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SENATE BILL NO. 591

Offered January 10, 2024

Prefiled January 10, 2024

A BILL to amend and reenact § 56-577 of the Code of Virginia, relating to electric utilities; customer energy choice; notice required for customer return to service.

Patron—McPike

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 one megawatt 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 nonecontiguous 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' six months' 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 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, including, at such utility's election, any applicable market-based tariff. Any customer that returns to purchase electric energy from its incumbent electric utility, before or after expiration of the five-year six-month 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 If a customer that has received an exemption from the five-year notice

59 requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the actual
 60 expenses of procuring such located in the service territory of an incumbent electric utility purchases electric
 61 energy from the market, (ii) additional administrative and transaction costs associated with procuring such
 62 energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services,
 63 and (iii) a reasonable margin as determined pursuant to the provisions of subdivision A 2 of § 56-585.1. The
 64 methodology established by the Commission for determining such costs a licensed supplier pursuant to this
 65 subdivision, such licensed supplier shall ensure that neither utilities nor other retail customers are adversely
 66 affected in a manner contrary to the public interest satisfy the annual RPS Program requirement established
 67 by subsection C of § 56-585.5 on an aggregate basis for all electric energy sold by such licensed supplier
 68 within such incumbent electric utility's service territory.

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

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

81 b. Approval of such petition is consistent with the public interest.

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

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

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

97 b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in
 98 effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves the
 99 exclusive service territory in which the customer is located to offer electric energy provided 100 percent from
 100 renewable energy, for the duration of such agreement provided by a licensed supplier during each calendar
 101 month must match the customer's load served by such supplier for that month. Such supplier shall retire
 102 renewable energy certificates matching the amount of load served by such supplier during each calendar
 103 year. Such renewable energy certificates shall be generated by any source qualifying as renewable energy
 104 pursuant to § 56-576 during such calendar year and may be from a different generating unit than the unit
 105 that matched such customer's load.

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

120 7. A tariff for one or more classes of residential customers filed with the Commission for approval by a

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

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

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

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

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

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