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## HOUSE BILL NO. 2334

Offered January 18, 2013

A BILL to amend and reenact §§ 56-265.1, 56-576, and 56-577 of the Code of Virginia, relating to electric utility regulation; exemption for purchases from net metering sellers.

Patrons—Yancey, Hodges and Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-265.1, 56-576, and 56-577 of the Code of Virginia are amended and reenacted as follows:

§ 56-265.1. Definitions.

In this chapter the following terms shall have the following meanings:

(a) "Company" means a corporation, a limited liability company, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or a county, unless such municipal corporation or county has obtained a certificate pursuant to § 56-265.4:4.

(b) "Public utility" means any company which owns or operates facilities within the Commonwealth of Virginia for the generation, transmission or distribution of electric energy for sale, for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of telephone service, sewerage facilities or water; however, the term "public utility" shall not include any of the following:

(1) Except as otherwise provided in § 56-265.3:1, any company furnishing sewerage facilities, geothermal resources or water to less than 50 customers. Any company furnishing water or sewer services to 10 or more customers and excluded by this subdivision from the definition of "public utility" for purposes of this chapter nevertheless shall not abandon the water or sewer services unless and until approval is granted by the Commission or all the customers receiving such services agree to accept ownership of the company.

(2) Any company generating and distributing electric energy exclusively for its own consumption.

(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant, and (B) which does not charge separately or by meter for electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within 30 days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ 56-232 et seq.) and 17 (§ 56-509 et seq.) of this title and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.

(4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or delivery service, of natural or manufactured gas to fewer than 35 commercial or industrial customers, which are not themselves "public utilities" as defined in this chapter, or to certain public schools as indicated in this subdivision, for use solely by such purchasing customers at facilities which are not located in a territory for which a certificate to provide gas service has been issued by the Commission under this chapter and which, at the time of the Commission's receipt of the notice provided under § 56-265.4:5, are not located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, provided that such company shall comply with the provisions of § 56-265.4:5. Direct sales or ancillary transmission or delivery services of natural gas to public schools in the following localities may be made without regard to the number of schools involved and shall not count against the "fewer than 35" requirement in this subdivision: the Counties of Dickenson, Wise, Russell, and Buchanan, and the City of Norton.

(5) Any company which is not a public service corporation and which provides compressed natural gas service at retail for the public.

(6) Any company selling landfill gas from a solid waste management facility permitted by the Department of Environmental Quality to a public utility certificated by the Commission to provide gas

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59 distribution service to the public in the area in which the solid waste management facility is located. If  
60 such company submits to the public utility a written offer for sale of such gas and the public utility  
61 does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company  
62 may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within  
63 three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been  
64 liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

65 (7) Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et  
66 seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or  
67 industrial customer from a solid waste management facility permitted by the Department of  
68 Environmental Quality and operated by that same authority, if such an authority limits off-premises sale,  
69 transmission or delivery service of landfill gas to no more than one purchaser. The authority may  
70 contract with other persons for the construction and operation of facilities necessary or convenient to the  
71 sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely  
72 by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located  
73 within the certificated service territory of a natural gas public utility, the public utility may file for  
74 Commission approval a proposed tariff to reflect any anticipated or known changes in service to the  
75 purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the  
76 landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities;  
77 provided, however, that such tariff may impose such requirements as are reasonably calculated to  
78 recover the cost of such service and to protect and ensure the safety and integrity of the public utility's  
79 facilities.

80 (8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or  
81 both, that is derived from a solid waste management facility permitted by the Department of  
82 Environmental Quality and sold or delivered from any such facility to not more than three commercial  
83 or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as  
84 authorized by this section. If a purchaser of the landfill gas is located within the certificated service  
85 territory of a natural gas public utility or within an area in which a municipal corporation provides gas  
86 distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such  
87 company shall submit to such public utility or municipal corporation a written offer for sale of that gas  
88 prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility  
89 or municipal corporation does not agree within 60 days following the date of the offer to purchase such  
90 landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill  
91 gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or  
92 county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated  
93 or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No  
94 such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on  
95 similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may  
96 impose such requirements as are reasonably calculated to recover any cost of such service and to protect  
97 and ensure the safety and integrity of the public utility's facilities.

98 (9) A company that is not organized as a public service company pursuant to subsection D of  
99 § 13.1-620 and that sells and delivers propane air only to one or more public utilities. Any company  
100 excluded by this subdivision from the definition of "public utility" for the purposes of this chapter  
101 nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and  
102 enforcement.

103 (10) A farm or aggregation of farms that owns and operates facilities within the Commonwealth for  
104 the generation of electric energy from waste-to-energy technology. As used in this subdivision, (i)  
105 "farm" means any person that obtains at least 51 percent of its annual gross income from agricultural  
106 operations and produces the agricultural waste used as feedstock for the waste-to-energy technology, (ii)  
107 "agricultural waste" means biomass waste materials capable of decomposition that are produced from the  
108 raising of plants and animals during agricultural operations, including animal manures, bedding, plant  
109 stalks, hulls, and vegetable matter, and (iii) "waste-to-energy technology" means any technology,  
110 including but not limited to a methane digester, that converts agricultural waste into gas, steam, or heat  
111 that is used to generate electricity on-site.

112 (11) A company, other than an entity organized as a public service company, that provides  
113 non-utility gas service as provided in § 56-265.4:6.

114 (12) *A net metering seller.*

115 (c) "Commission" means the State Corporation Commission.

116 (d) "Geothermal resources" means those resources as defined in § 45.1-179.2.

117 (e) *"Net metering seller" means any person that (i) owns or operates a renewable energy electricity*  
118 *generation source on the premises owned, leased, or controlled by an eligible customer-generator, as*  
119 *defined in subsection B of § 56-594, and (ii) sells the electricity generated by the renewable energy*  
120 *generation source exclusively to the customer-generator pursuant to a power purchase agreement.*

**§ 56-576. Definitions.**

As used in this chapter:

"Affiliate" means any person that controls, is controlled by, or is under common control with an electric utility.

"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § 56-585; (v) engaging in activities of a retail electric energy supplier, licensed pursuant to § 56-587, which are authorized by such supplier's license; and (vi) engaging in actions of a retail customer, in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy for consumption by such retail customers.

"Combined heat and power" means a method of using waste heat from electrical generation to offset traditional processes, space heating, air conditioning, or refrigeration.

"Commission" means the State Corporation Commission.

"Cooperative" means a utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.).

"Covered entity" means a provider in the Commonwealth of an electric service not subject to competition but shall not include default service providers.

"Covered transaction" means an acquisition, merger, or consolidation of, or other transaction involving stock, securities, voting interests or assets by which one or more persons obtains control of a covered entity.

"Curtailment" means inducing retail customers to reduce load during times of peak demand so as to ease the burden on the electrical grid.

"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase electric energy from any supplier licensed and seeking to sell electric energy to that customer.

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

"Distribute," "distributing," or "distribution of" electric energy means the transfer of electric energy through a retail distribution system to a retail customer.

"Distributor" means a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.

"Electric utility" means any person that generates, transmits, or distributes electric energy for use by retail customers in the Commonwealth, including any investor-owned electric utility, cooperative electric utility, or electric utility owned or operated by a municipality.

"Energy efficiency program" means a program that reduces the total amount of electricity that is required for the same process or activity implemented after the expiration of capped rates. Energy efficiency programs include equipment, physical, or program change designed to produce measured and verified reductions in the amount of electricity required to perform the same function and produce the same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs that result in improvements in lighting design, heating, ventilation, and air conditioning systems, appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use or losses of electricity and otherwise improve internal operating efficiency in generation, transmission, and distribution systems; and (iii) customer engagement programs that result in measurable and verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs include demand response, combined heat and power and waste heat recovery, curtailment, or other programs that are designed to reduce electricity consumption so long as they reduce the total amount of electricity that is required for the same process or activity. Utilities shall be authorized to install and operate such advanced metering technology and equipment on a customer's premises; however, nothing in this chapter establishes a requirement that an energy efficiency program be implemented on a customer's premises and be connected to a customer's wiring on the customer's side of the inter-connection without the customer's expressed consent.

"Generate," "generating," or "generation of" electric energy means the production of electric energy.

"Generator" means a person owning, controlling, or operating a facility that produces electric energy for sale.

"Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,

182 1999, supplied electric energy to retail customers located in an exclusive service territory established by  
183 the Commission.

184 "Independent system operator" means a person that may receive or has received, by transfer pursuant  
185 to this chapter, any ownership or control of, or any responsibility to operate, all or part of the  
186 transmission systems in the Commonwealth.

187 "In the public interest," for purposes of assessing energy efficiency programs, describes an energy  
188 efficiency program if, among other factors, the net present value of the benefits exceeds the net present  
189 value of the costs as determined by the Commission upon consideration of the following four tests: (i)  
190 the Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator  
191 Test); (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall  
192 include an analysis of all four tests, and a program or portfolio of programs shall not be rejected based  
193 solely on the results of a single test. In addition, an energy efficiency program may be deemed to be "in  
194 the public interest" if the program provides measurable and verifiable energy savings to low-income  
195 customers or elderly customers.

196 "Measured and verified" means a process determined pursuant to methods accepted for use by  
197 utilities and industries to measure, verify, and validate energy savings and peak demand savings. This  
198 may include the protocol established by the United States Department of Energy, Office of Federal  
199 Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects,  
200 measurement and verification standards developed by the American Society of Heating, Refrigeration  
201 and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand  
202 savings associated with specific energy efficiency measures, as determined by the Commission.

203 "Municipality" means a city, county, town, authority, or other political subdivision of the  
204 Commonwealth.

205 *"Net metering seller" has the same meaning ascribed to the term in subdivision (e) of § 56-265.1.*

206 "Peak-shaving" means measures aimed solely at shifting time of use of electricity from peak-use  
207 periods to times of lower demand by inducing retail customers to curtail electricity usage during periods  
208 of congestion and higher prices in the electrical grid.

209 "Person" means any individual, corporation, partnership, association, company, business, trust, joint  
210 venture, or other private legal entity, and the Commonwealth or any municipality.

211 "Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or  
212 otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas,  
213 municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived  
214 from coal, oil, natural gas, or nuclear power. Renewable energy shall also include the proportion of the  
215 thermal or electric energy from a facility that results from the co-firing of biomass.

216 "Renewable thermal energy" means the thermal energy output from a renewable-fueled combined  
217 heat and power generation facility that is (i) constructed, or renovated and improved, after January 1,  
218 2012, (ii) located in the Commonwealth, and (iii) utilized in industrial processes other than the  
219 combined heat and power generation facility.

220 "Renewable thermal energy equivalent" means the electrical equivalent in megawatt hours of  
221 renewable thermal energy calculated by dividing (i) the heat content, measured in British thermal units  
222 (BTUs), of the renewable thermal energy at the point of transfer to an industrial process by (ii) the  
223 standard conversion factor of 3.413 million BTUs per megawatt hour.

224 "Renovated and improved facility" means a facility the components of which have been upgraded to  
225 enhance its operating efficiency.

226 "Retail customer" means any person that purchases retail electric energy for its own consumption at  
227 one or more metering points or nonmetered points of delivery located in the Commonwealth.

228 "Retail electric energy" means electric energy sold for ultimate consumption to a retail customer.

229 "Revenue reductions related to energy efficiency programs" means reductions in the collection of  
230 total non-fuel revenues, previously authorized by the Commission to be recovered from customers by a  
231 utility, that occur due to measured and verified decreased consumption of electricity caused by energy  
232 efficiency programs approved by the Commission and implemented by the utility, less the amount by  
233 which such non-fuel reductions in total revenues have been mitigated through other program-related  
234 factors, including reductions in variable operating expenses.

235 "Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who offers  
236 to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but it  
237 *"supplier" does not mean (i) a generator that produces electric energy exclusively for its own*  
238 *consumption or the consumption of an affiliate or (ii) a net metering seller.*

239 "Supply" or "supplying" electric energy means the sale of or the offer to sell electric energy to a  
240 retail customer.

241 "Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric energy  
242 through the Commonwealth's interconnected transmission grid from a generator to either a distributor or  
243 a retail customer.

"Transmission system" means those facilities and equipment that are required to provide for the transmission of electric energy.

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

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. From January 1, 2004, until the expiration or termination of capped rates, 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. After the expiration or termination of capped rates, and subject to the provisions of subdivisions 4 and 5, only individual retail customers of electric energy within the Commonwealth, regardless of customer class, whose 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 after that date, such customer shall purchase electric energy from its incumbent electric utility.

b. Except as provided in subdivision 4, the demands of individual retail customers may not be aggregated or combined for the purpose of meeting the demand limitations of this provision, any other provision of this chapter to the contrary notwithstanding. For the purposes of this section, each noncontiguous site will nevertheless constitute an individual retail customer even though one or more such sites may be under common ownership of a single person.

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

d. The costs of serving a customer that has received an exemption from the five-year notice requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative and transaction costs associated with procuring such energy, including, but not limited to, costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as determined pursuant to the provisions of subdivision A 2 of § 56-585.1. The methodology established by the Commission for determining such costs shall ensure that neither utilities nor other retail customers are adversely affected in a manner contrary to the public interest.

4. After the expiration or termination of capped rates, two or more individual nonresidential retail

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

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

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

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

5. After the expiration or termination of capped rates, individual retail customers of electric energy within the Commonwealth, regardless of customer class, shall be permitted:

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

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

c. *To purchase electric energy from a net metering seller if (i) the retail customer is an eligible customer-generator as defined in subsection B of § 56-594; (ii) the electric energy is generated from an electrical generating facility that satisfies the conditions of clauses (i) through (v) in the definition of "eligible customer-generator" in subsection B of § 56-594; and (iii) the retail customer is financing the acquisition, installation, maintenance, or operation of the generating facility through a power purchase agreement with the net metering seller. Purchases of power pursuant to this subdivision need not supply all of the retail customer's electric energy requirements.*

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

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

C. 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

367 pursuant to subsection D of § 56-582 or a default service provider, after a period of receiving service  
368 from other suppliers of electric energy, shall be required to use such service from such incumbent  
369 electric utility or default service provider, as determined to be in the public interest by the Commission.

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

387 3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585,  
388 however, any such customers exempted from any applicable minimum stay periods as provided in  
389 subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent  
390 electric utilities, or from any distributor required to provide default service under subsection B of  
391 § 56-585, at the capped rates established under § 56-582, unless such customers agree to satisfy any  
392 minimum stay period then applicable while obtaining retail electric energy at capped rates.

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