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## HOUSE BILL NO. 2477

Offered January 9, 2019

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A *BILL to amend and reenact §§ 56-577 and 56-587 of the Code of Virginia, relating to electric utility regulation; competitive suppliers.*

Patrons—Kilgore and Kory

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 56-577 and 56-587 of the Code of Virginia are amended and reenacted as follows:**

**§ 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 *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, may petition the Commission for permission 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. The Commission may, after notice and opportunity for hearing, approve such petition if it finds that:

a. 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; and

b. Approval of such petition is consistent with the public interest. Approval of such a petition shall also be subject to the following conditions:

a. (1) 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. (2) 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. (3) 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

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59 exemption from the five-year notice requirement, such customer may thereafter purchase electric energy  
60 at the costs of such utility, as determined by the Commission pursuant to subdivision 3 ~~d hereof~~ *b (4)*,  
61 for the remainder of the five-year notice period, after which point the customer may purchase electric  
62 energy from the utility under rates, terms and conditions determined pursuant to § 56-585.1. However,  
63 such customer shall be allowed to individually purchase electric energy from the utility under rates,  
64 terms, and conditions determined pursuant to § 56-585.1 if, upon application by such customer, the  
65 Commission finds that neither such customer's incumbent electric utility nor retail customers of such  
66 utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in  
67 a manner contrary to the public interest by granting such petition. In making such determination, the  
68 Commission shall take into consideration, without limitation, the impact and effect of any and all other  
69 previously approved petitions of like type with respect to such incumbent electric utility. Any customer  
70 that returns to purchase electric energy from its incumbent electric utility, before or after expiration of  
71 the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the  
72 Commission pursuant to subdivision C 1.

73 ~~d. (4)~~ The costs of serving a customer that has received an exemption from the five-year notice  
74 requirement under subdivision 3 ~~e hereof~~ *b (3)* shall be the market-based costs of the utility, including  
75 (i) the actual expenses of procuring such electric energy from the market, (ii) additional administrative  
76 and transaction costs associated with procuring such energy, including, but not limited to, costs of  
77 transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as determined  
78 pursuant to the provisions of subdivision A 2 of § 56-585.1. The methodology established by the  
79 Commission for determining such costs shall ensure that neither utilities nor other retail customers are  
80 adversely affected in a manner contrary to the public interest.

81 4. ~~After the expiration or termination of capped rates, two~~ Two or more individual nonresidential  
82 retail customers of electric energy within the Commonwealth, whose individual demand during the most  
83 recent calendar year did not exceed five megawatts, may petition the Commission for permission to  
84 aggregate or combine their demands, for the purpose of meeting the demand limitations of subdivision  
85 3, so as to become qualified to purchase electric energy from any supplier of electric energy licensed to  
86 sell retail electric energy within the Commonwealth under the conditions specified in subdivision 3. The  
87 Commission may, after notice and opportunity for hearing, approve such petition if it finds that:

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

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

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

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

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

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

114 6. *Notwithstanding any other provision of this section, retail customers may not purchase energy*  
115 *from licensed suppliers pursuant to subdivision 3 or 4 if the capacity load growth in the electric utility's*  
116 *service territory averaged less than two percent annually for the previous five years. Customers that are*  
117 *currently purchasing energy from a licensed supplier pursuant to subdivision 3 or 4 may continue to do*  
118 *so for the duration of their existing agreements with the licensed supplier.*

119 7. *Any customer that purchases energy pursuant to subdivision 3 or 4 from a supplier licensed to*  
120 *sell retail electric energy within the Commonwealth shall continue to pay its incumbent electric utility*

for the non-fuel generation and transmission capacity related costs incurred by the incumbent electric utility in order to meet the customer's capacity obligations, pursuant to the incumbent electric utility's standard tariff that has been approved by and is on file with the Commission.

6- 8. 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 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. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the management and control of an incumbent electric utility's transmission assets to a regional transmission entity after approval of such transfer by the Commission under § 56-579, retail customers of such utility (a) purchasing such energy from licensed suppliers and (b) 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 the market-based costs of such utility or default providers after a period of obtaining electric energy from another supplier. Such costs shall include (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. The methodology of ascertaining such costs shall be determined and approved by the Commission after notice and opportunity for hearing and after review of any plan filed by such utility to procure electric energy to serve such customers. The methodology established by the Commission for determining such costs 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 subsection C 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 thereafter from their incumbent electric utilities, or from any distributor required to provide default service under subsection B of § 56-585, at the capped rates established under § 56-582, 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, which rules and regulations shall include provisions specifying the commencement date of such minimum stay exemption program.

**§ 56-587. Licensure of retail electric energy suppliers and persons providing other competitive services.**

A. As a condition of doing business in the Commonwealth, each person except a default service provider seeking to sell, offering to sell, or selling electric energy to any retail customer in the Commonwealth, on and after January 1, 2002, shall obtain a license from the Commission to do so. A license shall not be required solely for the leasing or financing of property used in the sale of electricity

182 to any retail customer in the Commonwealth.

183 The license shall authorize that person to engage in the activities authorized by such license until the  
184 license expires or is otherwise terminated, suspended or revoked.

185 B. 1. As a condition of obtaining, retaining and renewing any license issued pursuant to this section,  
186 a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the  
187 Commission, which may include requirements that such person (i) demonstrate, in a manner satisfactory  
188 to the Commission, financial responsibility; (ii) post a bond as deemed adequate by the Commission to  
189 ensure that financial responsibility; (iii) pay an annual license fee to be determined by the Commission;  
190 and (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other  
191 political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and  
192 renewing any license pursuant to this section, a person shall satisfy such reasonable and  
193 nondiscriminatory requirements as may be specified by the Commission, including but not limited to  
194 requirements that such person demonstrate (i) technical capabilities as the Commission may deem  
195 appropriate; (ii) in the case of a person seeking to sell, offering to sell, or selling electric energy to any  
196 retail customer in the Commonwealth, access to generation and generation reserves; and (iii) adherence  
197 to minimum market conduct standards.

198 2. Any license issued by the Commission pursuant to this section to a person seeking to sell, offering  
199 to sell, or selling electric energy to any retail customer in the Commonwealth may be conditioned upon  
200 the licensee furnishing to the Commission prior to the provision of electric energy to consumers proof of  
201 adequate access to generation and generation reserves.

202 C. ~~4. The Commission shall:~~

203 1. *Shall* establish a reasonable period within which any retail customer may cancel, without penalty  
204 or cost, any contract entered into with any person licensed pursuant to this section; *and*

205 2. ~~The Commission may~~ *May* adopt other rules and regulations governing the requirements for  
206 obtaining, retaining, and renewing a license issued pursuant to this section, and may, as appropriate,  
207 refuse to issue a license to, or suspend, revoke, or refuse to renew the license of, any person that does  
208 not meet those requirements.

209 D. *Each licensed supplier shall file a report, verified by the president or the equivalent executive of*  
210 *such supplier, with the Commission by March 31 of each year that contains (i) copies of all marketing*  
211 *materials and other information conveyed to each potential customer regarding the services offered by*  
212 *the supplier and (ii) prices that the supplier charges each of its customers. Failure to provide the report*  
213 *shall be grounds for suspension or revocation of the supplier's license to sell retail electric energy*  
214 *within the Commonwealth.*

215 E. Notwithstanding the provisions of § 13.1-620, a public service company may, through an affiliate  
216 or subsidiary, conduct one or more of the following businesses, even if such business is not related to or  
217 incidental to its stated business as a public service company: (i) become licensed as a retail electric  
218 energy supplier pursuant to this section, or for purposes of participation in an approved pilot program  
219 encompassing retail customer choice of electric energy suppliers; (ii) become licensed as an aggregator  
220 pursuant to § 56-588, or for purposes of participation in an approved pilot program encompassing retail  
221 customer choice of electric energy suppliers; or (iii) own, manage or control any plant or equipment or  
222 any part of a plant or equipment used for the generation of electric energy.