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**COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION**

**IN THE MATTER OF ESTABLISHING
INTERIM RULES FOR RETAIL ACCESS PILOT PROGRAMS**

CASE NO. PUE980812

**STAFF COMMENTS REGARDING
TASK FORCE REPORT**

APRIL 9, 1999

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Overview

On December 3, 1998, the Virginia State Corporation Commission (“Commission”) entered an Order Establishing Procedural Schedule in Case No. PUE980812. This docket established a proceeding to develop and adopt interim rules to govern issues common to the natural gas and electricity restructuring retail access pilot programs, specifically certification, codes of conduct, and standards of conduct governing relationships among entities participating in such programs.

Further, the Commission Staff was charged to select and lead a Task Force to consider these issues and propose interim rules. A Task Force, comprised of numerous parties and interests, assembled for ten meetings to identify issues, to develop proposed interim rules, and file a written report along with recommended interim rules.

Staff’s role within the Task Force was to coordinate and facilitate discussions to meet the prescribed timetable and contribute to the discussions as any other member of the Task Force. Staff commends the members of the Task Force for their commitment and contribution. Staff now seeks to build upon the work initiated by the Task Force as set forth in its Report dated March 9, 1999.

This Staff Report will follow the same organizational layout and consider each proposed interim rule in the order presented in the Task Force Report. Each Task Force proposed interim rule is restated and, if appropriate, followed by Staff’s modified interim rule. Staff’s position on each rule is then presented. Staff’s report proposes and discusses additional rules that go beyond those proposed by the Task Force. Staff witnesses Howard Spinner, Kimberly Pate, and Mary Owens will address Staff’s proposed interim rules

applicable to competitive service providers (“CSPs”), local distribution companies (“LDCs”), and licensure, respectively.

Electric and Natural Gas Restructuring

There have been several electric service pilots conducted in various jurisdictions across the United States. In addition, retail electric service competition is underway or soon to be underway in various states. Observations of the conditions surrounding electric service competition in these jurisdictions point to three areas of concern for the upcoming electric service pilots in the Commonwealth as well as the development of effective and well-functioning electric service competitive markets. The concerns stem from electric industry characteristics somewhat unique to Virginia that may serve to limit supplier and customer participation in electric pilots. Staff’s concerns are as follows:

In Virginia's proposed electric service pilots, eligible customers that choose not to participate will receive service under existing tariffs. These tariffs price electricity relatively close to or below national averages. This situation has two interrelated implications for the development of fully subscribed pilot programs. First, given the historically low rates customers may not have the same motivation to participate in choice as they might in jurisdictions with high rates where electric bills are perceived to be a problem. Second, given the implied low generation rates it may be difficult for competitive suppliers to formulate offers sufficient to entice customers to leave tariff service.

Recent enactment of Senate Bill 1269¹, the Virginia Electric Utility Restructuring Act of 1999 ("SB1269"), prohibits the Commission from requiring the divestiture of generation, transmission and distribution assets. While electric utilities are permitted to voluntarily sell their assets, it currently appears unlikely that Virginia Electric and Power Company ("Virginia Power") and Appalachian Power Company, d/b/a American Electric Power-Virginia ("AEP-VA") will divest generation assets as part of the restructuring process unless such divestiture provides significant economic or strategic gains. These two utilities are cost-efficient providers of generation and appear to want to retain a presence in that portion of the business.

In most states where restructuring of the electric industry is proceeding, substantial divestiture activity has been completed or is currently underway. This is true whether or not divestiture is required by applicable state legislation or regulatory agency edict. Virginia is somewhat unique in that it is progressing with a restructuring of its electric industry without involuntary divestiture of the generation assets of its two largest incumbent electric utilities.

Maintaining a degree of vertical integration in corporate structure gives at least the appearance of both vertical and horizontal market power which may serve to deter some competitive service providers from entering deregulated electric service markets in Virginia. Moreover, it places greater importance on developing, implementing and monitoring administrative rules and procedures that are the only tools available to combat both vertical and horizontal market power. Staff's proposed amendments to the Task Force's interim rules regarding functional separation and cost allocation procedures are designed to actively thwart vertical market power problems. Staff believes its modified interim rules represent the

¹ 1999 Va. Acts ch.411

Commission oversight envisioned by the General Assembly and codified in Virginia Code §56-590.C.

Several jurisdictions implementing electric retail choice are currently served by Regional Transmission Entities ("RTE") that evolved from longstanding, centrally dispatched power pools. In California, the formation of the retail electricity market and the restructuring of the RTE were done concurrently. A common regional experience with centrally dispatched pooling arrangements, may facilitate electric restructuring efforts due to the existence of detailed operating procedures and systems that promote jointly provided reliability and power exchange between participants.

In Virginia, the early stages of retail restructuring are unfolding before the structure and operating rules of the RTE(s) are finalized. Utilities in the Commonwealth (except for a small portion of Connecticut), have not operated under a single control area or power pool arrangement like the New England ISO, New York ISO, or the PJM ISO. Instead, pilot rules, pilot tariffs and open access transmission tariffs must compensate for the unavoidable uncertainty stemming from the lack of an existing central dispatch function, with diverse ownership of production resources, for Virginia's electric system.

House Bill 2438 ("HB2438"),² aimed at electric cooperatives, was signed into law by Governor Gilmore on March 29, 1999. Electric distribution and power supply cooperatives may participate along with electric investor owned utilities within a restructured industry and may decide to implement a pilot program of their own. HB2438 recognizes and provides for some of the characteristics unique to electric cooperatives. Particularly, the law ensures that regulated activities of cooperatives will remain regulated to the same extent as the same activities of other entities and that unregulated activities will not be regulated. It also clarifies

the legality of cooperative independent system operators and a regional power exchanges and the recovery of stranded investment costs resulting from electric utility restructuring. HB2438 also requires the Commission to establish a code of conduct governing relations between a cooperative and its affiliates and authorizes power supply cooperatives to engage in retail sales.

Natural gas restructuring began several years ago with various FERC Orders (e.g., Order 636). Recently in Virginia, Senate Bill 1105³ ("SB1105") was signed by Governor Gilmore on March 27, 1999 allowing natural gas utilities to offer retail supply choice to their customers. The retail access plans should contain an implementation schedule, tariff revisions and terms and conditions which provide nondiscriminatory open access to the utilities' distribution systems for natural gas suppliers, a code of conduct designed to prevent anti-competitive behavior and other requirements established by the Commission. The law expires on July 1, 2000, and requires additional legislation to remain in force. The sunset provision is to allow further study regarding tax issues and implications.

Pilot Programs

Currently in Virginia, Columbia Gas of Virginia ("CGV") and Washington Gas Light Co. ("WGL") have Commission approved customer choice pilot programs underway.⁴ Final adoption of interim rules regarding pilot programs may necessitate changes to these existing pilot programs. Staff recommends that any program changes required by the interim rules coincide, to the extent practicable, with the Companies' filings seeking to extend, expand or

² 1999 Va. Acts ch. 874

³ 1999 Va. Acts ch. 494

⁴ Application of Commonwealth Gas Services, Inc., Case No. PUE970455 and Application of Washington Gas Light Co., Case No. PUE971024.

otherwise alter such pilot programs. Staff anticipates that when any alteration to an existing pilot program is approved, other changes to the pilot necessitated by the interim rules will also be implemented. Should no such filings be anticipated this year, Staff suggests changes necessitated from the interim rules be effective within 120 days following the Commission Order in this case.

Virginia Power and AEP-VA have applications pending before the Commission seeking approval to implement electricity retail access pilot programs.⁵ These proposed pilot programs must comply with the final interim rules adopted in the instant case, prior to any approval or implementation of such pilot programs.

The Task Force discussed the Commission's role in enforcing compliance with the pilot program interim rules. Some Task Force participants were concerned that the rules would unilaterally increase the jurisdiction of the Commission over non-regulated market competitors. There seemed to be general agreement, however, that as long as the Commission has the power to license competitive suppliers, it has the power to revoke a supplier's license for violation or failure to comply with the duties imposed by such a license.

Staff believes the Commission has the authority to adjust existing programs to comply with any changes necessitated by adoption of the interim rules and the authority to exercise the power to enforce the interim rules. Supporting comments will be provided by the Commission's Office of General Counsel separately from this Staff report.

⁵ Ex parte: In the matter of considering an electricity retail access pilot program- Virginia Electric and Power Company, Case No. PUE980813 and Ex parte: In the matter of considering an electricity retail access pilot program- American Electric Power -Virginia , Case No. PUE980814.

Other issues

The Task Force was mindful of some issues affected by the proposed interim rules and recognized that they were beyond the scope of the Task Force. Additional collaborative efforts regarding such issues as consumer education and standardized electronic data interchange (“EDI”) among suppliers and LDCs are currently underway.

In preparation for the upcoming electric pilot programs, electric utilities invited Staff to participate in their evaluation of developing and distributing educational materials to consumers to facilitate customer choice. Natural gas utilities have actually delivered such information to customers encouraging participation in their existing pilot programs. Enactment of the SB1269 directs the Commission to develop and propose a statewide education campaign by December, 1999 to facilitate informed choice. Staff has requested that the electric utilities and natural gas utilities combine efforts to begin the process of developing an educational campaign to facilitate energy choice for Virginia.

Additionally, the electric utilities are beginning to develop EDI standards for all electric generation suppliers to communicate customer information uniformly and quickly. The Virginia workgroup is studying Pennsylvania’s model to jumpstart such development in the Commonwealth. Pennsylvania’s model is also under review by several nearby states and RTEs to begin constructing a national model to ease participant entry across the country and extend to other energy sectors such as natural gas. Staff plans to be involved throughout this process and realizes that a concerted effort is required on the part of many to facilitate a transition to energy supply competition. Hopefully in the future, such standards will evolve and expand to combine efforts among all energy providers on a statewide and national level.

II. PROPOSED INTERIM RULES GOVERNING COMPETITIVE SERVICE PROVIDERS

Introduction

Rules applicable to competitive service providers govern the interaction between CSPs and their customers as well as between CSPs and LDCs and Transmission Providers (“TPs”). These rules must effectively mold a new and important business relationship created by the restructuring of the electric and natural gas utility industries in Virginia. Staff’s proposed interim rules set forth and discussed in this section lay the basic ground rules for and obligations of CSPs participating in electric and natural gas pilot programs in the Commonwealth. The primary objectives of the proposed interim rules are to promote an orderly and well-functioning pilot competitive marketplace while at the same time providing consumer protections by specifying certain requirements and obligations that will guide CSP behavior in Virginia pilot programs. As these are *interim* rules for pilot programs, Staff is particularly concerned about the type and accuracy of customer solicitation materials received by customers and the effectiveness of that information in facilitating choice for all classes of customers.

The interim rules discussed in this section detail the obligations of CSPs emerging and participating in formerly integrated network energy monopoly markets. The business relationships between these new entities and retail customers, LDCs, regulators, and each other are new to Virginia. LDCs hosting pilots and providing delivery services, see this new entity now participating in markets where the incumbent utility had an exclusive relationship

with pilot customers. As such, LDCs have strong notions of what type of relationships and behaviors are appropriate for CSPs engaging in transactions with utility customers. This combined with maintaining system reliability and avoiding service disruptions, forms the basis for the terms and conditions that LDCs expect of CSPs offering service in that utility's service area. As one might expect, CSPs have different views about how these new relationships with customers should evolve. Consumer representatives possess yet a third general perspective regarding these relationships. Consumer representatives' views usually depend on which class of customers is represented. Large commercial and industrial customers are trying to benefit from energy industry restructuring while residential customers are attempting to avoid economic injury from restructuring outcomes. Staff's proposed interim rules attempt to balance these conflicting views about how pilots should be conducted in the Commonwealth.

It is important to note that when drafting the Task Force's proposed interim rules for pilot programs, SB1269 and SB1105 had not been enacted into law. The enactment of these bills provides important insights into how the General Assembly views the appropriate course to energy service competition and choice in Virginia. Staff's proposed rules rely on this new and important information to determine appropriate policy decisions that must be made as these rules are promulgated.

In drafting its proposed interim pilot rules applicable to CSPs, Staff was acutely aware of the fine line and tradeoff between providing consumer protections and allowing the market to work freely. During Task Force meetings, CSP representatives repeatedly stressed their view that other laws currently on the books are sufficient to ensure a fair, competitive and well-functioning marketplace rendering rules discussed in this section unnecessary.

They further argued that unnecessary rules generally serve to smother vigorous competitive behavior and, as such, will withhold the benefits of competition from Virginians. In effect, CSPs argued that additional rules applicable to them are both unnecessary and harmful.

Staff does not agree with the extreme application of this view. Staff's proposed rules are necessary to ensure that clear and understandable customer information is disseminated in pilot programs. This information is crucial if pilot participants are to make informed choices among competing providers of competitive energy services. Moreover, Virginia Code §56-592, the Virginia Electric Utility Restructuring Act, clearly envisions an active consumer protection role for the SCC. The Staff's proposed interim rules applicable to CSPs as set forth in the following sections, in conjunction with ongoing efforts to develop a consumer education program, form the initial foundation from which consumer protections will be built in these new markets. Fair play, informed choices, and enhanced economic efficiency are the desired result.

A. Proposed Interim Rules Applicable to Relationships with Retail Customers

Task Force proposed interim Rule 20 VAC 5-311-10.A.1

1. A Competitive Service Provider shall provide accurate, understandable customer solicitation and marketing materials and customer service contracts which include clear pricing terms and conditions, term of customer contract and provisions for termination by either the Customer or the Competitive Service Provider.

Staff proposed interim Rule 20 VAC 5-311-10.A.1

1. A Competitive Service Provider shall develop and provide to customers as soon as practicable after any solicitation a customer information brochure. Such a brochure will, at a minimum, provide accurate, understandable customer solicitation and marketing materials and customer service contracts that include clear pricing terms and conditions, length of customer contract and provisions for termination by either the Customer or the Competitive Service Provider. Such a brochure will advise any prospective customer of a three business day recession period during which a customer may withdraw from any contract with a Competitive Service Provider without penalty. This three-day recession period shall begin upon receipt of the customer information brochure by the customer. Solicitations and associated customer information brochures offered to residential and small commercial customers shall include:

a. For electric service, a schedule which displays all applicable billing rates and typical monthly bills for usage levels ranging from 500 kWh to 2500 kWh in increments not greater than 500 kWh. Incentives that will not affect the customer's monthly bill shall be excluded from this schedule. For purposes of this rule, residential and small commercial customers are those with projected monthly usage less than 3000 kWh.

b. For natural gas service, a schedule which displays all applicable billing rates and typical monthly bills for usage levels ranging from 5 mcfs to 20 mcfs in increments not greater than 5 mcfs. Incentives that will not affect the customer's monthly bill shall be excluded from this schedule. For purposes of this rule, residential and small commercial customers are those with projected monthly usage less than 25 mcfs.

This proposed interim rule is intended to provide consumers with basic protections regarding fairness and accuracy in receiving information and offers from CSPs in pilot programs. The Task Force discussed at length whether such a rule was necessary given Virginia's existing consumer protection laws. In practice, an entirely new set of business relationships are created in this highly specialized industry, and it is unclear how these markets will function and what kinds of consumer protection rules will ultimately be required.

In light of these uncertainties and relying on the guidance provided by the 1999 General Assembly, Staff believes that it is appropriate for the Commission to promulgate and enforce basic consumer protection and related market conduct rules. Staff has a long history of receiving and resolving *ratepayer* complaints. Although Staff is certainly aware that disputes contemplated by these particular rules will be from consumers rather than ratepayers, Staff relies on its extensive experience in complaint resolution in formulating its proposed revisions to this rule. Staff believes a greater degree of specificity in the rule is warranted so that enforcement can be fair, consistent and effective.

CSPs expressed concern that regulations regarding how they should both structure and communicate competitive service offerings would serve to thwart potential innovations from reaching the marketplace. Consumer advocates seek to provide customers with comparable information so customers can make informed shopping decisions. The tension is that if competitive service offerings are developed and communicated in a manner well suited for 'apples to apples' comparisons, it may indeed be easier for consumers to navigate the marketplace and comparison shop. On the other hand, innovation may be sacrificed as

competitive service offerings necessarily resemble some form of ‘apple’ to accommodate required equivalent comparisons.

Staff is aware of this tradeoff. In the future it may well be appropriate to remove requirements that make it easier for consumers to comparison shop among competing CSPs. However, at this early juncture as consumers are asked to make choices that they have never made before, Staff believes that it is necessary to provide consumers with sufficient information to make those choices. Staff’s proposed rule seeks to ensure that consumers receive comprehensive, accurate, clear and, at least for residential and small commercial customers, easily comparable information from CSPs.

Task Force proposed interim Rule 20 VAC 5-311-10.A.2

2. A Competitive Service Provider claiming its offerings possess unique attributes shall be required to provide reasonable support for the claim.

Staff proposed interim Rule 20 VAC 5-311-10.A.2

2. A Competitive Service Provider shall provide documentation upon request to the Commission and to customers that substantiates any claims made by the Competitive Service Provider regarding the technologies and fuel mix used to provide competitive energy services offered or sold to customers. All electric service Competitive Service Providers shall disclose to customers and the Commission, to the extent feasible, fuel mix and emissions data on at least an annualized basis.

Observations from retail choice initiatives around the United States indicate that the offering of energy produced from what some consider environmentally benign energy sources forms the basis for a strategy that is penetrating these markets. As such, an appropriate requirement should ensure that CSPs employing such a strategy and making claims regarding their offerings in Virginia pilot markets be able to substantiate those claims.

Staff's proposed rule is more specific than that proposed by the Task Force allowing for greater objectivity in enforcement. Also, Staff's proposed rule incorporates the requirement of Virginia Code §56-592.D.4 for all suppliers to disclose fuel mix to the extent feasible.

Task Force proposed interim Rule 20 VAC 5-311-10.A.3

3. A Competitive Service Provider shall have in place explicit dispute resolution procedures and clearly identify the addresses and phone numbers of persons authorized to assist customers when they have a complaint.

Staff proposed interim Rule 20 VAC 5-311-10.A.3

3. A Competitive Service Provider shall provide to the Commission and to its customers a dispute resolution procedure and clearly identify the addresses and phone numbers of company employees authorized to assist customers with complaints.

Staff essentially supports the proposed rule as adopted by the Task Force with the following modifications as noted above. Staff's proposed rule requires that the dispute resolution procedure be made available to a CSP's customers.

Task Force proposed interim Rule 20 VAC 5-311-10.A.4

4. A Competitive Service Provider shall furnish to customers a toll-free telephone number for customer inquiries during normal business hours regarding services provided by the Competitive Service Provider.

Staff proposed interim Rule 20 VAC 5-311-10.A.4

4. A Competitive Service Provider shall furnish to customers a toll-free telephone number for customer inquiries during normal business hours regarding services provided by the Competitive Service Provider. After normal business hours, a recording or answering service shall advise customers to direct any outage, service,

safety or Local Distribution Company billing issues to the Local Distribution Company.

Staff adopts the first part of the Task Force's proposed interim rule regarding the provision of toll-free telephone access to a customer service function for customers of respective CSPs. Staff proposes an additional requirement that is designed to lessen the effects of the inevitable confusion that will result from the restructuring of the electric and natural gas industries. The intent of Staff's additional requirement is to ensure, to the greatest possible degree, that any consumer mistakenly calling a CSP with a problem that must be handled by a local distribution company, be directed immediately to the LDC for resolution of the problem.

Task Force proposed interim Rule 20 VAC 5-311-10.A.5

5. A Competitive Service Provider shall enroll a customer only when properly authorized by that customer and such authorization is appropriately verified.

Staff proposed interim Rule 20 VAC 5-311-10.A.5

5. No Competitive Service Provider shall enroll or switch a customer until the customer has contacted the Local Distribution Company to authorize the enrollment or switch.

This proposed interim rule seeks to prohibit CSPs from switching customers without customer authorization. Staff believes that the proposed rule as adopted by the Task Force is too vague. The terms 'properly authorized' and 'appropriately verify' require definition. Staff's proposed changes clearly require that an eligible customer wishing to join a pilot or change enrollment status must contact the LDC to authorize the enrollment or switch. Staff's

proposal minimizes the potential for unauthorized switches (“slamming”) by requiring customers to change their own enrollment status.

Task Force proposed interim Rule 20 VAC 5-311-10.A.6

6. A Competitive Service Provider shall adequately safeguard customer information, including payment history, unless disclosure is otherwise authorized by the customer or unless the information to be disclosed is already in the public domain.

Staff proposed interim Rule 20 VAC 5-311-10.A.6

6. A Competitive Service Provider shall provide each customer with the opportunity to restrict the disclosure of customer specific information by the Competitive Service Provider. However, this rule does not restrict the disclosure of credit and payment information as currently permitted by applicable federal and state statutes.

This proposed interim rule provoked a substantial amount of discussion during Task Force meetings. There was a lengthy discussion about what kinds of information may be confidential and why utilities have traditionally refrained from disclosing various types of information. It was established that most utilities, as a general business practice, simply do not disclose customer specific information including billing, payment, or usage history. According to Allegheny Power’s representative, company policy generally requires a court order for disclosure of customer information. However, AEP-VA reported that it now reports customer payment information to credit reporting agencies.

Staff believes that customers should, after restructuring, continue to enjoy similar privacy protections as those under traditional regulation. Consumer advocates support this position. CSPs expressed a desire to be held to the same standards that are applicable to any

other non-regulated entity doing business in Virginia. CSPs expressed their opinion that it is inappropriate to protect information already in the public domain.

Staff's proposed interim rule seeks to strike a balance between these competing views. Each customer should be afforded an opportunity to restrict the disclosure of their customer specific information including, but not limited to, usage history and appliance stock. This rule allows for the dissemination of credit and payment information, as allowed by applicable existing statutes. In a restructured energy market where consumers can change suppliers frequently, market functioning will be enhanced if accurate information identifying consumers who do not meet their payment obligations can be shared among various suppliers.

Task Force proposed interim Rule 20 VAC 5-311-10.A.7

7. A Competitive Service Provider may terminate a contract with a customer for non-payment of competitive services with appropriate notification to the customer and to the Local Distribution Company.

Staff proposed interim Rule 20 VAC 5-311-10.A.7

7. A Competitive Service Provider may terminate a contract with a customer for non-payment of bills with a minimum of ten days' prior notification to the customer and to the Local Distribution Company. Termination shall coincide with a customer's next actual meter reading following such notification.

During Task Force discussions, no party contemplated the disconnection of energy distribution service for pilot participants who fail to pay CSPs. Customers who do not pay their non-price regulated energy service obligations would at least be afforded the opportunity to revert back to regular tariff service provided by their LDC. Continued failure

to pay regulated LDC charges would subject a customer to the disconnection procedures set forth in the LDC's tariff.

There was justified sensitivity on the part of some CSP representatives to publicizing this consumer protection. This, according to CSP representatives, would increase the difficulty of collecting the CSP portion of energy bills applicable to pilot participants. In the event of customer non-payment, CSPs may drop offending customers from service. Staff recommends that any CSP contract termination be subject to a ten days' prior notification to the customer so that customers may take corrective action or arrange for alternative supply. Also, Staff proposes that any such service termination be coincident with an actual meter reading.

Depending on particular pilot implementation details, a CSP wishing to drop a customer for non-payment may wait for a regularly scheduled meter reading or arrange to have a special meter read performed by the authorized entity. This allows for the use of actual data in determining when a customer being dropped by a particular supplier reverts back to default supply or otherwise changes suppliers.

Additional Staff proposed interim Rule 20 VAC 5-311-10.A.8

8. A Competitive Service Provider shall notify a customer and explain any changes in the terms and conditions of the service contract between the Competitive Service Provider and the customer. Such written notification shall be made at least ten days prior to the effective date of any such changes.

Staff adds this proposed interim rule to provide consumers an opportunity for prior review of any material change in a service contract made by a CSP.

Additional Staff proposed interim Rule 20 VAC 5-311-10.A.9

9. A Competitive Service Provider requiring a deposit from a customer shall limit the amount of the deposit to no more than the equivalent of customer's estimated liability for two months' purchases of energy services from the Competitive Service Provider by that customer.

Staff adds this proposed interim rule in response to Virginia Code §56-592.F of the recently passed legislation. Staff believes that such limits on customer deposits are reasonable as required by the legislation.

Additional Staff proposed interim Rule 20 VAC 5-311-10.A.10

10. A Competitive Service Provider shall include a statement in its advertising and customer solicitation materials that the services being offered for sale by the Competitive Service Provider are not price regulated by the Virginia State Corporation Commission.

Staff proposes this interim rule to avoid any confusion that participating consumers may have about the implications of the choices that they make. It is important for customers to clearly understand that offers made by different Competitive Service Providers are unregulated offers at possibly non-uniform prices, terms, and conditions. Customers must understand that different choices may result in different outcomes.

Additional Staff proposed interim Rules 20 VAC 5-311-10.A.11

11. A Competitive Service Provider shall retain customer accounting and complaint records for at least three years.

Staff proposes this rule to ensure that information necessary for pilot analysis is retained by competitive service providers.

B. Proposed Interim Rules Applicable to Relationships with Local Distribution Companies and Transmission Providers.

Task Force proposed interim Rule 20 VAC 5-311-10.B.1

1. A Competitive Service Provider shall submit to the Local Distribution Company the appropriate name of the entity, business and mailing addresses, and the names, telephone numbers and e-mail addresses of appropriate contact persons.

Staff proposed interim Rule 20 VAC 5-311-10.B.1

1. A Competitive Service Provider shall submit to the Local Distribution Company the trade name of the entity and its business and mailing addresses, together with the names, telephone numbers and e-mail addresses of appropriate contact persons, including a 24-hour emergency contact telephone number and emergency contact person(s).

This proposed interim rule provoked little discussion during Task Force meetings. It is important for the LDC to know precisely who will be serving customers over its energy distribution system. Staff proposes adding a requirement for a 24-hour telephone number whereby the LDC could contact the CSP in the event of an emergency.

Task Force proposed interim Rule 20 VAC 5-311-10.B.2

2. A Competitive Service Provider shall furnish the Local Distribution Company proof of appropriate licensure from the State Corporation Commission.

Staff proposed interim Rule 20 VAC 5-311-10.B.2

2. Same as Task Force proposed interim rule

This proposed interim rule provoked substantial Task Force discussion surrounding the legal authority of the State Corporation Commission to certificate or license CSPs. With the enactment of SB1269 and SB1105, it appears that the question of the SCC's legal authority to require CSP licensure is resolved. The legislation requires retail electric energy suppliers, natural gas suppliers, and aggregators to obtain a license from the Commission as a condition of doing business in the Commonwealth.

The basic goal of licensure requirements is to ensure that CSPs fulfill their obligations to market participants and other interested parties participating in these emerging markets. The requirements promote the Commission's ability to create a well-functioning pilot marketplace for competitive energy services. Staff suggested the use of the term 'license' during Task Force discussions to distinguish CSP pilot certification from public utility Certificates of Public Convenience and Necessity. Staff's proposed rule is unchanged from that of the Task Force.

Task Force proposed interim Rule 20 VAC 5-311-10.B.3

3. A Competitive Service Provider shall adhere to all requirements of the Local Distribution Company's and Transmission Provider's schedules, terms and conditions of service as approved by the State Corporation Commission and/or FERC as applicable.

Staff proposed interim Rule 20 VAC 5-311-10.B.3

3. Same as Task Force proposed interim rule

During Task Force meetings, CSPs repeatedly expressed the view that LDC tariff requirements represent the appropriate avenue to create and enforce pilot program

regulations applicable to CSP obligations. There was considerable discussion about the possibility of conflicting state and federal jurisdiction. Since FERC regulates the transmission and sale of electrical energy and capacity at the wholesale level, questions were raised about the ability of the SCC to create and enforce regulations that govern certain aspects of the relationship between CSPs and LDCs/TPs. There was also substantial discussion about possible regulatory gaps surrounding natural gas transportation services. To the extent that remedies exist at FERC, some parties felt that this proposed rule is redundant and unnecessary. However, given the uncertainty attendant with restructuring these industries, Staff, as well as other parties, believe that Commission oversight might prove beneficial as long as it is agreed that this proposed interim rule is not intended to override applicable federal jurisdiction. As such, Staff supports this rule as proposed by the Task Force.

Task Force proposed interim Rule 20 VAC 5-311-10.B.4

4. An Energy Service Provider shall procure sufficient electric generation and transmission service to serve the requirements of its firm customers. In the event of a failure to fulfill such obligations, the Energy Service Provider shall be responsible for penalties as prescribed by the Local Distribution Company.

Staff proposed interim Rule 20 VAC 5-311-10.B.4

4. An energy service provider shall procure sufficient transmission service and electric generation and/or natural gas supply to serve the requirements of its firm customers.

This proposed interim rule generated considerable Task Force discussion as to the content and enforcement of rules that are designed to maintain electrical system reliability in

the presence of industry restructuring. Given the relative size of the currently proposed electric pilots, there was general agreement that reliability degradation during the pilots would not be an issue. However, given the importance of reliability and the perceived tendency for pilot rules to strongly influence rules that may be developed for full retail access, significant attention was directed at this proposed interim rule.

Staff removed the second portion of the Task Force proposal for this rule. Should an energy service provider fail to meet its supply obligations, Staff believes that appropriate remedies should be included in agreements between CSPs and LDCs or within the LDC pilot program tariffs. Moreover, unlike electrical restructuring efforts in states served by centrally dispatched power pools, there is less experience in Virginia with the development and operation of rules setting forth the obligations of several unaffiliated entities with regard to the maintenance of joint system reliability within specific control areas. Prior to the establishment of an RTE, the electrical obligations of CSPs will be set forth in LDC tariffs, Open Access Transmission Tariffs and Commission rules as developed in this proceeding. Staff's proposed rule requires that suppliers be able to meet the load responsibilities of their firm customers. As we move towards full competition in Virginia, operational requirements will need to be more clearly defined.

In ongoing natural gas pilots, Staff's current understanding is that both CGV and WGL are assigning gas supply obligations to various marketers based on weather normalized annual gas consumption adjusted for periodic meter reading. The effect of this method is to assign equal daily gas responsibility to marketers that varies only as a result of adding or dropping customers. An assignment is made each month and is the same for each day of the

month. In this regime a gas marketer's daily natural gas responsibility is not a function of daily weather fluctuation.

Staff is currently working with CGV to revise this deficiency and move to a method that better matches gas supply provided by marketers to the natural gas requirements of a marketers' customers on a daily basis. This modification will reduce the potential for cross-subsidies flowing to marketers' customers from those paying for the physical balancing of natural gas supply and demand on a daily basis.

Task Force proposed interim Rule 20 VAC 5-311-10.B.5

5. A Competitive Service Provider shall comply with all initial and continuing requirements of the State Corporation Commission's licensure process and the Local Distribution Company's and Transmission Provider's registration processes.

Staff proposed interim Rule 20 VAC 5-311-10.B.5

5. Same as Task Force proposed interim rule

Task Force debate on this proposed interim rule addressed the two sources of requirements applicable to CSPs participating in the pilot. This rule subjects CSPs to both a Commission licensure process as well as an LDC/TP registration process. CSPs were concerned about both the authority of the Commission to require licensure as well as the ability of LDC/TPs to place unreasonable burdens on CSPs in their respective registration processes.

There was also discussion about the various risks and corresponding mitigation measures that give rise to both Commission licensure requirements as well as LDC/TP registration requirements. For example, participating CSPs might be required to provide two

guarantees for financial soundness; one to the Commission as part of licensure and one to the LDC/TP as part of a supplier registration process. The financial soundness guarantee given to the LDC/TP serves to protect the delivery provider and/or its captive ratepayers by providing liquidated damages in the event of a CSP failure to provide service or other type of default.

Given these considerations, Staff supports the rule as submitted by the Task Force.

Task Force proposed interim Rule 20 VAC 5-311-10.B.6

6. A Competitive Service Provider shall adhere to standards developed for exchanging data and information in an electronic medium upon implementation of such standards.

Staff proposed interim Rule 20 VAC 5-311-10.B.6

6. Same as Task Force proposed interim rule

Task Force participants agreed that an electronic means of transferring data was crucial for electric pilot administration. It was also agreed that uniform data standards were desirable if they can be developed and implemented in a cost-effective manner.

In its pilot application, AEP-VA called for technical conferences on this issue. The Task Force agreed that such an approach would be a beneficial way to address this important issue. In fact, the formation of an EDI working group for Virginia is underway. Staff supports such a working group and believes that group meetings and associated technical conferences should facilitate the development of effective EDI standards for Virginia. Staff supports this rule as adopted by the Task Force.

C. Request for Waiver

Task Force proposed interim Rule 20 VAC 5-311-10.C

C. Any request for a waiver of any of the provisions in subsections A. or B. above 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.

Staff proposed interim Rule 20 VAC 5-311-10.C

C. Any request for a waiver of any of the provisions in subsections A. or B. above shall be considered by the Virginia State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the Commission may impose.

Proposed interim rule 20 VAC 5-311-10.C recognizes that circumstances may arise when a CSP may need to request relief from one or more of the above rules. This rule provides such relief to be considered by the Commission on a case-by-case basis. Staff agrees with this rule and includes it with minor changes.

III. PROPOSED INTERIM RULES GOVERNING LOCAL DISTRIBUTION COMPANIES

Introduction

On March 9, 1999, the Task Force filed its report with the Commission including a set of Proposed Interim Rules Governing Local Distribution Companies. These rules addressed the relationship between LDCs and CSPs as well as the relationship between LDCs and retail customers. The rules proposed by the Task Force are the result of compromise among its participants.

Staff believes that SBs 1269 and 1105 envision a more detailed set of rules that assure a competitive market that promotes effective competition. Virginia Code §56-590.C of SB 1269 states:

The Commission shall, to the extent necessary to promote effective competition in the Commonwealth, promulgate rules and regulation to carry out the provisions of this section, which rules and regulations shall include provisions:

1. Prohibiting cost-shifting or cross-subsidies between functionally separate units;
2. Prohibiting functionally separate units from engaging in anticompetitive behavior or self dealing;
3. Prohibiting affiliated entities from engaging in discriminatory behavior towards nonaffiliated units; and
4. Establishing codes of conduct detailing permissible relations between functionally separate units.

Staff's proposed rules applicable to local distribution companies are divided into three sections. All three sections contain various revisions and additions to the Task Force's

rules. Some of the revisions are intended to simply clarify the meaning of a rule while some revisions do change the rules intent. Staff also believes additional rules that we propose are necessary to ensure that preferential relationships do not exist.

Section A sets forth fourteen rules. The first six rules address relationship with all CSPs, while the next seven rules specifically address an LDC's relationship with an Affiliated Competitive Service Providers ("ACSPs"). The thirteenth rule requires an LDC to file dispute resolution procedures with the Commission. While the Commission must ensure that all CSPs are treated fairly by LDCs, Staff believes that the relationship between LDCs and ACSPs warrants additional rules to protect against preferences. Staff also rearranges the rules in Section A to reflect general CSP rules first and ACSP rules second. Staff believes that the renumbering of the rules presents them in a more logical order, though Staff discusses them in the order presented in the Task Force report for convenience.

Section B of Staff's proposed interim rules govern the relationship between LDCs and pilot customers. These rules are intended to ensure that retail customers are adequately informed and fairly treated. Section C of Staff's proposed rules provide LDCs an opportunity to request a waiver of any rule set forth in Sections A and B.

Staff's proposed interim rules governing local distribution companies are included in Appendix II. Staff believes that these rules will foster the transition from a regulated environment to a competitive market for competitive energy services. The pilot programs offer the LDCs, CSPs, the Commission and the General Assembly a forum to learn about this transition. As the pilots progress, the Commission may find that these rules require adjusting. The following discussion presents Staff's positions on rules applicable to LDCs.

A. Proposed Interim Rules Applicable to Relationships with Competitive Service Providers

Task Force proposed interim Rule 20 VAC 5-311-20.A.1

1. A Local Distribution Company shall not give an Affiliated Competitive Service Provider undue preference over a non-affiliated Competitive Service Provider.

Staff proposed interim Rule 20 VAC 5-311-20.A.13

13. A Local Distribution Company shall not give an Affiliated Competitive Service Provider any other undue preference over a non-affiliated Competitive Service Provider.

LDCs are entering into new and complex relationships as we move toward deregulation of the energy industry. Some CSPs offering competitive energy services may be affiliates or divisions of LDCs. The relationship between the LDC and an ACSP must be closely monitored to prevent preferential treatment of an ACSP over a non-affiliated CSP.

Staff agrees with the general intent of the Task Force proposed interim rule 20 VAC 5-311-20.A.1. However, Staff believes that an all-encompassing rule concerning LDC and affiliate relationships should follow the more specific rules that define LDC and ACSP behavior. Therefore, Staff proposes that this rule be renumbered and includes it as Staff proposed interim rule 20 VAC 5-311-20.A.13. Staff has added the words “any other” to the Task Force proposed interim rule to reflect the intent that no preferences are allowed between affiliated organizations; not only those addressed in specific rules.

Task Force proposed interim Rule 20 VAC 5-311-20.A.2

2. A 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. However, this provision is limited to activities that are beyond the jurisdiction of the Federal Energy Regulatory Commission.

Staff proposed interim Rule 20 VAC 5-311-20.A.7

7. A 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.

This proposed interim rule specifically denies ACSPs preferential access to purchase competitive energy services from the LDC. For example, an LDC should post non-systems requirements of electricity, natural gas supply or natural gas capacity on an electronic bulletin board for sale to the highest bidder. While Staff agrees with the general purpose of this rule, the Task Force rule is explicitly limited to activities beyond the FERC's jurisdiction. Staff contends that this proviso applies to all of the proposed rules and may be misleading if included only in this rule. Therefore, Staff proposes omitting the second sentence of the Task Force rule as well as renumbering the Task Force Rule

The electric cooperatives want the ability to offer price-discounted electricity to their members without offering the same price-discounted electricity to all market participants. Staff does not believe cooperatives should be exempt from this rule. The cooperatives may seek a waiver of this rule by the Commission on a case-by-case basis as provided for in proposed interim rule 20 VAC 5-311-20.C. Staff believes that the cooperatives should bear

the burden of proving to the Commission that an exception to this rule does not impair competition.

Task Force proposed interim Rule 20 VAC 5-311-20.A.3

3. To the extent the Local Distribution Company provides any Competitive Service Provider information related to the transmission, distribution or provision of electricity and/or natural gas, the Local Distribution Company shall make such information contemporaneously available to all other Competitive Service Providers upon request. The Local Distribution Company may make such information available by posting it on an electronic bulletin board. Nothing in this paragraph 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. This paragraph shall not apply to daily operational data provided by the Local Distribution Company to any Competitive Service Provider in the ordinary course of conducting business.

Staff proposed interim Rule 20 VAC 5-311-20.A.1

1. No Local Distribution Company shall withhold from any Competitive Service Provider information that the Local Distribution Company has provided to any other Competitive Service Provider. The Local Distribution Company may make such information available by posting it on an electronic bulletin board. This paragraph shall not apply to Competitive Service Provider specific information used in the ordinary course of conducting business.

This proposed interim rule allows all CSPs the same access to non-competitively sensitive information from the LDC. Staff agrees with this rule. However, Staff proposes editorial changes as written in the renumbered rule above. Staff's changes are not intended to change the context or the rule, but rather to clarify its meaning.

Task Force proposed interim Rule 20 VAC 5-311-20.A.4

4. Employees of a Local Distribution Company who have responsibility for operations or reliability functions of the distribution system shall operate independently from an Affiliated Competitive Service Provider, and their offices shall be separated from the offices of the Affiliated Competitive Service Providers to the maximum extent practicable.

Staff proposed interim Rule 20 VAC 5-311-20.A.9

9. Employees and/or agents of a Local Distribution Company shall operate independently from employees and/or agents of any Affiliated Competitive Service Provider(s), and their offices shall be separated from the offices of the Affiliated Competitive Service Provider(s).

This Task Force proposed interim rule is intended to ensure that LDCs and ACSPs maintain adequate separation of employees and functions in order to prevent the sharing of information in a preferential manner. The rule further recognizes that in certain situations physical separation may not be practicable.

As stated earlier, Staff believes that the relationships between LDCs and ACSPs require specific rules to ensure independence. The Task Force rule limited the functional separation to operations and reliability. However, complete separation of employees is the only means to ensure that no cross-subsidy or preferential treatment results from the affiliated relationship. Additionally, agents who may act in a similar capacity to a company employee should be separated.

Staff recognizes that its proposed rule may require that multiple employees perform similar tasks and may result in reduced operating efficiencies, especially in small companies or cooperatives. However, the LDCs may petition the Commission for a waiver of this rule pursuant to 20 VAC 5-311-20.C. The burden of proof is then placed on the LDC and its

affiliate to demonstrate that sharing employees will not result in the ACSP receiving a competitive advantage over non-affiliated CSPs.

Should the Commission determine that complete separation places too much of a burden on the LDCs, Staff recommends that at a minimum the Commission adopt the Task Force proposed interim rule 20 VAC 5-311-20.A.4. Operation and reliability employees have direct control over the daily operation and scheduling of the system load and should remain independent in order to ensure no preference is given to an ACSP concerning the provision of energy supply, distribution or transmission.

Task Force proposed interim Rule 20 VAC 5-311-20.A.5

5. The cost of any shared employees, services or facilities between a Local Distribution Company and an Affiliated Competitive Service Provider shall be fully and clearly allocated between the two entities. Separate books of account and records shall be maintained for each such affiliate. Any Local Distribution Company that provides Competitive Energy Services through a division shall maintain documentation of the methodologies used to allocate any shared costs to that division and provide such documentation to the State Corporation Commission staff upon request.

Staff proposed interim Rule 20 VAC 5-311-20.A.10 and A.11

10. Any Local Distribution Company which has a division(s) that provides Competitive Energy Services shall develop and file with the State Corporation Commission a Cost Allocation Manual (“CAM”) which provides a narrative describing the computation of all factors used to separate its revenues, expenses and rate base components. The Local Distribution Company shall maintain documentation supporting the development of the Cost Allocation Manual. Any changes to the Cost Allocation Manual shall be filed annually with the Commission’s Division of Public Utility Accounting;

and

11. Any Local Distribution Company which has a Commission-approved Cost Allocation Manual shall file a schedule with the Commission’s Division of Public

Utility Accounting on an annual basis that allocates revenues, expenses and rate base between regulated Virginia jurisdictional, competitive energy services and other non-regulated operations. The Local Distribution Company shall maintain documentation supporting the allocations.

The Task Force proposed interim rule attempts to ensure that no subsidization of costs occurs between regulated and competitive services offered by an LDC or its affiliate. It further requires that sufficient documentation be maintained and provided to the Commission. This rule extends to both affiliates and divisions of an LDC.

The first two sentences of this proposed rule address the allocations between an LDC and its affiliate. Virginia Code §56-77 requires an LDC and an affiliate to have all contracts for services approved by the Commission. The Commission must review and approve all allocations between an LDC and an affiliate in order to satisfy the affiliates statute. Since the Commission already has the authority and obligation to review affiliate allocations, Staff believes that the first two sentences of the Task Force proposed interim rule are unnecessary.

While Staff believes that LDCs should be restricted from providing Competitive Energy Services, the Commission may determine that in certain situations a division of an LDC may offer such services. In this instance Staff believes that the rules addressing allocations for divisions should be more specific than proposed by the Task Force in rule 20 VAC 5-311-20.A.5. Staff proposes replacing the Task Force rule with rules 20 VAC 5-311-20.A.10 and A.11 above. A division of an LDC is not included in the definition of an affiliate in §56-75 of the Code of Virginia. Currently, there is no requirement for utilities to file supporting documentation for allocations among its divisions even though one or more divisions may offer competitive energy services. Staff believes that CAMs are a necessary

audit tool during the pilots to monitor cost allocations and ensure that no cross-subsidization exists.

CAMs are not new to the Commission. In Case No. PUC890014, the Commission adopted principles and guidelines for CAMs to be included in telephone company Annual Information Filings required as part of their Alternative Regulatory Plans. The situation in the energy industry today is very similar to that of the telecommunications industry in the late 1980s. Where regulated and competitive service offerings may be made by the same utility, Staff found the CAMs to be an invaluable tool when auditing company's financial information. Through use of the CAMs, Staff was able to gain assurance that no cross-subsidies existed as well as to monitor the financial results of both the competitive and regulated services provided by the incumbent local exchange telephone companies. Staff believes similar information is needed here for the Commission to meet the monitoring requirements placed on it through SBs 1269 and 1105.

LDCs should directly assign costs when possible and allocate indirect costs. CAMs will provide a road map to understand how factors are calculated as well as how they are applied. In fact, the National Association of Regulatory Utilities Commissioners ("NARUC") has developed "Guidelines for Cost Allocations and Affiliated Transactions." These guidelines recommend that an entity with both regulated and non-regulated services or products maintain a CAM. A copy of these guidelines is included in Appendix IV.

Staff's proposed interim rule 20 VAC 5-311-20.A.10 should not be overly burdensome on the LDCs. While the LDCs have to initially develop a CAM, only changes in the narrative need to be filed with the Commission on an annual basis. In regard to Staff's proposed interim rule 20 VAC 5-311-20.A.11, Staff believes it is essential to have the annual

allocations in order to ensure that no cross-subsidies are present as well as for on-going monitoring in the developing competitive energy market.

Task Force proposed interim Rule 20 VAC 5-311-20.A.6

6. A Local Distribution Company shall not condition the provision of any distribution services on the purchase of electricity and/or natural gas from any Competitive Service Provider.

Staff proposed interim Rule 20 VAC 5-311-20.A.2

2. Same as Task Force proposed interim rule

The Task Force proposed interim rule allows retail customers to receive distribution of electricity and/or natural gas regardless of the source of the generation or natural gas. Staff agrees with this rule and includes it as Staff proposed interim rule 20 VAC 5-311-20.A.2.

Task Force proposed interim Rule 20 VAC 5-311-20.A.7

7. Joint advertising shall be prohibited between the Local Distribution Company and any Competitive Service Provider unless made available to all Competitive Service Providers upon the same price, terms and conditions.

Staff proposed interim Rule 20 VAC 5-311-20.A.3

3. Same as Task Force proposed interim rule

This Task Force proposed interim rule does not prohibit joint advertising between LDCs and CSPs. It proposes that that all CSPs have an equal opportunity to jointly advertise

with an LDC under the same terms and conditions. Staff agrees with this rule and includes it as Staff proposed interim rule 20 VAC 5-311-20.A.3.

Task Force proposed interim Rule 20 VAC 5-311-20.A.8

8. *Neither a Local Distribution Company nor any Competitive Service Provider shall:*

- a. *Suggest that the distribution services provided by the Local Distribution Company are of a superior or inferior quality when electricity and/or natural gas is purchased from a particular Competitive Service Provider; or*
- b. *Suggest that the Competitive Energy Services provided by a Competitive Service Provider are being provided by a Local Distribution Company rather than the specified Competitive Service Provider.*

Staff proposed interim Rule 20 VAC 5-311-20.A.4

4. Same as Task Force proposed interim rule

The Task Force proposed interim rule is intended to protect retail customers from false or misleading statements concerning either the energy commodity or who is providing the competitive energy service. Staff agrees with this rule and includes it as Staff proposed interim rule 20 VAC 5-311-20.A.4.

Task Force proposed interim Rule 20 VAC 5-311-20.A.9

9. *No affiliated Competitive Service Provider shall trade upon, promote or advertise its relationship with the Local Distribution Company or use the name or logo employed by the Local Distribution Company as its own, without clearly disclosing that the Affiliated Competitive Service Provider is not the same company as the Local Distribution Company.*

Staff proposed interim Rule 20 VAC 5-311-20.A.12

12. Same as Task Force proposed interim rule

This Task Force proposed interim rule is intended to inform customers about the relationship that an ACSP has with an LDC. Staff agrees with this rule and includes it as Staff proposed interim rule 20 VAC 5-311-20.A.12.

Task Force proposed interim Rule 20 VAC 5-311-20.A.10

10. A Local Distribution Company shall establish and file with the State Corporation Commission dispute resolution procedures to address complaints alleging violations of these rules.

Staff proposed interim Rule 20 VAC 5-311-20.A.14

14. A Local Distribution Company shall establish and file for Commission approval of dispute resolution procedures to address complaints alleging violations of rules in Section A.

All Task Force participants agreed that dispute resolution procedures are necessary. However, Staff believes that dispute procedures should be approved by the Commission to ensure that such procedures are adequate to protect the public interest. Therefore, Staff proposes the above interim rule 20 VAC 5-311-20.A.14.

Task Force proposed interim Rule 20 VAC 5-311-20.A.11

11. Notwithstanding any other provision of these rules, in emergency situations, a Local Distribution Company is authorized to take any actions that may be necessary to ensure public safety and reliability of the distribution system. The Virginia State

Corporation Commission upon a reasonable claim of inappropriate action may later investigate such actions.

Staff proposed interim Rule 20 VAC 5-311-20.A.5

5. Notwithstanding any other provision of these rules, in emergency situations, a Local Distribution Company may take any actions that may be necessary to ensure public safety and reliability of the distribution system. The Virginia State Corporation Commission upon a reasonable claim of inappropriate action may investigate and take such corrective actions as may be appropriate.

The electric LDCs proposed the Task Force interim rule. Staff believes that the rule should allow for the possibility of corrective action by the Commission and proposes adding language to that extent.

Additional Staff proposed interim Rule 20 VAC 5-311-20.A.6

6. In the event that a competitive service provider's services are permanently terminated, the Local Distribution Company shall notify affected customers within five business days of being informed of such termination of services. Such notification shall describe the process for selecting a new competitive service provider and note that service will continue to be provided by the default service provider if a new competitive service provider is not selected.

Customers should be informed of permanent termination of CSP services since they will either have to arrange for services from another CSP or remain on default service. Customers will likely be unsure of who is providing their service or whether they will receive service. Staff believes that LDCs are in the best position to lessen customer confusion when permanent termination of service occurs.

Additional Staff proposed interim Rule 20 VAC 5-311-20.A.8

8. A Local Distribution Company shall not provide information to an Affiliated Competitive Service Provider through either a third party or an affiliate if such information is not made available to all Competitive Service Providers.

Staff proposed interim rule 20 VAC 5-311-20.A.1 prohibits LDCs from withholding information from any competitive service provider that the LDC has provided to any other CSP. That rule does not address the indirect transfer of information. Staff proposed interim rule 20 VAC 5-311-20.A.8 seeks to prohibit ACSPs from gaining a competitive advantage through information received from an LDC through a third party or other affiliate.

B. Proposed Interim Rules Applicable to Relationships with Retail Customers

Task Force proposed interim Rule 20 VAC 5-311-20.B.1

1. A Local Distribution Company shall provide pilot program information and facilitate enrollment of pilot customers pursuant to Virginia State Corporation Commission approved pilot programs.

Staff proposed interim Rule 20 VAC 5-311-20.B.1

1. Same as Task Force proposed interim rule

This Task Force proposed interim rule addresses the need for the LDC to be actively involved in customer education and enrollment during the pilot program. Staff agrees with this rule and includes it as Staff proposed interim rule 20 VAC 5-311-20.B.1.

Task Force proposed interim Rule 20 VAC 5-311-20.B.2

2. A Local Distribution Company shall, upon request, provide Competitive Service Providers with the addresses of eligible pilot customers on a non-discriminatory basis consistent with each Local Distribution Company's pilot tariff as approved by the Virginia State Corporation Commission. Other customer specific information about pilot customers shall not be provided to Competitive Service Providers without customer authorization.

Staff proposed interim Rule 20 VAC 5-311-20.B.2

2. A Local Distribution Company shall, upon request, provide Competitive Service Providers with the addresses of eligible pilot customers on a non-discriminatory basis consistent with each Local Distribution Company's pilot tariff as approved by the Virginia State Corporation Commission. No other customer specific information about pilot customers shall be provided to Competitive Service Providers without customer authorization.

Historically, some LDCs have not released customer specific information without express approval from the customer. As a result, customers have come to expect a level of privacy concerning their information. For competition to develop, CSPs must obtain some customer information in order to market their products. This proposed interim rule allows a minimal level of customer information to provide for continued customer protection in this controversial area. Staff's proposed interim rule 20 VAC 5-311-20.B.2 makes editorial changes to the second sentence that do not alter the meaning of the rule.

Task Force proposed interim Rule 20 VAC 5-311-20.B.3

3. Changes to terms and conditions concerning customer deposits required by the Local Distribution Company to implement the pilot shall be set forth in each Local Distribution Company's pilot tariff approved by the State Corporation Commission.

Staff proposed interim Rule 20 VAC 5-311-20.B.3

3. Pilot program customer deposits held or collected by Local Distribution Companies shall be for only those services provided by the Local Distribution Company to pilot customers.

This proposed interim rule recognizes that customer deposits held by LDCs for pilot customers will be different than the bundled customer deposit currently collected from customers. This rule allows LDCs to address the determination of customer deposits in the tariff filed as part of their individual pilot programs. Staff believes that a uniform rule concerning the collection of customer deposits is warranted in this generic proceeding rather than in the individual pilots. Staff proposes the above interim rule.

Task Force proposed interim Rule 20 VAC 5-311-20.B.4

4. Changes to terms and conditions concerning customer disconnection for non-payment shall be set forth in each Local Distribution Company's pilot tariff approved by the Virginia State Corporation Commission.

Staff proposed interim Rule 20 VAC 5-311-20.B.4

4. Same as Task Force proposed interim rule

Staff agrees with this proposed interim rule in that only changes to Commission-approved terms and conditions for customer disconnections need to be filed with the Commission and that such changes may be included in the tariffs for the pilots.

Task Force proposed interim Rule 20 VAC 5-311-20.B.5

5. The Commission shall establish a policy to determine the disposition of partial payments with regard to services provided by Competitive Service Providers and the Local Distribution Company.

Staff proposed interim Rule 20 VAC 5-311-20.B.5

5. The Local Distribution Company shall apply any partial payments on a prorated basis for monthly services provided by the Competitive Service Provider and the Local Distribution Company.

As discussed in the Task Force Report, the Task Force was unable to agree on how to distribute partial payments between LDCs and CSPs. Partial payments are a problem when either the LDC or the CSP bills the customer for competitive energy services as well as regulated services. Staff believes that a uniform rule is necessary concerning the distribution of partial payments and proposes the aforementioned rule.

Prorating partial payments is equitable to LDCs, CSPs and customers. LDCs can follow their normal collection procedures and disconnection policies for pilot customers who do not pay for regulated services. Since CSPs do not have the ability to disconnect customers for non-payment, prorating provides some financial relief for CSPs. Finally, the customers may benefit. If CSPs receive a prorated share of partial payments then their risk is reduced and some CSPs may decide not to require customer deposits.

Task Force proposed interim Rule 20 VAC 5-311-20.B.6

6. The Local Distribution Company shall be the default supplier during the pilot program period pursuant to the prices, terms, and conditions of its Virginia State Corporation Commission approved tariffs.

Staff proposed interim Rule 20 VAC 5-311-20.B.6

6. Same as Task Force proposed interim rule

In certain instances a pilot customer may be without a CSP. Staff agrees with this proposed interim rule that the LDC should be the default supplier.

Task Force proposed interim Rule 20 VAC 5-311-20.B.7

7. A Local Distribution Company shall only switch a pilot customer's competitive Service Provider in accordance with the Local Distribution Company's pilot tariff approved by the State Corporation Commission.

Staff proposed interim Rule 20 VAC 5-311-20.B.7

7. A Local Distribution Company shall enroll or switch a pilot customer's Competitive Service Provider only when contacted and authorized by the customer.

This proposed interim rule provides for customer switching policies to be determined in each pilot program. Staff believes that a uniform rule is necessary. Staff's Proposed Interim Rules Governing Competitive Service Providers addresses switching and enrolling customers. Staff believes that this LDC rule should mirror the CSP rule as proposed above.

C. Request for Waiver

Task Force proposed interim Rule 20 VAC 5-311-20.C

C. Any request for a waiver of any of the provisions in subsections A. or B. above 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.

Staff proposed interim Rule 20 VAC 5-311-20.C

C. Any request for a waiver of any of the provisions in subsections A. or B. above shall be considered by the Virginia State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the Commission may impose.

Proposed interim rule 20 VAC 5-311-20.C recognizes that circumstances may arise when an LDC may need to request relief from one or more of the above rules. This rule provides such relief to be considered by the Commission on a case-by-case basis. Staff agrees with this rule and includes it with minor changes.

IV. PROPOSED MINIMUM REQUIREMENTS GOVERNING LICENSURE OF ENERGY SERVICE PROVIDERS AND AGGREGATORS

Introduction

In defining Staff's proposed information requirements for entities wishing to sell energy in a Virginia retail access pilot program, Staff was guided by the Commission's December 3, 1998, Order in this case and the new Virginia Code §§56.576 – 56.595 and §56.325.8 regarding electric utility restructuring and gas retail supply choice. Although the new code sections focus on a fully competitive market, Staff believes that the pilot programs should be consistent with the law.

There were lengthy discussions in the Task Force meetings about which entities should be subject to the licensure requirements. The Task Force's proposed requirements apply to energy service providers and aggregators. These requirements do not apply to providers of other competitive services such as metering and billing. This choice appears to be consistent with the restructuring legislation.

One argument put forth in the Task Force report to support the exclusion of non-energy providers was that billing services are currently provided in a variety of industries but are not subject to the specific types of requirements that licensing rules for the pilots would require. For purposes of the pilot programs, Staff agrees with the focus on ESPs and aggregators. However, as the competitive environment in Virginia evolves, the Commission should continue to evaluate the need for licensure requirements for other types of competitive service providers.

The Task Force agreed to license both ESPs and aggregators under one set of requirements in the pilot program phase of retail access. Staff has also combined the two under its proposed requirements. However, the new Virginia Code sections related to electric competition specify requirements for ESPs separately from aggregators. Staff recognizes that some of the licensure requirements proposed may not be appropriate for certain types of aggregators. For example, if a non-profit community association were to apply for licensure as an aggregator, Staff's proposed financial fitness requirements may be inappropriate. In such a case, the applicant would need to file for a waiver from that requirement.

With a newly developing market, it is difficult to envision all of the unique characteristics of an ESP or aggregator. As participants enter the market and Staff becomes familiar with the types of competitors participating in retail access in Virginia, ESPs and aggregators may need distinct licensure requirements. At the present, however, Staff believes that the proposed requirements provide sufficient flexibility to allow a variety of participants.

Through its participation on the Task Force, Staff wrestled with the need for some level of consumer protection and sufficient information for the Commission to license and monitor licensees without crafting overly burdensome requirements that may create barriers to entry. In terms of licensing requirements, Staff strongly believes that it must obtain sufficient information from applicants for licensure to be able to:

- 1) fully and fairly assess the applicant prior to licensure
- 2) monitor the state of the emerging competitive market in Virginia
- 3) monitor the success of specific pilot programs

It is with these responsibilities in mind that Staff recommends the Commission adopt changes to the licensure requirements as originally drafted by the Task Force. The section below contains each requirement proposed by the Task Force, Staff's proposed changes, if any, and a discussion of the requirement. Staff has added several requirements believed to be necessary. Staff's proposed licensure requirements are included as Appendix III to this report.

A. Proposed Minimum Requirements for Licensure of Energy Service Providers and Aggregators

Task Force proposed interim Requirement 20 VAC 5-311-30.A.1

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

Staff proposed interim Requirement 20 VAC 5-311-30.A.1

1. Same as Task Force proposed interim rule

This proposed interim requirement was included by the Task Force to identify the legal entity applying for licensure, regardless of trade name. Staff supports this rule without modification.

Task Force proposed interim Requirement 20 VAC 5-311-30.A.2

2. *a. Name of applicant and business addresses of the applicant's principal office and any Virginia office location(s).*
b. A list of states in which the applicant or an affiliate conduct electric or natural gas retail business.

Staff proposed interim Requirement 20 VAC 5-311-30.A.2

2. a. Business address and telephone number of the applicant's principal office and any Virginia office location(s).
b. A list of states in which the applicant or an affiliate provide rate-regulated services including, but not limited to, electric or natural gas, water, sewer or telecommunications businesses.

The general intent of this Task Force requirement was to provide additional information about the specific applicant. Staff supports this requirement with slight modification. Requirement 20 VAC 5-311-30.A.2.a is redundant to again require an applicant's name. Additionally, Staff believes that additional information about the applicant

and an affiliate's experience in any rate-regulated business will prove helpful in evaluating an applicant's request for licensure. This information will also assist Staff in its review of the emerging competitive market. Therefore, Staff proposes adding additional types of rate-regulated businesses (i.e., water, sewer or telecommunications) to 20 VAC 5-311-30.A.2.b of this requirement.

Task Force proposed interim Requirement 20 VAC 5-311-30.A.3

3. Names of the applicant's affiliates and subsidiaries. Applicant may satisfy this requirement by providing a copy of its most recent Form 10K, Exhibit 21 filing with the Securities and Exchange Commission.

Staff proposed interim Requirement 20 VAC 5-311-30.A.3

3. Same as Task Force proposed interim rule

The information included in this requirement is necessary for Staff to better understand an applicant's identity. Various members of the Task Force, especially the marketers, questioned the need for this level of detailed information. In the emerging competitive environment, Staff must guard against any possible cross-subsidization to ensure that the market is truly competitive and to know what other business experience a licensee has in other areas. As such, Staff supports the adoption of this requirement as stated in the Task Force report.

Task Force proposed interim Requirement 20 VAC 5-311-30.A.4

4. Disclosure of any affiliate relationships with Virginia Local Distribution Companies as well as any related Affiliated Competitive Service Provider agreements pursuant to which Competitive Energy Services are provided within the Commonwealth of Virginia.

Staff proposed interim Requirement 20 VAC 5-311-30.A.4

4. Same as Task Force proposed interim rule

Staff supports this requirement without modification. It is necessary for Staff's assessment of an applicant and monitoring the developing competitive market.

Task Force proposed interim Requirement 20 VAC 5-311-30.A.5

5. Telephone number of the customer service department or the title and telephone number of the customer service contact person.

Staff proposed interim Requirement 20 VAC 5-311-30.A.5

5. Same as Task Force proposed interim rule

This requirement provides information that will enable the Commission to assist customers in search of a particular ESP. It may also be necessary for the Commission to use this information for complaint resolution. Staff recommends adoption of this requirement without modification.

Task Force proposed interim Requirement 20 VAC 5-311-30.A.6

6. Title and telephone number of the company liaison with the State Corporation Commission.

Staff proposed interim Requirement 20 VAC 5-311-30.A.6

6. Name, title, address, telephone number, FAX number, and E-mail address (if available) of the company liaison with the Virginia State Corporation Commission.

The liaison information is necessary for reasons similar to 20 VAC 5-311-30.A.5 above. The Commission must have a contact during review of the application and for

complaint resolution, if needed. Staff has added some detail to the requirement to facilitate any necessary contact with the liaison.

Task Force proposed interim Requirement 20 VAC 5-311-30.A.7

7. A copy of the applicant's authorization to do business in Virginia from the State Corporation Commission.

Staff proposed interim Requirement 20 VAC 5-311-30.A.7

7. A copy of the applicant's authorization to conduct business in Virginia from the State Corporation Commission.

Requiring the applicant to provide a copy of its business authorization will help expedite Staff's processing of an application. Staff supports the requirement with minor rewording.

Task Force proposed interim Requirement 20 VAC 5-311-30.A.8

8. In the event the Energy Service Provider intends to collect security deposits or prepayments, the Energy Service Provider shall hold such funds in escrow in Virginia, and shall provide the name and address of the institution holding such deposits or prepayments.

Staff proposed interim Requirement 20 VAC 5-311-30.A.8

8. Same as Task Force proposed interim rule

This requirement is aimed at protecting consumers that provide pre-payments or deposits to ESPs. Staff supports the requirement as drafted by the Task Force.

Task Force proposed interim Requirement 20 VAC 5-311-30.A.9

9. If the applicant collects or plans to collect taxes owed to the Commonwealth or to a locality within the Commonwealth, the applicant shall be required to provide proof of financial viability in the form of a minimum bond rating of BBB- by a major rating agency. In lieu of such minimum bond rating other instruments may be used to indemnify the state and locality for taxes to be collected from the customer, such as:

- a. A deposit of \$25,000 in an escrow account;*
- b. A guarantee of \$25,000 by an affiliated corporation which has a minimum bond rating of BBB- by a major rating agency;*
- c. The posting of a security bond with the State Corporation Commission in the amount of \$25,000; or*
- d. A committed line of credit in the amount of \$25,000.*

Staff proposed interim Requirement 20 VAC 5-311-30.A.9

9. Applicant must provide sufficient information to demonstrate financial fitness commensurate with the service(s) proposed to be provided. Applicant shall submit the following information related to general financial fitness:

- a. Any published parent company financial and credit information.
- b. Applicant's audited balance sheet and income statement for the most recent fiscal year. Published financial information such as 10K's and 10Q's may be provided, if available.
- c. Proof of a minimum bond rating of BBB- by a major rating agency. In lieu of such minimum bond rating, other instruments may be provided, such as: a guarantee of \$25,000 by an affiliated corporation which has a minimum bond rating of BBB- by a major rating agency; a deposit of \$25,000 in an escrow account; the posting of a security bond with the State Corporation Commission in the amount of \$25,000; or a committed line of credit in the amount of \$25,000.

This requirement provoked significant discussion among members of the Task Force. It was narrowed from a broad test of financial fitness to apply only to ESPs collecting taxes owed to the Commonwealth or a locality. The evolution of this requirement is discussed in the Task Force report. As proposed by the Task Force, this requirement does not provide Staff with sufficient information to evaluate financial fitness. It is imperative that this

requirement be changed to include the submission of minimum, necessary financial information for all ESPs.

States ahead of Virginia in their retail access programs have encountered problems related to scanty requirements. For example, in California, Boston-Finney, a pyramid scheme run by a 19-year old, registered to sell power in California's \$23 billion market. At the time, filling out a brief form and paying \$100 was all that was required. Recognizing that some companies of dubious quality were planning to market power in the state, California's Public Utility Commission enacted additional regulations. The cost of entry went from a fee of \$100 to posting a bond of at least \$25,000. New suppliers must also prove they have some technical ability.

Staff's proposed requirement regarding financial fitness is similar to requirements in other states with retail access pilots or programs. The information is vital in Staff's review of an application. The demonstration of financial fitness in this requirement and evidence of technical ability in Staff's proposed requirement 20 VAC 5-311-30.A.14 may be the simplest ways for the Commission and Staff to differentiate between well-qualified ESPs and scam artists.

During the Task Force process, Staff proposed a \$25,000 bond requirement. The Task Force report discusses the justification for this dollar level. Staff and other parties believed that \$25,000 was sufficient for the pilot programs. However, other states have set much higher bonding requirements. Several Task Force members suggested bonds of \$100,000 or \$250,000. Staff will assess the appropriateness of a higher bond level as part of its overall monitoring and review of the pilot programs.

Task Force proposed interim Requirement 20 VAC 5-311-30.A.10

10. Identification of the geographic area(s) or pilot(s) in which the applicant proposes to provide service; the type of service(s) it proposes to provide; the class of customers to which it proposes to provide such services; and description of the applicant's experience or other evidence regarding its ability to provide such services.

Staff proposed interim Requirement 20 VAC 5-311-30.A.10

10. a. Identification of the current or proposed pilot programs in Virginia in which the applicant proposes to participate.
- b. List of the geographic area(s) in which the applicant proposes to offer service.
- c. Description of the types of service(s) the applicant proposes to offer and identification of the class(es) of customers to which the applicant proposes to offer services. Disclosure, to the extent feasible, of fuel mix and emissions data.
- d. Start date(s) on which the applicant proposes to begin delivering services for each applicable pilot.

It is important that an applicant be as specific as possible about the service(s) it plans to provide. Although Staff supports the intent of the Task Force proposed requirement, more specific information requirements will assist Staff's review of an application. As such, Staff proposes the above modification to the requirement.

Task Force proposed interim Requirement 20 VAC 5-311-30.A.11

11. Disclose whether any application for license or authority to conduct business in a similar retail access program has ever been denied or whether any license or authority issued to it or an affiliate has ever been suspended, revoked or sanctioned.

Staff proposed interim Requirement 20 VAC 5-311-30.A.11

- 11. a. Disclosure of whether the applicant, an affiliate, a predecessor of either, or any person identified in the application has been convicted of a crime involving fraud or similar activity.
- b. Disclosure of whether any application for license or authority to conduct business in a similar retail access program has ever been denied or whether any license or authority issued to it or an affiliate has ever been suspended, revoked or sanctioned.

Among the Task Force members, this requirement generated a great deal of discussion. In particular, a suggestion by consumer representatives to add language aimed at preventing consumer fraud was troubling to other members of the group. Consumer representatives argued that large companies or those with many affiliates would have to research historical data in a variety of jurisdictions and thus the requirement would be burdensome. Staff strongly believes that, in order to protect the consumer, the Commission should be provided with information about fraud convictions involving the applicant, an affiliate, a predecessor company or any person identified in the application. As a result, Staff added the first section to requirement 20 VAC 5-311-30.A.11. The second section of the requirement is unchanged from the Task Force proposal.

Task Force proposed interim Requirement 20 VAC 5-311-30.A.12

- 12. A \$250 pilot registration fee shall accompany each initial application.*

Staff proposed interim Requirement 20 VAC 5-311-30.A.12

- 12. Same as Task Force proposed interim rule

The Task Force report thoroughly discusses the basis for this requirement. Staff supports the requirement as proposed by the Task Force.

Additional Staff proposed interim Requirement 20 VAC 5-311-30.A.13

13. a. Identification of the applicant's chief officers along with their professional resumes.
- b. The name, title, address, telephone number, FAX number, and E-mail address (if available) of applicant's custodian of its accounting records.

Staff believes that it is important for an applicant's request for licensure to identify its principal officers and provide their professional resumes. This information will help Staff in its monitoring of the evolving state of competition. It will also serve as support for the applicant's description of its technical abilities. Additionally, Staff needs a company contact for financial and accounting information. The second part of this new requirement will provide Staff with that contact person.

Additional Staff proposed interim Requirement 20 VAC 5-311-30.A.14

14. To ensure that the present quality and availability of service(s) provided by utilities does not deteriorate, the Applicant shall provide sufficient information to demonstrate technical fitness commensurate with the service(s) to be provided, to include:
 - a. Identity of Applicant's officers directly responsible for operations, including names and their experience in the generation of electricity, procurement of electricity and/or procurement of natural gas, and the provision of energy service to retail consumers.
 - b. Documentation of membership or participation in regional reliability councils or regional transmission organizations.
 - c. For electric pilot participants, information concerning access to generation and generation reserves. Such information should specify to the extent possible the expected sources of electricity or electricity procurement practices that will be used to support retail sales of electricity in Virginia. For natural gas pilot participants, 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.

- d. A list of states in which applicant and/or affiliated companies have participated in similar retail access programs.

Staff believes that in its role of processing applications for licensure and monitoring retail access programs in Virginia, it requires more information about the technical abilities of an ESP than was envisioned by the Task Force requirements. Thus, Staff has added a requirement for specific information related to technical fitness.⁶

Additional Staff proposed interim Requirement 20 VAC 5-311-30.A.15

15. A copy of the ESP's customer information brochure and representative examples of forms or contracts that the applicant uses or proposes to use for service provided to residential or small commercial customers.

Staff believes there was an omission regarding review of an ESP's marketing information, forms and contracts prior to licensure. Staff strongly believes that the Commission should review an ESP's customer information brochure to ensure that minimum required information is included. While recognizing that an ESP's forms and contracts may vary among customers and may change over time, Staff also believes that a review of sample forms and/or contracts should be part of its responsibility to process an application. Staff is not suggesting that the Commission approve or disapprove any marketing information, forms or contracts. Rather, Staff would simply review these materials when it processes an

⁶ Human Needs Requirement is defined as requirements for residences, critical child care and medical facilities, sanatoriums, rest homes, hotels, certain schools, essential agricultural users and food process needs, commercial cooking, prisons, plant protection, water and sewage treatment and electric generating unit start-up and flame stabilization. (Final Order, Ex. Parte, In re: Priorities for available gas supplies, Case No. PUE900053 (May 1, 1991).

application. Having access to this type of information will also assist Staff in researching complaints.

Additional Staff proposed interim Requirement 20 VAC 5-311-30.A.16

16. A copy of applicant's dispute resolution procedures.

The Task Force proposed a rule for competitive service providers requiring a CSP to have in place explicit dispute resolution procedures. Staff believes that this information should be provided to the Commission as part of the application for licensure.

B. Request for Waiver

Task Force proposed interim Requirement 20 VAC 5-311-30.B

B. Any request for a waiver of any of the provisions in subsection A. above 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.

Staff proposed interim Requirement 20 VAC 5-311-30.B

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

Proposed interim rule 20 VAC 5-311-30.B recognizes that circumstances may arise when an ESP or an aggregator may need to request relief from one or more of the above

rules. This rule provides such relief to be considered by the Commission on a case-by-case basis. Staff agrees with this rule and includes it with minor changes.

C. Proposed instructions for filing applications for licensure

Staff recommends that the Commission adopt specific instructions for filing applications for licensure. The Staff's proposed instructions are included as Appendix V. The instructions list the items to be filed by each applicant. This standardized application is similar to other utility filings that Staff currently processes. It is intended to provide guidance and instructions to the applicant and to enable Staff to process the application as quickly as possible. Each of the requirements outlined in this report is included in the proposed instructions although the order may be somewhat different.

D. Proposed format for license

Staff is also recommending a format for the energy service provider or aggregator's license. Similar to other types of certificates issued by the Commission, this license should include the types of services authorized and the location(s) where the services can be offered. The flexible nature of the pilot programs calls for the pilot license to also include a description of the classes of customers that may be served, the name of the local distribution company (electric or gas) pilot program(s), and any restrictions, terms, or conditions the

Commission deems appropriate or necessary. Staff strongly recommends including a statement of compliance stating that failure to comply with applicable FERC or Commission orders and/or rules may result in the revocation, suspension, or restriction of the license. A sample of Staff's proposed license is included as Appendix VI.

V. CLOSING REMARKS

Members of the Task Force worked diligently to file their report on March 9, 1999. Simultaneously with the Task Force discussions, Senators and Representatives of the 1999 General Assembly diligently prepared its proposed bills regarding energy industry restructuring. At the time the Task Force Report was written and filed with the Commission, draft legislation was under debate at the General Assembly. Proposed Senate and House Bills were passed by the General Assembly and forwarded to the Governor for signature. During the last week of March, Senate Bills 1105 and 1269 and House Bill 2438 were signed by the Governor.

Staff now has the advantage of knowing the content of the enacted laws that was not available to the Task Force during the discussions. Staff believes that its modified interim rules better reflect the General Assembly's intent, given the responsibilities assigned to the Commission within the enacted legislation. The proposed modified interim rules also provide Staff with additional detail necessary to learn the costs and benefits of customer choice within limited and controlled pilot programs, prior to widespread implementation anticipated after 2002.

Staff has tried to balance the tradeoff between providing consumer protection and allowing the competitive market to work freely. The desired result of restructuring is to maintain fair play among competitive suppliers, enable customers to make informed decisions, and to enhance economic efficiency. Staff urges the Commission to consider the modifications contained throughout this Report in its promulgation of interim rules governing retail access pilot programs.

APPENDIX I

**Staff Proposed Interim Rules Governing
Electric and Natural Gas Retail Access Pilot Programs**

Staff Proposed Interim Rules Governing Competitive Service Providers

CHAPTER 311.

PROPOSED INTERIM RULES GOVERNING

ELECTRIC AND NATURAL GAS RETAIL ACCESS PILOT PROGRAMS

20 VAC 5-311-10. Proposed interim rules governing competitive service providers.

A. The following provisions shall govern the relationship between a competitive service provider and its retail customers:

1. A competitive service provider shall develop and provide to customers as soon as practicable after any solicitation, a customer information brochure. Such a brochure will, at a minimum, provide accurate, understandable customer solicitation and marketing materials and customer service contracts that include clear pricing terms and conditions, length of customer contract and provisions for contract termination by either the customer or the competitive service provider. Such a brochure will advise any prospective customer of a three business day recession period during which a customer may withdraw from any contract with a competitive service provider without penalty. This three-day recession period shall begin upon receipt of the customer information brochure by the customer. Solicitations and associated customer information brochures offered to residential and small commercial customers shall include:

a. For electric service, a schedule which displays all applicable billing rates and typical monthly bills for usage levels ranging from 500 kWh to 2500 kWh in increments not greater than 500 kWh. Incentives that will not affect the customer's

monthly bill shall be excluded from this schedule. For purposes of this rule, residential and small commercial customers are those with projected monthly usage less than 3000 kWh.

b. For natural gas service, a schedule which displays all applicable billing rates and typical monthly bills for usage levels ranging from 5 mcfs to 20 mcfs in increments not greater than 5 mcfs. Incentives that will not affect the customer's monthly bill shall be excluded from this schedule. For purposes of this rule, residential and small commercial customers are those with projected monthly usage less than 25 mcfs.

2. A competitive service provider shall provide documentation upon request to the Commission and to customers that substantiates any claims made by the competitive service provider regarding the technologies and fuel mix used to provide competitive energy services offered or sold to customers. All electric service competitive service providers shall disclose to customers and the Commission, to the extent feasible, fuel mix and emissions data on at least an annualized basis.

3. A competitive service provider shall provide to the Commission and to its customers a dispute resolution procedure and clearly identify the addresses and phone numbers of company employees authorized to assist customers with complaints.

4. A competitive service provider shall furnish to customers a toll-free telephone number for customer inquiries during normal business hours regarding services provided by the

competitive service provider. After normal business hours, a recording or answering service shall advise customers to direct any outage, service, safety or local distribution company billing issues to the local distribution company.

5. No competitive service provider shall enroll or switch a customer until the customer has contacted the local distribution company to authorize the enrollment or switch.

6. A competitive service provider shall provide each customer with the opportunity to restrict the disclosure of customer specific information by the competitive service provider. However, this rule does not restrict the disclosure of credit and payment information as currently permitted by applicable federal and state statutes.

7. A competitive service provider may terminate a contract with a customer for non-payment of bills with a minimum of ten days' prior notification to the customer and to the local distribution company. Termination shall coincide with a customer's next actual meter reading following such notification.

8. A competitive service provider shall notify a customer and explain any changes in the terms and conditions of the service contract between the competitive service provider and the customer. Such written notification shall be made at least ten days prior to the effective date of any such changes.

9. A competitive service provider requiring a deposit from a customer shall limit the amount of the deposit to no more than the equivalent of customer's estimated liability for two months' purchases of energy services from the competitive service provider by that customer.

10. A competitive service provider shall include a statement in its advertising and customer solicitation materials that the services being offered for sale by the competitive service provider are not price regulated by the Virginia State Corporation Commission.

11. A competitive service provider shall retain customer accounting and complaint records for at least three years.

B. The following provisions shall govern the relationships between a competitive service provider and the local distribution company or between a competitive service provider and the transmission provider:

1. A competitive service provider shall supply to the local distribution company the trade name of the entity and its business and mailing addresses, together with the names, telephone numbers and e-mail addresses of appropriate contact persons, including a 24-hour emergency contact telephone number and emergency contact person(s).

2. A competitive service provider shall furnish the local distribution company proof of appropriate licensure from the State Corporation Commission.

3. A competitive service provider shall adhere to all requirements of the local distribution company's and transmission provider's schedules, terms and conditions of service as approved by the State Corporation Commission and/or FERC, as applicable.

4. An energy service provider shall procure sufficient transmission service and electric generation and/or natural gas supply to serve the requirements of its firm customers.

5. A competitive service provider shall comply with all initial and continuing requirements of the State Corporation Commission's licensure process and the local distribution company's and transmission provider's registration processes.

6. A competitive service provider shall adhere to standards developed for exchanging data and information in an electronic medium upon implementation of any such standards.

C. Any request for a waiver of any of the provisions in subsections A. or B. above shall be considered by the Virginia State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the Commission may impose.

APPENDIX II

**Staff Proposed Interim Rules Governing
Electric and Natural Gas Retail Access Pilot Programs**

Staff Proposed Interim Rules Governing Local Distribution Companies

CHAPTER 311.

PROPOSED INTERIM RULES GOVERNING

ELECTRIC AND NATURAL GAS RETAIL ACCESS PILOT PROGRAMS

20 VAC 5-311-20. Proposed interim rules governing local distribution companies.

A. The following provisions shall govern the relationship between a local distribution company and a competitive service provider:

1. No local distribution company shall withhold from any competitive service provider information that the local distribution company has provided to any other competitive service provider. The local distribution company may make such information available by posting it on an electronic bulletin board. This paragraph shall not apply to competitive service provider specific information used in the ordinary course of conducting business.

2. A local distribution company shall not condition the provision of any distribution services on the purchase of electricity and/or natural gas from any competitive service provider.

3. Joint advertising shall be prohibited between the local distribution company and any competitive service provider unless made available to all competitive service providers upon the same price, terms and conditions.

4. Neither a local distribution company nor any competitive service provider shall:

- a. Suggest that the distribution services provided by the local distribution company are of a superior or inferior quality when electricity and/or natural gas is purchased from a particular competitive service provider; or
 - b. Suggest that the competitive energy services provided by a competitive service provider are being provided by a local distribution company rather than the specified competitive service provider.

5. Notwithstanding any other provision of these rules, in emergency situations, a local distribution company may take any actions that may be necessary to ensure public safety and reliability of the distribution system. The Virginia State Corporation Commission upon a reasonable claim of inappropriate action may investigate and take such corrective actions as may be appropriate.

6. In the event that a competitive service provider's services are permanently terminated, the local distribution company shall notify affected customers within five business days of being informed of such termination of services. Such notification shall describe the process for selecting a new competitive service provider and note that service will continue to be provided by the default service provider if a new competitive service provider is not selected.

7. A 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.

8. A local distribution company shall not provide information to an affiliated competitive service provider through either a third party or an affiliate if such information is not made available to all competitive service providers.

9. Employees and/or agents of a local distribution company shall operate independently from employees and/or agents of any affiliated competitive service provider(s), and their offices shall be separated from the offices of the affiliated competitive service provider(s).

10. Any local distribution company which has a division(s) that provides competitive energy services shall develop and file with the Commission a Cost Allocation Manual (“CAM”) which provides a narrative describing the computation of all factors used to separate its revenues, expenses and rate base components. The local distribution company shall maintain documentation supporting the development of the Cost Allocation Manual. Any changes to the Cost Allocation Manual shall be filed annually with the Commission’s Division of Public Utility Accounting.

11. Any local distribution company which has a Commission-approved Cost Allocation Manual shall file a schedule with the Commission’s Division of Public Utility Accounting on an annual basis that allocates revenues, expenses and rate base between regulated Virginia jurisdictional, competitive energy services and other non-regulated operations. The local distribution company shall maintain documentation supporting the allocations.

12. No affiliated competitive service provider shall trade upon, promote or advertise its relationship with the local distribution company or use the name or logo employed by the local distribution company as its own, without clearly disclosing that the affiliated competitive service provider is not the same company as the local distribution company.

13. A local distribution company shall not give an affiliated competitive service provider any other undue preference over a non-affiliated competitive service provider.

14. A local distribution company shall establish and file for Commission approval of dispute resolution procedures to address complaints alleging violations of rules in Section A.

B. The following provisions shall govern the relationship between a local distribution company and its retail customers:

1. A local distribution company shall provide pilot program information and facilitate enrollment of pilot customers pursuant to Virginia State Corporation Commission approved pilot programs.

2. A local distribution company shall, upon request, provide competitive service providers with the addresses of eligible pilot customers on a non-discriminatory basis consistent with each local distribution company's pilot tariff as approved by the Virginia State Corporation Commission. No other customer specific information about pilot customers shall be provided to competitive service providers without customer authorization.

3. Pilot program customer deposits held or collected by local distribution companies shall be for only those services provided by the local distribution company to pilot customers.

4. Changes to terms and conditions concerning customer disconnection for non-payment shall be set forth in each local distribution company's pilot tariff approved by the Virginia State Corporation Commission.

5. The local distribution company shall apply any partial payments on a prorated basis for monthly services provided by the competitive service provider and the local distribution company.

6. The local distribution company shall be the default supplier during the pilot program period pursuant to the prices, terms, and conditions of its Virginia State Corporation Commission approved tariffs.

7. A local distribution company shall enroll or switch a pilot customer's competitive service provider only when contacted and authorized by the customer.

C. Any request for a waiver of any of the provisions in subsections A. or B. above shall be considered by the Virginia State Corporation Commission on a case-by-case basis, and may be granted upon such terms and conditions as the Commission may impose.

APPENDIX III

**Staff Proposed Interim Rules Governing
Electric and Natural Gas Retail Access Pilot Programs**

**Staff Proposed Minimum Requirements Governing Licensure of
Energy Service Providers and Aggregators**

CHAPTER 311.
PROPOSED INTERIM RULES GOVERNING
ELECTRIC AND NATURAL GAS RETAIL ACCESS PILOT PROGRAMS

20 VAC 5-311-30. Minimum requirements for licensure of energy service providers and aggregators.

A. An application for a license to be an energy service provider or aggregator shall include at least the following information:

1. Legal name(s) of the applicant as well as any trade name(s).

2.
 - a. Business address and telephone number of the applicant's principal office and any Virginia office location(s).

 - b. A list of states in which the applicant or an affiliate provide rate-regulated services including, but not limited to, electric, natural gas, water, sewer or telecommunications businesses.

3. Names of the applicant's affiliates and subsidiaries. Applicant may satisfy this requirement by providing a copy of its most recent Form 10K, Exhibit 21 filing with the Securities and Exchange Commission.

4. Disclosure of any affiliate relationships with Virginia local distribution companies as well as any related affiliated competitive service provider agreements pursuant to which competitive energy services are provided within the Commonwealth of Virginia.

5. Telephone number of the customer service department or the title and telephone number of the customer service contact person.

6. Name, title, address, telephone number, FAX number, and E-mail address (if available) of the company liaison with the Virginia State Corporation Commission.

7. A copy of the applicant's authorization to conduct business in Virginia from the State Corporation Commission.

8. In the event the energy service provider intends to collect security deposits or prepayments, the energy service provider shall hold such funds in escrow in Virginia, and shall provide the name and address of the institution holding such deposits or prepayments.

9. Applicant must provide sufficient information to demonstrate financial fitness commensurate with the service(s) proposed to be provided. Applicant shall submit the following information related to general financial fitness:

- a. Any published parent company financial and credit information.

- b. Applicant's audited balance sheet and income statement for the most recent fiscal year. Published financial information such as 10K's and 10Q's may be provided, if available.
 - c. Proof of a minimum bond rating of BBB- by a major rating agency. In lieu of such minimum bond rating, other instruments may be provided, such as: a guarantee of \$25,000 by an affiliated corporation which has a minimum bond rating of BBB- by a major rating agency; a deposit of \$25,000 in an escrow account; the posting of a security bond with the State Corporation Commission in the amount of \$25,000; or a committed line of credit in the amount of \$25,000.
- 10.
- a. Identification of the current or proposed pilot programs in Virginia in which the applicant proposes to participate.
 - b. List of the geographic area(s) in which the applicant proposes to offer service.
 - c. Description of the types of service(s) the applicant proposes to offer and identification of the class(es) of customers to which the applicant proposes to offer services. Disclosure, to the extent feasible, of fuel mix and emissions data.
 - d. Start date(s) on which the applicant proposes to begin delivering services for each applicable pilot.
- 11.
- a. Disclosure of whether the applicant, an affiliate, a predecessor of either, or any person identified in the application has been convicted of a crime involving fraud or similar activity.

- b. Disclosure of whether any application for license or authority to conduct business in a similar retail access program has ever been denied or whether any license or authority issued to it or an affiliate has ever been suspended, revoked or sanctioned.

- 12. A \$250 pilot registration fee shall accompany each initial application.

- 13.
 - a. Identification of the applicant's chief officers along with their professional resumes.
 - b. The name, title, address, telephone number, FAX number, and E-mail address (if available) of applicant's custodian of its accounting records.

- 14. To ensure that the present quality and availability of service(s) provided by utilities does not deteriorate, the Applicant shall provide sufficient information to demonstrate technical fitness commensurate with the service(s) to be provided, to include:
 - a. Identity of Applicant's officers directly responsible for operations, including names and their experience in the generation of electricity, procurement of electricity and/or procurement of natural gas, and the provision of energy service to retail consumers.
 - b. Documentation of membership or participation in regional reliability councils or regional transmission organizations.
 - c. For electric pilot participants, information concerning access to generation and generation reserves. Such information should specify to the extent possible the expected sources of electricity or electricity procurement practices that will be used to support retail sales of electricity in Virginia. For natural gas pilot participants,

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.

d. A list of states in which applicant and/or affiliated companies have participated in similar retail access programs.

15. A copy of the ESP's customer information brochure and representative examples of forms or contracts that the applicant uses or proposes to use for service provided to residential or small commercial customers.

16. A copy of applicant's dispute resolution procedures.

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

APPENDIX IV

**Staff Proposed Interim Rules Governing
Electric and Natural Gas Retail Access Pilot Programs**

NARUC Guidelines for Cost Allocations and Affiliated Transactions

GUIDELINES FOR COST ALLOCATIONS AND AFFILIATE TRANSACTIONS

The following Guidelines for Cost Allocations and Affiliate Transactions (Guidelines) are intended to provide guidance to jurisdictional regulatory authorities and regulated utilities and their affiliates in the development of procedures and recording of transactions Or services and products between a regulated entity and affiliates. The prevailing premise of these Guidelines is allocation methods should not result in subsidization of non-regulated services or products by regulated entities unless authorized by the jurisdictional regulatory authority. These Guidelines are not intended to be rules or regulations prescribing how cost allocations and affiliate transactions are to be handled. They are intended to provide a framework for regulated entities and regulatory authorities in the development of their own policies and procedures for cost allocation and affiliated transactions.

The Guidelines acknowledge and reference the use of several different practices and methods. It is intended that there be latitude in the application of these guidelines, subject to regulatory oversight. The implementation and compliance with these cost allocation and affiliate transaction guidelines, by regulated utilities under the authority of jurisdictional regulatory commissions, is subject to Federal and state law. Each state or Federal regulatory commission may have unique situations and circumstances that dictate affiliate transactions, cost allocations, and/or service or product pricing standards. For example, The Public Utility Holding Company Act of 1935 requires registered holding company systems to price "at cost" the sale of goods and services and the undertaking of construction contracts between affiliate companies.

The Guidelines were developed by the NARUC Staff Subcommittee on Accounts in compliance with the Resolution passed on March 3, 1998 titled "Resolution Regarding Cost Allocation for the Energy Industry" which directed the Staff Subcommittee on Accounts together with the Staff Subcommittees on Strategic Issues and Gas to prepare for NARUC's consideration, "Guidelines for Energy Cost Allocations." In addition, input was requested from other industry parties. Various levels of input were obtained in the development of the Guidelines from the Edison Electric Institute, American Gas Association, Securities and Exchange Commission, the Federal Energy Regulatory Commission, Rural Utilities Service and the National Rural Electric Cooperatives Association as well as staff of various state public utility commissions.

In some instances, non structural safeguards as contained within may not be sufficient in preventing market power problems in strategic marketed such as the generation market. Market power is defined as the ability to raise prices above market for a sustained period and/or impede output of a product or service. Consideration should be given to any "unique" advantages an incumbent utility would have over competitors in emerging market such as the retail energy market. A code of conduct should be used in conjunction with guidelines on cost allocations and affiliate transactions. Such concerns have led some states to develop codes of conduct to govern relationships between the regulated utility and its unregulated affiliates.

A. DEFINITIONS

1. Affiliates - companies that are related to each other due to common ownership or control.
2. Attestation Engagement - one in which a certified public accountant who is in the practice of public accounting is engaged to issue a written communication that expresses a conclusion about the reliability of a written assertion that is the responsibility of another party.
3. Cost Allocation Manual (CAM) - an indexed compilation and documentation of a company's cost allocation policies and related procedures.
4. Cost Allocators - the methods or ratios used to apportion costs. A cost allocator can be based on the origin of costs, as in the case of cost drivers; cost-causative linkage of an indirect nature; or one or more overall factors (also known as general allocators).
5. Combinations or Negotiated - combinations of other methods, which may include "the higher of" or "the lower of" several methodologies or other negotiated methods.
6. Common Costs - costs associated with services or products that are of joint benefit between regulated and non-regulated business units.
7. Cost Driver - a measurable event or quantity which influences the level of costs incurred and which can be directly traced to the origin of the costs themselves.
8. Direct Costs - costs which can be identified with a particular service or product.
9. Fully Allocated - services or products bear the sum of the direct costs plus a proportional share of indirect costs.
10. Incremental - new services or products support only the incremental costs added by their operations while one or more pre-existing services or products support the fixed costs.
11. Indirect Costs - costs that cannot be identified with a particular service or product. This includes but not limited to overhead costs, administrative and general, and taxes.
12. Market Driven - costs are allocated to services or products on a basis equivalent to the costs that would be incurred in the competitive market.
13. Non-regulated - refers to services or products that are not subject to regulation by regulatory authorities.
14. Regulated - refers to services or products that are subject to regulation by regulatory authorities.

B. COST ALLOCATION PRINCIPLES

1. To the maximum extent practicable, in consideration of cost benefit standards, costs should be collected and classified on a direct basis for each service or product provided.

2. The general method for charging indirect costs should be on a fully allocated cost basis. Under appropriate circumstances, regulatory authorities may consider incremental, market-driven, negotiated pricing or other methods for allocating costs and pricing transactions among affiliates.

3. To the extent possible, all direct and allocated costs between regulated and non-regulated products and services shall be traceable on the books of the applicable regulated utility to the applicable Uniform System of Accounts. Documentation shall be made available to the appropriate regulatory authority upon request regarding transactions between the regulated utility and its affiliates.

4. The allocation methods shall apply to the regulated entity's affiliates in order to prevent cross-subsidization from, and ensure equitable cost sharing between, the regulated entity and its affiliates, and vice versa.

5. All costs shall be classified to services or products which, by their very nature, are either regulated, non-regulated, or common to both.

6. The primary cost driver of common costs, or a relevant proxy in the absence of a primary cost driver, shall be identified and used to allocate the cost between regulated and non-regulated services or products.

7. The indirect costs of each business unit, including the allocated costs of shared services shall be spread to the services or products to which they relate using relevant cost allocators.

C. Each entity that provides both regulated and non-regulated services or products shall maintain a cost allocation manual (CAM) or its equivalent and notify the jurisdictional regulatory authorities of the CAM's existence. Any entity required to provide notification of a CAM(s) should make arrangements as necessary and appropriate to ensure competitively sensitive information derived therefrom be kept confidential by the regulator. At a minimum, the CAM should contain the following:

1. An organization chart of the holding company, depicting all affiliates, and regulated entities.

2. A description of all services and products provided between the regulated entity and its affiliates. Also, annual revenue by each of these services and products should be provided.

3. A description of all services and products provided the regulated entity to non-affiliates. Also, annual revenue by each of these services and products should be provided.

4. A description of the cost allocators and methods used by the regulated entity and the cost allocators and methods used by its affiliates related to the regulated services and products provided to the regulated entity. Entities will follow Statement of Financial Accounting Standards (SAS) No. 131, Disclosures about Segments of an Enterprise and Related Information as required and will make the disclosure available upon request to jurisdictional regulatory authorities.

D. AFFILIATE TRANSACTIONS (NOT TARRIFFED)

1. Generally, the price for services and products provided by a regulated entity to its non-regulated affiliates shall be at the higher of fully allocated costs or market prices. Under appropriate circumstances, prices could be based on incremental, market-driven, negotiated pricing or other pricing mechanisms as determined by the regulator. Pricing below fully allocated costs but above incremental costs may be appropriate given market prices and regulatory approval. As required by regulators, utilities shall provide adequate market and other relevant information that justifies pricing below fully allocated costs.

2. Generally, the price for services and products provided by an affiliated company to a regulated affiliate should be at the lower of fully allocated cost or market as determined by the regulator. Under appropriate circumstances, prices for affiliated company provision of services and products could be based on incremental, market-driven, negotiated prices or a competitive bidding process, as determined by the regulator.

3. Generally, transfer of a capital asset from the utility to its non-regulated affiliate should be at the greater of market price or net book value, except as otherwise required by law or regulation. If no market exists for the asset, a negotiated price no lower than net book value could be acceptable. Generally, transfer of assets from an affiliate to the utility should be at the lower of market or net book value, except as otherwise required by law or regulation. An appraisal to date asset valuation may be required according to value thresholds as determined by regulators.

4. Entities should maintain all information underlying affiliate transactions with the affiliated utility for a minimum of three years, or as required by law or regulation if longer than three years.

E. AUDIT REQUIREMENTS

1. An audit trail should exist with respect to all transactions between the regulated entity and its affiliates that relate to jurisdictional services and products. The regulator should have complete access to all affiliate records necessary to ensure that cost allocations and affiliate transactions are conducted in accordance with the previously mentioned guidelines.

2. Each regulated entity's cost allocation documentation shall be made available to the company's internal auditors for periodic review of the allocation policy and process and to any jurisdictional regulatory authority when appropriate and upon request. Further, any jurisdictional regulatory authority may request independent attestation engagement of the CAM.

3. The cost of any independent attestation engagement, associated with the CAM, shall be shared between regulated and non-regulated operations consistent with the allocation of similar common costs.

4. Audit of the CAM does not otherwise limit or restrict the authority of state regulatory authorities to have access to the books and records of and audit the operations of jurisdictional utilities.

5. Any entity required to provide access to its books and records should make arrangements as necessary and appropriate to ensure that competitively sensitive information derived therefrom be kept confidential by the regulator.

APPENDIX V

**Staff Proposed Interim Rules Governing
Electric and Natural Gas Retail Access Pilot Programs**

Staff Proposed Application for Licensure

**Instructions for Filing Applications
For Licensure of Energy Service Provider or Aggregator**

I. General Instructions

- A) Applications must be filed with the Document Control Center (DCC) at the following mailing address:

**Document Control Center
Tyler Building – 1st Floor
P.O. Box 2118
Richmond, VA 23218**

DCC must have an original application and four (4) copies. To expedite processing, please send additional copies of the application directly to the following:

Director, Economics and Finance
Virginia State Corporation Commission
P. O. Box 1197
Richmond, VA 23218

Director, Energy Regulation
Virginia State Corporation Commission
P.O. Box 1197
Richmond, VA 23218

Director, Public Utility Accounting
Virginia State Corporation Commission
P.O. Box 1197
Richmond, VA 23218

- B) A filing fee must accompany the original application for licensure. Applications that do not include the filing fee will not be regarded as filed and no further processing will

occur. Checks for such fees should be made payable to "State Corporation Commission".

- C) Each application for licensure shall follow a standardized format covering each of the items enumerated in Section II. The standardized application will enable the Commission to process more efficiently the request for licensure. Any additional supporting information shall be attached as exhibits to the application. Applications that do not provide all of the information in Section II will not be regarded as filed, and no further processing will occur. If applicant has received a waiver for any of the information requirements, applicant shall provide a copy of the waiver in place of the information requirement(s).

- D) If any application fails in any respect to be complete, the application will not be regarded as filed. For incomplete applications, the Commission Staff will inform applicant what is needed before the application will be considered filed.

- E) Upon review and approval of the application, the Commission shall issue a license to sell energy to retail customers in the pilot access program(s).

- F) At any time during or at the end of the pilot programs, the company shall file with the Commission, information about its energy supply transactions and participation in the pilot program(s) as directed by the Commission.

G) The Company shall file an update to its original application if there are changes to the information submitted.

II. Information Filing Requirements:

1. **IDENTITY OF APPLICANT:** Legal name(s) of the Applicant as well as any trade name(s).
2. **ADDRESS AND TELEPHONE NUMBER:** Business address and telephone number of the Applicant's principal office and any Virginia location(s).
3. **CONTACT PERSON:** The name, title, address, telephone number, FAX number, and E-mail address (if available) of the person to whom questions about this Application should be addressed:
4. **CUSTOMER SERVICE CONTACT:** Telephone number of the customer service department or the title and telephone number of the customer service contact person.
5. **AUTHORIZATION TO CONDUCT BUSINESS:** A copy of the Applicant's authorization to conduct business in Virginia from the State Corporation Commission.
6. **AFFILIATES:** Names of the Applicant's affiliates and subsidiaries. Applicant may satisfy this requirement by providing a copy of its most recent Form 10K, Exhibit 21 filing with the Securities and Exchange Commission.

7. **AFFILIATE RELATIONSHIPS:** Disclose any affiliate relationships with Virginia local distribution companies as well as any related affiliated competitive service provider agreements pursuant to which competitive energy services are provided within the Commonwealth of Virginia.
8. **LOCATIONS:** A list of the states in which the Applicant or an affiliate provide rate-regulated services including, but not limited to electric, natural gas, water, sewer or telecommunications business(es).
9. **PILOT PARTICIPATION:** List the current or proposed pilot programs in Virginia in which the Applicant proposes to participate.
10. **SERVICE AREA:** Generally list the geographic area(s) in which the Applicant proposes to offer service.
11. **SERVICES AND CUSTOMERS:** Generally describe the type of service(s) the Applicant proposes to offer. Additionally, identify the class(es) of customers to which the Applicant proposes to offer services. Disclose, to the extent feasible, fuel mix and emissions data.
12. **START DATE:** State the date(s) on which the Applicant proposes to begin delivering services for each applicable pilot.

13. **ESCROW SECURITY DEPOSITS AND PREPAYMENTS:** State the name and address of the Virginia institution holding security deposits and prepayments in escrow.

14. **FINANCIAL FITNESS:** Applicant must provide sufficient information to demonstrate financial fitness commensurate with the service(s) proposed to be provided. Applicant shall submit the following information related to general financial fitness:

- a. Any published parent company financial and credit information.
- b. Applicant's audited balance sheet and income statement for the most recent fiscal year. Published financial information such as 10K's and 10Q's may be provided, if available.
- c. Proof of a minimum bond rating of BBB- by a major rating agency. In lieu of such minimum bond rating, other instruments may be provided, such as: a guarantee of \$25,000 by an affiliated corporation which has a minimum bond rating of BBB- by a major rating agency; a deposit of \$25,000 in an escrow account; the posting of a security bond with the State Corporation Commission in the amount of \$25,000; or a committed line of credit in the amount of \$25,000.

15. **EMPLOYEE INFORMATION:** Applicant must provide the following information:

- a. Identity of Applicant's chief officers along with their professional resumes.

- b. The name, title, address, telephone number, FAX number, and E-mail address (if applicable) of Applicant's custodian of its accounting records.

16. TECHNICAL FITNESS: To ensure that the present quality and availability of service(s) provided by utilities does not deteriorate, the Applicant shall provide sufficient information to demonstrate technical fitness commensurate with the service(s) to be provided, to include:

- a. Identity of Applicant's officers directly responsible for operations, including names and their experience in the generation of electricity, procurement of electricity and/or procurement of natural gas, and the provision of energy service to retail consumers.
- b. Documentation of membership or participation in regional reliability councils or regional transmission organizations.
- c. For electric pilot participants: include information concerning access to generation and generation reserves. Such information should specify to the extent possible the expected sources of electricity or electricity procurement practices that will be used to support retail sales of electricity in Virginia.

For natural gas pilot participants: 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.

d. List of states in which applicant and/or affiliated companies have participated in retail access programs.

17. **AFFIDAVIT AS TO SERVICE AND FITNESS:** Attach to the Application an affidavit as follows:

AFFIDAVIT

Commonwealth of _____

County of _____

_____, Affiant, being duly sworn according to law, deposes and says that:

He is the _____(office of Affiant) of _____(Name of Applicant);]

That he is authorized to and does make the affidavit for said Applicant;

That _____, the Applicant herein, asserts that it possesses the requisite technical, managerial, and financial fitness to render electric service within the Commonwealth of Virginia and that the Applicant will abide by all applicable federal and state laws and regulations and by the decisions of the Virginia State Corporation Commission.

That the facts above set forth are true and correct and that he expects to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this _____ day of _____, 19____.

Signature of official administering oath

My commission expires _____.

18. TAXATION: Provide the State Tax Account number or similar number of the Applicant: _____.

In certification that the supplier will pay in full all taxes due from the supplier as required, the Applicant will attach to the Application an affidavit as follows:

AFFIDAVIT

Commonwealth of _____

County of _____

_____, Affiant, being duly sworn according to law, deposes and says that:

He is the _____(office of Affiant) of _____(Name of Applicant);]

That he is authorized to and does make this affidavit for said Applicant;

That _____, the Applicant herein, certifies to the Commission that it is subject to and will pay the full amount of taxes imposed by _____. The Applicant acknowledges that failure to pay such taxes or otherwise comply with the taxation requirements shall be cause for the Commission to revoke the license of the Applicant.

That the facts above set forth are true and correct and that he expects to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this ____ day of _____, 19__.

Signature of official administering oath

My commission expires _____.

19. STANDARDS, BILLING, PRACTICES, TERMS AND CONDITIONS OF PROVIDING SERVICE AND CONSUMER EDUCATION: Provide a copy of the customer information brochure and representative examples of all standard forms or contracts that Applicant uses, or proposes to use, for service provided to residential or small commercial customers. Energy and services should be priced in clearly stated terms to the extent possible. Common definitions should be used. All consumer contracts or sales agreements should be written in plain language with any exclusions, exceptions, add-ons, package offers, limited time offers or other deadlines, penalties, and/or procedures for ending contracts prominently communicated.

20. DISCLOSURE/COMPLIANCE: State specifically whether the Applicant, an affiliate, a predecessor of either, or any person identified in this Application has been convicted of a crime involving fraud or similar activity. Disclose whether any application for license or authority to conduct business in a similar retail access program has ever been denied or whether any license or authority issued to it or an affiliate has ever been suspended, revoked or sanctioned.

21. DISPUTE RESOLUTION PROCEDURES: Provide a copy of applicant's dispute resolution procedures.

22. APPLICATION FEE: Enclose a licensing fee of \$250, made payable to "State Corporation Commission".

APPENDIX VI

**Staff Proposed Interim Rules Governing
Electric and Natural Gas Retail Access Pilot Programs**

Staff Proposed Sample of License

SAMPLE LICENSE

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
LICENSE NO.

III. <Company name>

is hereby granted a license under Section 56-234 of the Code of Virginia to provide the following products and services

in conjunction with the following local distribution company pilot programs

to the following customer classes within the Commonwealth of Virginia

under the following terms, conditions, or restrictions

This license expires on _____

Failure of the licensee to comply with any applicable FERC or State Corporation Commission Orders and/or Rules and all state and federal laws may result in the revocation, suspension or restriction of this license.

Dated at Richmond, Virginia _____

STATE CORPORATION COMMISSION

By _____

Commissioner