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HOUSE BILL NO. 2436
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)
(Patron Prior to Substitute—Delegate Webert)

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

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

31 chapter to the contrary notwithstanding. For the purposes of this section, each noncontiguous site will
32 nevertheless constitute an individual retail customer even though one or more such sites may be under
33 common ownership of a single person.

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

56 d. The costs of serving a customer that has received an exemption from the five-year notice requirement
57 under subdivision 3 e hereof shall be the market-based costs of the utility, including (i) the actual expenses of
58 procuring such electric energy from the market, (ii) additional administrative and transaction costs associated
59 with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and

60 ancillary services, and (iii) a reasonable margin as determined pursuant to the provisions of subdivision A 2
61 of § 56-585.1. The methodology established by the Commission for determining such costs shall ensure that
62 neither utilities nor other retail customers are adversely affected in a manner contrary to the public interest A
63 licensed supplier serving customers under a contract signed after July 1, 2025, shall match a percentage of
64 each participating customer's annual load with renewable energy certificates from generation resources
65 within the PJM transmission region that meet the definition of renewable energy as defined in § 56-576,
66 except that for the purposes of this subdivision, "renewable energy" does not include energy derived from
67 biomass, waste heat from fossil fuel or biomass combustion, waste, landfill gas, or municipal solid waste.
68 This percentage shall be equal to the percentage applied to the customer's incumbent electric utility under §
69 56-585.5. All customers for which renewable energy certificates are procured in accordance with this
70 subdivision shall be exempt from non-bypassable charges imposed by the renewable energy portfolio
71 standard program under § 56-585.5, except for the costs of an offshore wind generating facility imposed
72 pursuant to § 56-585.1:11, which shall be allocated to all customers. The allocation of costs from an offshore
73 wind generating facility to customers of a licensed supplier shall be made after reducing such costs by the
74 monetary benefits received for the sale of energy, capacity, ancillary services, and renewable energy
75 certificates, unless the customer directly receives such monetary benefits as part of such customer's electric
76 supply service from an electric utility. If in any year a licensed supplier is unable to meet the obligations of
77 this subdivision, or if the cost of renewable energy certificates necessary to comply with this subdivision
78 exceeds \$45 per megawatt-hour, such supplier shall be obligated to make a deficiency payment equal to \$45
79 for each megawatt-hour of shortfall for the year of noncompliance. All proceeds from such deficiency
80 payments shall be deposited into an interest-bearing account administered by the Department of Energy.

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

88 a. Neither such customers' incumbent electric utility nor retail customers of such utility that do not choose

89 to obtain electric energy from alternate suppliers will be adversely affected in a manner contrary to the public
90 interest by granting such petition. In making such determination, the Commission shall take into
91 consideration, without limitation, the impact and effect of any and all other previously approved petitions of
92 like type with respect to such incumbent electric utility; and

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

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

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

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

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

113 6. To the extent that an incumbent electric utility has elected as of February 1, 2019, the Fixed Resource
114 Requirement alternative as a Load Serving Entity in the PJM Region and continues to make such election and
115 is therefore required to obtain capacity for all load and expected load growth in its service area, any customer
116 of a utility subject to that requirement that purchases energy pursuant to subdivision 3 or 4 from a supplier
117 licensed to sell retail electric energy within the Commonwealth shall continue to pay its incumbent electric

118 utility for the non-fuel generation capacity and transmission related costs incurred by the incumbent electric
119 utility in order to meet the customer's capacity obligations, pursuant to the incumbent electric utility's
120 standard tariff that has been approved by and is on file with the Commission. ~~In the case of such customer,~~
121 ~~the advance written notice period established in subdivisions 3 e and d shall be three years.~~ This subdivision
122 shall not apply to the customers of licensed suppliers that (i) had an agreement with a licensed supplier
123 entered into before February 1, 2019, or (ii) had aggregation petitions pending before the Commission prior
124 to January 1, 2019, unless and until any customer referenced in clause (i) or (ii) has returned to purchase
125 electric energy from its incumbent electric utility, pursuant to the provisions of subdivision 3 or 4, and is
126 receiving electric energy from such incumbent electric utility.

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

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

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

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

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

174 4. The Commission shall promulgate such rules and regulations as may be necessary to implement the
175 provisions of this subsection, which rules and regulations shall include provisions specifying the

176 commencement date of such minimum stay exemption program.