

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 56-231.16, 56-231.34:1, and 56-234 of the Code of Virginia, relating to electric cooperative subsidiaries; customers exceeding 90 megawatts demand.

[S 1197]

Approved

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 of any federal income tax exemption that is not available to persons other than cooperatives and will not receive the benefit of any federally guaranteed or subsidized financing that is not available to persons other

than cooperatives; and provided further that nothing in this subsection shall prohibit the continued operation of any business activities of any not-for-profit cooperative or affiliate formed, operating, and actively providing products or services to customers on or before July 1, 1999.

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

A. No cooperative that engages in a regulated utility service shall conduct any unregulated business activity, other than traditional cooperative activities, except in or through one or more affiliates of such cooperative, provided that a cooperative that provides regulated utility services, *or one or more of its affiliates*, shall have the right to offer and make unregulated sales of electric power to ~~its~~ *members of the cooperative that are served at or by dedicated or excess facilities* within ~~its~~ *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. No such affiliates, formed to engage in any business that is not a regulated utility service, shall engage in regulated utility services.

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

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

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

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

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

1. A telephone company shall not have the duty to extend or expand its facilities to furnish service and facilities when the person, firm or corporation has service available from one or more alternative providers of wireline or terrestrial wireless communications services at prevailing market rates; and

2. A telephone company may meet its duty to furnish reasonably adequate service and facilities through the use of any and all available wireline and terrestrial wireless technologies; however, a telephone company, when restoring service to an existing wireline customer, shall offer the option to furnish service using wireline facilities.

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

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

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

B. It shall be the duty of every public utility to charge uniformly therefor all persons, corporations or municipal corporations using such service under like conditions. However, no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates, where such experiments have been approved by order of the Commission after notice and hearing and a finding that such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest. The Commission's final order regarding any petition filed by an investor-owned electric utility for approval of a voluntary rate or rate design test or experiment shall be entered the earlier of not more than six months after the filing of the petition or not more than three months after the date of any evidentiary hearing concerning such petition. The charge for such service shall be at the lowest rate applicable for such service in accordance with schedules filed with the Commission pursuant to § 56-236. But, subject to the provisions of § 56-232.1, nothing contained herein or in § 56-481.1 shall apply to (i) schedules of rates for any telecommunications service provided to the public by virtue of any contract with, (ii) for any service provided under or relating to a contract for telecommunications services with, or (iii) contracts for service rendered by any telephone company to, the state government or any agency thereof, or

119 by any other public utility to any municipal corporation or to the state or federal government. The provisions
120 hereof shall not apply to or in any way affect any proceeding pending in the State Corporation Commission
121 on or before July 1, 1950, and shall not confer on the Commission any jurisdiction not now vested in it with
122 respect to any such proceeding.

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

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