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HOUSE BILL NO. 2453

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 30, 2003)

(Patron Prior to Substitute—Delegate Parrish)

A BILL to amend and reenact §§ 56-577 and 56-579 of the Code of Virginia, relating to electric utility restructuring; regional transmission entities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-577 and 56-579 of the Code of Virginia are amended and reenacted as follows:

§ 56-577. Schedule for transition to retail competition; Commission authority.

A. The transition to retail competition for the purchase and sale of electric energy shall be implemented as follows:

1. ~~On or before January 1, 2001, each~~ 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. On and after January 1, 2002, retail customers of electric energy within the Commonwealth shall be permitted to purchase energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth during and after the period of transition to retail competition, subject to the following:

a. The Commission shall separately establish for each utility a phase-in schedule for customers by class, and by percentages of class, to ensure that by January 1, 2004, all retail customers of each utility are permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth.

b. The Commission shall also ensure that residential and small business retail customers are permitted to select suppliers in proportions at least equal to that of other customer classes permitted to select suppliers during the period of transition to retail competition.

3. On and after January 1, 2002, the generation of electric energy shall no longer be subject to regulation under this title, except as specified in this chapter.

4. On and after January 1, 2004, all retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth.

B. The Commission may delay or accelerate the implementation of any of the provisions of this section, subject to the following:

1. Any such delay or acceleration shall be based on considerations of reliability, safety, communications or market power; and

2. Any such delay shall be limited to the period of time required to resolve the issues necessitating the delay, but in no event shall any such delay extend the implementation of customer choice for all customers beyond January 1, 2005.

The Commission shall, within a reasonable time, report to the General Assembly, or any legislative entity monitoring the restructuring of Virginia's electric industry, any such delays and the reasons therefor.

C. Except as may be otherwise provided in this chapter, prior to and during the period of transition to retail competition, the Commission may conduct pilot programs encompassing retail customer choice of electric energy suppliers, consistent with its authority otherwise provided in this title and the provisions of this chapter.

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

E. 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.

§ 56-579. Regional transmission entities.

A. As set forth in § 56-577, ~~on or before January 1, 2001, each~~ incumbent electric utility owning, operating, controlling, or having an entitlement to transmission capacity shall join or establish a regional transmission entity ~~€, which hereafter may be referred to as "RTE),"~~ to which such utility shall transfer the management and control of its transmission assets, subject to the following:

1. No such incumbent electric utility shall transfer to any person any ownership or control of, or any

60 responsibility to operate, any portion of any transmission system located in the Commonwealth *prior to*
61 *July 1, 2004, and without obtaining, following notice and hearing, the prior approval of the*
62 Commission, as hereinafter provided. *However, any incumbent electric utility that has filed an*
63 *application for approval pursuant to this section by July 1, 2003, shall have transferred management*
64 *and control of its transmission assets to a regional transmission entity, as provided herein, following*
65 *Commission approval, not later than January 1, 2005.*

66 2. The Commission shall develop rules and regulations under which any such incumbent electric
67 utility owning, operating, controlling, or having an entitlement to transmission capacity within the
68 Commonwealth, may transfer all or part of such control, ownership or responsibility to an RTE, upon
69 such terms and conditions that the Commission determines will:

70 a. Promote:

71 (1) Practices for the reliable planning, operating, maintaining, and upgrading of the transmission
72 systems and any necessary additions thereto; and

73 (2) Policies for the pricing and access for service over such systems; ~~which~~ *that* are safe, reliable,
74 efficient, not unduly discriminatory and consistent with the orderly development of competition in the
75 Commonwealth;

76 b. Be consistent with lawful requirements of the Federal Energy Regulatory Commission;

77 c. Be effectuated on terms that fairly compensate the transferor;

78 d. Generally promote the public interest, and are consistent with (i) ensuring ~~the successful~~
79 ~~development of interstate regional transmission entities that consumers' needs for economic and reliable~~
80 ~~transmission are met~~ and (ii) meeting the transmission needs of electric generation suppliers both within
81 and without this Commonwealth, *including those that do not own, operate, control or have an*
82 *entitlement to transmission capacity.*

83 B. The Commission shall also adopt rules and regulations, with appropriate public input, establishing
84 elements of regional transmission entity structures essential to the public interest, which elements shall
85 be applied by the Commission in determining whether to authorize transfer of ownership or control from
86 an incumbent electric utility to a regional transmission entity.

87 C. The Commission shall, to the fullest extent permitted under federal law, participate in any and all
88 proceedings concerning regional transmission entities furnishing transmission services within the
89 Commonwealth, before the Federal Energy Regulatory Commission. Such participation may include such
90 intervention as is permitted state utility regulators under ~~FERC~~ *Federal Energy Regulatory Commission*
91 rules and procedures.

92 D. Nothing in this section shall be deemed to abrogate or modify:

93 1. The Commission's authority over transmission line or facility construction, enlargement or
94 acquisition within this Commonwealth, as set forth in Chapter 10.1 (§ 56-265.1 et seq.) of this title;

95 2. The laws of this Commonwealth concerning the exercise of the right of eminent domain by a
96 public service corporation pursuant to the provisions of Article 5 (§ 56-257 et seq.) of Chapter 10 of this
97 title; however, on and after January 1, 2002, a petition may not be filed to exercise the right of eminent
98 domain in conjunction with the construction or enlargement of any utility facility whose purpose is the
99 generation of electric energy; or

100 3. The Commission's authority over retail electric energy sold to retail customers within the
101 Commonwealth by licensed suppliers of electric service, including necessary reserve requirements, all as
102 specified in § 56-587.

103 E. For purposes of this section, transmission capacity shall not include capacity that is primarily
104 operated in a distribution function, as determined by the Commission, taking into consideration any
105 binding federal precedents.

106 F. ~~On or after January 1, 2002, the~~ *Any request to the Commission for approval of such transfer of*
107 *ownership or control of or responsibility for transmission facilities shall include a study of the*
108 *comparative costs and benefits thereof, which study shall analyze the economic effects of the transfer on*
109 *consumers, including the effects of transmission congestion costs. The Commission may approve such a*
110 *transfer if it finds, after notice and an opportunity for a hearing, that the transfer satisfies the*
111 *conditions contained in this section. If a proposed transfer does not satisfy a condition contained in this*
112 *section, the Commission may require, as a condition of approval, that, following the transfer of the*
113 *transmission system, the transmission system be upgraded or, if appropriate, the constraint be mitigated.*
114 *The Commission shall ensure that any such condition of approval is the least cost solution for retail*
115 *customers of all electric utilities in the Commonwealth and shall ensure full and timely retail rate*
116 *recovery of all reasonable and not otherwise recovered costs for such required transmission upgrading*
117 *or constraint mitigation. Further, the Commission shall determine, as a requirement for its approval,*
118 *that the impact of any transmission congestion costs attributable to existing constraints can be*
119 *reasonably mitigated by the actions of load serving entities.*

120 G. The Commission shall report *annually* to the Legislative Transition Task Force its assessment of
121 the success in the practices and policies of the RTE facilitating the orderly development of competition

122 in the Commonwealth. *Such report shall set forth actions taken by the Commission regarding requests*
123 *for the approval of any transfer of ownership or control of transmission facilities to an RTE, including a*
124 *description of the economic effects of such proposed transfers on consumers.*
125 **2. That the provisions of this act shall not apply to an incumbent electric utility that, on or before**
126 **January 1, 2003, transferred functional control of its transmission facilities to a regional**
127 **transmission entity pursuant to authorization of the Federal Energy Regulatory Commission.**