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SENATE BILL NO. 152

Offered January 10, 2024

Prefiled January 5, 2024

A BILL to amend and reenact § 56-577 of the Code of Virginia, relating to electric utilities; retail competition; aggregated competitive purchasers.

Patron—Suetterlein

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-577 of the Code of Virginia is amended and reenacted as follows:

§ 56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot programs.

A. Retail competition for the purchase and sale of electric energy shall be subject to the following provisions:

1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity, which entity may be an independent system operator, to which such utility shall transfer the management and control of its transmission system, subject to the provisions of § 56-579.

2. The generation of electric energy shall be subject to regulation as specified in this chapter.

3. Subject to the provisions of subdivisions 4 and 5, only individual retail customers of electric energy within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded five megawatts but did not exceed one percent of the customer's incumbent electric utility's peak load during the most recent calendar year unless such customer had noncoincident peak demand in excess of 90 megawatts in calendar year 2006 or any year thereafter, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving the exclusive service territory in which such a customer is located, subject to the following conditions:

a. If such customer does not purchase electric energy from licensed suppliers, such customer shall purchase electric energy from its incumbent electric utility.

b. Except as provided in subdivision 4, the demands of individual retail customers may not be aggregated or combined for the purpose of meeting the demand limitations of this provision, any other provision of this chapter to the contrary notwithstanding. For the purposes of this section, each noncontiguous site will nevertheless constitute an individual retail customer even though one or more such sites may be under common ownership of a single person.

c. If such customer does purchase electric energy from licensed suppliers after the expiration or termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the incumbent electric utility without giving five years' advance written notice of such intention to such utility, except where such customer demonstrates to the Commission, after notice and opportunity for hearing, through clear and convincing evidence that its supplier has failed to perform, or has anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of the customer, and that such customer is unable to obtain service at reasonable rates from an alternative supplier. If, as a result of such proceeding, the Commission finds it in the public interest to grant an exemption from the five-year notice requirement, such customer may thereafter purchase electric energy at the costs of such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the remainder of the five-year notice period, after which point the customer may purchase electric energy from the utility under rates, terms and conditions determined pursuant to § 56-585.1. However, such customer shall be allowed to individually purchase electric energy from the utility under rates, terms, and conditions determined pursuant to § 56-585.1 if, upon application by such customer, the Commission finds that neither such customer's incumbent electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In making such determination, the Commission shall take into consideration, without limitation, the impact and effect of any and all other previously approved petitions of like type with respect to such incumbent electric utility. Any customer that returns to purchase electric energy from its incumbent electric utility, before or after expiration of the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the Commission pursuant to subdivision C 1.

d. The costs of serving a customer that has received an exemption from the five-year notice requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the actual expenses of

59 procuring such electric energy from the market, (ii) additional administrative and transaction costs associated  
60 with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and  
61 ancillary services, and (iii) a reasonable margin as determined pursuant to the provisions of subdivision A 2  
62 of § 56-585.1. The methodology established by the Commission for determining such costs shall ensure that  
63 neither utilities nor other retail customers are adversely affected in a manner contrary to the public interest.

64 4. Two or more individual nonresidential retail customers of electric energy within the Commonwealth,  
65 whose individual demand during the most recent calendar year did not exceed five megawatts, may petition  
66 the Commission for permission to aggregate or combine their demands, for the purpose of meeting the  
67 demand limitations of subdivision 3, so as to become qualified to purchase electric energy from any supplier  
68 of electric energy licensed to sell retail electric energy within the Commonwealth under the conditions  
69 specified in subdivision 3. The Commission may, after notice and opportunity for hearing, approve such  
70 petition if it finds that:

71 a. Neither such customers' incumbent electric utility nor retail customers of such utility that do not choose  
72 to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public  
73 interest by granting such petition. In making such determination, the Commission shall take into  
74 consideration, without limitation, the impact and effect of any and all other previously approved petitions of  
75 like type with respect to such incumbent electric utility; and

76 b. ~~Approval~~ *Except as provided in subdivision b, approval* of such petition is consistent with the public  
77 interest.

78 If such petition is approved, all customers whose load has been aggregated or combined shall thereafter be  
79 subject in all respects to the provisions of subdivision 3 and shall be treated as a single, individual customer  
80 for the purposes of said subdivision. In addition, the Commission shall impose reasonable periodic  
81 monitoring and reporting obligations on such customers to demonstrate that they continue, as a group, to  
82 meet the demand limitations of subdivision 3. If the Commission finds, after notice and opportunity for  
83 hearing, that such group of customers no longer meets the above demand limitations, the Commission may  
84 revoke its previous approval of the petition, or take such other actions as may be consistent with the public  
85 interest.

86 *A customer seeking permission to procure service from any licensed supplier under this section may*  
87 *remunerate the utility for any adverse effects to the incumbent utility or its remaining retail customers*  
88 *contrary to the public interest as calculated by the Commission as part of the Commission's evaluation for*  
89 *subdivisions a and b. Customers who elect this option shall not be denied permission to procure from a*  
90 *competitive supplier. The Commission shall recalculate the remuneration fee on a triennial basis from the*  
91 *date that such a customer commences a competitive service agreement. Customers taking service under*  
92 *subdivision A 3 may also elect to remunerate the utility for adverse effects to the incumbent utility or its*  
93 *remaining retail customers contrary to the public interest and may request that the Commission provide the*  
94 *appropriate calculation. The utility shall only use these funds to address the costs identified by the*  
95 *Commission in the public interest calculation. If such fees exceed the amount that is required to satisfy the*  
96 *public interest requirement, then the excess amount shall be returned to the customer taking competitive*  
97 *supply at the end of each triennial period or at the termination of such customer's competitive agreement.*

98 5. Individual retail customers of electric energy within the Commonwealth, regardless of customer class,  
99 shall be permitted:

100 a. To purchase electric energy provided 100 percent from renewable energy from any supplier of electric  
101 energy licensed to sell retail electric energy within the Commonwealth, other than any incumbent electric  
102 utility that is not the incumbent electric utility serving the exclusive service territory in which such a  
103 customer is located, if the incumbent electric utility serving the exclusive service territory does not offer an  
104 approved tariff for electric energy provided 100 percent from renewable energy; and

105 b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in  
106 effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves the  
107 exclusive service territory in which the customer is located to offer electric energy provided 100 percent from  
108 renewable energy, for the duration of such agreement.

109 6. To the extent that an incumbent electric utility has elected as of February 1, 2019, the Fixed Resource  
110 Requirement alternative as a Load Serving Entity in the PJM Region and continues to make such election and  
111 is therefore required to obtain capacity for all load and expected load growth in its service area, any customer  
112 of a utility subject to that requirement that purchases energy pursuant to subdivision 3 or 4 from a supplier  
113 licensed to sell retail electric energy within the Commonwealth shall continue to pay its incumbent electric  
114 utility for the non-fuel generation capacity and transmission related costs incurred by the incumbent electric  
115 utility in order to meet the customer's capacity obligations, pursuant to the incumbent electric utility's  
116 standard tariff that has been approved by and is on file with the Commission. In the case of such customer,  
117 the advance written notice period established in subdivisions 3 c and d shall be three years. This subdivision  
118 shall not apply to the customers of licensed suppliers that (i) had an agreement with a licensed supplier  
119 entered into before February 1, 2019, or (ii) had aggregation petitions pending before the Commission prior

120 to January 1, 2019, unless and until any customer referenced in clause (i) or (ii) has returned to purchase  
121 electric energy from its incumbent electric utility, pursuant to the provisions of subdivision 3 or 4, and is  
122 receiving electric energy from such incumbent electric utility.

123 7. A tariff for one or more classes of residential customers filed with the Commission for approval by a  
124 cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided 100 percent  
125 from renewable energy if it provides undifferentiated electric energy and the cooperative retires a quantity of  
126 renewable energy certificates equal to 100 percent of the electric energy provided pursuant to such tariff. A  
127 tariff for one or more classes of nonresidential customers filed with the Commission for approval by a  
128 cooperative on or after July 1, 2012, shall be deemed to offer a tariff for electric energy provided 100 percent  
129 from renewable energy if it provides undifferentiated electric energy and the cooperative retires a quantity of  
130 renewable energy certificates equal to 100 percent of the electric energy provided pursuant to such tariff. For  
131 purposes of this section, "renewable energy certificate" means, with respect to cooperatives, a tradable  
132 commodity or instrument issued by a regional transmission entity or affiliate or successor thereof in the  
133 United States that validates the generation of electricity from renewable energy sources or that is certified  
134 under a generally recognized renewable energy certificate standard. One renewable energy certificate equals  
135 1,000 kWh or one MWh of electricity generated from renewable energy. A cooperative offering electric  
136 energy provided 100 percent from renewable energy pursuant to this subdivision that involves the retirement  
137 of renewable energy certificates shall disclose to its retail customers who express an interest in purchasing  
138 energy pursuant to such tariff (i) that the renewable energy is comprised of the retirement of renewable  
139 energy certificates, (ii) the identity of the entity providing the renewable energy certificates, and (iii) the  
140 sources of renewable energy being offered.

141 B. The Commission shall promulgate such rules and regulations as may be necessary to implement the  
142 provisions of this section.

143 C. 1. By January 1, 2002, the Commission shall promulgate regulations establishing whether and, if so,  
144 for what minimum periods, customers who request service from an incumbent electric utility pursuant to  
145 subsection D of § 56-582 or a default service provider, after a period of receiving service from other suppliers  
146 of electric energy, shall be required to use such service from such incumbent electric utility or default service  
147 provider, as determined to be in the public interest by the Commission.

148 2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the  
149 management and control of an incumbent electric utility's transmission assets to a regional transmission entity  
150 after approval of such transfer by the Commission under § 56-579, retail customers of such utility (a)  
151 purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods prescribed  
152 by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such minimum stay  
153 obligations by agreeing to purchase electric energy at the market-based costs of such utility or default  
154 providers after a period of obtaining electric energy from another supplier. Such costs shall include (i) the  
155 actual expenses of procuring such electric energy from the market, (ii) additional administrative and  
156 transaction costs associated with procuring such energy, including, but not limited to, costs of transmission,  
157 transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology of  
158 ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for  
159 hearing and after review of any plan filed by such utility to procure electric energy to serve such customers.  
160 The methodology established by the Commission for determining such costs shall be consistent with the  
161 goals of (a) promoting the development of effective competition and economic development within the  
162 Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor  
163 retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

164 3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585, however,  
165 any such customers exempted from any applicable minimum stay periods as provided in subdivision 2 shall  
166 not be entitled to purchase retail electric energy thereafter from their incumbent electric utilities, or from any  
167 distributor required to provide default service under subsection B of § 56-585, at the capped rates established  
168 under § 56-582, unless such customers agree to satisfy any minimum stay period then applicable while  
169 obtaining retail electric energy at capped rates.

170 4. The Commission shall promulgate such rules and regulations as may be necessary to implement the  
171 provisions of this subsection, which rules and regulations shall include provisions specifying the  
172 commencement date of such minimum stay exemption program.