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SENATE BILL NO. 1197

Offered January 8, 2025

Prefiled January 8, 2025

A BILL to amend and reenact §§ 56-231.16, 56-231.34:1, and 56-234 of the Code of Virginia, relating to electric cooperatives; unregulated sale of electric power to certain customers.

Patron—Deeds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-231.16, 56-231.34:1, and 56-234 of the Code of Virginia are amended and reenacted as follows:

§ 56-231.16. Organization; purpose.

A. Any number of natural persons not less than five may, by executing, filing and recording articles of incorporation as hereinafter set forth, form a cooperative, either with or without capital stock, not organized for pecuniary profit, for the principal purpose of making energy, energy services, and other utility services available at the lowest cost consistent with sound economy and prudent management of the business of such cooperative and such other purposes as its membership shall approve: (i) provided, however, that within its certificated service territory, no such cooperative shall, prior to July 1, 2000, undertake or initiate any new program (a) to buy or maintain an inventory of HVACR equipment or household appliances, (b) to install or service any such equipment or household appliances for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service, (c) to sell HVACR equipment or household appliances to customers metered and billed on residential rates, (d) to sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing traditional cooperative activities, (e) to sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale, or (f) to serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are traditional cooperative activities; (ii) provided further, that notwithstanding clause (i), such cooperative may engage within its certificated service territory in any of the activities enumerated in clause (i) that (a) have received State Corporation Commission approval prior to February 1, 1998, (b) such cooperative is ordered or required to undertake by any jurisdictional court or regulatory authority, (c) were lawfully undertaken prior to February 1, 1998, (d) are specifically permitted by statute, or (e) are undertaken by any other regulated public service company or its unregulated affiliate within such cooperative's certificated service territory; and (iii) also provided that such cooperative or its affiliate may not undertake such activities as are prohibited by clause (i) within the certificated service territory of another public service company unless such activities are undertaken by such public service company or its unregulated affiliate within such cooperative's certificated service territory. In addition, such cooperative may establish one or more subsidiaries to engage in any other business activities not prohibited by law, including making unregulated sales of electric power to members of such cooperative that are served at or by dedicated or excess facilities within the cooperative's certificated service territory and that contract for electric utility services to serve a demand that is reasonably expected to exceed 90 megawatts; notwithstanding the foregoing, no such subsidiary may engage in any business activities that the cooperatives are prohibited from engaging in under this section. For purposes of determining whether a cooperative is formed not for pecuniary profit, the establishment of one or more affiliates thereof on a for-profit basis shall not disqualify such entity from being formed as a cooperative pursuant to this article.

B. Nothing in this article shall be construed to authorize a cooperative formed pursuant to this article, or any affiliate thereof, to engage, on a not-for-profit basis, within either the cooperative's certificated service territory or in the certificated service territory of another public service company, in the sale of products, the provision of services, or other business activity, except for regulated electric utility services, unregulated sales of electric power to its members within its certificated service territory, and traditional cooperative activities. However, if such products or services are not currently provided by any person other than a cooperative formed under or subject to this chapter or its affiliate and the Commission determines that no such other person is likely, within a reasonable time, to effectively provide such products and services in such territory, an affiliate of a cooperative may provide such products or services on a not-for-profit basis. The Commission shall also permit an affiliate of a cooperative formed under or subject to this chapter to provide such products or services on a not-for-profit basis upon a finding that the affiliate will not receive the benefit

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59 of any federal income tax exemption that is not available to persons other than cooperatives and will not
 60 receive the benefit of any federally guaranteed or subsidized financing that is not available to persons other
 61 than cooperatives; and provided further that nothing in this subsection shall prohibit the continued operation
 62 of any business activities of any not-for-profit cooperative or affiliate formed, operating, and actively
 63 providing products or services to customers on or before July 1, 1999.

64 **§ 56-231.34:1. Separation of regulated and unregulated businesses.**

65 A. No cooperative that engages in a regulated utility service shall conduct any unregulated business
 66 activity, other than traditional cooperative activities, except in or through one or more affiliates of such
 67 cooperative, provided that a cooperative that provides regulated utility services, *or one or more of its*
 68 *affiliates*, shall have the right to offer and make unregulated sales of electric power to ~~its~~ *members of the*
 69 *cooperative that are served at or by dedicated or excess facilities* within ~~its~~ *the cooperative's* certificated
 70 service territory *and that contract for electric utility services to serve a demand that is reasonably expected to*
 71 *exceed 90 megawatts*. No such affiliates, formed to engage in any business that is not a regulated utility
 72 service, shall engage in regulated utility services.

73 B. The Commission shall promulgate rules and regulations, governing the conduct of the cooperatives, to
 74 promote effective and fair competition between (i) affiliates of cooperatives that are engaged in business
 75 activities which are not regulated utility services and (ii) other persons engaged in the same or similar
 76 businesses. The rules and regulations shall be effective by July 1, 2000, and shall include provisions:

- 77 1. Prohibiting cost-shifting or cross-subsidies between a cooperative and its affiliates;
- 78 2. Prohibiting anticompetitive behavior or self-dealing between a cooperative and its affiliates;
- 79 3. Prohibiting a cooperative from engaging in discriminatory behavior towards nonaffiliated entities; and
- 80 4. Establishing codes of conduct detailing permissible relations between a cooperative and its affiliates. In
 81 establishing such codes, the Commission shall consider, among other things, whether and, if so, under what
 82 circumstances and conditions (i) a cooperative may provide its affiliates with customer lists or other customer
 83 information, sales leads, procurement advice, joint promotions, and access to billing or mailing systems
 84 unless such information or services are made available to third parties under the same terms and conditions,
 85 (ii) the cooperative's name, logos or trademarks may be used in promotional, advertising or sales activities
 86 conducted by its affiliates, and (iii) the cooperative's vehicles, equipment, office space and employees may be
 87 used by its affiliates.

88 C. Nothing in this article shall be deemed to abrogate or modify the Commission's authority under
 89 Chapter 4 (§ 56-76 et seq.) of this title.

90 **§ 56-234. Duty to furnish adequate service at reasonable and uniform rates.**

91 A. It shall be the duty of every public utility to furnish reasonably adequate service and facilities at
 92 reasonable and just rates to any person, firm or corporation along its lines desiring same. Notwithstanding
 93 any other provision of law:

- 94 1. A telephone company shall not have the duty to extend or expand its facilities to furnish service and
 95 facilities when the person, firm or corporation has service available from one or more alternative providers of
 96 wireline or terrestrial wireless communications services at prevailing market rates; and
- 97 2. A telephone company may meet its duty to furnish reasonably adequate service and facilities through
 98 the use of any and all available wireline and terrestrial wireless technologies; however, a telephone company,
 99 when restoring service to an existing wireline customer, shall offer the option to furnish service using
 100 wireline facilities.

101 For purposes of subdivisions 1 and 2, the Commission shall have the authority upon request of an
 102 individual, corporation, or other entity, or a telephone company, to determine whether the wireline or
 103 terrestrial wireless communications service available to the party requesting service is a reasonably adequate
 104 alternative to local exchange telephone service.

105 The use by a telephone company of wireline and terrestrial wireless technologies shall not be construed to
 106 grant any additional jurisdiction or authority to the Commission over such technologies.

107 For purposes of subdivision 1, "prevailing market rates" means rates similar to those generally available to
 108 consumers in competitive areas for the same services.

109 B. It shall be the duty of every public utility to charge uniformly therefor all persons, corporations or
 110 municipal corporations using such service under like conditions. However, no provision of law shall be
 111 deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use
 112 of special rates, where such experiments have been approved by order of the Commission after notice and
 113 hearing and a finding that such experiments are necessary in order to acquire information which is or may be
 114 in furtherance of the public interest. The Commission's final order regarding any petition filed by an
 115 investor-owned electric utility for approval of a voluntary rate or rate design test or experiment shall be
 116 entered the earlier of not more than six months after the filing of the petition or not more than three months
 117 after the date of any evidentiary hearing concerning such petition. The charge for such service shall be at the
 118 lowest rate applicable for such service in accordance with schedules filed with the Commission pursuant to §
 119 56-236. But, subject to the provisions of § 56-232.1, nothing contained herein or in § 56-481.1 shall apply to

120 (i) schedules of rates for any telecommunications service provided to the public by virtue of any contract
121 with, (ii) for any service provided under or relating to a contract for telecommunications services with, or (iii)
122 contracts for service rendered by any telephone company to, the state government or any agency thereof, or
123 by any other public utility to any municipal corporation or to the state or federal government. The provisions
124 hereof shall not apply to or in any way affect any proceeding pending in the State Corporation Commission
125 on or before July 1, 1950, and shall not confer on the Commission any jurisdiction not now vested in it with
126 respect to any such proceeding.

127 C. The Commission may conclude that competition can effectively ensure reasonably adequate retail
128 services in competitive exchanges and may carry out its duty to ensure that a public utility is furnishing
129 reasonably adequate retail service in its competitive exchanges by monitoring individual customer complaints
130 and requiring appropriate responses to such complaints.

131 *D. An electric utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.) may meet its duty to*
132 *furnish reasonably adequate service through unregulated sales of electric power directly from one or more of*
133 *its affiliates to any customer located within the cooperative's certificated service territory that contracts for*
134 *electric utility services to serve a demand that is reasonably expected to exceed 90 megawatts.*

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