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SENATE BILL NO. 818  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Commerce and Labor  
on \_\_\_\_\_)  
(Patron Prior to Substitute—Senator Suetterlein)

*A BILL to amend and reenact § 56-577 of the Code of Virginia, relating to electric utilities; licensed retail suppliers; renewable portfolio standard requirements.*

**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. Retail competition in electric generation service; limitations; Commission authority; exemptions.**

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 *nonresidential* retail customers of electric energy of a Phase I or Phase II Utility, as those terms are defined in subdivision A 1 of § 56-585.1, within the Commonwealth, regardless of customer class, whose *noncoincident peak* 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 *nonresidential* retail customers may not be aggregated or combined for the purpose of meeting the demand limitations of this provision, any other

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

35 c. If such customer does purchase electric energy from licensed suppliers after the expiration or  
36 termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the incumbent  
37 electric utility without giving ~~five years'~~ *eighteen months'* advance written notice of such intention to such  
38 utility, except where such customer demonstrates to the Commission, after notice and opportunity for  
39 hearing, through clear and convincing evidence that its supplier has failed to perform, or has anticipatorily  
40 breached its duty to perform, or otherwise is about to fail to perform, through no fault of the customer, and  
41 that such customer is unable to obtain service at reasonable rates from an alternative supplier. If, as a result of  
42 such proceeding, the Commission finds it in the public interest to grant an exemption from the ~~five-year~~  
43 *eighteen-month* notice requirement, such customer may thereafter purchase electric energy at the costs of  
44 such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the remainder of the  
45 ~~five-year~~ *eighteen-month* notice period, after which point the customer may purchase electric energy from the  
46 utility under rates, terms and conditions determined pursuant to § 56-585.1, *including at such utility's*  
47 *election, any applicable market-based tariff. However, such customer shall be allowed to individually*  
48 ~~purchase electric energy from the utility under rates, terms, and conditions determined pursuant to § 56-585.1~~  
49 ~~if, If~~, upon application by such customer, the Commission finds that neither such customer's incumbent  
50 electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate  
51 suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In  
52 making such determination, the Commission shall take into consideration, without limitation, the impact and  
53 effect of any and all other previously approved petitions of like type with respect to such incumbent electric  
54 utility. Any customer that returns to purchase electric energy from its incumbent electric utility, before or  
55 after expiration of the ~~five-year~~ *eighteen-month* notice period, shall be subject to *a minimum stay periods*  
56 ~~equal to those prescribed by the Commission pursuant to subdivision C 1 period of 12 months.~~

57 d. The costs of serving a customer that has received an exemption from the ~~five-year~~ *eighteen-month*  
58 notice requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the  
59 actual expenses of procuring such electric energy from the market, (ii) additional administrative and  
60 transaction costs associated with procuring such energy, including, but not limited to, costs of transmission,  
61 transmission line losses, and ancillary services, and (iii) a reasonable margin as determined pursuant to the  
62 provisions of subdivision A 2 of § 56-585.1. The methodology established by the Commission for

63 determining such costs shall ensure that neither utilities nor other retail customers are adversely affected in a  
64 manner contrary to the public interest.

65 *e. Any Phase I or Phase II Utility may file with the Commission a petition to adjust its rates for generation*  
66 *and distribution services solely for the purpose of reallocating within such rates for generation and*  
67 *distribution services the costs associated with customers that (i) request and are afforded service from the*  
68 *incumbent utility after a period of receiving service from other licensed suppliers of electric energy or (ii)*  
69 *elect to purchase electric energy from licensed suppliers pursuant to this section, provided that only costs*  
70 *associated with a net loss or gain of 100 megawatts or more on or after July 1, 2026, may be petitioned for*  
71 *pursuant to this subdivision.*

72 *f. Notwithstanding any other provision of law, no residential customer, or nonresidential customer whose*  
73 *noncoincident peak load is equal to or less than 150 kilowatts, of a Phase I or Phase II Utility, shall be*  
74 *permitted to purchase electric energy from any licensed supplier pursuant to this section.*

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

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

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

88 If such petition is approved, all customers whose load has been aggregated or combined shall thereafter be  
89 subject in all respects to the provisions of subdivision 3 and shall be treated as a single, individual customer  
90 for the purposes of said subdivision. In addition, the Commission shall impose reasonable periodic  
91 monitoring and reporting obligations on such customers to demonstrate that they continue, as a group, to  
92 meet the demand limitations of subdivision 3. If the Commission finds, after notice and opportunity for

93 hearing, that such group of customers no longer meets the above demand limitations, the Commission may  
94 revoke its previous approval of the petition, or take such other actions as may be consistent with the public  
95 interest.

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

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

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

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

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

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

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

146 2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the  
147 management and control of an incumbent electric utility's transmission assets to a regional transmission entity  
148 after approval of such transfer by the Commission under § 56-579, retail customers of such utility (a)  
149 purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods prescribed  
150 by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such minimum stay  
151 obligations by agreeing to purchase electric energy at the market-based costs of such utility or default  
152 providers after a period of obtaining electric energy from another supplier. Such costs shall include (i) the

153 actual expenses of procuring such electric energy from the market, (ii) additional administrative and  
154 transaction costs associated with procuring such energy, including, but not limited to, costs of transmission,  
155 transmission line losses, and ancillary services, and (iii) a reasonable margin. The methodology of  
156 ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for  
157 hearing and after review of any plan filed by such utility to procure electric energy to serve such customers.  
158 The methodology established by the Commission for determining such costs shall be consistent with the  
159 goals of (a) promoting the development of effective competition and economic development within the  
160 Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor  
161 retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

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

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