

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

4 [S 818]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 56-577 of the Code of Virginia is amended and reenacted as follows:**8 **§ 56-577. Retail competition in electric generation service; limitations; Commission authority;**
 9 **exemptions.**10 A. Retail competition for the purchase and sale of electric energy shall be subject to the following
 11 provisions:12 1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to transmission
 13 capacity shall join or establish a regional transmission entity, which entity may be an independent system
 14 operator, to which such utility shall transfer the management and control of its transmission system, subject
 15 to the provisions of § 56-579.

16 2. The generation of electric energy shall be subject to regulation as specified in this chapter.

17 3. Subject to the provisions of subdivisions 4 and 5, only individual *nonresidential* retail customers of
 18 electric energy of a *Phase I or Phase II Utility*, as those terms are defined in subdivision A 1 of § 56-585.1,
 19 within the Commonwealth, regardless of customer class, whose *noncoincident peak demand during the most*
 20 *recent calendar year* exceeded five megawatts ~~but did not exceed one percent of the customer's incumbent~~
 21 ~~electric utility's peak load during the most recent calendar year unless such customer had noncoincident peak~~
 22 ~~demand in excess of 90 megawatts in calendar year 2006 or any year thereafter~~, shall be permitted to
 23 purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the
 24 Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving the
 25 exclusive service territory in which such a customer is located, subject to the following conditions:26 a. If such customer does not purchase electric energy from licensed suppliers, such customer shall
 27 purchase electric energy from its incumbent electric utility.28 b. Except as provided in subdivision 4, the demands of individual *nonresidential* retail customers may not
 29 be aggregated or combined for the purpose of meeting the demand limitations of this provision, any other
 30 provision of this chapter to the contrary notwithstanding. For the purposes of this section, each noncontiguous
 31 site will nevertheless constitute an individual retail customer even though one or more such sites may be
 32 under common ownership of a single person.33 c. If such customer does purchase electric energy from licensed suppliers after the expiration or
 34 termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the incumbent
 35 electric utility without giving ~~five years'~~ *eighteen months'* advance written notice of such intention to such
 36 utility, except where such customer demonstrates to the Commission, after notice and opportunity for
 37 hearing, through clear and convincing evidence that its supplier has failed to perform, or has anticipatorily
 38 breached its duty to perform, or otherwise is about to fail to perform, through no fault of the customer, and
 39 that such customer is unable to obtain service at reasonable rates from an alternative supplier. If, as a result of
 40 such proceeding, the Commission finds it in the public interest to grant an exemption from the ~~five-year~~
 41 *eighteen-month* notice requirement, such customer may thereafter purchase electric energy at the costs of
 42 such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the remainder of the
 43 ~~five-year~~ *eighteen-month* notice period, after which point the customer may purchase electric energy from the
 44 utility under rates, terms and conditions determined pursuant to § 56-585.1, *including at such utility's*
 45 *election, any applicable market-based tariff. However, such customer shall be allowed to individually*
 46 ~~purchase electric energy from the utility under rates, terms, and conditions determined pursuant to § 56-585.1~~
 47 ~~if, If, upon application by such customer, the Commission finds that neither such customer's incumbent~~
 48 ~~electric utility nor retail customers of such utility that do not choose to obtain electric energy from alternate~~
 49 ~~suppliers will be adversely affected in a manner contrary to the public interest by granting such petition. In~~
 50 ~~making such determination, the Commission shall take into consideration, without limitation, the impact and~~
 51 ~~effect of any and all other previously approved petitions of like type with respect to such incumbent electric~~
 52 ~~utility. Any customer that returns to purchase electric energy from its incumbent electric utility, before or~~
 53 ~~after expiration of the five-year eighteen-month notice period, shall be subject to a minimum stay periods~~
 54 ~~equal to those prescribed by the Commission pursuant to subdivision C 4 period of 12 months.~~55 d. The costs of serving a customer that has received an exemption from the ~~five-year~~ *eighteen-month*
 56 notice requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the

ENROLLED

SB818ER

57 actual expenses of procuring such electric energy from the market, (ii) additional administrative and
 58 transaction costs associated with procuring such energy, including, but not limited to, costs of transmission,
 59 transmission line losses, and ancillary services, and (iii) a reasonable margin as determined pursuant to the
 60 provisions of subdivision A 2 of § 56-585.1. The methodology established by the Commission for
 61 determining such costs shall ensure that neither utilities nor other retail customers are adversely affected in a
 62 manner contrary to the public interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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