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HOUSE BILL NO. 964

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact § 56-576 of the Code of Virginia, relating to electric utility regulation; energy efficiency programs.

Patron—Sullivan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 56-576 of the Code of Virginia is amended and reenacted as follows:****§ 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

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59 or losses of electricity and otherwise improve internal operating efficiency in generation, transmission,
60 and distribution systems; and (iii) customer engagement programs that result in measurable and
61 verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs
62 include demand response, combined heat and power and waste heat recovery, curtailment, or other
63 programs that are designed to reduce electricity consumption so long as they reduce the total amount of
64 electricity that is required for the same process or activity. Utilities shall be authorized to install and
65 operate such advanced metering technology and equipment on a customer's premises; however, nothing
66 in this chapter establishes a requirement that an energy efficiency program be implemented on a
67 customer's premises and be connected to a customer's wiring on the customer's side of the
68 inter-connection without the customer's expressed consent.

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

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

72 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,
73 1999, supplied electric energy to retail customers located in an exclusive service territory established by
74 the Commission.

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

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

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

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

96 "New underground facilities" means facilities to provide underground distribution service. "New
97 underground facilities" includes underground cables with voltages of 69 kilovolts or less, pad-mounted
98 devices, connections at customer meters, and transition terminations from existing overhead distribution
99 sources.

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

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

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

110 "Renewable thermal energy" means the thermal energy output from (i) a renewable-fueled combined
111 heat and power generation facility that is (a) constructed, or renovated and improved, after January 1,
112 2012, (b) located in the Commonwealth, and (c) utilized in industrial processes other than the combined
113 heat and power generation facility or (ii) a solar energy system, certified to the OG-100 standard of the
114 Solar Ratings and Certification Corporation or an equivalent certification body, that (a) is constructed, or
115 renovated and improved, after January 1, 2013, (b) is located in the Commonwealth, and (c) heats water
116 or air for residential, commercial, institutional, or industrial purposes.

117 "Renewable thermal energy equivalent" means the electrical equivalent in megawatt hours of
118 renewable thermal energy calculated by dividing (i) the heat content, measured in British thermal units
119 (BTUs), of the renewable thermal energy at the point of transfer to a residential, commercial,
120 institutional, or industrial process by (ii) the standard conversion factor of 3.413 million BTUs per

121 megawatt hour.

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

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

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

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

133 "Solar energy system" means a system of components that produces heat or electricity, or both, from
134 sunlight.

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

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

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

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