040401840

SENATE BILL NO. 117

Offered January 14, 2004

Prefiled January 7, 2004

A BILL to amend and reenact §§ 56-577 and 56-583 of the Code of Virginia, relating to electric utility restructuring; minimum stay requirements; wires charges.

Patron—Watkins

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-577 and 56-583 of the Code of Virginia are amended and reenacted as follows:

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

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

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. 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. The Commission may conduct pilot programs encompassing retail customer choice of electricity energy suppliers for each incumbent electric utility that has not transferred functional control of its transmission facilities to a regional transmission entity prior to January 1, 2003. Upon application of an incumbent electric utility, the Commission may establish opt-in and opt-out municipal aggregation pilots and any other pilot programs the Commission deems to be in the public interest, and the Commission shall report to the Legislative Transition Task Force on the status of such pilots by November of each year through 2006.

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

E. *1.* 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.

2. Effective July 1, 2004, and subject further to the availability of capped rate service under § 56-582, retail customers of electric energy (i) purchasing such energy from licensed suppliers and (ii) otherwise subject to minimum stay periods prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such minimum stay obligations by agreeing to purchase electric energy at market-based rates from incumbent electric utilities or default providers concurrent with seeking to purchase electric energy from such utilities or providers after a period of obtaining electric energy from another supplier. Such rates shall be determined and approved by the Commission after notice and opportunity for hearing. The methodology established by the Commission for determining such rates shall be consistent with the goals of (a) promoting the development of effective competition and economic development within the Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

3. Notwithstanding the provisions of subsection D of § 56-582 and subdivision C 1 of § 56-585, however, any such customers exempted from any applicable minimum stay periods as provided in subdivision 2 shall not be entitled to purchase retail electric energy from their incumbent electric utilities thereafter at the capped rates established under § 56-582, and expiring on July 1, 2007, unless such customers agree to satisfy any minimum stay period then applicable while obtaining retail electric energy at capped rates.

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

§ 56-583. Wires charges.

A. To provide the opportunity for competition and consistent with § 56-584, the Commission shall calculate wires charges for each incumbent electric utility, effective upon the commencement of customer choice, which shall be the excess, if any, of the incumbent electric utility's capped unbundled rates for generation over the projected market prices for generation, as determined by the Commission; however, where there is such excess, the sum of such wires charges, the unbundled charge for transmission and ancillary services, the applicable distribution rates established by the Commission and the above projected market prices for generation shall not exceed the capped rates established under § 56-582 A 1 applicable to such incumbent electric utility. The Commission shall adjust such wires charges not more frequently than annually and shall seek to coordinate adjustments of wires charges with any adjustments of capped rates pursuant to § 56-582. No wires charge shall be less than zero. The projected market prices for generation, when determined under this subsection, shall be adjusted for any projected cost of transmission, transmission line losses, and ancillary services subject to the jurisdiction of the Federal Energy Regulatory Commission which the incumbent electric utility (i) must incur to sell its generation and (ii) cannot otherwise recover in rates subject to state or federal jurisdiction.

B. Customers that choose suppliers of electric energy, other than the incumbent electric utility, or are subject to and receiving default service, prior to the expiration of the period for capped rates, as provided for in § 56-582, shall pay a wires charge determined pursuant to subsection A based upon actual usage of electricity distributed by the incumbent electric utility to the customer (i) during the period from the time the customer chooses a supplier of electric energy other than the incumbent electric utility or (ii) during the period from the time the customer is subject to and receives default service until capped rates expire or are terminated, as provided in § 56-582.

C. The Commission shall permit any customer, at its option, to pay the wires charges owed to an incumbent electric utility on an accelerated or deferred basis upon a finding that such method is not (i) prejudicial to the incumbent electric utility or its ratepayers or (ii) inconsistent with the development of effective competition, provided that all deferred wires charges shall be paid in full by July 1, 2007.

D. A supplier of retail electric energy may pay any or all of the wires charge owed by any customer to an incumbent electric utility. The supplier may not only pay such wires charge on behalf of any customer, but also contract with any customer to finance such payments. Further, on request of a supplier, the incumbent electric utility shall enter into a contract allowing such supplier to pay such wires charge on an accelerated or deferred basis. Such contract shall contain terms and conditions, specified in rules and regulations promulgated by the Commission to implement the provisions of this subsection, that fully compensate the incumbent electric utility for such wires charge, including reasonable compensation for the time value of money.

E. 1. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585, and effective July 1, 2004, and subject further to the availability of capped rate service under § 56-582, (i) individual customers within the industrial and commercial rate classes of incumbent electric utilities, subject to such demand criteria as may be established by the Commission, and (ii) aggregated customers of incumbent electric utilities in all rate classes, subject to such demand criteria as may be established by the Commission, may elect, upon giving prior notice to such utilities, to purchase retail electric energy from licensed suppliers thereof without the obligation to pay wires charges to any such utilities as otherwise provided under this section.

2. Any such customers (i) making such election and (ii) thereafter exercising that election by obtaining retail electric energy from suppliers without paying wires charges to their incumbent electric utilities, as authorized herein, shall not be entitled to purchase retail electric energy from their incumbent electric utilities thereafter at the capped rates established under § 56-582, for the duration of the capped rate period expiring on July 1, 2007.

3. Customers making and exercising such election may thereafter, however, purchase retail electric energy from their incumbent electric utilities at market-based rates for generation capacity and energy. Such rates shall be determined and approved by the Commission after notice and opportunity for hearing. The methodology established by the Commission for determining such rates shall be consistent with the goals of (i) promoting the development of effective competition and economic development within the Commonwealth as provided in subsection A of § 56-596, and (ii) ensuring that neither incumbent utilities nor retail customers that do not choose to obtain electric energy from alternate suppliers are adversely affected.

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