

**APPENDIX A**

**PROPOSED RULES GOVERNING RETAIL ACCESS TO**

**COMPETITIVE ENERGY SERVICES**

**CHAPTER 312.**  
**RULES GOVERNING RETAIL ACCESS**  
**TO COMPETITIVE ENERGY SERVICES.**

**20 VAC 5-312-10. Applicability; definitions.**

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

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

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

"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electricity or natural gas supply, or both, or (ii) offers to arrange for, or arranges for, the purchase of electricity or natural gas supply, or both, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, competitive service providers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or a competitive service

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**20 VAC 5-312-20. General provisions.**

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

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

C. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

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

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

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

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

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

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

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

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

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

K. The local distribution company and a competitive service provider or an aggregator shall successfully complete EDI testing and receive certification for all EDI

transactions, as outlined in the VAEDT EDI Test Plan, prior to actively enrolling customers, except as permitted by subsection J above.

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

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

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

O. By March 31 of each year, the local distribution company or a competitive service provider providing electricity supply service shall provide a report to its customers and file such report with the State Corporation Commission stating to the extent feasible, fuel mix and emissions data for the prior calendar year. If such data is unavailable, the local distribution company or a competitive service provider shall file a

report with the State Corporation Commission stating why it is not feasible to submit any portion of such data.

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

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

R. If a filing with the State Corporation Commission, made pursuant to this chapter, contains information that the local distribution company, a competitive service provider, or an aggregator claims to be confidential, the filing may be made under seal provided it is accompanied by both a motion for protective order or other confidential treatment and an additional five copies of a redacted version of the filing to be available for public disclosure. Unredacted filings containing the confidential information shall be maintained under seal unless the State Corporation Commission orders otherwise, except that such filings shall be immediately available to the commission staff for internal use at the commission. Filings containing confidential or redacted information shall be so stated on the cover of the filing, and the precise portions of the filing containing such confidential or redacted information, including supporting material, shall be clearly marked within the filing.

**20 VAC 5-312-30. Codes of conduct.**

A. An affiliated competitive service provider may use the name or logo of its affiliated local distribution company in advertising and solicitation materials. A disclaimer shall be used when an affiliated competitive service provider offers services in the certificated service territory of its affiliated local distribution company. Such disclaimer shall clearly and conspicuously disclose that the affiliated competitive service



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

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

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

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

3. An affiliated competitive service provider shall document each occasion that an employee of its affiliated local distribution company, or of the transmission provider that serves its affiliated local distribution company, becomes one of its employees and each occasion that one of its employees

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

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

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

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

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

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

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

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

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

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

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

1. The local distribution company shall be compensated at the greater of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to an affiliated competitive service provider. An affiliated competitive service provider shall be compensated at the lower of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to the local distribution company. If market price data are unavailable, non-tariffed services, facilities and products shall be compensated at fully distributed cost and the local distribution company shall document its efforts to determine market price data and its basis for concluding that such price data are unavailable. Notification of a determination of the unavailability of market price data shall be included with the report required in subdivision I 2.

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

**20 VAC 5-312-40. Licensing.**

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

Corporation Commission within 10 calendar days. Each application shall include the following:

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof; e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.
3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.
4. Physical business addresses and telephone numbers of the applicant's principal office and any Virginia office location or locations.
5. A list of states in which the applicant or an affiliate conducts business related to electricity supply service or natural gas supply service, the names under which such business is conducted, and a description of the businesses conducted.
6. Names of the applicant's affiliates and subsidiaries. If available, applicant shall satisfy this requirement by providing a copy of its most recent form 10K, Exhibit 21 filing with the Securities and Exchange Commission.
7. Disclosure of any affiliate relationships with local distribution companies or competitive service providers, or both, that conduct business in Virginia, and any agreements with the affiliated local distribution company that affect the provision of competitive energy services within the Commonwealth of Virginia.
8. If an affiliated competitive service provider, a description of internal controls the applicant has designed to ensure that it and its employees, contractors, and agents that are engaged in the (i) merchant, operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions, do not receive information from an affiliated local distribution company or from entities that provide similar functions for or on behalf of its affiliated local distribution company or affiliated transmission provider as would

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

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

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

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

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

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

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

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

14. The name of the local distribution company that is certificated to provide service in the area in which the applicant proposes to provide service, the

type of service or services it proposes to provide, and the class of customers to which it proposes to provide such services.

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

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

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

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

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

a. The applicant's experience.

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

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

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

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

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

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

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



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

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

F. A competitive service provider or an aggregator shall comply with all initial and continuing requirements of the State Corporation Commission's licensure process and any reasonable registration processes required by the local distribution company and the transmission provider. Should the State Corporation Commission determine, upon complaint of any interested person, the Attorney General, upon staff motion, or its own motion, that a competitive service provider or an aggregator has failed to comply with any of the requirements of this chapter or a State Corporation Commission order related thereto, the State Corporation Commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the competitive service provider's license or an aggregator's license or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.

**20 VAC 5-312-50. Competitive service provider registration with the local distribution company.**

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

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

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

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

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

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

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

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

**20 VAC 5-312-60. Customer information.**

A. A competitive service provider or an aggregator shall adequately safeguard customer information, including payment history, unless the customer authorizes disclosure or unless the information to be disclosed is already in the public

domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by federal and state statutes.

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

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

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

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

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

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

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

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

A. A competitive service provider or an aggregator shall provide, in any advertisements, solicitations, marketing materials, or customer service contracts,

accurate, understandable information, in a manner that is not misleading. Any such materials specifying a price shall include a statement that the local distribution company shall continue to provide and charge for distribution service.

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

C. Customer service contracts shall include:

1. Price or, if the exact price cannot feasibly be specified, an explanation of how the price will be calculated;
2. Length of the service contract, including any provisions for automatic contract renewal;
3. Provisions for termination by the customer and by the competitive service provider;
4. A statement of any minimum contract terms, minimum or maximum usage requirements, minimum or fixed charges, and any required deposit;
5. Applicable fees including, but not limited to, start-up fees, cancellation fees, late payment fees, and fees for checks returned for insufficient funds;
6. A notice of billing terms and conditions;
7. A toll-free telephone number and an address for inquiries and complaints;

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

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

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

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

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

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

#### **20 VAC 5-312-80. Enrollment and switching.**

A. A competitive service provider shall be permitted to enroll a customer upon: (i) receiving a license by the State Corporation Commission; (ii) receiving EDI certification as required by the VAEDT, including the subsequent provision of a sample

bill as required by 20 VAC 5-312-20 L; and (iii) completing registration with the local distribution company.

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

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

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

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

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

G. Upon receipt of an enrollment request from a competitive service provider, the local distribution company shall, normally within one business day of

receipt of such notice, mail notification to the customer advising of the enrollment request, the approximate date that the competitive service provider's service commences, and the caption and statement as to cancellation required by 20 VAC 5-312-70 C 8. The customer shall have 10 calendar days from the mailing of such notification to advise the local distribution company to cancel such enrollment without penalty.

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

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

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

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

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

M. If the local distribution company is notified by a competitive service provider that the competitive service provider will terminate service to a customer, the local distribution company shall respond to a competitive service provider by any means

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

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

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

#### **20 VAC 5-312-90. Billing and payment.**

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

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

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

1. Be performed under a "bill-ready" protocol.
2. Not require the local distribution company to purchase the accounts receivable of the competitive service provider or aggregator.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. The local distribution company shall provide on customer bills either (i) a customer's cumulative 12-month energy consumption, and total

seasonal energy consumption if seasonal rates are applicable, for the 12-month period consistent with the calculation of "price-to-compare" values required in subdivision J 3 or for the most recent 12 months or (ii) a customer's monthly energy consumption, numerically or graphically, for the most recent 12 months; and

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

K. The investor-owned electric local distribution company shall develop and file a plan, prior to the implementation of full or phased-in retail access, with the State Corporation Commission's Division of Energy Regulation to provide "price-to-compare" assistance and information, on bills or by other means, to customers that are subject to demand-based billing charges.

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

M. The local distribution company shall provide sufficient space on a consolidated bill to accommodate a competitive service provider's or an aggregator's name and 24-hour toll-free telephone number, previous account balance, payments

applied since the previous billing, total current charges, total amount due, six additional numeric fields to detail current charges, and 240 additional text characters.

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

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

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

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

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

**20 VAC 5-312-100. Load profiling.**

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

B. The local distribution company shall ensure that profile classes are easily identifiable, that load profiles used are representative of the customer class being

profiled, and that customer loads are represented in a nondiscriminatory manner. Load profiles and load profiling methodologies shall be reviewable and verifiable by the State Corporation Commission.

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

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

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

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

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

H. Upon a customer's request, the local distribution company shall provide interval metering service to the customer at the net incremental cost above the basic metering service provided in accordance with the local distribution company's applicable

tariff. If the local distribution company provides interval metering as the basic metering service for customer billing purposes in accordance with its applicable tariff, interval metering of a customer's load shall continue to be required if such customer purchases electricity supply service from a competitive service provider.

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

**20 VAC 5-312-110. Dispute resolution.**

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

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

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

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

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

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

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



**APPENDIX B**

**INTERIM RULES GOVERNING ELECTRIC AND NATURAL GAS**

**RETAIL ACCESS PILOT PROGRAMS**

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

**20 VAC 5-311-10. Applicability; definitions.**

- A. The provisions in this chapter govern solely electric and natural gas retail access pilot programs conducted by Virginia electric and natural gas public utilities.
- B. The following terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

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

"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or natural gas, or both, or (ii) offers to arrange for, or arranges for, the purchase of electric energy or natural gas, or both, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy or natural gas, or both; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § 56-585 of the Code of Virginia; (v) conducting business as a competitive service provider licensed under 20 VAC 5-311-50; and (vi) engaging in actions of a retail customer, acting in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy or natural gas, or both, for consumption by such retail customers.

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

"Commencement of the pilot program" means the date established by the State Corporation Commission for the beginning of each pilot program.

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

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

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

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

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

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

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

"Virginia Electronic Data Transfer Working Group" (VAEDT) means the group of representatives from investor-owned electric utilities, electric cooperatives, the staff of the State Corporation Commission, the Office of Attorney General, and natural gas utilities and suppliers, whose objective is to formulate guidelines and practices for the exchange of information during retail access pilot programs.

## **20 VAC 5-311-20. Competitive service providers.**

A. Each competitive service provider shall comply with the following requirements with respect to its relationship with its potential or actual retail customers:

1. A competitive service provider shall, in any advertisements, solicitations, marketing materials, or customer service contracts, provide accurate,

understandable information, in a manner that is not misleading. Solicitations, advertising, and marketing materials shall contain a clear and conspicuous notice of a toll-free telephone number to contact for the additional information specified in 20 VAC 5-311-20 A 2. If such information is requested, it shall be provided in writing or by electronic means.

2. The following information shall be provided to the prospective customer, in writing or by electronic means, prior to, or contemporaneously with, the written contract: (i) for residential customers, an estimated total annual bill for a customer who uses, on a monthly basis, 1,000 kWh of electricity or 7.5 Mcf or 75 therms of natural gas, including all fees and minimum or fixed charges, exclusive of any non-recurring financial or non-financial incentives, and the total average price per kWh, Mcf, or therm based on the annual bill; (ii) the value of any non-financial incentives or non-recurring financial incentives; (iii) a statement regarding provisions for termination by the customer and by the competitive service provider; (iv) a statement of any minimum contract terms, minimum usage requirements, any required deposit, any applicable fees such as start-up fees or cancellation fees, and any minimum or fixed charges; and (v) following a clear and conspicuous caption: **“CUSTOMER’S RIGHT TO CANCEL,”** in bold face type of a minimum size of ten points, a statement that any customer may cancel its contract with a competitive service provider by notifying the competitive service provider or the local distribution company, without penalty, at any time, prior to midnight of the tenth day following notification by the local distribution company of an enrollment request as provided in 20 VAC 5-311-30 B 4. If a competitive service provider’s offer cannot be adequately described in accordance with the details described in 20 VAC 5-311-20 A 2 (i) or if the prospective customer is other than a residential customer, then the competitive service provider shall furnish similar information that will allow prospective customers to compare reasonably the full price of service if the competitive energy service is purchased from the competitive service provider to the full price of service charged by the local distribution company.

3. A competitive service provider, in arranging to provide service to a new customer, shall comply with the following requirements:

a. A competitive service provider shall enroll a customer only after the customer has affirmatively authorized such enrollment. A competitive service provider shall maintain adequate records allowing it to verify a customer’s enrollment authorization. Examples of adequate records of enrollment authorization include: (i) a written contract signed by the customer; (ii) a written statement by an independent third party that witnessed or heard the customer's verbal commitments; (iii) a recording of the customer's verbal commitment; or (iv) electronic data exchange, provided that the competitive service provider can show that the electronic transmittal of a customer's authorization originated with the customer. Such authorization records shall contain the customer’s name and address;

the date the authorization was obtained; the name of the product, pricing plan, or service that is being subscribed; and acknowledgment of any switching fees, minimum contract terms or usage requirements, or cancellation fees. Such authorization records shall be retained for at least 12 months after enrollment and must be provided within five business days upon request by the customer or the staff of the State Corporation Commission. Such authorization procedures are not required where an existing customer moves to a new address and wishes to continue service with the same provider, provided that the competitive service provider is licensed to provide service to the customer's new location.

b. Upon obtaining the customer's authorization pursuant to subdivision a above, the competitive service provider shall send, contemporaneously: (i) an enrollment request to the local distribution company consistent with the terms and conditions of the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission, and (ii) a written contract to the customer. Such materials may be hand-delivered, mailed or electronically transmitted, and shall be deemed to have been received on the date they are hand-delivered or electronically transmitted or three calendar days after the date they are mailed.

c. The customer shall have 10 calendar days from the date the customer receives notification from the local distribution company pursuant to the procedures of 20 VAC 5-311-30 B 4, to advise the local distribution company or the competitive service provider that it wishes to cancel such enrollment or contract. In the event the competitive service provider receives a cancellation request, the competitive service provider shall, normally within one business day, notify the local distribution company of the customer's cancellation in order to terminate the enrollment process. Any customer that cancels an enrollment pursuant to the procedures of 20 VAC 5-311-30 B 4 shall be deemed to have withdrawn from the contract with that competitive service provider, and shall incur no penalty or other obligation for doing so. Such contract shall thereupon be considered void from its inception and of no further effect.

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

4. At a minimum, all customer service contracts shall include: (i) the price or, if the exact price cannot feasibly be specified, an explanation of how the price will be calculated; (ii) the length of the service contract; (iii) provisions for termination by the customer and by the competitive service provider; (iv) a statement of any minimum contract terms, minimum usage requirements, minimum or fixed charges, and any required deposit; (v) any applicable fees including, but not limited to start-up fees, cancellation fees, late payment fees, and fees for checks returned for insufficient funds; (vi) a description of the dispute resolution procedures required pursuant to 20 VAC 5-311-20 A 8; (vii) following a clear and conspicuous caption: **‘CUSTOMER’S RIGHT TO CANCEL,’** appearing on the front side of the contract, or immediately above the customer’s signature, in bold face type of a minimum size of ten points, a statement that any customer may cancel its contract with a competitive service provider by notifying the competitive service provider or the local distribution company, without penalty, at any time, prior to midnight of the tenth day following notification by the local distribution company of an enrollment request as provided in 20 VAC 5-311-30 B 4; and (viii) in a conspicuous place, confirmation of the customer’s request for enrollment and the approximate date the customer’s service will commence.

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

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

7. A competitive service provider requiring a deposit or prepayment from a customer shall limit the amount of the deposit or prepayment to the equivalent of a customer’s estimated liability for no more than two months’ purchase of services from the competitive service provider by that customer.

8. 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.

9. A competitive service provider shall furnish to customers 24-hour toll-free telephone numbers to call: (i) in a service emergency and (ii) for other customer inquiries regarding services provided by the competitive service provider. The 24-hour toll-free telephone numbers shall be stated on all customer-billing statements.

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

11. A competitive service provider may include provisions in its service contracts that provide for automatic contract renewal during and beyond the duration of the pilot program upon the same terms and conditions, provided that, in any event, the contract shall provide that (i) it will terminate if the competitive service provider's license expires, or is suspended or revoked, and (ii) once the pilot program ends, the contract is subject to termination by either party upon 30 days written notice to the other party.

12. In the event that a competitive service provider's services are terminated for any reason other than by a customer's decision to terminate the contract, the competitive service provider shall send written notification of such termination to the customer at least 30 days prior to the date that service to the customer is scheduled to terminate.

B. Each competitive service provider shall comply with the following provisions with respect to its relationship with the local distribution companies and transmission providers:

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

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

3. A competitive service provider shall adhere to all requirements of schedules, terms, and conditions of service under the rate schedules and tariffs approved by the State Corporation Commission or the Federal Energy Regulatory Commission, and of the local distribution company and the transmission provider, as applicable.

4. a. A competitive service provider selling electricity or natural gas, or both, at retail shall:

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

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

(3) Comply with any obligations that the State Corporation Commission may impose to ensure access to sufficient availability of capacity; and

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

b. In the event of a failure to fulfill the obligations set forth in subdivision a above, the competitive service provider shall be responsible for any applicable penalties as authorized or required by the regulator with jurisdiction over the matter.

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

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

a. Not later than the commencement of the local distribution company's pilot program, or the date of licensure of such affiliated competitive service provider under this chapter, whichever is later, the affiliated competitive service provider shall implement internal controls to ensure that it and its employees that are engaged in the (i) merchant operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions, do not receive information from an affiliated local distribution company or from entities that provide similar functions for or on behalf of its affiliated local distribution company or affiliated



transmission provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this subdivision, “undue advantage” means an advantage that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.

b. An affiliated competitive service provider shall file with the State Corporation Commission, a revised listing and description of all internal controls required in subdivision a above within 10 days subsequent to any modification of such controls as were originally provided under 20 VAC 5-311-50 A 7 as part of the requirements of the affiliated competitive service provider’s application for license.

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

7. In the event that a competitive service provider’s services are terminated for any reason other than a customer’s decision to terminate the contract, the competitive service provider shall provide notice of the termination, by any means specified by the VAEDT, to the local distribution company at least 30 days prior to the date that the competitive service provider’s service to the customer is scheduled to terminate. In the event of a customer’s decision to terminate the contract, the competitive service provider shall provide such notice to the local distribution company, normally within one business day, upon receipt of the customer’s decision to terminate.

C. Competitive service providers shall be subject to the following general requirements:

1. Each person seeking to engage in the activities of a competitive service provider shall obtain a license from the State Corporation Commission prior to commencing such activities.

2. A competitive service provider shall comply with all initial and continuing requirements of the State Corporation Commission’s licensure process and any reasonable registration processes required by the local distribution company and the transmission provider. Should the State Corporation Commission determine, upon complaint of any interested person, the Attorney General, staff motion, or upon its own motion, that a competitive service provider has failed to comply

with any of the requirements of this chapter or a commission order related thereto, the State Corporation Commission may, after providing due notice and an opportunity for a hearing, suspend or revoke the competitive service provider's license or take any other actions permitted by law or regulations as it may deem necessary to protect the public interest.

3. A competitive service provider shall, to the maximum extent feasible, adhere to standard practices for exchanging data and information in an electronic medium as may be specified by the VAEDT and as specified in the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission. A competitive service provider shall cooperate with the VAEDT to comply on a continuing basis with the development and implementation of EDI requirements.

4. A competitive service provider providing electric service shall annually file a report with the State Corporation Commission stating: (i) to the extent feasible, fuel mix, and emissions data on at least an annualized basis; or (ii) why it is not feasible to submit any portion of such data.

5. A competitive service provider shall retain customer billing and account records and complaint records for at least three years.

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

7. The competitive service provider shall not:

a. Suggest that the services provided by the local distribution company are of any different quality when either electricity, natural gas, or both 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 competitive service provider.

## **20 VAC- 5-311-30. Local distribution companies.**

A. Each local distribution company shall comply with the following provisions with respect to its relationship with competitive service providers:

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

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

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

4. The local distribution company shall, upon request by a competitive service provider, provide such competitive service provider with the addresses of eligible pilot customers on a non-discriminatory basis consistent with the local distribution company's pilot tariff as approved by the State Corporation Commission. No other customer information about eligible pilot customers shall be provided to competitive service providers unless the customer affirmatively authorizes disclosure or unless the information to be disclosed is already in the public domain. This provision, however, shall not restrict the disclosure of credit and payment information as currently permitted by applicable federal and state statutes.

5. The local distribution company shall not accept an enrollment request from a competitive service provider to switch a customer if that customer’s account is subject to a pending disconnect notice from the local distribution company.

6. In the event the local distribution company is notified by a competitive service provider that the competitive service provider will terminate service to a customer, the local distribution company shall, normally within two business days, respond to the competitive service provider by any means specified by the VAEDT that will acknowledge (i) receipt of the competitive service provider’s notice, and (ii) the date that the competitive service provider's service to the customer is scheduled to terminate.

7. Joint advertising and marketing 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. The local distribution company shall not condition the provision of any services on the purchase of any other service or product from it or any of its affiliates.

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

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

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

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

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

a. The local distribution company shall be compensated at the greater of fully distributed cost or market price for all non-tariffed services, facilities,

and products provided to an affiliated competitive service provider. An affiliated competitive service provider shall be compensated at the lower of fully distributed cost or market price for all non-tariffed services, facilities, and products provided to the local distribution company. If market price data are unavailable, non-tariffed services, facilities and products shall be compensated at fully distributed cost and the local distribution company shall document its efforts to determine market price data and its basis for concluding that such price data are unavailable. Notification of a determination of the unavailability of market price data shall be included with the report required in subdivision b below.

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

11. The local distribution company shall not:

a. Suggest that the services provided by the local distribution company are of any different quality when either electricity, natural gas, or both 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 competitive service provider.

12. The local distribution company may require reasonable financial security from the competitive service provider to financially safeguard the local distribution company and its customers from losses or additional costs incurred due to the non-performance of the competitive service provider. Such financial security may include a letter of credit, a deposit in an escrow account, a prepayment arrangement, or other arrangements that may be mutually agreed upon by the local distribution company and the competitive service provider. The amount of such financial security shall be commensurate with the level of risk assumed by the local distribution company, as determined by the parameters described in the local distribution company's pilot program or applicable pilot

tariff as approved by the State Corporation Commission. Such security shall be used to offset any losses or additional costs incurred, due to the non-performance of the competitive service provider, including the cost of replacement energy supplied by the local distribution company. Disagreements with respect to financial security shall be subject to the dispute resolution procedures established pursuant to 20 VAC 5-311-30 A 13.

13. The local distribution company shall establish, and file for State Corporation Commission approval, dispute resolution procedures to address complaints alleging violations of, or disputes arising under, the provisions of 20 VAC 5-311-30. The local distribution company shall make such filing no later than 60 days prior to the commencement of the pilot program.

14. The provisions of this chapter shall not be deemed to prohibit the local distribution company, in emergency situations, from taking actions it is otherwise authorized to take that are necessary to ensure public safety and reliability of the distribution system. The State Corporation Commission, upon a claim of inappropriate action or its own motion, may investigate and take such corrective actions as may be appropriate.

15. The local distribution company shall, to the maximum extent feasible, adhere to standard practices for exchanging data and information in an electronic medium as may be specified by the VAEDT and as specified in the local distribution company's pilot program or applicable pilot tariff as approved by the State Corporation Commission. The local distribution company shall cooperate with the VAEDT to comply on a continuing basis with the development and implementation of EDI requirements.

B. Each local distribution company shall comply with the following provisions with respect to its relationship with its retail customers:

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

2. The local distribution company shall continue to allow customers to participate in its pilot program by selecting a competitive service provider until the maximum participation limits established and defined in its retail access pilot program, as approved by the State Corporation Commission, have been met.

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

4. Upon receipt of an enrollment request from a competitive service provider, pursuant to 20 VAC 5-311-20 A 3 b, the local distribution company shall, normally within one business day of receipt of such notice, mail notification to the customer advising of the enrollment request, the approximate date that the competitive service provider's service commences, and the caption and statement as to cancellation required by 20 VAC 5-311-20 A 2 (v). Such notice shall be deemed to have been received by the customer three calendar days after the date of mailing. The customer shall have 10 calendar days from the date the customer receives such notification to advise the local distribution company or the competitive service provider that it wishes to cancel such enrollment. In the event the local distribution company receives notice of a cancellation request from the competitive service provider pursuant to the provisions of 20 VAC 5-311-20 A 3 c, the local distribution company shall, normally within one business day, terminate the enrollment process. In the event the local distribution company receives a cancellation request from the customer, the local distribution company shall, normally within one business day, notify the competitive service provider of the customer's cancellation and terminate the enrollment process. Additionally, the local distribution company shall send to the State Corporation Commission a monthly report of all such cancellation requests, which report shall include: the approximate date of the enrollment, the identity of the competitive service provider, the name and address of the customer that cancelled such enrollment, and a brief statement of the reasons, if any, given by the customer for the cancellation.

5. In the event that the local distribution company is notified by a competitive service provider that a customer's service will be terminated, the local distribution company, in addition to responding to the competitive service provider as required by 20 VAC 5-311-30 A 6, shall send written notification to the customer, normally within five business days, that it was so informed and describe the customer's opportunity to select a new supplier. The local distribution company shall inform the affected customer that if the customer does not select another competitive service provider, the local distribution company will provide the customer's generation or natural gas supply.

6. Pilot program customer deposits held or collected by local distribution companies shall be for only those services provided by the local distribution company to customers participating in the pilot program. Any deposit held by the local distribution company in excess of this amount shall be promptly refunded to the customer. The local distribution company may, upon a customer's return to service provided by the local distribution company, collect the generation portion of a customer deposit as permitted by the local distribution company's tariffs and 20 VAC 5-10-20.

7. 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.

## **20 VAC 5-311-40. Aggregators.**

A. Each person seeking to act as an aggregator shall obtain a license from the State Corporation Commission prior to conducting business as an aggregator within the Commonwealth.

B. An aggregator shall abide by the following requirements as applicable:

1. An aggregator that is also the competitive service provider or acting as an agent of a competitive service provider for two or more customers shall comply with all of the provisions of this chapter applicable to competitive service providers with respect to such customers.

2. An aggregator that does not meet the conditions in 20 VAC 5-311-40 B 1, in arranging to provide service to a customer, shall:

a. In any advertisements, solicitations, marketing materials, or customer service contracts provide accurate, understandable information, in a manner that is not misleading;

b. Disclose in writing to prospective customers, and include in each written contract: (i) the nature of the service to be provided; (ii) the length of the contract; (iii) the fees or prices that will be charged for such service, provisions for termination of the contract by the customer and the aggregator; (iv) any other terms that are necessary for the prospective customer to make an informed choice in selecting an aggregator; and (v) following a clear and conspicuous caption: “**CUSTOMER’S RIGHT TO CANCEL,**” appearing on the front side of the contract, or immediately above the customer’s signature, in bold face type of a minimum size of ten points, a statement that any customer may cancel its contract with an aggregator by notifying the aggregator, without penalty, at any time, prior to midnight of the third business day following receipt of the contract;

c. Provide to each customer a written contract, which may be hand-delivered, mailed, or electronically transmitted, and which shall be deemed to have been received on the date such contract is hand-delivered or electronically transmitted or three calendar days after the date the contract was mailed; and

d. Provide a period of three business days, commencing with the customer’s receipt of a written contract, during which time the customer may withdraw from the contract without incurring any penalty or other obligations.



3. An aggregator expecting to receive compensation from a retail customer shall, prior to contracting with customers, provide written notice to the customers or prospective customers if the aggregator is, or expects to be, compensated by one or more competitive service providers. Such notice shall identify such competitive service providers.

## **20 VAC 5-311-50. Licensure of competitive service providers and aggregators.**

A. Each person applying for a license to conduct business as a competitive service provider or an aggregator shall file the original application with 15 copies thereof with the Clerk of the State Corporation Commission. Each application shall include the following:

1. Legal name of the applicant as well as any trade name.
2. A description of the applicant's authorized business structure, identifying the state authorizing such structure and the date thereof; e.g., if incorporated, the state and date of incorporation; if a limited liability company, the state issuing the certificate of organization and the date thereof.
3. Name and business addresses of all principal corporate officers and directors, partners, and LLC members, as appropriate.
4.
  - a. Physical business addresses and telephone numbers of the applicant's principal office and any Virginia office location or locations.
  - b. A list of states in which the applicant or an affiliate conducts business related to electricity or natural gas, the names under which such business is conducted, and a description of the businesses conducted.
5. Names of the applicant's affiliates and subsidiaries. If available, applicant shall satisfy this requirement by providing a copy of its most recent form 10K, Exhibit 21 filing with the Securities and Exchange Commission.
6. Disclosure of any affiliate relationships with local distribution companies or competitive service providers, or both, that conduct business in Virginia, and any agreements with the affiliated local distribution company that affect the provision of competitive energy services within the Commonwealth of Virginia.
7. If an affiliated competitive service provider, provide a description of internal controls it has designed to ensure that it and its employees that are engaged in the (i) merchant operations, transmission, or reliability functions of the electric generation or natural gas supply systems, or (ii) customer service, sales, marketing, accounting or billing functions, do not receive information from an affiliated local distribution company or from entities that provide similar

functions for or on behalf of its affiliated local distribution company or affiliated transmission provider as would give such affiliated competitive service provider an undue advantage over non-affiliated competitive service providers. For purposes of this subdivision, “undue advantage” means an advantage that is reasonably likely to affect adversely the development of effective competition within the Commonwealth.

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

9. Name, title, address, and telephone number, facsimile (fax) number, and e-mail address of the company liaison with the State Corporation Commission.

10. Name, title, and address of any registered agent in Virginia for service of process.

11. If a foreign corporation, a copy of the applicant’s authorization to conduct business in Virginia from the State Corporation Commission; if a domestic corporation, a copy of the certificate of incorporation from the State Corporation Commission.

12. Sufficient information to demonstrate financial fitness commensurate with the service or services proposed to be provided. Applicant shall submit the following information related to general financial fitness:

a. Applicant’s audited balance sheet and income statement for the most recent fiscal year. Published financial information such as the Securities and Exchange Commission forms 10K and 10Q should be provided, if available.

b. Proof of a minimum bond rating (or other senior debt) of "BBB-" or an equivalent rating by a major rating agency, or a guarantee with a guarantor possessing a credit rating of “BBB-” or higher from a major rating agency. In lieu of such minimum bond rating or guarantee, submit other evidence that will demonstrate the applicant’s financial responsibility.

13. Identification of the geographic area or areas, the name of the local distribution company that is certificated to provide service in the area or areas and the associated pilot program or programs in which the applicant proposes to provide service, the type of service or services it proposes to provide, the class of customers to which it proposes to provide such services, and, if applying to sell electricity or natural gas, or both, at retail and, if feasible, access to the sources of supply it intends to use.

14. a. Disclosure of any (i) civil, criminal, or regulatory sanctions or penalties imposed within the previous five years against the company, any of its affiliates, or any officer, director, partner, or member of an LLC or any of its

affiliates, pursuant to any state or federal consumer protection law or regulation; and (ii) felony convictions within the previous five years, which relate to the business of the company or to an affiliate thereof, of any officer, director, partner, or member of an LLC.

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

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

15. A \$250 pilot registration fee payable to the State Corporation Commission shall accompany each initial application.

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

a. The applicant's experience.

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

c. If applying to sell electricity or natural gas, or both, at retail, documentation of any membership or participation in regional reliability councils or regional transmission organizations.

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

17. Applicants other than aggregators shall file a copy of their dispute resolution procedure for approval by the State Corporation Commission.

B. The license application shall be signed by an officer with appropriate authority under penalty of perjury that all information supplied on the application form is true and correct, and that, if licensed, applicant will abide by all applicable regulations of the State Corporation Commission.

C. Each person applying for a license to conduct business as a competitive service provider or an aggregator shall contemporaneously serve a copy of its application upon each applicable local distribution company located within the service territory or territories where the competitive service provider intends to operate.

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

E. A license to conduct business as a competitive service provider or an aggregator granted under this section shall expire upon the termination of the pilot program unless otherwise ordered by the State Corporation Commission. The State Corporation Commission will consider extending or converting licenses issued under this chapter to allow licensed entities to continue to provide service after the termination of the pilot programs.

F. If any application fails in any respect to be complete, the application will not be regarded as filed. The State Corporation Commission will take no action on any application until deemed complete and filed.

## **20 VAC 5-311-60. General provisions.**

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

B. Any natural gas retail access pilot program previously approved by the State Corporation Commission and in operation prior to the adoption of this chapter, as well as any competitive service provider or aggregator participating in such programs, shall be required to comply with the provisions of this chapter within 120 days from the chapter's adoption or from the date of denial of a waiver request filed under 20 VAC 5-311-60 A, whichever is later.

C. Each local distribution company, competitive service provider, and aggregator shall comply with the standards for billing information set forth in § 56-592 D 1, § 56-592 D 2, and § 56-592 D 4 of the Code of Virginia and with such standards that may be

established by the State Corporation Commission pursuant to § 56-592 D of the Code of Virginia.

D. A local distribution company, a competitive service provider, or an aggregator shall bear the responsibility for meter reading and billing as provided or allowed by law and as approved by the State Corporation Commission.

E. A customer payment received in partial payment of a single consolidated bill shall be applied as designated by the customer, or, in the absence of a customer designation, to arrearages owed the local distribution company, then to arrearages owed the competitive service provider, then to current charges of the local distribution company, and then to current charges of the competitive service provider.

F. A competitive service provider and an aggregator shall inform the State Corporation Commission within 30 days of the following: (i) any change in its name, address and telephone numbers; (ii) any information contained in its application that has changed regarding its affiliate status with a local distribution company; and (iii) any changes to information provided pursuant to 20 VAC 5-311-50 A 14 a.

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

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

**APPENDIX C**

**ORGANIZATIONS REPRESENTED ON THE STAFF WORK GROUP**

## **Organization Name**

American Electric Power  
American Electric Power - Virginia  
AES-New Energy  
Allegheny Energy Supply Co, LLC  
Allegheny Power  
Apartment and Office Building Association  
Bracewell & Patterson  
Columbia Gas of Virginia, Inc.  
Christian & Barton, LLP  
Conectiv  
Creative Energy Controls, Inc.  
Dominion Energy Direct Sales  
Dominion Retail  
Dominion Virginia Power  
Energy Consultants, Inc.  
Energy Services Mgmt., LLC  
Enron Corporation  
First Energy Services  
Hunton & Williams  
Kentucky Utilities Company  
LeClair Ryan  
Logica, Inc.  
Mecklenburg Electric Cooperative  
MidAmerican Energy Company  
National Energy Marketers Association  
Northern Virginia Electric Cooperative  
Old Dominion Electric Cooperative  
Office of Attorney General  
Old Mill Power Company  
PennStuart  
PP&L EnergyPlus  
Rappahannock Electric Cooperative  
Revilo Hill Assoc. Inc./ AOBA  
RGC Resources, Inc.  
Schlumberger Resource Management Services  
Shenandoah Valley Electric Cooperative  
The New Power Co.  
Utility.com  
Virginia Association of Counties  
Virginia Department of Social Services  
Virginia Municipal League  
Virginia Natural Gas, Inc  
Virginia Citizens Consumer Council  
Virginia Independent Power Producers  
Virginia Retail Merchants Association  
Washington Gas Light  
Washington Gas Energy Services  
Williams Mullen Christian Dobbins  
Woods, Rogers & Hazlegrove