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SENATE BILL NO. 797

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor
on January 28, 2013)

(Patron Prior to Substitute—Senator Garrett)

A BILL to amend and reenact § 56-576 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-249.8, relating to electric utilities; advanced meters.

Be it enacted by the General Assembly of Virginia:

1. That § 56-576 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-249.8 as follows:

§ 56-249.8. Advanced meters.

A. As used in this section:

"Advanced meter" means a meter that is capable of measuring, recording, storing, and reporting electricity usage according to predetermined time criteria and that allows two-way communications suited for demand-response programs.

"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.

B. It shall be unlawful for a utility to:

1. Install an advanced meter to serve a customer or require a customer to use any advanced meter unless the customer has affirmatively requested to have an advanced meter installed;

2. Refuse, at a customer's request, to uninstall any advanced meter;

3. Give any meter use data from an advanced meter to any person;

4. Shut off service to a customer based on (i) the amount of electricity the customer uses or (ii) the customer's not being served by an advanced meter;

5. Impose any disincentive on a customer for not being served by an advanced meter; or

6. Obtain data from an advanced meter more than once per month, unless requested by a customer.

C. The utility is required to notify customers in writing that the installation and use of an advanced meter is not required by state law and is not permitted without the customer's request.

§ 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

60 periods to times of lower demand by inducing retail customers to curtail electricity usage during periods
61 of congestion and higher prices in the electrical grid.

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

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

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

69 "Energy efficiency program" means a program that reduces the total amount of electricity that is
70 required for the same process or activity implemented after the expiration of capped rates. Energy
71 efficiency programs include equipment, physical, or program change designed to produce measured and
72 verified reductions in the amount of electricity required to perform the same function and produce the
73 same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs
74 that result in improvements in lighting design, heating, ventilation, and air conditioning systems,
75 appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not
76 limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use
77 or losses of electricity and otherwise improve internal operating efficiency in generation, transmission,
78 and distribution systems; and (iii) customer engagement programs that result in measurable and
79 verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs
80 include demand response, combined heat and power and waste heat recovery, curtailment, or other
81 programs that are designed to reduce electricity consumption so long as they reduce the total amount of
82 electricity that is required for the same process or activity. Utilities shall be authorized to install and
83 operate such advanced metering technology and equipment on a customer's premises; ~~however, nothing~~
84 ~~in this chapter establishes a requirement that an energy efficiency program be implemented on a~~
85 ~~customer's premises and be connected to a customer's wiring on the customer's side of the~~
86 ~~inter-connection without the customer's expressed consent upon complying with the requirements of~~
87 ~~§ 56-249.8.~~

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

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

91 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,
92 1999, supplied electric energy to retail customers located in an exclusive service territory established by
93 the Commission.

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

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

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

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

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

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

120 "Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or
121 otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas,

municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power. Renewable energy shall also include the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass.

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

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

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

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

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

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

"Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who offers to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but it does not mean a generator that produces electric energy exclusively for its own consumption or the consumption of an affiliate.

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

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

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