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SENATE BILL NO. 1485

Offered January 17, 2025

A BILL to amend and reenact § 56-577 of the Code of Virginia, relating to electric utilities; retail energy choice; customer return to service; subscription cap and queue.

Patron—Srinivasan

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. For the purposes of this section, "electric utility" does not include a municipally owned electric utility or a rural electric cooperative, but any such municipally owned electric utility or rural electric cooperative may choose to opt in to permitting all or designated customers to participate in purchasing electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth.

B. 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 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'~~ *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

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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 e hereof shall be the market-based costs of the utility, including (i) the actual expenses of procuring such electric energy from the market; (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services; and (iii) a reasonable margin as determined pursuant to the provisions of subdivision A 2 of § 56-585.1. The methodology established by the Commission for determining such costs shall ensure that neither utilities nor other retail customers are adversely affected in a manner contrary to the public interest. A licensed supplier operating pursuant to this section shall match a percentage of each retail electric customer's annual load with renewable energy certificates from within the PJM transmission region. This percentage shall be equal to the annual obligation of the customer's incumbent electric utility pursuant to the renewable energy portfolio standard program under § 56-585.5, unless the customer's incumbent electric utility is a distribution cooperative or a municipal utility, in which case the percentage shall be equal to the renewable energy portfolio standard requirements under § 56-585.5 for Phase I Utilities, as that term is defined in subdivision A 1 of § 56-585.1.

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

a. Neither such customers' 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; and

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

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

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

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

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

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

receiving electric energy from such incumbent electric utility.

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

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

~~C. D. Subject to subsection A, no licensed supplier shall make a sale of electric energy to an individual retail customer if (i) such customer's peak demand is between one and five megawatts in size, (ii) such customer has not received electric energy from a licensed supplier in the previous calendar year, and (iii) the aggregate total peak demand of customers between one and five megawatts purchasing electric energy from a licensed supplier is greater than 20 percent of the peak demand of all individual retail customers with a peak demand of between one and five megawatts receiving service under any tariff approved by the Commission from the applicable incumbent utility. By October 1, 2026, the Commission shall publish by order a numerical cap consistent with this requirement. Each year on the first business day following October 1, the Commission shall increase the cap to reflect incremental growth in demand, if any. The previously published cap shall have effect until the publication of such new order.~~

1. By January 1, 2027, the Commission shall establish a queue process for commercial and industrial utility customers seeking to participate in purchasing electric energy from a licensed supplier pursuant to this section.

2. Such subscription cap allowance shall be incremental to existing loads served by licensed suppliers and based on a percentage of the total weather-adjusted retail sales for the preceding calendar year for each utility. If the utility's subscription cap allowance is fully subscribed for two consecutive years, the Commission shall conduct a proceeding to review such cap allowance and may expand such cap allowance if (i) a wait list exists for unserved customers and (ii) the utility continues to project load growth in its integrated resource plan or has realized load growth within the previous two years.

3. No later than January 1, 2028, and every two years thereafter, the Commission shall conduct a proceeding to review such subscription cap allowance and consider expanding or removing the cap allowance based on subscription queue load, projected utility load growth, and other market factors that the Commission deems relevant.

4. If a utility's subscription cap allowance is fully subscribed, a new customer will be placed in the subscription queue. The customer's prospective licensed supplier shall notify the electric utility within five business days after being notified that the customer will purchase electric energy from an alternative electric supplier. The Commission shall ensure that if a customer is notified that the customer's service from an alternative electric supplier will be terminated or restricted as a result of the alternative electric supplier limiting service in the Commonwealth, the customer has 60 days to acquire service from a different alternative electric supplier. If the customer is a public entity, the time to acquire service from a different alternative electric supplier shall not be less than 180 days. A customer may be removed from the subscription queue by notifying the electric utility electronically or in writing.

5. No later than January 15, 2027, and annually thereafter, each electric utility shall file with the Commission a rank-ordered subscription queue of all customers awaiting retail open access service under this subsection. The filing shall include the estimated amount of electric energy used by each customer awaiting retail open access service under this subsection.

E. A customer seeking to expand usage at a facility shall be permitted to purchase electric energy from a licensed supplier for both the existing and any expanded load at such facility as well as any new facility constructed or acquired by the customer that is similar in nature if the customer owns more than 50 percent of the new facility. The owner of such new facility may purchase electric energy from an alternative electric

supplier regardless of whether the sales exceed the subscription cap allowance established under subsection C.

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

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

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

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

2. That (i) except as provided in clause (ii), the provisions of this act shall become effective on July 1, 2026, and (ii) the State Corporation Commission shall promulgate, in due course, rules and regulations to implement the provisions of this act, and such rules and regulations may specify a commencement date other than the effective date provided in this enactment.