of the applicant's registered agent in Virginia for service of process.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50A.10.

**12. If a foreign corporation, a copy of the applicant's authorization to conduct business in Virginia from the State Corporation Commission or if a domestic corporation, a copy of the certificate of incorporation from the State Corporation Commission.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50A.11.

**13. Sufficient information to demonstrate, for purposes of licensure with the State Corporation Commission, financial fitness commensurate with the service or services proposed to be provided. Applicant shall submit the following information related to general financial fitness:**

**a. If available, applicant's audited balance sheet and income statement for the most recent fiscal year and published financial information such as the most recent Securities and Exchange Commission forms 10K and 10Q. If not available, other financial information for the applicant or any other entity that provides financial resources to the applicant.**

**b. If available, proof of a minimum bond rating (or other senior debt) of "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of "BBB-" or higher from a major rating agency. If not available, other evidence that will demonstrate the applicant's financial responsibility.**

The work group seemed generally comfortable with the existing language regarding financial fitness in Interim Rule 20 VAC 5-311-50A.12.a and b. However, some participants wanted a clear indication that the requirements of this rule do not replace the local distribution company's own creditworthiness requirements for supplier registration. The addition of the phrase "for purposes of licensure with the State Corporation Commission" near the beginning of this rule is intended to address this concern.

At least one supplier pointed out the difficulty of start-up companies producing audited financial statements to meet the requirements of subsection a of this rule. Staff has broadened the acceptable forms of proof of financial fitness by adding to subsection a

the statement, "If not available, other financial information for the applicant or any other entity that provides financial resources to the applicant". Staff added to subsection b, "If not available, other evidence that will demonstrate the applicant's financial responsibility". The changes to the subsections of this rule are intended to address suppliers' concerns by allowing some flexibility in the types of financial information that may be filed in an application and accepted by the Commission. The changes may also obviate the need for requests for waivers in situations where the specified information is not available. However, Staff's position continues to be that an applicant should submit as much relevant information as possible to support its claim of financial fitness.

**14. The name of the local distribution company that is certificated to provide service in the area in which the applicant proposes to provide service, the type of service or services it proposes to provide, and the class of customers to which it proposes to provide such services.**

Regarding the requirement in Interim Rule 20 VAC 5-311-50A.13 for identification of the geographic area in which an applicant proposes to provide service, most suppliers noted that, for practical purposes, they would likely identify the whole state rather than a smaller geographic region, even if they intended to target a particular region. After some discussion of the need and usefulness of this information with full retail access, the group seemed to agree that this portion of the rule could be deleted. The only other change to this rule removes the reference to pilot program areas.

**15. a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed or in place within the previous five years against the company, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its affiliates, pursuant to any state or federal consumer protection law or regulation; and (ii) felony convictions within the previous five years, which relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.**

Under Interim Rule 20 VAC 5-311-50A.14.a, an applicant was required to disclose any "civil, criminal, or regulatory sanctions or penalties imposed within the previous five years…." One participant in the work group questioned whether the original rule would include information on sanctions or penalties currently in place but perhaps imposed more than five years ago. Based on work group input, this rule now includes sanctions or penalties imposed or in place within the past five years.

**b. Disclosure of whether any application for license or authority to conduct the same type of business as it proposes to offer in Virginia has ever been denied, and whether any license or authority issued to it or an affiliate has ever been suspended or revoked and whether other sanctions have been imposed.**

Under Interim Rule 20 VAC 5-311-50A.14.b, an applicant was required to disclose, in part, whether any license or authority had ever been suspended, revoked, or sanctioned. One member of the work group pointed out that while an individual or firm may be sanctioned, a license cannot be sanctioned. Staff has reworded the rule to clarify the disclosure of any sanctions that have been imposed.

**c. If applicant has engaged in the provision of electricity supply service or natural gas supply service, or both, in Virginia or any other state, a report of all instances of violations of reliability standards that were determined to be the fault of the applicant, including unplanned outages, failure to meet service obligations, and any other deviations from reliability standards during the previous three years. The report shall include, for each instance, the following information: (i) a description of the event; (ii) its duration; (iii) its cause; (iv) the number of customers affected; (v) any reports, findings or issuances by regulators or electric and natural gas system reliability organizations relating to the instance; (vi) any penalties imposed; and (vii) whether and how the problem has been remedied.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50 A.4.c.

**16. A $250 registration fee payable to the State Corporation Commission.**

Without changing the intent of this rule, Interim Rule 20 VAC 5-311-50A.15 was reworded for clarity and to remove "pilot" and "initial" to better reflect full retail access.

**17. Sufficient information to demonstrate technical fitness commensurate with the service or services to be provided, to include:**

**a. The applicant's experience.**

**b. Identity of applicant's officers directly responsible for the business operations conducted in Virginia and their experience in the generation of electricity, procurement of electricity or natural gas, or both, and the provision of energy services to retail customers.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50A.16a or b.

**c. If applying to sell electricity supply service at retail, documentation of any membership or participation in regional reliability councils or regional transmission organizations.**

Natural gas suppliers were eliminated from the requirement of Interim Rule 20 VAC 5-311-50A.16 c. It was pointed out in the work group that there are no organizations for natural gas suppliers comparable to the electric reliability councils or regional transmission organizations. There was no objection to the change to this rule.

**d. If applying to sell electricity supply service or natural gas supply service, or both, at retail, information concerning access to generation, supply, reserves, and transmission. If applying to sell electricity supply service, provide information specifying, to the extent possible, the expected sources of electricity or electricity procurement practices and transmission arrangements that will be used to support retail sales of electricity in Virginia. If applying to sell natural gas supply service, provide information regarding pipeline capacity and storage arrangements, including assurances that such suppliers will be able to meet the requirements of their essential human needs customers.**

The work group agreed to changes in this section (previously Interim Rule 20 VAC 5-311-50A.16d.) that deleted references to “pilot” from the requirements.

However, for electricity supply service, there was significant discussion on the new requirement for details of transmission arrangements. The discussion focused on the use of the term transmission versus firm transmission. One local distribution company proposed that firm transmission should be required of all competitive service providers serving electric retail customers. One of the competitive service providers strongly disagreed with this position.

Staff believes that it is impractical to ask a competitive service provider to indicate firm transmission arrangements when a license application is filed. The local distribution company may, through its supplier registration process, ask the competitive service provider to discuss the transmission arrangements it will use to support retail sales of electricity. However, Staff does not believe that firm transmission is the only manner in which a competitive service provider can support retail sales of electricity.

**e. Billing service options the applicant intends to offer and a description of the applicant's billing capability including a description of any related experience.**

This rule was added to reflect the need for information regarding an applicant's technical capabilities with respect to billing consistent with §56-581.1 of the Code of Virginia. During the drafting process, Staff suggested requiring a sample bill be provided with the license application. One supplier expressed concerns about having to produce sample bills at the time an application is submitted. After lengthy discussion, Staff eliminated that requirement. As this subsection is currently worded, Staff believes that the requirement is broad enough to allow the Commission some flexibility in evaluating suppliers with various levels of expertise in billing.

**18. A copy of the applicant's dispute resolution procedure.**

Interim Rule 20 VAC 5-311-50A.17 excluded aggregators from the requirement to file dispute resolution procedures. Based on work group discussion, it was decided that aggregators should not be excluded from this requirement. In addition, Staff made minor changes to the wording of this rule for consistency.

**B. An officer with appropriate authority, under penalty of perjury shall attest that all information supplied on the application for licensure form is true and correct, and that, if licensed, the applicant will abide by all applicable regulations of the State Corporation Commission.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50B.

**C. Upon receipt of an application for a license to conduct business as a competitive service provider or an aggregator, the State Corporation Commission shall enter an order providing notice to appropriate persons and an opportunity for written comments on the application.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50C.

**D. If any application fails to conform to the requirements herein, the application shall not be regarded as complete. No action shall be taken on any application until deemed complete and filed.**

The work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-50D. However, the work group did spend some time discussing the merits of formalizing some of Staff's internal deadlines for processing licensure applications. While there is a 45-day statutory time frame for the licensing of natural gas suppliers in §56-235.8.E.1 of the Code of Virginia, there is no statutory time frame for licensing of electricity suppliers.

Currently, Staff attempts to determine whether an application is complete within 10 days. Staff's goal is to process the application and any related information quickly enough that the Commission is able to issue any license within 45 days of a complete application being filed. Staff continues to believe that these procedures are sufficient and does not believe more formal deadlines are needed.

**E. A license to conduct business as a competitive service provider or an aggregator granted under this section is valid until revoked or suspended by the State Corporation Commission after providing due notice and an opportunity for a hearing, or until the competitive service provider or aggregator abandons its license.**

There was significant discussion regarding the transition of pilot licenses to valid licenses for full retail access. The renewal and term of the license were also discussed. The group reviewed renewal requirements in other states. Some states have a two-year license term while others have no specific renewal requirements. In those states, suppliers are expected to provide immediate changes to any of the license application information.

Most of the work group participants supported an indefinite time period for the term of the license (i.e., an "evergreen" license). Such a license would be valid until the supplier takes action to abandon the license or the Commission revokes or suspends the license.

Based on the work group discussion, the review of other states' policies, and the recent Uniform Business Practices document, Staff is supporting one-time licensing with annual reviews and various reporting requirements.

**F. A competitive service provider or an aggregator shall comply with all initial and continuing requirements of the State Corporation Commission's licensure process and any reasonable registration processes required by the local distribution company and the transmission provider. Should the State**

**Corporation Commission determine, upon complaint of any interested person, the Attorney General, upon staff motion, or its own motion, that a competitive service provider or an aggregator has failed to comply with any of the requirements of this chapter or a State Corporation Commission order related thereto, the State Corporation Commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the competitive service provider's license or an aggregator's license or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.**

Staff replaced "commission" with "State Corporation Commission" for consistency. Although this rule (Interim Rule 20 VAC 5-311-20C.2) was initially identified by the group as one that might warrant review, there were no comments or suggested changes during the group discussion.

Two Interim Rules regarding licensing were deleted:

Interim Rule 20 VAC 5-311-50C. required applicants to contemporaneously serve their application on each local distribution company located within the service territory or territories where the competitive service provider intends to operate. Most of the work group participants believe that with full retail access, the requirement for contemporaneous service is unnecessary. A supplier may choose to apply for a license but not pursue registration with a particular local distribution company at the same time. Therefore, the group agreed to delete this requirement.

Interim Rule 20 VAC 5-311-40 established the requirements for aggregators. Based on work group discussion, it was generally agreed that the aggregator requirements could be handled within other rules. Therefore, many proposed rules governing competitive service providers now include aggregators.

# Competitive Service Provider Registration with the Local Distribution Company 20VAC 5-312-50

In order for a competitive service provider to offer competitive energy services to retail customers, they must also register with the local distribution company. These rules govern, in part, the registration process.

The issues involving competitive service provider registration with the local distribution company were limited to an extensive discussion of one rule of the Interim Rules. The work group spent a considerable amount of time discussing 20 VAC 5-311-50.E. and supplier creditworthiness standards. The discussions of the work group showed a clear division of opinion between competitive service providers and local distribution companies. In addition to the discussions of the work group, Staff received written comments from five participants.

A summary of the discussion of each rule is included after each of the individual rules comprising this section. In its discussion, Staff has noted where a rule remains unchanged or when there was no significant discussion.

**A. A competitive service provider shall submit to the local distribution company the full name of the competitive service provider, the type of entity (e.g., partnership, corporation, etc.), physical street and mailing addresses, and the names, telephone numbers, and e-mail addresses of appropriate contact persons, including a 24-hour emergency telephone number, and the name, title, and address of its registered agent in Virginia.**

There was no signifigant discussion of this rule by the work group, and the work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-20B.1.

**B. A competitive service provider shall furnish the local distribution company and the transmission provider proof of licensure from the State Corporation Commission to provide competitive energy services in the Commonwealth.**

There was no significant discussion of this rule by the work group, and the work group generally agreed that no change was necessary to Interim Rule 20 VAC 5-311-20B.2.

**C. A competitive service provider selling electricity supply service or natural gas supply service, or both, at retail shall:**

**1. Procure sufficient electric generation and transmission service or sufficient natural gas supply and delivery capability, or both, to serve the requirements of its firm customers.**

**2. Abide by any applicable regulation or procedure of any institution charged with ensuring the reliability of the electric or natural gas systems, including the State Corporation Commission, the North American Electric Reliability Council, and the Federal Energy Regulatory Commission, or any successor agencies thereto.**

**3. Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity.**

**4. Comply with generally accepted technical protocols applicable to particular competitive services.**

There was no significant discussion of these rules by the work group, and the work group generally agreed that no change was necessary to Interim Rules 20 VAC 5-311-20B.4.a.1, 2, 3 and 4.

**D. The local distribution company may require reasonable financial security from the competitive service provider to safeguard the local distribution company and its customers from the reasonably expected net incremental costs due to the non-performance of the competitive service provider. The amount of such financial security shall be commensurate with the level of risk assumed by the local distribution company, as determined by the local distribution company's applicable tariff approved by the State Corporation Commission. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, or other arrangements that may be mutually agreed upon by the local distribution company and the competitive service provider. Disagreements with respect to financial security shall be subject to the dispute resolution procedures established pursuant to 20 VAC 5-312-110 G.**

There was a significant amount of discussion of this section. Staff is recommending a number of changes to Interim Rule 20 VAC 5-311-30A.12 because of the discussions of the work group and the written comments from some of the work group participants.

The work group discussion of this rule took place over the course of multiple sessions. The investor-owned electric distribution companies shared information relative to how individual competitive supplier creditworthiness is assessed and how the local distribution company decides the amount of financial security a competitive service provider should furnish. Staff also asked each of the investor-owned electric utilities participating in the work group to provide any formulas used to calculate the amount of financial security required from a competitive service provider. The local distribution companies represented, including the electric cooperatives and natural gas distribution companies, supported the adoption of the Interim Rule. One local distribution company filed written comments that the word "losses" should be eliminated from the rule. Furthermore, the comment stressed that the company was concerned about the recovery of additional costs that it will incur if a competitive supplier quickly exits the market.

With near unanimity, the competitive service providers believed that 20 VAC 5-311-30A.12 was inadequate, and that the Interim Rule as written created a significant barrier to market entry. Three sets of extensive written comments on this rule were received, and one of the comments proposed a new rule for Staff's consideration.[5]

[5] Rule 30A.12. The local distribution company may require reasonable financial security from the competitive service provider to financially safeguard the local distribution company and its customers from losses incurred due to the non-performance of the competitive service provider. Such financial security requirements must be required of all competitive service providers on a non-discriminatory basis and shall include letters of credit, deposits in escrow accounts, prepayment arrangements, or other arrangements identified in the local distribution company's retail access tariff. The amount of such financial security shall not exceed the expected value of the loss incurred by the local distribution company in the event of

Another competitive service provider provided extensive arguments on creditworthiness standards.[6] The competitive service providers generally agreed that credit requirements should reflect reasonable market conditions and energy prices in the normal course of business.

Staff is recommending changes to the rule, but is not recommending that a formula for calculating the security be added to the rule. To add a formula to the rule would be problematic because each local distribution company has different levels of risk. The first change Staff proposes is to delete the word "losses" from the Interim Rule, and add the phrase "reasonably expected net incremental" before costs. The phrase "reasonably expected net incremental costs" reflects the fact that a local distribution company should only require financial security to cover costs that are in excess of its unbundled generation and distribution rates. Staff reviewed the documents submitted by the investor owned electric local distribution companies, including any formulas used to calculate the required security. Staff found that the companies were asking for security based upon a high capacity factor for each hour of the day, and the formulas fixed the

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non-performance of the competitive service provider, as determined by the following formula. [Formula to be determined, if possible, by working group consensus.] Values for the parameters of this formula, or a methodology for determining such values, shall be described in the local distribution company's retail access tariff as approved by the State Corporation Commission. Disagreements with respect to financial security shall be subject to the dispute resolution procedures established pursuant to 20 VAC 5-312-110 G.

[6] The local distribution company argument for this guarantee is that if a competitive service provider defaults, then the local distribution company is required to provide necessary services. Although this argument does have some merit, it does not justify the draconian measures associated with the guarantee. First, the amount of money necessary to supply this extra bonding prevents many possible suppliers from competing, preventing many niche players from even developing. Second, this requirement stands as a further impediment to competition in a state where most utilities already enjoy market power on the generation side and have absorbed the credit risk of customers in the past. This market power allows incumbents the ability to provide many smaller competitive service providers the generation service at market costs, but also receive a credit guarantee that this generation will not be shut down should the CSP default or withdraw from the market. This seems a double whammy that should not be allowed. Third, the threat of returning to default service (or switching to a competitive supplier) looms at all times with every customer, but the likelihood of every customer on the system suddenly returning is not meritable. Thus, holding bonds and guarantees for this situation also should have no merit.

cost of energy at $100 or $110 per MWh. The formulas require financial security on a yearly basis ranging from approximately $120,000 to $183,600 per MWh. The formulas when applied by the local distribution company result in the provision of security in excess of the net incremental cost of the local distribution company. The phrase "losses" in the view of Staff allows a local distribution company to ask for security in excess of what it actually needs to cover its net incremental costs.

Staff also recommends deleting the sentence that includes the phrase "including the cost of replacement energy." The cost of replacement energy is already covered in the net incremental costs for which a local distribution company would collect financial security. Staff also deleted a reference to the pilot program from the rule.

Staff must review the functional unbundling filings required by § 56-590 of the Code of Virginia. The tariffs filed in the functional unbundling cases should have provisions relating to the creditworthiness of the supplier. The Staff in the functional unbundling cases will assess whether the financial security required is commensurate with the level of risk assumed by the local distribution company.

Staff recommends the deletion of Interim Rule 20 VAC 311-20B.3 from this section. The rule required a competitive service provider to adhere to all requirements of schedules, terms and conditions of service under the rate schedules and tariffs approved by the State Corporation Commission or the Federal Energy Regulatory Commission, and of the local distribution company and the transmission provider, as applicable. Staff believes this rule is unnecessary since a competitive service provider, by obtaining a license, registering with the local distribution company, and registering with a transmission provider, agrees to adhere to the requirements of all of these entities.

## Customer Information
## 20 VAC 5-312-60

The purpose of the proposed rules pertaining to customer information is to address the development of a mass customer list by the local distribution companies. The following rules direct how the mass list will be developed and maintained, what information will be included on the mass list and how the list will be received and used by competitive service providers. Competitive service providers requested a mass list to enable them to reach those customers who may be interested in being contacted by a competitive service provider. Local distribution companies and competitive service providers with experience using a list either in pilot programs or in retail access in other states have found the greatest benefit of a list is the reduction in errors during customer enrollment.

**A. A competitive service provider or an aggregator shall adequately safeguard customer information, including payment history, unless the customer authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by federal and state statutes.**

This proposed rule is basically the same as Interim Rule 20 VAC 5-311-20A.10 with the exception of making the rule apply to an aggregator and the removal of the word "affirmatively" as it pertains to customer authorization. The work group was in general agreement on this rule. The intent of this proposed rule is to prohibit a competitive service provider from releasing or selling customer information to any other party without a customer's authorization. Any customer-specific information a competitive service provider gains access to should be for that competitive service provider's use only.

**B. The local distribution company shall provide, upon the request of a competitive service provider or an aggregator, a mass list of eligible customers.**

**1. The mass list shall include the following customer information: (i) customer name; (ii) service address; (iii) billing address; (iv) service delivery point, if applicable; (v) universal identifier, if applicable; (vi) utility account identifier; (vii) electricity or natural gas account; (viii) meter reading date or cycle; (ix) wholesale delivery point, if applicable; (x) rate class and subclass or rider, as applicable; (xi) load profile reference category, if not based on rate class; and (xii) up to twelve months of cumulative historic energy usage and annual peak demand information as available.**

**2. Prior to releasing any information on the mass list, the local distribution company shall provide each customer the opportunity to have the information itemized in subdivision B 1 withheld from the mass list.**

**3. The local distribution company shall make the mass list available two months prior to implementation of full or phased-in retail access and shall update or replace the list every six months thereafter. Prior to each update, each customer shall be provided an opportunity to reverse the prior decision regarding the release of the information included on the mass list.**

**4. The local distribution company shall prepare and make available the mass list by means specified by the VAEDT.**

Interim Rule 20 VAC 5-311-30A.4 requires local distribution companies to provide competitive service providers with a list of the addresses of all eligible pilot customers. During the pilots, the electric local distribution companies went a step further by developing a pilot participant list that included customer-specific information as outlined by the VAEDT. Similar to the interim rule, this proposed rule requires the local distribution company to prepare a mass list of eligible customers but requires additional customer specific information much like that currently being provided on the pilot participant list in the electric pilot programs.

The cooperatives do not believe a mass list is necessary because competitive service providers can purchase lists of names and addresses from other sources.

Cooperatives were also concerned about their members' privacy and were opposed to the entire rule.

Some work group participants objected to portions of the proposed rule. The release of customer information without affirmative authorization was a major issue for all of the local distribution companies. One concern is customer confusion since customers affirmatively authorized the release of their information during the pilot. As each electric local distribution company began its pilot program, customers were asked to confirm their interest in participating in the program by affirmatively authorizing the local distribution company to release customer contact information. Customers could authorize the release of information by checking off postcards, signing up via the internet, or calling the local distribution company. Under the proposed rule, customers will be required to contact the local distribution company to "opt-out" if they do not want their information released to competitive service providers.

Another concern with the "opt-out" process is that personal information may be released for customers who are unavailable to check their mail or do not return a response in a timely manner. The purpose of a mass list is to provide competitive service providers with a list of customers who are interested in shopping; however, some customers' information may appear on the list because they failed to notify the local distribution company to withhold their information. Customer education is essential in helping customers understand what action they must take and the consequences of such actions. While some disagree with the "opt-out" process for developing the list, the important thing to note is that customers may still make a choice, but also must

consciously decide whether or not to be included on the list to receive additional information.

The work group generally agreed on the items that should appear on a mass list if the mass list was to be used. While most participants agreed that customer phone numbers should be excluded from the list, some competitive service providers suggested that the phone numbers of large commercial and industrial customers should be included. One provider suggested the local distribution companies offer two check boxes on the negative response card – one box that restricts the release of all customer information and a second that restricts the release of a customer's phone number only. The local distribution companies are concerned about the possibility of releasing a customer's unlisted number by mistake because such numbers are not flagged in the local distribution companies' customer information systems. The local distribution companies' preferred method for the release of customer information is to allow for the release of either all information or no information. Staff understands that a process where customers could pick and choose certain items they want to withhold while releasing other items could be time-consuming and expensive to administer. Additionally, the feedback Staff received from participants representing consumer interests was that they were not in favor of the release of phone numbers. Staff believes providing the information listed in the rule above is adequate for competitive service providers to market to customers.

Another item of concern for some participants is the release of the customer account number because of the possibility of an unscrupulous competitive service provider using the information to enroll customers without their consent. The

confirmation letter required and described later in this report in 20 VAC 5-312-80G should prevent a customer from being enrolled with a competitive service provider without their consent.

The local distribution companies suggested this proposed rule should require a fee paid to the local distribution company by the competitive service provider for providing and maintaining the list. Staff believes such fees are more appropriately addressed in the individual local distribution companies' tariffs.

**C. A competitive service provider or an aggregator shall use the most recent mass list made available by the local distribution company.**

The most recent list will contain the most accurate data because it is to be updated with current information in accordance with proposed rule 20 VAC 5-312-60B.3. The requirement that the local distribution companies shall provide the customer with the opportunity to reverse a prior decision regarding the release of customer information means the customer may choose to have the information removed from or added to the list. The customer's decision to change its status may not prevent the customer from receiving future mailings from the competitive service providers who accessed a prior list when the customer's information was included, but future competitive service providers entering the market would not receive that customer's information. Before mailing solicitations and marketing materials to customers, competitive service providers should consult the most recent list to avoid contacting customers no longer interested in being contacted.

**D. A competitive service provider or an aggregator shall obtain customer authorization prior to requesting any customer information not included on the mass list from the local distribution company.**

Competitive service providers may request certain customer usage information through EDI transactions. The local distribution company will assume that the competitive service provider has a customer's authorization when a request is made because the competitive service provider must use a customer's account number for the transaction. Because customer account numbers are included on the mass list, it is possible that a competitive service provider may request information without a customer's express authorization. The local distribution companies' concern with this rule is that they will not know whether a competitive service provider has a customer's authorization. This proposed rule does not require the local distribution company to police a competitive service provider's request. However, this proposed rule places the responsibility on the competitive service provider to get a customer's authorization to request information from the local distribution company, and the competitive service provider must be able to verify such authorization upon request.

## Marketing
## 20 VAC 5-312-70

The purpose of the proposed rules pertaining to marketing is to ensure customers receive meaningful and understandable information when presented with marketing materials and contracts from competitive service providers and aggregators.

**A. A competitive service provider or an aggregator shall provide, in any advertisements, solicitations, marketing materials, or customer service contracts, accurate, understandable information, in a manner that is not misleading. Any such materials specifying a price shall include a statement that the local distribution company shall continue to provide and charge for distribution service.**

This rule is basically the same as Interim Rule 20 VAC 5-311-20A.1 and generated little work group discussion. A requirement has been added for materials specifying price to include a statement that the local distribution company will continue to provide and charge for distribution service. This addition is to alert customers that the prices they are being quoted by competitive service providers may not necessarily include all charges they will incur. The State Corporation Commission has received some customer complaints that the price information they received from competitive service providers was misleading, and the Staff believes the addition of this statement will help alleviate future customer confusion. Customer education will also be extremely important in relaying this message to consumers.

**B. A competitive service provider shall provide to a prospective residential customer, in writing or by electronic means, prior to, or contemporaneously with, the written contract, an estimated electricity supply service or natural gas supply service annual bill assuming average monthly usage of 1,000 kWh of electricity or 7.5 Mcf or 75 therms of natural gas, including all fees and minimum or fixed charges, exclusive of any non-recurring financial or non-financial incentives, and the total average price per kWh, Mcf, or therm based on the annual bill. If a competitive service provider's offer cannot be adequately described in such a manner or if the prospective customer is other than a residential customer, the competitive service provider shall furnish**

**similar information that will allow prospective customers to reasonably compare the price of electricity supply service or natural gas supply service, if purchased from a competitive service provider, to the price of equivalent service provided by the local distribution company.**

This proposed rule generated limited discussion during the work group meetings and is basically the same as Interim Rule 20 VAC 5-311-20A.2(i). The interim rule required a competitive service provider to provide several additional items of information to prospective customers when sending a written contract. The same information was required in a subsequent rule addressing contracts. Staff believed that having the information requirement in two rules was redundant and determined the most appropriate place for the other items was in the rule pertaining to contract information.

In response to the requirements of this proposed rule, one competitive service provider commented that as long as the customer is provided a price per kWh, the estimated annual bill information would be of little benefit to a customer. The competitive service provider also stated that a customer with usage above or below 1,000 kWh per month could be confused by the information. Staff believes the information is useful to customers because, if all competitive service providers are providing the same information, a customer should be better equipped to compare offers. Consumer advocates seek to provide customers with comparable information so customers can make informed shopping decisions. Many consumer advocates would prefer to require competitive service offerings be suited for "apples-to-apples" comparisons. This proposed rule gives the competitive service provider some flexibility by allowing the provider to furnish other comparable information if the provider's offer cannot be adequately described in accordance with the rule. This proposed rule is predominantly directed towards residential and small commercial customers.

**C. Customer service contracts shall include:**

1. **Price or, if the exact price cannot feasibly be specified, an explanation of how the price will be calculated;**

2. **Length of the service contract, including any provisions for automatic contract renewal;**

3. **Provisions for termination by the customer and by the competitive service provider;**

4. **A statement of any minimum contract terms, minimum or maximum usage requirements, minimum or fixed charges, and any required deposit;**

5. **Applicable fees including, but not limited to, start-up fees, cancellation fees, late payment fees, and fees for checks returned for insufficient funds;**

6. **A notice of billing terms and conditions;**

7. **A toll-free telephone number and an address for inquiries and complaints;**

8. **A clear and conspicuous caption: "CUSTOMER'S RIGHT TO CANCEL," that shall appear on the front side of the contract, or immediately above the customer's signature, in bold face type of a minimum size of ten points, and a statement under such caption that a customer may cancel the contract, without penalty, with the competitive service provider by notifying the local distribution company prior to midnight of the tenth day following the mailing of notice by the local distribution company of an enrollment request; and**

9. **In a conspicuous place, confirmation of the customer's request for enrollment and the approximate date the customer's service shall commence.**

This proposed rule is similar to Interim Rule 20 VAC 5-311-20A.4 with a few modifications. The items from this proposed rule that generated the lengthiest discussion were the "Customer's Right to Cancel" and the ten-day rescission period. The work group was in general agreement on allowing a customer a reasonable amount of time to rescind or cancel an enrollment. The rescission period is an anti-slamming mechanism that all participants agreed is necessary. The disagreement was over when the ten-day window should start. Originally, the Staff proposed the same language as Interim Rule

20 VAC 5-311-20A.4(vii). The interim rule specified the window began with the customer's receipt of the confirmation letter sent by the local distribution company. The receipt date of materials was defined in Interim Rule 20 VAC 5-311-20A3.b as three calendar days after the date mailed, and the local distribution company was allowed a day to mail the letter upon receiving an enrollment request. The process actually gave customers fourteen days to cancel an enrollment. Local distribution companies and competitive service providers agreed that this period was too long and inconsistent with the rescission period in surrounding states. Based on the work group discussions, Staff concurred that starting the ten-day period with the date the confirmation letter is mailed by the local distribution company would be more appropriate and modified the rule as it is proposed above.

The language of the interim rule's "Customer's Right to Cancel" clause directed the customer to call the local distribution company or the competitive service provider to cancel a contract. Competitive service providers in the group suggested the customer be directed to contact both parties to rescind an enrollment because the contract is between the provider and the customer. The local distribution companies commented that a customer could be inadvertently enrolled with a competitive service provider if the competitive service provider does not send a drop to the local distribution company in a timely manner. Staff believes it is unnecessary to require a customer to contact both parties. The local distribution company knows when the confirmation letter is mailed and when the rescission period ends and is ultimately the party responsible for stopping the enrollment. Therefore, Staff proposes that the customer be directed to contact the local distribution company. Furthermore, Staff believes if the customer did not authorize the

enrollment with a competitive service provider, the customer should not be required to call that provider to cancel the enrollment.

Two other items in the proposed rule that differ from Interim Rule 20 VAC 5-311-20A.4 are the addition of the requirement to include billing terms and conditions and the removal of the requirement to include the dispute resolution procedure on every customer contract. These two items generated minimal discussion. The notification of billing terms requirement is a result of the additional billing options available to competitive service providers. No one objected to adding this requirement to the contract rule. One competitive service provider questioned the need to include the dispute resolution procedure on every contract. The competitive service provider suggested that the procedure is lengthy and would be available to customers upon request. Staff agreed that a customer does not need to see the full dispute resolution procedure on each contract and that providing a telephone number and an address where customers can call or write for inquiries and complaints is adequate. Competitive service providers shall make the dispute resolution procedure available to customers upon request.

**D. A competitive service provider and a non-residential customer that is subject to demand-based billing charges and with an annual peak demand of greater than 30 kilowatts may contractually agree to a shorter cancellation period than stated in subdivision C 8.**

The purpose of this proposed rule is to address the concern of competitive service providers that large commercial and industrial customers could sign a contract for service and use the ten-day rescission period as a way to back out of an otherwise legally binding contract. Competitive service providers suggested contract cancellations by large commercial and industrial customers should be covered under standard contract law and

not the proposed rule 20 VAC 5-312-70C.8. Competitive service providers also stated they might be able to make a customer a better offer if they do not have to build in the ten-day rescission period. Staff proposes this rule to allow providers and large customers the option of waiving the protection or negotiating a shorter rescission period.

The local distribution companies stated that they send the same rescission letter to all customers regardless of customer size and do not want to be responsible for determining whether a customer has ten days or three days to rescind and cancel the enrollment. This proposed rule does not change the local distribution companies' rescission process. The letter will still be sent to the customer regardless of whether the provider and the customer have contractually agreed to a shorter rescission period. The customer is responsible for knowing whether or not the rescission period applies.

Additionally, Staff would like to note that this proposed rule may need to be modified to also include a non-residential natural gas customer that is subject to demand-based billing charges.

**E. A competitive service provider that claims its offerings possess unusual or special attributes shall maintain documentation to substantiate any such claims. Such documentation may be made available through electronic means and a written explanation shall be provided promptly upon request of any customer, prospective customer, competitive service provider, aggregator, local distribution company, or State Corporation Commission.**

This proposed rule did not generate any discussion in the work group meetings and is basically unchanged from Interim Rule 20 VAC 5-311-20A.5.

**F. Prior to the enrollment of a customer with a competitive service provider, an aggregator shall provide written notice to the customer identifying the name, toll-free telephone number, and address of the selected competitive service provider.**

Although this rule was proposed to the work group in a slightly different form, the intent was discussed. This rule is similar to part of Interim Rule 20 VAC 5-311-40B.3. Aggregators were concerned that they may not necessarily know the identity of the competitive service provider at the time a contract is being negotiated with a customer. This proposed rule requires notification be sent to a customer prior to the actual enrollment of a customer which does not take place until after the rescission period. The aggregator should have ample time to send notification to the customer.

**G. An aggregator that receives or expects to receive compensation from both a customer, or a prospective customer, and the customer's competitive service provider shall disclose in writing to the customer the existence or expectation of such an arrangement.**

This proposed rule is a portion of Interim Rule 20 VAC 5-311-40B.3 and generated no substantial discussion from the work group. The intent of this rule is for a customer to be notified if both the customer and the competitive service provider are compensating an aggregator for the same charges.

## Enrollment and Switching
## 20 VAC 5-312-80

The following proposed rules govern the process, the responsibilities, and the rights of a customer, the local distribution company, and a competitive service provider in switching a customer's electricity or natural gas supply service. Although they generated some discussion, the proposed rules generally mirror those of the current Interim Rules. Several rules were modified and a few rules were added to address experience with Virginia's pilot programs and retail access available in neighboring states.

**A. A competitive service provider shall be permitted to enroll a customer upon: (i) receiving a license by the State Corporation Commission; (ii) receiving EDI certification as required by the VAEDT, including the subsequent provision of a sample bill as required by 20 VAC 5-312-20 L; and (iii) completing registration with the local distribution company.**

Although a new rule, all participants recognize the importance placed on market participants to be prepared and ready to serve retail customers. As discussed previously, competitive service providers and aggregators are required by Sections 56-587 and 56-588 of the Code of Virginia to be licensed by the State Corporation Commission. Additionally, certain service agreements must be in place with each local distribution company before a competitive service provider may transact business, including those regarding communication protocols to exchange business and customer information. The VAEDT has been recognized as the organization to establish and maintain appropriate EDI requirements for all market participants to transact business in Virginia. Its coordination with the Utility Industry Group of the Accredited Standards Committee of the American National Standards Institute and neighboring regional EDI working groups enables the VAEDT to stay abreast of industry and technology advancements. Also,

Staff believes that prior to serving a customer, a competitive service provider should demonstrate its capability to render an understandable bill to a customer for its service within a reasonable time following delivery of such service.

**B. A competitive service provider shall enroll a customer only after the customer has affirmatively authorized such enrollment. A competitive service provider shall maintain adequate records allowing it to verify a customer's enrollment authorization. Examples of adequate records of enrollment authorization include: (i) a written contract signed by the customer; (ii) a written statement by an independent third party that witnessed or heard the customer's verbal commitments; (iii) a recording of the customer's verbal commitment; or (iv) electronic data exchange, provided that the competitive service provider can show that the electronic transmittal of a customer's authorization originated with the customer. Such authorization records shall contain the customer's name and address; the date the authorization was obtained; the name of the product, pricing plan, or service that is being subscribed; and acknowledgment of any switching fees, minimum contract terms or usage requirements, or cancellation fees. Such authorization records shall be retained for at least 12 months after enrollment and shall be provided within five business days upon request by the customer or the State Corporation Commission.**

To avoid, or at least minimize the potential of a practice referred to as "slamming", a customer should not be switched to a competitive service provider without having given express authorization. Similar to Interim Rule 20 VAC 5-311-20A.3.a, this proposed rule requires a competitive service provider to obtain customer authorization, by any means technologically available, and to retain such verifiable authorization in the event of a customer challenge. The local distribution company does not, and should not be required to, police this activity.

The assumption of the work group was that a customer enrollment would be performed by a competitive service provider. Generally, the customer information system required to exchange the EDI transactions necessary to perform a customer switch will be established by a competitive service provider. As described in proposed Rule 20 VAC 5-312-90B, an aggregator and a competitive service provider may contractually

agree to other arrangements and coordinate such responsibility for one party to interact with the local distribution company to enroll a customer.

**C. A competitive service provider shall send a written contract to a customer prior to, or contemporaneously with, sending the enrollment request to the local distribution company.**

Prior to enrollment, and similar to the requirement of Interim Rule 20 VAC 5-311-20A.3.b, a customer is entitled to a written contract disclosing all terms and conditions as previously described in proposed Rule 20 VAC 5-312-70C. This proposed rule is shortened from the Interim Rule to apply to all future enrollments beyond pilot programs and to reflect the ten-day rescission period previously discussed with proposed Rule 20 VAC 5-312-70C.8.

**D. Upon a customer's request, a competitive service provider may re-enroll such customer at a new address under the existing contract, without acquiring new authorization records, if a competitive service provider is licensed to provide service to the customer's new address.**

This proposed rule expands similar language at the end of Interim Rule 20 VAC 5-311-20A.3.a and enables a customer, upon moving to a new location, to stay with a selected competitive service provider without requiring the competitive service provider to obtain new authorization records. Currently, the appropriate EDI transactions have not been established to permit a customer to transparently or "seamlessly" move from one location to another and remain with the selected competitive service provider. Such efforts to address the complexity of such a practice and to establish appropriate EDI standards are underway in neighboring states and appear to be difficult to resolve.

Meanwhile, the work group recognizes that a customer may decide to stay with a selected competitive service provider under prior authorization and contract terms but would need to be "re-enrolled" at the customer's new location. Should a competitive

service provider desire changes to the terms and conditions of an existing contract, new authorization records would need to be obtained.

**E. The local distribution company shall advise a customer initiating new service of the customer's right and opportunity to choose a competitive service provider.**

Although similar to the requirement under Interim Rule 20 VAC 5-311-30B.5, this proposed rule expands the requirement beyond application to a competitive service provider's notice to terminate service. This rule extends to any time that a customer seeks new distribution service, re-connection to existing service, and continued service at a new location. Staff believes that the local distribution company should advise a customer seeking distribution service of the opportunity to select a competitive service provider.

**F. In the event that multiple enrollment requests are submitted regarding the same customer within the same enrollment period, the local distribution company shall process the first one submitted and reject all others for the same enrollment period.**

This new proposed rule gives direction to market participants regarding which enrollment request should be processed if multiple requests are submitted within the same period. Neighboring states are split on this issue as some require "first-in" processing as prescribed with this rule while other states require "last-in" processing. Staff believes the "first-in" approach will foster a robust market for competitive service providers to solicit customer participation. A customer simply wishing to change service providers may do so during the next enrollment period.

**G. Upon receipt of an enrollment request from a competitive service provider, the local distribution company shall, normally within one business day of receipt of such notice, mail notification to the customer advising of the enrollment request, the approximate date that the competitive service provider's service commences, and the caption and statement as to cancellation required by 20 VAC 5-312-70 C 8. The customer shall have 10 calendar days from the mailing of such**

**notification to advise the local distribution company to cancel such enrollment without penalty.**

Similar to Interim Rules 20 VAC 5-311-20A.3.c and 20 VAC 5-311-30B.4, the proposed rule describes the accepted means for the local distribution company to promptly enroll the customer while also providing the customer with another level of protection to avoid and minimize unauthorized switching. The work group generally agreed that consumer protection was necessary, however, a few participants believed the responsibility belonged to competitive service providers. Staff believes the local distribution company bears the responsibility to notify the customer since it is the gatekeeper of all customer switches and it schedules the meter read dates to implement such switches.

**H. In the event a competitive service provider receives a cancellation request, it shall notify, by any means specified by the VAEDT, the local distribution company of the customer's cancellation in order to terminate the enrollment process.**

Similar to Interim Rule 20 VAC 5-311-20A.3.c, this proposed rule describes the accepted means for a competitive service provider to promptly notify the local distribution company to halt the enrollment process upon a customer's decision to cancel. The responsibility of a competitive service provider to act promptly is to guard the right of a customer to rescind the enrollment request within the ten-day rescission period prior to implementation of the switch.

**I. In the event the local distribution company receives notice of a cancellation request from a competitive service provider or a customer, the local distribution company shall terminate the enrollment process by any means specified by the VAEDT.**

Similar to Interim Rule 20 VAC 5-311-30B.4 and the discussion above, this proposed rule describes the accepted means for the local distribution company to

promptly halt the enrollment process upon a customer's decision to cancel within the rescission period. The responsibility of the local distribution company to respond promptly to a request to cancel is to protect the customer's right to rescind prior to implementation of the switch and avoid potential harm to such customer.

**J. A competitive service provider shall commence service to a customer as provided in the local distribution company's applicable tariff as approved by the State Corporation Commission. A competitive service provider may request, pursuant to the local distribution company's tariff, a special meter reading, in which case the enrollment may become effective on the date of the special meter reading. The local distribution company shall perform the requested special meter reading as promptly as working conditions permit.**

Similar to Interim Rule 20 VAC 5-311-20A.3.d, this proposed rule requires the local distribution company's tariff to establish procedures regarding the switch of a customer's energy supply service to a competitive service provider. The work group generally agreed that normally electricity supply service would commence with the customer's next meter read date and that natural gas supply service would commence on a prescribed date near the beginning of each month. The work group also agreed that an enrollment request had to be processed within sufficient time ahead of the prescribed dates to physically implement the switch.

Typical practice among work group participants and neighboring states appears to be a lead-time for electricity supply service of 15 days. This lead-time accounts for the customer's ten-day rescission period and a three-day to five-day "black-out" period around the next scheduled meter read date. The scheduled meter read date is an estimated date that could actually be a day or two earlier or later depending on work and weather conditions. The "black-out" period enables the local distribution company to issue and act upon a work order to implement the switch when the meter is actually read.

Such a lead-time is also necessary for natural gas local distribution companies to nominate expected natural gas volume to serve customers and arrange for transportation of such volume with pipeline companies. These monthly arrangements are typically performed on prescribed dates for the upcoming month.

Work group participants indicated that they occasionally receive requests for special or "off-cycle" meter reads and generally have not been able to accommodate such requests. Experience to date indicates that such requests rarely occur and would be manually executed by the local distribution company as conditions and schedules permit. Staff believes that some local distribution companies currently offer such "off-cycle" meter reads as an option and, if such an option is offered, it should be described in the company's tariff. However, further development of a robust competitive energy market may require such offerings in the future.

**K. In the event a customer terminates a contract with a competitive service provider beyond the 10-day cancellation period, the competitive service provider shall provide notice of termination to the local distribution company by any means specified by the VAEDT.**

Upon a customer's notice to cancel, a competitive service provider shall accept such notice, subject to any contractual obligations, and promptly notify the local distribution company to drop the customer. This requirement is similar to that of Interim Rule 20 VAC 5-311-20B.7. The customer must then make a selection as to the intended provider of energy supply service in a manner described earlier in this report.

Upon further reflection, Staff believes this proposed rule should also extend to situations in which a customer notifies the local distribution company of a decision to cancel or in which a different competitive service provider requests an enrollment for the customer. The local distribution shall accept such notice and promptly process the

request. A customer may be subject to other contractual obligations with a competitive service provider and the local distribution company should not be responsible for monitoring or policing such obligations.

**L. If a competitive service provider terminates an individual contract for any reason including expiration of the contract, the competitive service provider shall provide notice of termination to the local distribution company by any means specified by the VAEDT and also shall send written notification of such termination to the customer at least 30 days prior to the date that service to the customer is scheduled to terminate.**

Similar to requirements described in Interim Rules 20 VAC 5-311-20A.12 and 20 VAC 5-311-20B.7, the proposed rule requires that a competitive service provider desiring to terminate a customer contract give proper advance notice to the customer and the local distribution company. Such notice will trigger other activities as required and discussed below.

**M. If the local distribution company is notified by a competitive service provider that the competitive service provider will terminate service to a customer, the local distribution company shall respond to a competitive service provider by any means specified by the VAEDT that will acknowledge (i) receipt of a competitive service provider's notice, and (ii) the date that a competitive service provider's service to the customer is scheduled to terminate. Additionally, the local distribution company shall send written notification to the customer, normally within five business days, that it was so informed and describe the customer's opportunity to select a new supplier. The local distribution company shall inform the affected customer that if the customer does not select another competitive service provider, the local distribution company shall provide the customer's electricity supply service or natural gas supply service under its tariffed rates.**

Similar to Interim Rule 20 VAC 5-311-30A.6, this proposed rule places the responsibility on the local distribution company to initiate the process to halt a customer's energy supply service and remind the customer of the opportunity to return to its service or to select another competitive service provider. Prompt action to sufficiently handle this responsibility is expected of the local distribution company to help minimize

customer confusion and enhance customer education during the transition period to full retail access.

**N. If a competitive service provider decides to terminate service to a customer class or to abandon service within the Commonwealth, the competitive service provider shall provide at least 60 days advanced written notice to the local distribution company, to the affected customers, and to the State Corporation Commission.**

This proposed rule is new and was created to address experience in neighboring states and the existing pilot programs. Volatility in the wholesale energy market has caused many competitive service providers to reconsider the risks they take to serve retail customers. This proposed rule is intended to permit an orderly exit of a competitive service provider upon a business decision to change its service offerings. This enables such a provider to arrange service to its customers by another competitive service provider or permits retail customers to seek and select another provider. Such advance notice also gives the local distribution company time to prepare for the potential return of customers.

It is understood that some competitive service providers may not be able to provide the full 60 days notice. However, this proposed rule does impose the requirement for such notification to be promptly delivered as soon as practicable following such a business decision. Appropriate notice of such actions enables all parties to be better prepared to handle such occurrences.

**O. If the local distribution company issues a final bill to a customer, the local distribution company shall notify, by any means specified by the VAEDT, the customer's competitive service provider.**

Although related to circumstances envisioned with Interim Rule 20 VAC 5-311-30B.7, this proposed rule is an addition. Since a competitive service provider is

responsible for procuring and delivering energy supply to its retail customers, it has the need and right to know if delivery service has been suspended by the local distribution company to adjust its scheduled energy supply.

## Billing and Payment
## 20 VAC 5-312-90

The proposed billing and payment rules are responsive to implementation requirements imposed by the competitive billing provisions of § 56-581.1 of the Code of Virginia as amended by the 2001 General Assembly. Such requirements include consistency with the Commission's Recommendation and Draft Plan for retail electric billing services filed with the Legislative Transition Task Force on December 12, 2000 ("Draft Plan"), the facilitation of the development of effective competition, and reasonable levels of billing accuracy, timeliness and quality and consumer readiness. Additionally, the proposed regulations address the requirements set forth in § 56-592 of the Code of Virginia regarding the establishment of billing information standards and reasonable limits on customer security deposits as well as the provision of billing information that supports consumer education efforts.

The proposed rules apply to local distribution company billing of consumers that do not choose a competitive service provider and the competitive billing service options authorized with an effective date of January 1, 2002, including separate billing service and consolidated billing service provided by the local distribution company. The compact schedule did not provide adequate time to address rule development for consolidated billing service by competitive service providers or aggregators. That billing service option has an authorized effective date of January 1, 2003, which allows additional time to evaluate and develop appropriate rules.

To facilitate the provision of accurate and timely bills, the proposed billing and payment rules require compliance with EDI standards established by the VAEDT, including testing and certification prior to customer enrollment. Additionally, to

minimize potential customer confusion, a competitive service provider or an aggregator must settle on billing arrangements with a customer and include the billing terms and conditions in the customer service contract as required by proposed rule 20 VAC 5-312-70 C 6. The proposed billing and payment rules establish minimum bill information standards to enhance customer understanding of billing charges and set reasonable limits on deposit requests. Also, the proposed rules maintain the application hierarchy for the partial payment of a consolidated bill similar to that established by the Interim rules. In general, there was limited disagreement in the work group regarding these basic requirements.

The Staff believes that, in addition to serving as a mechanism for stating charges and requesting payment, the customer bill can and should be an important educational tool that promotes competition and supports statewide consumer education efforts. In fact, the previously referenced statutes require such consideration. To this end, the Staff's proposed rules include bill information standards aimed at non-shopping, small-usage customers and attempt to accomplish three basic objectives: 1) enhance consumer understanding with respect to the existence of two basic utility services, distribution service which must be provided by the local distribution company, and electricity or natural gas supply service which may be procured from the competitive market; 2) provide price-to-compare information the consumer may use in considering offers from a competitive service provider; and 3) provide historical energy consumption information that will allow consumers to begin to understand their annual consumption characteristics.

Some work group participants, especially representatives of the local distribution companies, expressed significant concerns regarding these requirements, especially with respect to prescriptive requirements for the calculation and provision of "price-to-compare" information. Additional concerns were noted regarding the availability of space for competitive service provider charges and bill messages on the consolidated bill of the local distribution company. Generally, the local distribution utilities seem to believe that the proposed rules, in total, will require substantial systems modification and associated costs, will increase bill pages and postage expense, and will confuse consumers with the provision of too much bill information.

The Staff's proposed billing and payment rules are as follows:

**A. A competitive service provider or an aggregator shall offer separate billing service or consolidated billing service by the local distribution company, or both, to prospective customers pursuant to § 56-581.1 of the Code of Virginia.**

This proposed rule establishes the responsibility of a competitive service provider, or an aggregator, to offer and agree on authorized billing service arrangements in conjunction with the offering of electricity or natural gas supply service. It must be recognized that the competitive service provider and aggregator, if one exists, must coordinate with each other to avoid conflicting offers of billing arrangements. Additionally, only one of these entities may serve in the enrollment and billing coordination role due to the technical design of EDI systems (both in Virginia and elsewhere) that limit the capability of the local distribution company to transact such business on one customer's account to one other party. Normally, the competitive service provider is expected to serve in this role; however, upon mutual agreement, an aggregator may assume such responsibilities.

Some of the local distribution companies suggested eliminating the reference to aggregators in the billing and payment rules; however, § 56-581.1 of the Code of Virginia, as amended, while allowing for the establishment of conditions by the Commission, clearly provides authority for the provision of billing service by aggregators. Accordingly, the Staff believes it would be inappropriate to eliminate such reference from the rules.

**B. A competitive service provider or an aggregator shall coordinate the provision of the customer-selected billing service with the local distribution company by any means specified by VAEDT.**

For purposes of minimizing confusion and facilitating the provision of accurate and timely customer billing, this proposed rule essentially requires the competitive service provider or aggregator to notify the local distribution company of the billing service applicable to a customer in the enrollment request and to conduct billing transactions in accordance with standards established by the VAEDT. The requirements of this rule may be largely redundant to those specified by 20 VAC 5-312-20 J and K in the General provisions of the proposed rules; however, the Staff included the proposed rule to provide clarity and emphasis to the billing and payment section.

**C. Consolidated billing by the local distribution company, except as otherwise arranged through contractual agreement between the local distribution company and a competitive service provider or an aggregator, shall:**

**1. Be performed under a "bill-ready" protocol.**

**2. Not require the local distribution company to purchase the accounts receivable of the competitive service provider or aggregator.**

**3. Not require the electric local distribution company to include natural gas competitive energy service charges on a consolidated bill or the natural gas local distribution company to include electric competitive energy service charges on a consolidated bill.**

**4. Not require the local distribution company to receive the transmittal of billing information for one customer account from more than one competitive service provider or aggregator for the same billing period.**

This proposed rule clarifies conditions and limitations regarding the required provision of consolidated billing service by the local distribution company. The proposed rule is generally consistent with the Commission's stated intentions of conditions governing consolidated billing in its Draft Plan. The rule establishes the "bill-ready" protocol as the standard for consolidated billing; although, the local distribution company may and should accommodate the "rate-ready" protocol through negotiation with a competitive service provider or an aggregator, where practical. Additionally, the local distribution company is not required to purchase the accounts receivable of a competitive service provider or an aggregator, but may negotiate to do so as a business decision. Also, as a practical matter, an electric local distribution company is only required to perform consolidated billing for electric competitive energy services and a natural gas local distribution company for natural gas competitive energy services. Finally, due to the EDI system design limitations discussed above, the local distribution company cannot conduct billing transactions for one account with more than one party. Accordingly, if both a competitive service provider and an aggregator want the local distribution company to bill charges on the consolidated bill, either the competitive service provider or the aggregator must incorporate the other party's charges in the billing charges it transmits to the local distribution company.

**D. In the event a competitive service provider or an aggregator collects security deposits or prepayments, such funds shall be held in escrow by a third party in Virginia, and the competitive service provider or the aggregator shall provide to the State Corporation Commission the name and address of the entity holding such deposits or prepayments.**

This proposed rule is the same as Interim Rule 20 VAC 5-311-20 A 6 except that it is expanded to include aggregators. One competitive service provider suggested limiting the requirement to customer deposits of residential or small customers. However, the Staff believes the financial protection of customer deposits from supplier default that is afforded by this rule should be applicable to the deposits of all customers.

**E. A competitive service provider or an aggregator requiring a deposit or prepayment from a customer shall limit the amount of the deposit or prepayment to the equivalent of a customer's estimated liability for no more than three months' usage of services from the competitive service provider by that customer.**

This proposed rule is virtually the same as Interim Rule 20 VAC 5-311-20 A 7 except it is expanded to include aggregators and modified to increase the allowed deposit request from two months' estimated liability to three months' estimated liability. The proposed increase in the allowance for a deposit request to three months' liability recognizes the minimum time required for a competitive service provider or an aggregator to identify and drop a non-paying customer after enrollment. In submitted comments, one supplier suggested that the Commission does not need to set deposit limitations since in a competitive market, a high deposit request would lead a customer to choose another supplier. However, § 56-592 F of the Code of Virginia specifically directs the Commission to establish reasonable limits on customer security deposits required by suppliers and aggregators.

**F. Customer deposits held or collected by a local distribution company shall be for only those services provided by the local distribution company. Any deposit held in excess of this amount shall be promptly credited or refunded to the customer. The local distribution company may, upon a customer's return to regulated electricity supply service or natural gas supply service, collect that portion of a customer deposit as permitted by the local distribution company's tariffs and 20 VAC 5-10-20.**

This proposed rule is virtually the same as Interim Rule 20 VAC 5-311-30 B 6 except that references to pilot programs have been removed and minor editing changes were made for clarity. In submitted comments, one local distribution company noted that customers are paid interest on deposits and a partial refund of deposits may be costly and cumbersome for the utility, especially in the case where a customer returns to regulated service and a new deposit is requested. Therefore, it was suggested that deposits should be returned in total after the normal retention period. The Staff respectfully disagrees and believes that retention of excess deposits is not consistent with the spirit or intent of existing Commission rule 20 VAC 5-10-20 with respect to the amount of a customer deposit that may collected or held by a public utility. Additionally, the suggested practice effectively could result in a customer paying a double deposit for electricity or natural gas supply service if the competitive service provider requires a deposit. In short, the Staff believes that the suggested practice is burdensome to consumers and could create a barrier to their participation in the competitive market.

**G. Terms and conditions concerning customer disconnection for non-payment of regulated service charges shall be set forth in each local distribution company's tariff approved by the State Corporation Commission. A customer may not be disconnected for non-payment of unregulated service charges.**

This proposed rule is the same as Interim Rule 20 VAC 5-311-30 B 7 except that references to pilot programs has been removed and a stronger statement added that directly prohibits the disconnection of service for the non-payment of unregulated service charges.

**H. The local distribution company shall apply a customer's partial payment of a consolidated bill to charges in the following order: (i) to regulated service arrearages owed the local distribution company; (ii) to competitive energy service and aggregation service arrearages owed the competitive service provider or the aggregator; (iii) to regulated service current charges of the local**

**distribution company; (iv) to competitive energy service and aggregation service current charges of the competitive service provider or the aggregator; and (v) to other charges. Collections of state and local consumption taxes and local utility taxes shall be remitted as required by law.**

This proposed rule provides for the hierarchical application of a partial payment to consolidated billing charges similar to Interim Rule 20 VAC 5-311-60. This rule maintains the same basic hierarchy for application of payments as the interim rule although it clarifies that any charges for services other than regulated service or competitive energy services are last in line. The rule also clarifies that the payment application hierarchy is subordinate to the legal requirements for the remittance of state and local consumption taxes and the local utility tax. Finally, references to payment application as designated by the customer were removed. The Staff believes that this is not necessary since payments should be applied first to distribution company arrearages, for which a customer can be disconnected. Customers who wish to designate payments may choose a competitive service provider that offers separate billing.

Although no change is proposed in the basic payment application hierarchy, the work group discussed this matter at length, including the consideration of prorating the application of payments between local distribution company and the competitive service provider charges. The majority of the work group seemed to agree that the existing hierarchy is consistent with practices in most other states and would minimize customer disconnections for non-payment. Effectively, prorating partial payments would allow disconnection for non-payment of unregulated charges. An associated concern with this approach is the potential customer confusion that could result from disconnection notices issued by the local distribution company for non-payment and the determination of the amount that must be paid to avoid disconnection. The local distribution companies also

indicated that complex and costly system changes would be required to accommodate prorating partial payments. In written comments, one supplier proposed prorating partial payments based on a predetermined percentage, reflecting an average customer's proportionate distribution and electricity supply cost, as a more equitable method of applying payments. Alternatively, the supplier suggested that payments be applied first to the arrearages of the non-billing party since the non-billing party is dependent on the collection efforts of the billing party. While the Staff can understand the perception of inequity regarding the partial payment hierarchy, neither of the suggested options addresses the Staff's concerns with respect to potential customer confusion concerning disconnection and the policy implications of effectively disconnecting consumers for non-payment of competitive service charges. Further, the Staff notes that a competitive service provider decides which billing service to offer customers and may choose to offer separate billing. The local distribution company, on the other hand, is required to respond to the billing service arranged by the competitive service provider.

**I. The local distribution company, a competitive service provider, and an aggregator shall comply with the following minimum billing information standards applicable to all customer bills:**

**1. Sufficient information shall be provided or referenced on the bill so that a customer can understand and calculate the billing charges.**

This proposed requirement reflects traditional practice and a reasonable expectation that customers should be able to understand charges on their bill. With the opportunities and risks inherent in a competitive market, customer understanding of such charges becomes even more important.

**2. Charges for regulated services and unregulated services shall be clearly distinguished.**

This requirement is pursuant to § 56-592 D of the Code of Virginia.

3. **Standard terminology shall be employed and charges shall be categorized for the following key bill components, as applicable: (i) distribution service; (ii) competitive transition charge; (iii) electricity supply service or natural gas supply service; (iv) state and local consumption tax; and (v) local (or locality name) utility tax. The bill may provide further detail of each these key components as appropriate.**

The proposed standard terminology is intended to support and facilitate the effectiveness of the statewide consumer education effort with respect to communications and consumer understanding. The Staff notes the proposed use of the term "competitive transition charge" as opposed to the statutory term of "wires charge," as provided by § 56-583 of the Code of Virginia, due to the potential confusion of the latter term with some aspect of distribution service.

4. **Non-routine charges and fees shall be itemized including late payment charges and deposit collections.**

This proposed requirement is intended to prevent hidden charges or fees and to facilitate the customer's understanding of billing charges.

5. **The total bill amount due and date by which payment must be received to avoid late payment charges shall be clearly identified.**

This proposed requirement is self-explanatory.

6. **The 24-hour toll-free telephone number of the local distribution company for service emergencies shall be clearly identified.**

This proposed requirement is to ensure that customers have a readily available number to call for immediate response in the event of safety-related emergencies.

7. **In the event a disconnection notice for non-payment is included on a customer bill, the notice shall appear on the first page of the bill and be emphasized in a manner that draws immediate attention to such notice. The notice shall clearly identify the amount that must be paid and the date by which such amount must be paid to avoid disconnection.**

This proposed requirement is to ensure that customers are immediately aware that disconnection for non-payment is pending and understand the requirements to avoid such disconnection.

**8. The following additional information shall be provided on customer bills to the extent applicable:**

**a. Customer name, service address, billing address, account number, rate schedule identifier, and meter identification number.**

**b. Billing party name, payment address, and 24-hour toll-free telephone number for customer inquiries and complaints.**

**c. For consolidated bills, non-billing party name and 24-hour toll-free telephone number for customer inquiries and complaints.**

**d. Bill issue date and notice of change in rates.**

**e. Previous and current meter readings and dates of such meter readings or metering period days, current period energy consumption, meter reading unit conversion factor, billing-demand information, and "estimated" indicator for non-actual meter reads.**

**f. Previous bill amount, payments received since previous billing, balance forward, current charges, total amount due, and budget billing information.**

**g. For consolidated bills, billing party, and non-billing party elements as specified in subdivision I 8 f.**

These proposed additional bill information elements, except the consolidated bill items, are generally standard items currently included on utility bills and provide the minimum amount of information required for a customer to understand the basis for billing charges.

**J. The local distribution company shall comply with the following additional billing information standards applicable to the bills of residential and other customers that are not subject to demand-based billing charges and that purchase regulated electricity supply service or regulated natural gas supply service from the local distribution company:**

1. **The local distribution company shall employ standard terminology and categorize charges for the following key billing components: (i) distribution service; (ii) electricity supply service or natural gas supply service; (iii) state and local consumption tax; and (iv) local (or locality name) utility tax. Brief explanations of distribution service and electricity supply service or natural gas supply service shall be presented on the bill. Such explanations shall convey that distribution service is a regulated service that must be purchased from the local distribution company and that electricity supply service or natural gas supply service may be purchased from the competitive market but, if applicable, may result in a competitive transition charge.**

The proposed standard terminology for the bills of non-shopping customers is the same as that proposed in 20 VAC 5-312-90 I 3. The Staff believes it is especially important to target the educational aspects of the bill to customers that are not participating in the competitive market. Therefore, the Staff also proposes brief explanatory footnotes to emphasize the two distinct services, regulated distribution service and electricity or natural gas supply service that may be purchased in the competitive market.

Significant work group discussion surrounded the issue of whether to impute and separately itemize a competitive transition charge associated with regulated electricity supply service, based on the wires charge applicable to shopping customers. The majority of the work group seemed to favor this approach in that it would assist in consumer education and avoid the confusion and frustration a customer might experience when seeing the competitive transition charge as a new billing charge for the first time after choosing a competitive service provider. Further, if such an amount were separately itemized, the charges for regulated electricity supply service would reflect the local distribution company charges that would be avoided if electricity supply service were procured competitively.

While the Staff is sympathetic to the underlying objective, we are concerned that such an approach may be misleading and represent a departure from statutory provisions that clearly state that the wires charge is applicable to customers that choose a competitive service provider. Alternatively, the Staff proposes that the footnote explaining electricity supply service indicate that a customer procuring electricity supply service from the competitive market may be subject to a competitive transition charge.

On the other hand, one local distribution company pointed out that § 56-584 of the Code of Virginia indicates that stranded costs are recoverable by incumbent electric utilities through either capped rates (non-shopping customers) or the wires charge (shopping customers). This may present the option of defining "competitive transition charge" as stranded cost recovery as opposed the wires charge. However, this approach also would rely on an assumption that the stranded cost recovery embedded in capped rates is identical to the wires charge rate. Since neither stranded costs or stranded cost recovery embedded in capped rates have been determined, this may be a challengeable assumption. Accordingly, the Staff is hesitant to make such a recommendation, but presents this option for Commission consideration.

2. **The local distribution company shall provide on customer bills either (i) a customer's cumulative 12-month energy consumption, and total seasonal energy consumption if seasonal rates are applicable, for the 12-month period consistent with the calculation of "price-to-compare" values required in subdivision J 3 or for the most recent 12 months or (ii) a customer's monthly energy consumption, numerically or graphically, for the most recent 12 months; and**

A requirement to provide historical energy consumption information on customer bills is proposed by the Staff because of the importance for customers to increase awareness about their consumption and energy usage patterns in the new competitive

environment. This consumption information, in conjunction with the "price-to-compare" information proposed in following rules, may provide valuable assistance to customers shopping for a competitive service provider. Several local distribution companies currently do not provide this historical usage information on bills. They point out that the proposal would require system changes resulting in additional costs and more bill space for presentation which, in combination with other proposed billing information requirements, could result in additional billing pages and postage expense.

3. **The investor-owned electric local distribution company shall also provide a customer-specific annual average "price-to-compare," stated in cents per kilowatt-hour, for regulated electricity supply service on each customer bill. In the event the local distribution company employs seasonal rates, "price-to-compare" values shall be specified for each season in addition to the annual average. The customer-specific "price-to-compare" values shall be based on the currently approved rates of the local distribution company and the customer's historical usage pattern over the most recent 12-month period, updated no less frequently than quarterly. If 12 months' energy consumption is not available for a customer, class average load profile data shall be employed to either (i) substitute for unavailable consumption information or (ii) provide a class average "price-to-compare." The bill shall be noted accordingly.**

The work group engaged in substantial discussion regarding "price-to-compare" information. The "price-to compare" is the portion of the average effective regulated rate for electricity supply service that will be avoided if a customer procures electricity supply service in the competitive market (the average effective regulated rate for electricity supply service less the average effective wires charge rate). Without this information, a customer simply cannot make a rational economic decision and know whether a competitive service provider's offer will result in savings or additional costs. While most participants agreed that this information is crucial for a customer to compare offers of competitive service to the cost of regulated service, there was significant debate about

what specific "price-to-compare" information should be provided and how it should be provided.

For utilities that employ block or seasonal rates, each customer's "price-to-compare" is unique because these calculations depend on the customer's specific monthly energy consumption. Likewise, since a customer's usage will vary from month-to-month and year-to-year due to the effects of weather and other energy consumption changes, each customer's individual "price-to-compare" continually varies. In fact, a totally accurate prospective "price-to-compare," which is conceptually needed for comparison with competitive offers that are for prospective electricity supply service, cannot be calculated because future monthly usage would have to be known in advance.

To the extent a customer's recent historical usage is a reasonable predictor of future usage, current rates can be applied to such usage and an average customer-specific "price-to-compare" can be calculated. Alternatively, a typical customer "price-to-compare" can be developed using class-average load profile data, as suggested by several work group participants. However, the amount and pattern of an individual customer's energy consumption, and the resulting average "price-to-compare," can vary significantly from that developed with class-average load profile data. Significant variances of an individual customer's energy consumption from class-average load data are not especially alarming with respect to the intended use of load profile applications for wholesale market financial settlements. For such purposes, load profiles are typically applied to a sizable group of customers and only need to be reasonably accurate for the group of customers as a whole. It should also be noted that, even in this application, the actual metered usage of each customer is incorporated in the settlement process and the

load profile is used just to spread such usage over the hours of the month. In any event, for purposes of developing and providing "price-to-compare" information to individual consumers, which may use such information to make specific individual financial decisions, the use of such class-average data is highly suspect.

The Staff's concern is highlighted by the experience offered by Dominion Virginia Power, which has both block and seasonal rates. The Company calculated customer-specific "price-to-compare" values for customers participating in its pilot program. It is the Staff's understanding that differences in the average "price-to-compare" for individual residential customers varied by as much as two cents per kilowatt-hour. The Staff believes that in cases where this level of variance exists between customers, the use of class-average profile data as the standard basis for calculating "price-to-compare" values is simply not acceptable. While customer-specific "price-to-compare" values based on individual historical consumption data have deficiencies, as indicated previously, the Staff believes that, in general, this approach provides the best information that can be provided to customers.

The Staff also believes it is important to provide such price-to-compare information on the monthly bills of non-shopping small customers. Many of these consumers may not have the immediate knowledge, motivation, or skills to gather the needed information and make such calculations independently. The Staff believes customers are more likely to notice, retain, develop interest in, and/or use information that is repeatedly provided on the bill than information provided infrequently through bill inserts or separate mailings that commonly are ignored and discarded.

The local distribution companies indicate strong disagreement with prescriptive requirements regarding the provision of "price-to-compare" information to customers, such as those contained in the Staff's proposed rule. They propose that flexibility be afforded each utility to decide the type and manner in which such information is provided to customers so that the unique circumstances of each utility can be accommodated. The local distribution companies also indicate that the Staff's proposal would require substantial system modifications and would result in significant additional cost.

The Staff's proposed rule is limited in applicability to investor-owned electric local distribution companies at the present time. The extreme volatility of natural gas rates raises substantial questions as to the best approach for providing "price-to-compare" information to the customers of natural gas local distribution companies. The electric cooperatives, many of which may not implement retail choice until as late as January 1, 2004, also have unique circumstances, including monthly rate changes for the recovery of wholesale power costs and the relative potential impact of substantial system changes on a small customer base. Due to these circumstances, the Staff believes additional consideration is warranted prior to establishing more specific "price-to-compare" requirements for electric cooperatives and natural gas local distribution companies. Accordingly, in proposed rule 20 VAC 5-312-90 L, the Staff proposes that these local distribution companies develop and file plans with the Division of Energy Regulation to provide and assist their customers with "price-to-compare" information prior to the implementation of retail access in their respective service territories.

**K. The investor-owned electric local distribution company shall develop and file a plan, prior to the implementation of full or phased-in retail access, with the State Corporation Commission's Division of Energy Regulation to provide "price-to-**

**compare" assistance and information, on bills or by other means, to customers that are subject to demand-based billing charges.**

The Staff believes it is appropriate to provide more flexibility to investor-owned electric local distribution companies in providing "price-to-compare" information and assistance to larger more sophisticated customers that are served by more complex rate schedules. This rule proposes that such local distribution companies develop and file plans with the Division of Energy Regulation for the provision of adequate assistance and information.

**L. The electric cooperative local distribution company and the natural gas local distribution company shall develop and file a plan, prior to the implementation of full or phased-in retail access, with the State Corporation Commission's Division of Energy Regulation to provide "price-to-compare" assistance and information, on bills or by other means, to all customers.**

As indicated in the discussion of proposed rule 20 VAC 5-312-90 J, due to the unique circumstances relative to electric cooperative and natural gas local distribution companies, this rule proposes the development and filing of plans with the Division of Energy Regulation for the provision of adequate price-to-compare information and assistance to customers.

**M. The local distribution company shall provide sufficient space on a consolidated bill to accommodate a competitive service provider's or an aggregator's name and 24-hour toll-free telephone number, previous account balance, payments applied since the previous billing, total current charges, total amount due, six additional numeric fields to detail current charges, and 240 additional text characters.**

This proposed rule is intended to establish the minimum parameters for space on the local distribution company's consolidated bill available for the billing charges and messages of the current competitive service provider. The Staff believes the most controversial issues are the number of numeric fields available to detail current charges

and the number of text characters available for bill messages. The local distribution companies currently indicate a capability of providing between two and four numeric fields for the current charges of the competitive service provider. In written comments, five competitive service providers indicate that normally four numeric fields would be sufficient for detailing a current month's charges. However, four of these suppliers indicate that sufficient space should be available to detail two additional months' charges, resulting in a total requirement of 12 numeric fields, and one supplier indicates the need to accommodate charges for one additional month, or a total of eight numeric fields. The Staff, while not certain of the most equitable solution, believes a reasonable number of available numeric fields to detail charges may range from four to eight and proposes the midpoint of six numeric fields for this rule. The Staff recognizes that certain technical glitches could on rare occasions result in the charges of a competitive service provider being excluded from a consolidated bill, resulting in the need to bill such charges in the following month; however, the Staff is less sympathetic, and would become extremely concerned, with a need to include three months' charges on a bill. In any event, the Staff believes that six numeric fields should easily accommodate the detail of charges for one month and in most cases should accommodate the charges for two months, although perhaps with less detail than desired.

The Staff notes that in the draft billing and payment rule document discussed with the work group, the Staff, for purposes of discussion, had included four numeric fields and 350 text characters for competitive service providers. Since the Staff's is increasing the number of proposed numeric fields to six from four, partially in response to supplier comments, the Staff's proposed rule also reduces the number of text characters from 350

to 240 as a bill space offset. This number of text characters translates into a varying number of bill lines for the different local distribution companies. For example, on Dominion Virginia Power's bill at 80 characters per line, this equates to three bill lines of text, while on Conectiv's bill at 35 characters per line, it provides approximately seven lines of text.

The local distribution companies expressed concern that the requirements contained in the draft billing and payment rules in combination with the other billing information requirements contained therein would result in one or more additional bill page(s) and additional postage expense, as well as significant system changes and associated cost.

**N. The local distribution company shall continue to track and bill customer account arrearages owed to former competitive service providers or aggregators for two billing cycles after service has terminated. The bill shall list, at a minimum, the name, 24-hour toll-free telephone number, and balance due for each former competitive service provider or aggregator.**

This proposed rule requires that the local distribution company continue to bill customers the arrearages owed to a former competitive service providers for two billing cycles on the consolidated bill. A competitive service provider that relies on consolidated billing by the local distribution company may not have billing systems in place to efficiently bill arrearages. A limited tail-end provision of continued consolidated billing service for arrearages appears reasonable to the Staff. After two billing cycles, the arrearages are to be returned to the former supplier for collection. In written comments, one natural gas local distribution company indicates that this rule will require substantial system changes. The proposed rule also requires that each former supplier (a maximum

of two) is listed separately with a 24-hour toll-free telephone number and the balance due.

**O. If the current charges of a competitive service provider or an aggregator are not included on the consolidated bill issued by the local distribution company, the bill shall note that such charges are not included.**

This proposed rule is intended to alert the customer that charges from the competitive service provider were not included on the bill so that the customer will not be surprised by either a subsequent corrected bill or two months of charges on the following month's bill.

**P. If the current charges of a competitive service provider or an aggregator are not included on the consolidated bill issued by the local distribution company due to causes attributable to the competitive service provider or aggregator, the charges shall be billed in the following month unless the two parties mutually agree to other arrangements.**

This rule is intended to minimize the burden and financial impact on the local distribution company when a competitive service provider fails to fulfill its obligations as the non-billing party in the consolidated billing arrangement.

**Q. If the current charges of a competitive service provider or an aggregator are not included on the consolidated bill issued by the local distribution company due to causes attributable to the local distribution company, the bill shall be cancelled and reissued to include such charges unless the two parties mutually agree to other arrangements.**

This rule is intended to minimize the burden and financial impact on a competitive service provider when the local distribution company fails to fulfill its obligations as the billing party in the consolidated billing arrangement.

**R. The local distribution company, a competitive service provider, or an aggregator shall report any significant deficiency regarding the timely issuance, accuracy, or completeness of customer bills to the State Corporation Commission's Division of Energy Regulation as soon as practicable. Such reports shall detail the circumstances surrounding the deficiency and the planned corrective actions.**

This proposed rule is to ensure that the Staff is fully informed of any significant customer billing difficulties in a timely manner so that the Staff is prepared to address consumer inquiries and can take appropriate actions, if any are required.

## Load Profiling
## 20 VAC 5-312-100

The work group jointly considered issues relating to load profiling, balancing and settlement. Load profiling is a statistical technique that allows customers to participate in retail choice without the installation of certain metering equipment that would be used to record the loads of customers on an hourly basis. Instead, hourly loads, and thus the costs imposed on CSPs by these customers, are estimated by statistical methods. The work group believed that issues relating to load profiling are properly resolved by the Commission. Balancing and settlement issues relate to the coordination of bulk transmission systems and are commonly handled in the transmission tariff of transmission providers.

The Interim Rules applicable to Virginia's retail electric pilot programs did not cover issues relating to load profiling, balancing and settlement. There were several reasons for this omission. Issues relating to load profiling can be highly technical and are often best handled in an evidentiary proceeding. Virginia's three electric pilot programs handled load profiling issues in this manner. Each local distribution company proposed a particular load profiling approach in the direct portion of its pilot proceeding. After or prior to their filings, Staff and the LDCs worked to find common ground. Staff addressed profiling issues in its direct testimony in each pilot proceeding. The Commission then approved, either explicitly or implicitly, each distribution company's profiling approach. Load profiling issues were relatively non-controversial in these proceedings.

A second consideration that allowed profiling and settlement issues to be omitted from the Interim Rules was the lack of standardization in profiling methods employed by the three LDCs that conducted pilots. These differences stem from different company

cost structures, histories and rate structures that lead to different load research approaches. Since on-going load research usually supplies the fundamental data for profiling and therefore defines limits on profiling approaches, the three LDCs proposed to employ very different load profiling regimes in their electric retail access pilot. Such unavoidable diversity prohibits the development of detailed rules that attempt to spell out specific analytical methods. As such, the rules set forth in this report are designed to require general LDC behaviors rather than specific statistical methods for empirical analysis.

Finally, the work group believes that bulk power balancing and settlement issues are within the jurisdiction of the FERC and are covered by LDC/RTE Open Access Transmission Tariffs (OATT). As such, no attempt was made to develop rules pertaining to those activities. It should be noted, however, that Staff stands ready to evaluate the appropriateness of LDC activities relating to balancing and settlement issues and is prepared to participate in FERC regulatory processes as necessary.

The work group discussions regarding load profiling, balancing and settlement issues were relatively non-controversial. The first issue discussed was the need for rules applicable to these restructuring topics. As part of electric industry restructuring, load profiling issues are commonly resolved by state regulatory commissions. As stated above, balancing and settlement issues associated with bulk power transactions are covered by transmission provider OATTs. As such, beyond the general requirement that LDCs shall conduct "its activities regarding load profiling and settlement in a nondiscriminatory manner" the proposed rules make no further mention of balancing or settlement. As for load profiling, there was little sentiment for or against rule

development. On balance, Staff believes that general load profiling rules that stress the LDC's crucial role as a non-discriminatory provider of access services to CSPs --- so that CSPs may serve retail customers --- would serve to better facilitate the development of effective competition for electric service in Virginia's retail electricity markets.

The proposed rules are designed to require that LDCs conduct load profiling activities in a non-discriminatory manner. They contemplate that, in addition to the load profiles themselves, interested parties shall have access to the methods, data and empirical analysis that produce resulting profiles. This information data can be used to both gain insights into the accuracy of LDC methods and to assess potential improvements to those methods. Since load profiles determine the costs that CSPs will bear when CSPs serve profiled customers, Staff strongly believes that the entire profiling process should be as transparent as possible. This is an absolute requirement for the development of effective retail competition in the Commonwealth.

It follows, then, that detailed profiling data and information also may be employed by CSPs to develop segmentation analysis based on customer cost causality. Such analysis leads to marketing strategies that may seek to target offers to particular customers whose actual cost of serving may be less than that as determined by the profile. Such target marketing strategies have, as their ultimate goal, removal of customers from the profiled population through the use of some type of interval metering. Should such strategies be successfully implemented by CSPs, the samples on which profiles are based will become biased due to the removal of customers from the population in a systematic manner. While this process is beneficial because customers will receive CSP offers more closely tied to the actual cost of serving individual customers, such an eventuality will

require corrective action on the part of the LDC. These rules require such corrective action.

**A. The local distribution company shall conduct its activities regarding load profiling and settlement in a nondiscriminatory manner.**

This rule sets an overall requirement for LDC behavior regarding these important restructuring functions.

**B. The local distribution company shall ensure that profile classes are easily identifiable, that load profiles used are representative of the customer class being profiled, and that customer loads are represented in a nondiscriminatory manner. Load profiles and load profiling methodologies shall be reviewable and verifiable by the State Corporation Commission.**

This rule requires that LDCs conduct profiling activities in a transparent manner.

**C. The local distribution company shall provide a competitive service provider, through the appropriate regulatory process, access to interval data, excluding any customer-specific identifier, that is necessary to verify the validity and reliability of load profiles and methodologies.**

This rule ensures that CSPs have reasonable access to all LDC load profiling information. During work group discussions, certain LDC representatives expressed concerns with allowing interested parties unfettered access to interval data collected from sample metering points. The LDCs felt that the transfer of data to CSPs and others who are interested in profile method verification, profile method improvement or marketing information embedded in the data would be burdensome and costly. As such, Staff's proposed rules allow for CSPs to obtain such data through the appropriate regulatory process. In effect, this proposed rule places Staff in the role of information "gatekeeper". While Staff originally proposed unfettered access to such data as being in the best interests of developing retail competition in Virginia, this rule reflects Staff's desire to respond to LDC concerns about the trouble and cost of data dissemination. Staff plans to

facilitate the transfer of such data and information to CSPs who can demonstrate a reasonable business need for such data.

**D. The local distribution company shall use a load profiling method that balances ease of implementation with the need for the load profile to reasonably represent and predict the customer's actual use. The method used shall balance the need for accuracy, cost-effectiveness for the market, predictability, technical innovation, lead time to implement, demonstrated need for market data, and sample bias. The validity of the approach needs to be reconfirmed periodically or as markets evolve, and corresponding load profiles shall be updated accordingly and made available to competitive service providers.**

This rule reflects the fact that load profiling is an estimation process that must weigh the costs of increased accuracy against its benefits. Also, the LDC must make a reasonable effort to ensure the accuracy of its profiles as markets evolve.

**E. The local distribution company shall make available to a competitive service provider the validated and edited customer class or segment load profile *via* a website in a read-only, downloadable format or by other appropriate cost-effective electronic media. The information shall be date stamped with the date posted and the date created, and the website or other electronic media shall clearly indicate when updated information has become available.**

The purpose of this rule is to ensure that profiles are made available to interested parties in a cost-effective manner.

**F. A customer's assigned load profile shall remain the same regardless of the provider of electricity supply service. Customer loads that are not metered, such as streetlights, may be represented by load profiles deemed to closely reflect their known patterns of usage.**

This rule is designed to ensure that profiling activities of LDCs are conducted in a nondiscriminatory manner.

**G. The load sample may include both bundled and unbundled customers, such that a customer is not automatically removed from the load sample when the customer begins to receive service from a competitive service provider.**

This rule is designed to avoid unwarranted bias from entering the sample data.

**H. Upon a customer's request, the local distribution company shall provide interval metering service to the customer at the net incremental cost above the basic metering service provided in accordance with the local distribution company's applicable tariff. If the local distribution company provides interval metering as the basic metering service for customer billing purposes in accordance with its applicable tariff, interval metering of a customer's load shall continue to be required if such customer purchases electricity supply service from a competitive service provider.**

This rule requires LDCs to reasonably facilitate the removal of a customer from a profiled population and allows for the customer's use to be measured with interval metering. If a customer is currently billed by the LDC using interval metered data and switches to a CSP, then the customer's load will continued to be measured using interval metering.

**I. The local distribution company shall post its distribution and transmission loss factors via the appropriate electronic methodology.**

The purpose of this rule is to ensure that the specified information related to profiles is made available to interested parties in a cost-effective manner.

## Dispute Resolution
## 20 VAC 5-312-110

The following proposed rules govern the interaction between a competitive service provider or an aggregator and its customer and between the local distribution company and a competitive service provider with respect to disputes that may arise between the parties. Regardless of how well consumers are educated or how ethically market participants conduct business activities, inquiries and disputes will arise. Therefore, these rules are designed to ensure that market participants have an avenue to receive answers to their questions or resolutions of their disputes.

Two general issues generated discussion during the work group sessions. The first related to the necessity of requiring an aggregator to have a dispute resolution procedure. In the Interim Rules, an aggregator was not required to have such a procedure; however, since an aggregator may be interacting directly with customers, the potential for questions, concerns, and complaints exists. Therefore, the work group, including those participants representing aggregators, generally agreed that aggregators should now be required to have a dispute resolution procedure.

The second issue related to establishing a new rule that would prevent the local distribution company and a competitive service provider from referring a customer, with a question, concern or complaint, back and forth between the two parties with neither accepting responsibility for resolving the issue with the customer. Such activity, regardless of which party is at fault, will certainly lead to customer confusion and frustration, not only with the two parties but also with the process of procuring competitive energy services. Participants in the work group universally agreed that a

confused or frustrated customer would likely become disinterested in shopping. Staff's proposed rule 20 VAC 5-312-110E attempts to address this concern.

**A. A competitive service provider or an aggregator shall establish an explicit dispute resolution procedure that clearly identifies the process that shall be followed when resolving customer disputes. A copy of such dispute resolution procedure shall be provided to a customer or the State Corporation Commission upon request.**

This rule relates to Interim Rule 20 VAC 5-311-20A.8. The work group uniformly agreed that a dispute resolution procedure is necessary. Customers will have questions, concerns, and complaints, therefore a competitive service provider and an aggregator need to have a procedure in place to respond to customers in a timely manner.

**B. A competitive service provider shall furnish to customers an address and 24-hour toll-free telephone number for customer inquiries and complaints regarding services provided by the competitive service provider. The 24-hour toll-free telephone number shall be stated on all customer-billing statements.**

Interim Rule 20 VAC 5-311-20A.9 required a competitive service provider to have 24-hour toll-free telephone numbers for emergencies and for inquiries and complaints. There was some confusion on the part of work group participants relative to whether the interim rule required a competitive service provider to have multiple toll-free telephone numbers, one for emergencies and a separate one for inquiries and disputes. The work group participants generally agreed that it is essential for customers to have simple and efficient means to access a competitive service provider to resolve disputes and get answers to inquiries. In addition, it is understood that a customer with a service emergency may call a competitive service provider expecting assistance. However, since the competitive service provider is not responsible for responding to the emergency, it may cause customer confusion if they have a second toll-free telephone number specifically for customers with an emergency. Therefore, Staff proposes replacing the

wording in Interim Rule 20 VAC 5-311-20A.9 with the wording in this rule and the following one.

**C. A competitive service provider shall immediately direct a customer to contact the appropriate local distribution company if the customer has a service emergency. Such direction may be given either by a customer service representative or by a recorded message on its 24-hour toll-free telephone number.**

See discussion of 20 VAC 5-312-110 B.

**D. A competitive service provider shall retain customer billing and account records and complaint records for at least three years, and provide copies of such records to a customer or the State Corporation Commission upon request.**

Interim Rule 20 VAC 5-311-20C.5 required a competitive service provide to retain billing and complaint records for three years. Staff recommends maintaining this requirement, and adding the requirement that the competitive service provider provide the information to its customer and the Commission upon request.

**E. In the event that a customer has been referred to the local distribution company by a competitive service provider, or to a competitive service provider by the local distribution company, for response to an inquiry or a complaint, the party that is contacted second shall: (i) resolve the inquiry or complaint in a timely fashion or (ii) contact the other party to determine responsibility for resolving the inquiry or complaint.**

As stated in the introduction to this section, the work group discussed this issue at some length and detail and generally agreed with this proposed rule. The purpose of the rule is to facilitate timely responses to customer inquiries and disputes and ultimately reduce customer frustration with the process of participating in a competitive market.

**F. In the event a competitive service provider and customer cannot resolve a dispute, the competitive service provider shall provide the customer with the toll-free telephone number and address of the State Corporation Commission.**

This proposed rule recognizes that a competitive service provider and a customer may not always be able to reach a mutually agreeable resolution to a dispute. The work

group generally agreed that a customer has a right to know the Commission exists and that they can request assistance from the Commission relative to the investigation and resolution of an alleged violation of the rules.

**G. The local distribution company shall establish and file with the State Corporation Commission prior to implementation of full or phased-in retail access an explicit dispute resolution procedure to address complaints, disputes, or alleged violations of the provisions of this chapter that may arise between the local distribution company and a competitive service provider.**

Interim Rule 20 VAC 5-311-30A.13 contained the same requirement as this proposed rule, with the additional requirement that the Commission approve the dispute resolution procedure. The work group uniformly agreed it is essential that the local distribution company have a dispute resolution procedure, however, there was some question as to whether it was necessary for the Commission to approve it. Any procedure filed, even if it is approved by the Commission, will ultimately only be an informal process. Therefore, the working group, including participants representing competitive service providers, generally agreed that this proposed rule adequately ensures that the local distribution company will utilize a consistent procedure when resolving complaints, disputes, or alleged violations. In addition, failure to conform to the procedure will potentially lead to a competitive service provider filing a complaint with the Commission.

## Conclusions and Recommendations

This report has presented the Staff's proposed Rules Governing Retail Access To Competitive Energy Markets. The Staff recommends that the Commission adopt these proposed rules for the full or phased-in implementation of retail access to electric and natural gas competitive energy services. The Staff also recommends that the Interim Rules remain in effect at the current time, since they remain applicable to on-going pilot programs.

Due to time constraints, there are several retail access issues not addressed in the Staff proposal that require resolution within the next several months, some prior to January 1, 2002. These include: 1) the development and adoption of rules for consolidated billing by competitive service providers and aggregators, effective January 1, 2003; 2) the development of regulations establishing whether and, if so, what minimum stay provisions for electric retail access should be adopted, by January 1, 2002; and 3) the implementation of competitive metering services for large commercial and industrial customers, by January 1, 2002, and for residential and small commercial customers, on or after January 1, 2003. The Staff recommends that work on these efforts commence immediately.