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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**

**TASK FORCE REPORT**

**MARCH 9, 1999**

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## **I. INTRODUCTION**

### **Commission Order**

On December 3, 1998, the Virginia State Corporation Commission (“Commission” or “SCC”) entered an Order Establishing Procedural Schedule in Case No. PUE980812 (“December 3, 1998 Order”). The referenced Order is attached as Appendix I. 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 in the Commonwealth. The Commission directed its Staff to select and lead a Task Force composed of representatives of all segments of the retail energy industry, including consumer representatives and the Office of the Attorney General. Parties interested in serving on the Task Force were to respond to the Task Force Coordinator by December 28, 1998. The Task Force was charged to file its report and recommended interim rules by March 9, 1999.

As noted in this Order, the work of this Task Force will also satisfy the requirement established by the Commission in its Order on September 30, 1997, approving Columbia Gas of Virginia's Commonwealth Choice Program (Case No. PUE970455) to set up a task force to develop a proposed generic code of conduct for retail gas unbundling programs.

## Background

In the Commonwealth and across the nation, electric and natural gas utilities are proposing to restructure the services they offer to consumers in order to provide customers with a choice of electric generation or natural gas suppliers. This necessarily involves a transition from heavily regulated, public utility energy services market in which the utility generates or acquires energy in the form of electricity or natural gas, ships the energy over interstate transmission systems, and delivers the energy to consumers through local distribution facilities to a system in which third party suppliers utilize the pipes or wires of the utilities to deliver energy to consumers at market commodity prices. As the restructuring process unfolds, the Commission, its Staff, and the industry and consumer representatives serving on the Task Force wish to ensure that the market in Virginia develops in a manner that facilitates customer choice while ensuring the reliability consumers have come to expect.

The Commission established the Task Force to develop and propose interim rules governing relationships among electric and natural gas local distribution companies (“LDCs”)<sup>1</sup>, competitive service providers (“CSPs”) and retail energy consumers during retail access pilot programs. The interim rules proposed in this Report include standards of conduct for LDCs and their CSP affiliates, rules and obligations applicable to all CSPs, and provisions for Commission oversight of the participation of CSPs in the pilot programs including interim licensing and filing requirements.

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<sup>1</sup> In this Report, the term Local Distribution Company (“LDC”), common to the gas industry, is also being used to refer to electric utilities offering distribution services in retail access pilots.

Washington Gas Light and Columbia Gas of Virginia currently have ongoing natural gas pilot programs that have been approved by the Commission. Virginia Power and AEP-Virginia have pilot program applications pending before the Commission. As such, the pilot proposals of these two electric utilities and the tariffs of the two natural gas utilities may require some modification to be consistent with these proposed interim rules or any modifications to them as determined by the Commission. In addition, the adoption of interim rules in this proceeding will serve as a guide to other electric or natural gas utilities that submit pilot proposals of their own. Moreover, the interim rules may continue to evolve to reflect lessons learned from the pilot programs prior to implementation of widespread retail electric or natural gas competition.

In its 1999 Session, the Virginia General Assembly passed two bills concerned with the deregulation of the natural gas and electric industries. Both of these bills await the signature of the Governor.

Senate Bill 1105 authorizes the natural gas utilities in Virginia to offer retail supply choice to all their customers. The retail access plans, as approved by the SCC, allow for the commencement of choice on July 1, 2000. These plans should contain, among other things: a schedule for implementation of choice for all customers; 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 as established by the SCC. The law expires on July 1, 2000, and will require further legislative action to remain in force after that date.

Senate Bill 1269, the Virginia Electric Utility Restructuring Act, will eventually allow all customers to purchase electricity from the provider of their choice. Phase-in of

retail access will begin on January 1, 2002, and be completed by January 1, 2004. The SCC has the ability to delay the full implementation to January 1, 2005, due to considerations for reliability, safety and market power. The bill also authorizes the SCC to conduct retail access pilot programs.

Both bills require license of all persons proposing to furnish competitive services as a supplier be licensed. Senate Bill 1269 also requires licensing of aggregators. These licensing procedures are to be established and administered by the SCC. The establishment of interim rules for the pilot programs through this Task Force will enable the SCC to fulfill the duties delegated to it by Senate Bills 1105 and 1269.

### **Formation of Task Force**

Pursuant to the Commission's December 3, 1998 Order, interested parties wishing to participate on the Task Force notified the Task Force Coordinator of such intent. Information regarding the participants' names, addresses, telephone and fax numbers, e-mail addresses, and entities being represented was forwarded to the Commission's Division of Economics and Finance by December 28, 1998. The Task Force Coordinator determined that e-mail was the most effective means of correspondence among the parties and invited all parties who had expressed interest in serving on the Task Force to attend the initial meeting at the Commission's offices on January 4, 1999.

Fifty-six persons, as well as several Commission Staff members, responded to the Order representing twenty-eight entities and characterizing eight categories of interest:

- ◆ Electric investor-owned utilities
- ◆ Electric cooperatives
- ◆ Natural gas utilities
- ◆ Competitive providers (utility affiliated and non-affiliated)
- ◆ Residential customers
- ◆ Commercial customers
- ◆ Industrial customers
- ◆ Regulators

The list of all Task Force participants is attached as Appendix II.

### **Task Force Participation**

Most participants attended the first meeting on January 4, 1999, and appeared willing to accept the challenging task and necessary commitment described by Commissioner Hullahen Moore and the Task Force Coordinator.

The Task Force held eight weekly meetings beginning January 12, 1999, and culminating in final drafting sessions March 3-4, 1999. The majority of participants were very active in attendance and in contributing ideas and comments throughout the project. The Task Force Report and the proposed interim rules developed by the participants are a product of agreement and consensus wherever possible. Where all participants could not agree, the Task Force adopted a rule known to be acceptable to some of the participants. This Report identifies some of the differing views in explaining the basis and purpose of each proposed interim rule. However, each participant is entitled, under the procedures



established in the December 3, 1998 Order, to submit written comments by April 9, 1999, which detail specific objections, offer alternative or additional rules, and propose the deletion of certain rules. In addition, a hearing will be held on April 19, 1999.

### **Applicability of Other Laws, Rules, and Regulations**

Throughout the course of Task Force discussions, certain members raised questions about the applicability of various state and federal laws and regulations to local distribution companies and competitive service providers. The Task Force recognized that some participants in the pilot programs are or will become subject to a variety of laws and regulations, including but not limited to:

- ◆ The Federal Power Act
- ◆ The Natural Gas Act
- ◆ The Public Utility Holding Company Act
- ◆ Federal Energy Regulatory Commission Orders and Regulations
- ◆ The Virginia Consumer Protection Act

The Task Force recognizes that state and federal agencies and courts have jurisdiction over certain actions of providers of energy services, and nothing in these proposed interim rules is intended to expand the jurisdiction of the State Corporation Commission beyond the authority granted to it by the Constitution and Code of Virginia “Code”). The Task Force notes that the Code provides that, in some instances, the State

Corporation Commission and Virginia courts have concurrent jurisdiction. However, nothing in these proposed interim rules shall be construed to take away or impair the jurisdiction of any court of this Commonwealth to hear and determine any proceeding, suit, or motion of which it has jurisdiction. See Code § 12.1-38. The Task Force also recognizes that any penalties which the Commission may impose upon any person for violation of these proposed interim rules would not relieve that person of other penalties that may be imposed by another state or federal agency or court. See Code §12.1-14.

### **Terms and Definitions**

The Task Force has provided definitions of certain terms used throughout this Report, attached as Appendix III. The definitions were created to establish some common ground for the drafting of this Report rather than to suggest that they are determinative. Such terms and definitions are generally consistent with the relevant legislation passed by the General Assembly. However, the Task Force recognizes that the definitions provided are not exhaustive of all terms used in either the electric or natural gas industries, nor are they exhaustive of terms used in restructured competitive environments. Additionally, the Task Force recognizes the right of individual LDCs to incorporate definitional sections within their own tariff proposals.

## **II. PROPOSED INTERIM RULES GOVERNING COMPETITIVE SERVICE PROVIDERS**

### **Introduction**

With the development and onset of pilot programs to offer competitive energy services to natural gas and electricity consumers in certain areas of the Commonwealth, CSPs will begin to sell natural gas,<sup>2</sup> electricity, and related services directly to consumers traditionally served by LDCs. The proposed interim rules set forth and discussed in this section concern the relationships between CSPs and customers and between CSPs and LDCs. The primary objective of these proposed rules is to promote a workable, competitive marketplace in which consumers participating in LDC pilot programs can make an informed choice of an energy supplier from numerous CSPs. Equally important, the proposed interim rules protect consumers by circumscribing CSP behavior in Virginia pilot programs.

The existing and proposed pilot program tariffs all contain requirements applicable to CSPs. During the Task Force meetings, the LDCs generally supported rules applicable to CSPs designed to ensure system reliability and engaged in discussions about protections for customers not participating in the pilots.

The CSPs generally have different views about the need for and scope of the rules applicable to CSPs. As unregulated entities operating in the competitive marketplace for electricity and natural gas, the CSPs point to existing law, such as the Virginia Consumer

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<sup>2</sup> Natural gas marketers have sold gas to large industrial consumers in the Commonwealth for almost 20 years.

Protection Act of 1977, Chapter 17 (§ 59.1-196 *et seq.*), which the CSPs believe governs relationships between suppliers and consumers. CSPs contend that consumer protection laws and, equally important, binding contracts, are sufficient to ensure a fair, competitive and well functioning marketplace rendering rules discussed in this section largely unnecessary. The CSPs also are concerned that too many rules will inhibit the development of customer choice by increasing the cost of doing business in the Commonwealth.

Consumer representatives pose yet a third general perspective regarding these relationships. Consumer representatives want consumers to benefit from pilot programs while avoiding economic injury. Consumer representatives also want rules that provide for the ability to comparison shop and rules that prevent fraud.

Considering these diverse interests, the Task Force endeavored to develop a set of proposed interim rules that could be presented in this Task Force Report. Consensus often was difficult to achieve and Task Force participants reserved the right to file individual comments or take other appropriate action.

#### **A. Proposed Interim Rules Applicable to Relationships with Retail Customers**

*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.*

This proposed interim rule is intended to create an environment in which consumers can make an informed choice of energy supplier. In a competitive marketplace in which products - natural gas and electricity - are being offered for the first time directly to consumers by new market entrants, it is important to ensure that materials received by consumers will be clear and understandable and to ensure that consumers are equipped to evaluate offers and to make informed decisions. Consumer education is the underpinning of informed choice. All market participants, but particularly LDCs, the Attorney General's Office, and the Commission, will play a role in educating consumers.

Although all participants agreed as to the purpose of this proposed interim rule, there was considerable discussion in the Task Force as to whether such a rule was necessary given Virginia's existing consumer protection laws. The Virginia Consumer Protection Act of 1977, Chapter 17 (§ 59.1-196 *et seq.*), broadly prohibits misrepresentations of goods or services, deceptive advertising and other specified fraudulent acts or practices committed by a supplier in connection with consumer transactions. The Act does not apply to "public service corporations," and certain Task Force members argued that the Act would apply to CSPs that do not fall within the definition of public service corporations. Based on this argument, some participants on the Task Force expressed concern over duplicative jurisdiction and ambiguity concerning standards of review. Notwithstanding these concerns, in view of the evolving nature of competitive services and market dynamics, and until these issues can be resolved by the Legislature, the Task Force agreed to the proposed interim rule.

Some Task Force participants, particularly among the marketer interests, expressed further concern that the proposed interim rule not be interpreted to require specific or standard offering formats. These parties argued that, in a working marketplace, CSPs should have the flexibility to offer innovative products and services in ways not offered by others. For example, it was suggested that local media outlets may gather CSP data and independently develop comparative pricing information. Nevertheless, some consumer advocates would like CSPs to provide customers with standardized formats and information so that customers can comparison shop. The proposed interim rule acknowledges the experimental nature of the pilot programs and is intended to meet the concerns of both supplier and consumer interests.

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

In other states where competitive markets have been created, energy marketers have adopted marketing strategies and offered so-called "green" electric generation produced from environmentally benign sources. Anticipating the use of similar marketing strategies in the pilot programs, Task Force participants designed the proposed interim rule to prevent fraudulent or misleading claims and to place the burden of proving marketing claims on the CSP making the claim. CSPs did not contest the purpose of the proposed interim rule, but some participants argued that the consumer protections sought to be afforded under the proposed interim rule are available under the Consumer Protection Act (§ 59.1-200), which expressly prohibits misrepresenting the source,

qualities, or characteristics of goods or services. The Task Force nevertheless agreed to include the proposed interim rule.

*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.*

The Task Force uniformly recognized the need for proposed interim rules 20 VAC 5-311-10.A.3 and A.4. In a new marketplace, consumers will have questions about energy services. It is important for consumers to have a simple and efficient means both to resolve disputes and to contact their service provider for assistance.

*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.*

See the discussion following proposed interim rule 20 VAC 5-311-10.A.3 above. Consumer representatives encourage the Commission to require CSPs to provide a mechanism to direct consumers where to call for help with a service emergency.

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

This proposed interim rule seeks to prohibit CSPs from switching customers without authorization and to eliminate unauthorized customer enrollment practices (“slamming”). It is not intended to limit the means of enrollment used in an individual pilot, such as written, telephonic, or Internet enrollment. The phrase “appropriately verified” is intended simply to assure that, by whatever means, the customer makes the decision to change suppliers.

*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.*

All of the Task Force participants are sensitive to consumer privacy issues. The proposed interim rule balances the interest in developing a workable competitive market and the desire for safeguarding consumer privacy. In the regulated paradigm, LDCs have traditionally refrained from disclosing customer-specific information including billing, payment, or usage history. One LDC stated that on its system a subpoena is generally required for disclosure. Yet, another LDC indicated that it now routinely reports customer payment information to credit reporting agencies. The proposed interim rule provides consumers in the new competitive marketplace with security while enabling CSPs to utilize information if authorized by the customer or if it is otherwise already in the public domain, as would any other non-regulated entity doing business in Virginia.



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.*

This proposed interim rule recognizes that there are three parties involved in a competitive energy service transaction, the customer, the CSP, and the LDC. Each of these parties has a critical and direct interest in a CSP's decision to terminate supply service. One purpose of the proposed interim rule is to inform the customer that, with appropriate notice, it can be dropped by its CSP for non-payment of the CSP's charges. Although no party contemplates the disconnection of energy distribution service from pilot participants who fail to pay CSPs, some CSP representatives would prefer not to publicize this consumer protection because of the impact it may have on collection activities. A second purpose of the proposed interim rule, in requiring notification to the LDC, is to protect the integrity of the system given the fact that LDCs will continue to act as the default supplier under the pilots.

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

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.*

This proposed interim rule reflects the need to have effective and efficient communications between the CSP and the LDC in order to maintain system reliability. The proposed interim rule does not preclude the CSP from appointing an agent for the purpose of such contacts.

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

Licensure is necessary to assure the LDC that the CSP is eligible to participate in pilot programs in the Commonwealth of Virginia.

*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.*

The purpose of this proposed interim rule is to require compliance with all approved tariff terms and conditions applicable to the CSP.

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.*

This proposed interim rule recognizes the need to continue the quality of firm service to which consumers have become accustomed. The proposed interim rule provides that if an Energy Service Provider (“ESP”) fails to fulfill its obligations, it will be responsible for costs and/or penalties prescribed by the LDC pursuant to its approved tariffs and/or applicable law. The proposed interim rule does not intend to define "sufficient" service or to prejudge who will determine what level of service is "sufficient."

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.*

The purpose of this proposed rule is to require compliance with any licensure or LDC and Transmission Provider registration process.

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

In the emerging competitive marketplace, it is important for all parties to exchange information efficiently in order to enroll and provide effective service to customers. The Task Force recognized that, because the pilots will operate in various regions of the Commonwealth and because industry restructuring is national in scope, it is incumbent upon the CSPs and LDCs to adopt data transfer protocols that are consistent with industry standards.

**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.*

This proposed interim rules deal with pilot programs and emerging markets. The Task Force believes that the Commission should have the flexibility to consider and grant appropriate waivers to, among other things, enhance the development of workable competition and to provide additional opportunities to gather data and gain experience and knowledge through the pilots.

### **III. PROPOSED INTERIM RULES GOVERNING LOCAL DISTRIBUTION COMPANIES**

#### **Introduction**

Relationships between LDCs and retail customers have developed in a regulated environment where LDCs have protected service territories, and where terms and conditions of service and rates are established by the State Corporation Commission. Customers historically have expected reliable service provided from a single company, while LDCs expect an opportunity to earn a reasonable rate of return on their investment. However, the established relationship between LDCs and retail customers is changing. Customer choice for electric generation and natural gas supply will create an environment where CSPs may compete for market share in some segments of the business.

In the new environment, the expectations of LDCs and retail customers will change while new relationships are being created between LDCs and CSPs. Retail customers opting to choose their generation and/or natural gas suppliers hope to benefit from additional or alternative services and pricing options. All Task Force participants seek to ensure a competitive environment that provides open and non-discriminatory access to customers and is void of preferential affiliate treatment by LDCs. LDCs may wish to establish affiliated competitive service providers (“ACSPs”) that may expand into competitive markets for any competitive energy services, while continuing to provide traditional regulated service.

The Proposed Interim Rules Applicable to LDCs are intended to provide a set of standards to govern (1) the relationship between the LDCs and ACSPs and CSPs, and (2) the relationship between the LDC and retail customers. Not all parties were in complete agreement with all of the Rules Applicable to LDCs proposed herein. LDCs generally expressed the opinion that there are many existing standards, rules and/or laws in place to ensure that all CSPs are given an equal opportunity to compete on a level playing field. In contrast, CSPs expressed concern that LDCs could give their ACSPs preferential treatment unless certain rules and standards were established to prevent such behavior. Accordingly, some of the basic exceptions that Task Force members had to the Proposed Interim Rules Applicable to LDCs are set forth herein. Task Force participants reserve the right to file individual comments or take other appropriate action.

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

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

This proposed interim rule is a general provision to ensure that an ACSP does not receive undue preferential treatment from an LDC. Issues discussed in the drafting of this rule included whether any preference, “undue” or otherwise, was appropriate; whether

any ACSP should be a participant in its affiliated LDC's pilot; and whether any further rules were necessary.

*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.*

This proposed interim rule provides more specifically that ACSPs will not receive undue preference from an LDC. Task Force members engaged in considerable debate about this proposed interim rule. Electric LDCs were of the opinion that FERC has sufficient jurisdiction to ensure that such inappropriate preferential treatment does not occur. However, some participants were concerned about regulatory gaps and dispute resolutions and wanted to ensure that the Commission could oversee any dispute regarding the provision of services that are not under FERC jurisdiction. The not-for-profit Cooperatives want the relationship between them and their member/customers recognized as one in which some preferential treatment is due. After further discussions, the Task Force participants generally agreed to accept this proposed interim rule for purposes of this Report.

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.*

This proposed interim rule is intended to ensure that ACSPs will not receive undue preferential access to certain information that would result in a marketing advantage over a non-affiliated CSP. Any such information that an LDC makes available to one CSP may be made available to all CSPs upon request. This rule contains a provision dealing with information considered competitively sensitive by a CSP.

Task Force members raised various concerns during the development of this proposed interim rule. After discussion, the participants generally agreed to include this proposed interim rule for purposes of this Report.



The final sentence of the proposed interim rule clarifies that daily information provided to a CSP about its customers is not subject to contemporaneous disclosure to others. CSP-specific data (e.g., scheduling information) shall not be disclosed.

*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.*

This proposed interim rule is intended to ensure that employees of the LDCs and ACSPs operate independently in certain functions and that their offices have adequate separation. This proposed interim rule does not specifically define how offices must be separated and does not prohibit sharing employees who do not have direct responsibility for operations or reliability functions. The parties agreed that, in application, the proposed interim rule is intended to recognize that in certain situations physical separation may not provide additional benefits without excessive additional costs and, therefore, may not be necessary if other protective measures are in place.

The Task Force members expressed contrasting views about this proposed interim rule. While CSPs suggested that physical separation provides a barrier to inadvertent sharing of information and initially endorsed complete separation of LDC and ACSP employees, they recognized that common office buildings could be maintained with

appropriate safeguards. The Cooperatives and some LDCs expressed concern that a rule mandating complete separation would create an excessive burden on their operations, particularly in the context of a pilot program. The Cooperatives and some LDCs are not able to support multiple employees in different facilities performing essentially similar functions without increasing costs to customers. Other LDCs argued that certain non-operational/reliability functions can be shared if the costs are properly allocated to the ACSP. Finally, the Task Force discussed using the FERC OASIS Standards of Conduct as a model set of rules. The Task Force members agreed to the broad general standard presented in the proposed interim rule and agreed that more specific concerns would be addressed in their comments to the Report.

*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 LDC 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.*

This proposed interim rule recognizes that affiliate transactions are allowable under the Code of Virginia with approval by the Commission. The Commission requires that affiliate applications include descriptions of the specific affiliate transactions as well as any accounting mechanisms necessary to ensure that ratepayers do not subsidize the

activities of non-regulated affiliates. Requiring separate books of account and records for each affiliate will assist the Commission in verifying that the costs associated with shared employees, services, and/or facilities have been accounted for properly. This proposed interim rule also requires an LDC to maintain documentation for factors used to separate LDC and division costs, if an LDC elects to provide competitive energy services through a division rather than through a separate affiliate. This is necessary since divisions of an LDC are not currently included in the definition of an affiliated interest in section 56-76 of the Code of Virginia.

Subsidization of an affiliate by an LDC is a concern expressed by both non-affiliated CSPs and Staff during the Task Force meetings. The Commission is charged with determining just and reasonable rates for regulated utility services. As such, the Commission must confirm that costs properly allocable to ACSPs are not reflected in an LDC's Virginia jurisdictional cost of service. Similarly, non-affiliated CSPs cannot effectively compete if the LDC subsidizes affiliate operations.

The Task Force discussed the requirement of division allocation documentation in the proposed interim rule as a means for the Commission to ensure that LDCs do not subsidize divisions that are involved in providing Competitive Energy Services. While LDCs agreed that documentation of division allocation should be maintained, the LDCs opposed the required use of a formal Cost Allocation Manual ("CAM") supported by Staff, consumer representatives and some CSPs. The LDCs were concerned about the volume, detail and expense that the term CAM implied and that such a requirement could be overly burdensome and resource intensive to develop, maintain and update in the context of a pilot program.

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

This proposed interim rule is intended to ensure that an LDC distributes electricity and/or natural gas to its customers without regard to the source of the generation or natural gas. This proposed interim rule allows any licensed CSP access to an LDC's distribution system on the same terms and conditions as any other CSP. All Task Force Members agreed with this proposed interim rule.

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.*

This proposed interim rule is not intended to prohibit joint advertising between LDCs and any CSP. Rather, the proposed interim rule is intended to ensure all CSPs have an equal opportunity to jointly advertise with an LDC under the same terms and conditions as ACSPs.

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 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.*

Part (a) of this proposed interim rule is intended to protect customers from false or misleading statements by LDCs or any CSP that distribution services differ if the energy commodity is purchased from a particular CSP. Part (b) of this proposed interim rule applies to all CSPs, however, it is more specifically targeted at restricting ACSPs from implying that its affiliated LDC is providing the Competitive Energy Service when the ACSP is the actual provider. All Task Force members agreed with the general purpose of this rule.

*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.*

Customers should be able to make an informed decision when choosing a CSP. An affiliation between a CSP and an LDC may influence customer decisions. This proposed interim rule is not intended to prohibit ACSPs from using the LDC's name or logo. Rather, the rule attempts to ensure that customers are aware of an affiliate relationship between an ACSP and an LDC. For example, an ACSP may use an LDC logo in a print advertisement, but the affiliation between the ACSP and the LDC must be clearly disclosed in the advertisement.

This proposed interim rule was discussed at length during the Task Force meetings. One consumer group was concerned with making sure that customers were not confused by LDC or ACSP representations or advertising. Initially, the consumer group opposed this proposed interim rule arguing that the LDC identity gives an ACSP an undue advantage and could thwart the success of any retail pilot program. The consumer group wanted to prohibit any use of an LDC's name by an ACSP. In the course of Task Force discussion, the parties recognized that the affiliate relationship could actually have the opposite effect and cause a disadvantage to the ACSP. After Task Force discussions, the consumer group no longer opposed this proposed interim rule.

The Task Force also discussed the need for an additional disclaimer that stated that the ACSP is not price regulated by the Commission. However, given the fact that no CSPs will be price regulated pursuant to retail access pilot programs, some Task Force members thought that the additional disclaimer could confuse customers. For purposes of the Task Force report, participants agreed to exclude the requirement.

The LDCs and ACSPs agreed to the general purpose of this proposed interim rule and wanted to emphasize that the use of an LDC's name or logo was not prohibited under

this rule. Non-affiliated CSPs agreed with the general purpose of this proposed interim rule.

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

All Task Force members agreed that dispute resolution procedures for complaints of alleged rule violations were appropriate. Additionally, the parties agreed that the Commission could best address the dispute resolution procedures in each LDC's pilot program proceeding.

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

This proposed interim rule reaffirms the LDC's responsibility to provide safe, reliable distribution of electricity and/or natural gas to customers. This proposed interim rule recognizes that the LDC must take actions that ensure safety and reliability in the event of an emergency situation. However, this proposed interim rule also allows anyone

to request that the Commission investigate claims of inappropriate behavior regarding emergency actions taken by an LDC.

All LDCs supported the proposed interim rule. Other Task Force members did not oppose the general purpose of this proposed interim rule, but believe this proposed interim rule is not necessary because utilities currently have the ability to act appropriately in emergencies and the Commission has authority granted by the Code of Virginia to scrutinize LDC actions and operations.

## **B. Proposed Interim Rules Applicable to Relationships with Retail Customers**

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

Historically, customers have not had the opportunity to choose who would generate their electricity or supply their natural gas (with the exception of large industrial gas users). In order for the retail pilot programs to succeed in introducing customer choice, Task Force participants agreed that LDCs sponsoring pilot programs should assist in educating customers and facilitating participation in the pilots. This proposed interim rule allows the Commission to address specific education and enrollment programs in each LDC's pilot program approved by the Commission. Task Force members agreed to the general purpose of this rule.



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 State Corporation Commission. Other customer specific information about pilot customers shall not be provided to Competitive Service Providers without customer authorization.*

Customers will elect whether to participate in the retail access pilot programs. LDCs generally do not release any customer specific information without express approval from customers. Some Task Force members agreed with the LDCs that customers expect the LDCs to maintain customer information privacy. However, in retail access pilot programs, some Task Force members believe CSPs need cost-efficient ways to quickly contact eligible customers in order to market their services. Customers will also need information from CSPs in order to make an informed decision when choosing an alternative supplier. CSPs sought access to all customer names and addresses as they believed this was necessary in order to allow for full and open competition in the pilots. The Task Force reached consensus, agreeing that addresses should be provided on a non-discriminatory basis. This proposed interim rule specifically allows LDCs to provide the addresses of pilot program participants to CSPs in the manner approved by the Commission in each LDC's pilot tariff. However, this rule also protects customers from the release of other customer specific information without their consent. While some Task Force members want to have a positive confirmation in order for LDCs to release

customer information, CSPs believe a negative response is sufficient. Task Force members agreed to exclude any specific language concerning positive or negative customer confirmation for purposes of this report and to allow the Commission to address this issue in any future pilot programs.

*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.*

Historically, the Commission has allowed LDCs to collect a deposit from customers for the provision of bundled utility service. For customers who opt not to participate in the pilot program, these Commission approved customer deposits will still apply. This proposed interim rule allows LDCs to request a change to the terms and conditions of customer deposits for pilot participants in the individual pilot proceedings. All Task Force members agreed to the general purpose of this rule. However, CSPs wanted it to be noted that this rule does not apply to them.

*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 State Corporation Commission.*

LDCs have terms and conditions for customer disconnection due to non-payment in their Commission approved tariffs for regulated service. Pursuant to proposed interim rule 20 VAC 5-311-20.B.4, an LDC may request a change in its terms and conditions concerning customer disconnection for pilot participants. The Commission may consider such a request in an LDC's pilot proceedings. All Task Force members agreed with the general purpose of this rule. The CSPs wanted it to be noted this rule does not apply to them.

*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.*

While most customers pay their utility bills on time, a small portion of customers do not. Under traditional rate base/rate of return regulation, LDCs are allowed to recover their uncollectibles from all customers by grossing-up their revenue requirements in rate case proceedings. Customer choice complicates the process of recovering past due amounts and/or applying partial payments for LDC and CSP charges in a rational and unbiased manner.

During the Task Force meetings, it became clear that there are two distinct and irreconcilable views concerning the treatment of partial payments. The LDCs believe that partial payments should be applied to current and past due transmission and distribution charges prior to supplier charges. LDCs argue that they bear more risk than the CSPs since they are the default suppliers when either a customer contract is terminated by a

CSP or if a CSP fails to provide contractual services to its customers. Also, since customers could only be disconnected for nonpayment of LDC charges, LDCs take the position that the initial application of partial payments to LDC charges is a necessary consumer protection measure.

In contrast, the CSPs believe that partial payments should be applied to supplier charges first. Since only LDCs are able to disconnect customers for non-payment, CSPs argue that customers do not have as great an incentive to pay the supplier charges. Allowing LDCs to receive payment first provides further incentive for customers to only pay the transmission and distribution charges.

As a compromise, Staff proposed to apply any partial payments on a prorated basis for current monthly services provided by the CSP and the LDC. Both the LDC and the CSP would be responsible for collecting the remainder of their unpaid bills. Among other things, the LDCs expressed their concern over the additional administrative burden. The CSPs were more receptive to Staff's proposal, but the Task Force was unable to reach an agreement on any proposal concerning partial payments. Therefore, the Task Force respectfully requests that the Commission determine how partial payments by pilot participants will be distributed.

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

Under certain circumstances during the retail access pilot programs, a customer may elect to return to the LDC's regulated tariff after it has satisfied its contractual arrangements with a CSP; find itself without a CSP; or not be able to contract with a CSP for services, even though the customer has expressed a desire to do so. This proposed interim rule provides the opportunity for the LDC to be the "default supplier" and for customers to return to the LDC's Commission approved tariffs during the time the pilot is in effect. All Task Force members agreed to the general purpose of this rule.

*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.*

Retail access pilot programs may have differing provisions for customers to switch suppliers. For example, a pilot may allow customers to switch suppliers only on meter reading dates, or may allow switching more or less frequently. This proposed interim rule allows the Commission to address the timing and opportunities for customer switching in each individual LDC's pilot program. All Task Force members agreed to the general purpose of this rule.

*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.*

This proposed interim rules deal with pilot programs and emerging markets. The Task Force believes that the Commission should have the flexibility to consider and grant appropriate waivers to, among other things, enhance the development of workable competition and to provide additional opportunities to gather data and gain experience and knowledge through the pilots.

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

### **Introduction**

As noted in the introduction to this report, the Commission's December 3, 1998 Order specifically charged the Task Force to consider and propose interim rules relating to certification or licensure of entities that desire to sell energy competitively in a retail access program. The proposed interim rules set forth and discussed in this section recommend the minimum requirements for licensure of ESPs. The primary purpose of these requirements is to provide the Commission with the information necessary to determine eligibility for obtaining a license to sell energy to retail customers within retail access pilot programs. The specific information required of applicants is intended to assist the Commission Staff in evaluating the financial and technical capability of the applicant to provide electricity and/or natural gas to retail consumers.

Before the Task Force began its discussion of specific requirements for licensure, several broad issues were addressed. There was considerable discussion regarding the Commission's authority to certificate or license ESPs. The CSPs argued that absent legislation to the contrary, the Commission does not have the authority to certify or license ESPs under existing state law. Accordingly, they contend the Commission should not promulgate rules for the pilots establishing requirements leading to a license issued by the Commission to an ESP seeking to sell non-price regulated competitive energy services in the Commonwealth. They strongly preferred an alternative to require ESP adherence to

LDC tariffs. The gas pilot programs include these types of rules in the pilot tariffs. However, the electric LDCs argued that they did not wish to serve as policemen and, therefore, use of the tariffs was unacceptable.

Other Task Force members argued that the Commission has the authority to regulate the sale of energy in Virginia on a retail basis and, therefore, to oversee the ESPs that wish to participate in the retail access pilots. The Staff contended that the Commission has the legislative authority to license ESPs. Commission certification or licensure of suppliers and aggregators is consistent with legislation (Senate Bills 1105 and 1269) that was passed by the 1999 Virginia General Assembly.

The licensure requirement for aggregators was discussed extensively. Several Task Force participants questioned the need for aggregators to be held to the same requirements as ESPs, when each may perform significantly different functions in the pilots. In addition, some of the requirements may preclude community groups or special interest groups from participating in the pilots as aggregators. While the Task Force recommends the rules apply to both ESPs and aggregators, it recognizes that waivers of the rules may be appropriate in certain situations.

At least one CSP strongly opposed the term "license" to describe proof of permission granted by the Commission to participate in a retail access pilot. This opposition spurred a discussion of whether the use of the term "license" or "certificate" would be more appropriate. Upon completion of this discussion, the Task Force reached the general consensus that the term "license" was more appropriate. This term is also consistent with the adopted legislation.



A general topic of discussion throughout the group's consideration of these requirements was how to ensure that the Commission received sufficient, reasonable and relevant information to adequately evaluate an applicant regarding its financial and technical viability without imposing burdensome requirements that could create barriers to entry. The Task Force grappled to find a balance between these two, often-conflicting goals. The group also had extensive discussions regarding the relevance of certain information that the Staff indicated a desire to be submitted during the application process.

During the discussion of specific rules, a more general matter arose concerning what entities would be subject to these rules. The Task Force discussed whether the licensure requirements should apply to any CSP or whether it could be limited to ESPs. One LDC indicated that its pilot includes the unbundling of many services, including billing and meter reading, and its proposed tariff includes provisions for qualifying any person or entity that wants to provide any of these related competitive energy services. Currently, billing agents perform similar services to a variety of industries within the Commonwealth and are not subject to the specific types of requirements that licensing rules for the pilots would require. In addition, discussion involved requirements that the individual pilot program tariffs may have for CSPs of related competitive energy services. It was generally agreed that the licensing process was most critical and necessary for suppliers of energy (electricity or natural gas), not suppliers of other services. At that point the term competitive service provider was replaced with energy service provider, recognizing that providers of other related services would in most cases be qualified through Commission approved tariffs.

Whether ESPs already operating in an existing pilot program must meet licensure requirements recommended here is beyond the scope of the Task Force to determine but an issue that must be addressed before the rules are issued.

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

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

This requirement is intended to identify the applicant. This requirement was not controversial.

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.*

This requirement is intended to provide further identifying information about the applicant but is broader in scope than the first requirement. Staff contended that the type of information requested by this requirement would assist in its evaluation of a specific applicant and in assessing the robustness of competition in Virginia. This requirement was not particularly controversial until the second part of the requirement was added at the suggestion of consumer advocates. Initially, the wording of this requirement did not

specify what type of retail business was intended. After adding "electric or natural gas" to the description, most of the Task Force participants were satisfied with the language.

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

The two greatest concerns with this requirement seemed to be that it might be overly burdensome to some participants and that it could require the presentation of information to the Commission that would not be relevant to the process of granting a license to sell energy. The discussion focused on the latter concern as a matter of principle. The ESPs argued that the Commission does not have the jurisdiction to require disclosure of where it does business or the multitude of affiliates that it may have which are not involved in energy-related business activities.

Various alternatives were discussed including whether this requirement should be narrowed to just affiliates involved in similar pilots; to only the entities between the ESP and the ultimate parent; or to only the parent or significant affiliates. The Task Force could not come to a consensus on any of these proposals.

The Commission Staff and the consumer advocates contended that this requirement was necessary. The Task Force discussed the value of the information and whether the information could provide a demonstration of technical ability through affiliate activities. Additionally, this information would help Staff in its ongoing monitoring of competition in Virginia and its understanding of how the retail market is

working in Virginia. After further research, it appeared that, for publicly traded firms, the information required in this section could be obtained from Exhibit 21 to the SEC Form 10-K. Thus, the second part of the requirement was added.

*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.*

Although some of the same arguments were made for this proposed requirement as for 20 VAC 5-311-30.A.3, this requirement seemed more palatable to the participants. Again, the Task Force discussed whether the information was valuable and whether it could provide a demonstration of technical ability through affiliate activities that would help Staff with its monitoring of competition in Virginia. In addition, Staff believed that the information could be helpful in ensuring that affiliate agreements were properly executed and approved when necessary.

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

Because the individual responsible for this function could change, the actual name of the customer service contact person was omitted as a part of this requirement. The

purpose for having this information on file is to enable the Commission to assist customers in search of information for a particular ESP.

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

This is the person who will serve as the ESP's interface with the Commission.

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

Several participants requested clarification and specificity on the document that was being requested by this requirement. Because the actual document issued to the entity by the Commission to do business within the Commonwealth can vary depending on the type of entity applying for authorization (i.e., it can be called a Certificate of Authority to Transact Business or a Certificate of Registration), the group agreed on the more generic term "authorization."

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.*

Several Task Force members believed that the licensing requirements needed to contain some provision to make sure that any deposits or prepayments collected by ESPs are put into escrow in Virginia. Thus, in response to those concerns, the Task Force developed this requirement. The requirement of an escrow account under the conditions described seemed to allay fears about unscrupulous ESPs that might abscond with deposits or prepayments.

*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.*

The Task Force discussed numerous issues regarding the scope of any proposed bonding requirements and proposed this rule to address two of these issues: first, to

provide some assurance to the Commission about the ESP's financial viability; and second, to provide for some means for the state to recover tax dollars if an ESP absconded with those funds. The financial requirements are not designed to protect the LDCs from financial risk associated with their transactions with CSPs. Accordingly, the LDCs are permitted to include separate financial assurance requirements in their tariffs or agreements with CSPs. Similarly the bonding requirements are not designed to reimburse customers for incidental damages due to failure of an ESP to perform according to contract.

The Task Force discussed the dollar amount appropriate for a bond or guarantee. While it was mentioned that other states required bonds of \$100,000 and more, the Staff and some other parties believe that \$25,000 was sufficient for the specific purpose of indemnifying the state or localities against possible loss of tax revenues in the pilot programs. The \$25,000 threshold was derived by taking 10% of Pennsylvania's bonding requirement, taking into consideration that the size of Virginia's pilots are proposed to be about 10% of Pennsylvania's electric pilot program. Moreover, Staff believed that \$25,000 was also sufficient to provide the Commission some assurance that the applicant had adequate financial resources to participate in the Virginia retail pilot programs.

The Task Force discussed how the bonding requirement might affect an aggregator. If a community association securing an energy offering for its individual homeowners fell under the definition of aggregator, it would need to meet the bonding requirement. This requirement would obviously be onerous for a nonprofit organization. The Task Force discussed proposed 20 VAC 5-311.30.B., a request for waiver, as the

solution to the problem of an ESP or aggregator that should not need to meet all of the requirements laid out in these proposed interim rules.

*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.*

The CSPs questioned whether an ESP would need to apply for a separate license for each pilot it intended to participate in and each time it expanded the geographic area it planned to serve. It was the opinion of the Task Force that one application and license should be sufficient. Any changes in the information provided in this or other requirements could be filed as an amendment to the ESP's original application.

*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.*

The Task Force discussed whether this provision should require disclosure of legal proceedings in other jurisdictions or even in other lines of business, and whether such disclosure might provide information about the overall viability and integrity of the



applicant. Both CSPs and LDCs expressed concerns about a broad request for information concerning ongoing legal proceedings or cases where the applicant was subject to investigation, which could be interpreted to include complaints. For a large company or one with numerous affiliates, this requirement could be extremely burdensome. Several Task Force participants questioned the relevance of an investigation that might be completely unrelated to the provision of energy services. There was also discussion of the appropriateness of requesting and providing information concerning ongoing proceedings. The fact that proceedings are taking place may not necessarily indicate that wrongdoing actually occurred.

Consumer representatives suggested additional language aimed at preventing consumer fraud. The proposed language read, "Disclose any Federal or State criminal conviction or civil order that sanctions, fines or enjoins the applicant or an affiliate pursuant to any state or federal consumer protection act." This language caused some of the Task Force participants the same concerns as discussed earlier. Specifically, large companies or those with many affiliates and areas of operations would be required to research historical data in a variety of jurisdictions and then determine if adverse decisions were related to any applicable consumer protection acts.

This language also led to a discussion of the meaning and breadth of the term "sanctioned." Several Task Force members pointed out that the reference to sanctions in the requirement should capture most situations, and that additional language was not necessary.

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

The Task Force discussed the purpose and amount of a registration fee. After research, Staff presented information about similar fees required to accompany filings with the SCC. Generally, Staff believed that the fee was intended to cover the cost of processing the application. Based on a rough estimate of the man-hours needed to process an application for licensure, the proposed \$250 fee seemed reasonable to the Staff. One LDC commented that it did not want its current regulatory fees to subsidize the Commission's activities related to overseeing unregulated entities (i.e., the fee charged should cover the cost incurred). It was also suggested that during the pilot programs the Staff collect information on the actual cost of performing the licensing process so that an appropriate cost based fee could be enacted at the time of full retail access.

**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.*

This language has been included in each section of the proposed interim rules. As stated elsewhere, the Task Force believes that the Commission should have the ultimate ability to consider and grant appropriate waivers. It is particularly important within the licensure section to ensure that sufficient flexibility exists to allow for a variety of participants. The Task Force discussed some specific situations in which a request for a

waiver might be appropriate. However, in this relatively new and emerging market, the group could not possibly conceive of every possibility.

## **V. CLOSING REMARKS**

The Task Force hopes that the Commission will consider this Report to be a valuable resource leading to the promulgation of interim rules governing pilot participants, including CSPs and LDCs.

All stakeholders—consumers, regulators, utilities, and suppliers—had input into the development of the proposed interim rules. The Task Force process facilitated the identification of issues and development of the proposed interim rules. In most cases, agreements and compromises enabled the Task Force to propose interim rules that may be adopted by the Commission. Individual Task Force members will submit comments on or before April 9, 1999, which should be helpful to the Commission in crafting final interim rules.

The Task Force members appreciate the opportunity the Commission has provided to participate in this useful and productive process.

Respectfully submitted.

**APPENDIX I**

**Copy of Case No. PUE980812 Order**

<http://dit1.state.va.us/scc/orders/e980812.htm>

## **APPENDIX II**

### **List of Task Force Participants**

<b>Name</b>	<b>Entity</b>	<b>Interest</b>
David F. Koogler Carol Busto David L. Holt	Virginia Power (VA Power)	Electric IOU
Michael J. Quinan Barry L. Thomas Ranie K. Wohnhas Jeffry L. Laine James R. Bacha	Woods, Rogers, & Hazelgrove American Electric Power (AEP-VA/TN)	Electric IOU
Robert C. Carder, Jr. Marleen L. Brooks George Blankenship	Allegheny Power Co. (APS)	Electric IOU
D. Richard Beam Rick Alston Richard M. Young Kent Farmer Rhonda Curtis R.G. Gillispie, Jr. Salud Layton	Old Dominion Electric Cooperative (ODEC) Rappahannock Electric Cooperative Mecklenburg Electric Cooperative VA,MD&DE Association of Electric Cooperatives	Electric Cooperatives
C.T. Bryant	Central VA Elect. Cooperative (CVEC)	Electric Cooperative
Mike Dailey Gilbert D. Jaramillo Mary Bergere	Northern VA Elect Cooperative (NOVEC)	Electric Cooperative
Dale Moore	Roanoke Gas	Natural Gas Utility
James B. Wagner Debra A. Bortel Donald R. Hayes	Washington Gas & Light Co. (WGL)	Natural Gas Utility
Donald Fickenscher Jeff Huston	Virginia Natural Gas Inc. (VNG)	Natural Gas Utility
James Copenhaver	Columbia Gas-VA (CGV)	Natural Gas Utility

Beverly E. Jones	CNG Retail Services Corp.	Provider
Mary Elizabeth Tighe	Statoil Energy, Inc.	Provider
Michel King	Old Mill Power Co.	Provider/renewables
Jeff Bladen	New Energy Ventures	Provider
Mark Thessin	Atmos Energy	Provider
Lawrence Friedeman Eric M. Page	Columbia Energy Services Corp. (CES) LeClair Ryan	Provider
Harry A. Warren, Jr.	Washington Gas Energy Services, Inc. (WGES)	Provider
Randall S. Rich Kathleen Magruder	Bracewell & Patterson, LLP Enron Corp.	Provider
Jim Williams	New Hope Youth Foundation	Provider
Tom Clancy Stephen La Pierre	AGF Direct Gas Sales	Provider
Charles P. Wilson	P.E. / Consultant	Consumer
John Dudley Amy Schwab	Attorney General	Consumers
Jean Ann Fox Josetta McLaughlin Jane King David Rubinstein Judy Mason	VA Citizens Consumer Council (CVCC) AARP VA Poverty Law Center VA Council Against Poverty	Consumers
David L. Bailey, Jr.	David Bailey Associates	VA Coalition for Fair Competition



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Frann G. Francis	Apartment & Office Bldg Assoc. of Washington DC	Commercial
Bruce R. Oliver	Revilo Hill Assoc., Inc (% AOBA)	

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Tom Nicholson	Williams Mullen Christian & Dobbins	VA Retail Merchants Assoc.
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Edward L. Petrini	Christian & Barton	VCFUR / ODCFUR
Hedy Szurovecz		

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Dave Eichenlaub	VA State Corporation Commission (VSCC)	Regulatory Staff
Renaë Carter		
Diane Jenkins		
Mark Carsley		
L.Tommy Oliver		
John Ballsrud		
Mary Owens		
Cody Walker		
Howard Spinner		
Susan Larsen		
V.O. Ragland (Sonny)		
Patrick Carr		
Kimberly Pate (Kim)		

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## **APPENDIX III**

### **Terms and Definitions**

## **Terms Applicable to Retail Access Pilot Program Interim Rules**

**Affiliated Competitive Service Provider (ACSP)** - Any Competitive Service Provider which is a unit, division, or separate legal entity that controls, is controlled by, or is under common control with a Local Distribution Company or its parent, that provides Competitive Energy Services and/or Related Competitive Energy Services.

**Aggregator** – A Person licensed by the State Corporation Commission that purchases or arranges for the purchase of Competitive Energy Services as an agent or intermediary for sale to, or on behalf of, two or more retail Customers.

**Competitive Energy Service** – The provision of electricity and/or natural gas identified in an approved retail access pilot program. (Does not include “Related Competitive Energy Services”.)

**Competitive Service Provider (CSP)** - A Person who sells or offers to sell any Competitive Energy Service and/or other Related Competitive Energy Service to a retail Customer. This excludes a party that supplies electricity and/or natural gas exclusively for its own consumption or the consumption of an affiliate. Some examples of the types of Competitive Service Providers are:

- **Energy Service Provider (ESP)** – A Person, licensed by the State Corporation Commission, who arranges to provide Customers with electricity and/or natural gas at unregulated prices, including Energy Marketers, and Aggregators. An ESP must rely on the Transmission Facilities of the Transmission Provider and/or the Distribution Facilities of the Local Distribution Company to deliver electricity and/or natural gas to their Customers.
- **Billing Agent** – A Person, qualified in an approved retail access pilot program, that provides billing services for either competitive electric and/or natural gas services or consolidated billing of both competitive and regulated electric and/or natural gas services.
- **Meter Data Management Agent** – A Person, qualified in an approved retail access pilot program, that provides meter reading and data management services.
- **Meter Service Provider** - A Person, qualified in an approved retail access pilot program, that provides metering services including ownership, installation, inspection and auditing of meters.

**Customer** – Any Person that purchases a Competitive Energy Service and/or Related Competitive Energy Services for consumption or use at one or more metering points or non-metered points of delivery located in the Commonwealth.

Customer Choice (Retail Access) - The opportunity for a retail Customer in the Commonwealth to purchase a Competitive Energy Service and/or Related Competitive Energy Service from any Competitive Service Provider seeking to sell such services to that Customer.

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

Energy Marketer – A Person who takes title to and sells (markets) electricity and/or natural gas.

Local Distribution Company (LDC) – The entity regulated by the State Corporation Commission that owns or controls the distribution facilities required for delivery of electricity or natural gas to the end-user.

Local Distribution Company Account – An individual service location or point of delivery.

Person – Any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

Related Competitive Energy Services – Services related to the competitive supply of electricity and/or natural gas including, but not limited to, electric and/or natural gas metering, meter data management and billing.

Retail Customer – See definition of “Customer”.

Transmission Provider or Upstream Pipeline - The entity regulated by FERC that owns and/or operates the transmission facilities required for the delivery of electricity or natural gas to the Local Distribution Company or end-user.

**APPENDIX IV**

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

**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 the competitive service provider and its retail customers:

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.
2. A competitive service provider claiming its offerings possess unique attributes shall be required to provide reasonable support for the claim.
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.

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.

5. A competitive service provider shall enroll a customer only when properly authorized by that customer and such authorization is appropriately verified.

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.

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.

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

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 the appropriate contact persons.

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 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.

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 such standards.

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.



**APPENDIX V**

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

**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 the local distribution company and the competitive service provider:

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

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.

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.

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.

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.

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

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.

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 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.

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.

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.

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

B. The following provisions shall govern the relationship between the 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 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 State Corporation Commission. Other customer specific information about pilot customers shall not be provided to competitive service providers without customer authorization.

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.

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 State Corporation Commission.

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.

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

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.

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.

## **APPENDIX VI**

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

### **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. Any application for a license to be an energy service provider or aggregator shall include at least the following provisions:

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

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.

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. Title and telephone number of the company liaison with the State Corporation Commission.
7. A copy of the applicant's authorization to do 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. 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.

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.

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.

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

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.