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SENATE BILL NO. 1281

Offered January 8, 2025

Prefiled January 8, 2025

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

Patrons—Hackworth and Pillion; Delegate: Shin

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 an individual retail customer customer of electric energy within the Commonwealth, regardless of customer class, (i) who is a customer of an Phase I Utility that had a typical residential customer bill for a residential customer using 1,000 kWh per month that exceeded 125 percent of the statewide average during the most recent calendar year, as determined by the Commission, or (ii) 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, or for a customer described in clause (i) of subdivision A 3, 90 days' 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 or 90-day, as applicable, 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 or 90-day, as applicable, 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

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59 incumbent electric utility, before or after expiration of the five-year *or 90-day, as applicable*, notice period,
60 shall be subject to minimum stay periods equal to those prescribed by the Commission pursuant to
61 subdivision C 1.

62 d. The costs of serving a customer that has received an exemption from the five-year, *or 90-day, as*
63 *applicable*, notice requirement under subdivision 3 c hereof shall be the market-based costs of the utility,
64 including (i) the actual expenses of procuring such electric energy from the market, (ii) additional
65 administrative and transaction costs associated with procuring such energy, including, but not limited to,
66 costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as
67 determined pursuant to the provisions of subdivision A 2 of § 56-585.1. The methodology established by the
68 Commission for determining such costs shall ensure that neither utilities nor other retail customers are
69 adversely affected in a manner contrary to the public interest.

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

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

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

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

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

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

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

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

117 7. A tariff for one or more classes of residential customers filed with the Commission for approval by a
118 cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided 100 percent
119 from renewable energy if it provides undifferentiated electric energy and the cooperative retires a quantity of

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

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

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

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

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

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