

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 56-577 and 56-587 of the Code of Virginia, relating to electric utility*
3 *regulation; competitive suppliers.*

4 [H 2477]
5 Approved

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

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

8 **§ 56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot**
9 **programs.**

10 A. Retail competition for the purchase and sale of electric energy shall be subject to the following
11 provisions:

12 1. Each incumbent electric utility owning, operating, controlling, or having an entitlement to
13 transmission capacity shall join or establish a regional transmission entity, which entity may be an
14 independent system operator, to which such utility shall transfer the management and control of its
15 transmission system, subject to the provisions of § 56-579.

16 2. The generation of electric energy shall be subject to regulation as specified in this chapter.

17 3. ~~From January 1, 2004, until the expiration or termination of capped rates, all retail customers of~~
18 ~~electric energy within the Commonwealth, regardless of customer class, shall be permitted to purchase~~
19 ~~electric energy from any supplier of electric energy licensed to sell retail electric energy within the~~
20 ~~Commonwealth. After the expiration or termination of capped rates, and subject~~ *Subject* ~~to the~~
21 ~~provisions of subdivisions 4 and 5, only individual retail customers of electric energy within the~~
22 ~~Commonwealth, regardless of customer class, whose demand during the most recent calendar year~~
23 ~~exceeded five megawatts but did not exceed one percent of the customer's incumbent electric utility's~~
24 ~~peak load during the most recent calendar year unless such customer had noncoincident peak demand in~~
25 ~~excess of 90 megawatts in calendar year 2006 or any year thereafter, shall be permitted to purchase~~
26 ~~electric energy from any supplier of electric energy licensed to sell retail electric energy within the~~
27 ~~Commonwealth, except for any incumbent electric utility other than the incumbent electric utility serving~~
28 ~~the exclusive service territory in which such a customer is located, subject to the following conditions:~~

29 a. If such customer does not purchase electric energy from licensed suppliers ~~after that date~~, such
30 customer shall purchase electric energy from its incumbent electric utility.

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

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

57 Commission pursuant to subdivision C 1.

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

66 4. ~~After the expiration or termination of capped rates, two~~ Two or more individual nonresidential
67 retail customers of electric energy within the Commonwealth, whose individual demand during the most
68 recent calendar year did not exceed five megawatts, may petition the Commission for permission to
69 aggregate or combine their demands, for the purpose of meeting the demand limitations of subdivision
70 3, so as to become qualified to purchase electric energy from any supplier of electric energy licensed to
71 sell retail electric energy within the Commonwealth under the conditions specified in subdivision 3. The
72 Commission may, after notice and opportunity for hearing, approve such petition if it finds that:

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

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

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

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

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

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

99 6. *To the extent that an incumbent electric utility has elected as of February 1, 2019, the Fixed
100 Resource Requirement alternative as a Load Serving Entity in the PJM Region and continues to make
101 such election and is therefore required to obtain capacity for all load and expected load growth in its
102 service area, any customer of a utility subject to that requirement that purchases energy pursuant to
103 subdivision 3 or 4 from a supplier licensed to sell retail electric energy within the Commonwealth shall
104 continue to pay its incumbent electric utility for the non-fuel generation capacity and transmission
105 related costs incurred by the incumbent electric utility in order to meet the customer's capacity
106 obligations, pursuant to the incumbent electric utility's standard tariff that has been approved by and is
107 on file with the Commission. In the case of such customer, the advance written notice period established
108 in subdivisions 3 c and d shall be three years. This subdivision shall not apply to the customers of
109 licensed suppliers that (i) had an agreement with a licensed supplier entered into before February 1,
110 2019, or (ii) had aggregation petitions pending before the Commission prior to January 1, 2019, unless
111 and until any customer referenced in clause (i) or (ii) has returned to purchase electric energy from its
112 incumbent electric utility, pursuant to the provisions of subdivision 3 or 4, and is receiving electric
113 energy from such incumbent electric utility.*

114 6. 7. A tariff for one or more classes of residential customers filed with the Commission for approval
115 by a cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided
116 100 percent from renewable energy if it provides undifferentiated electric energy and the cooperative
117 retires a quantity of renewable energy certificates equal to 100 percent of the electric energy provided

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

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

135 C. 1. By January 1, 2002, the Commission shall promulgate regulations establishing whether and, if
 136 so, for what minimum periods, customers who request service from an incumbent electric utility
 137 pursuant to subsection D of § 56-582 or a default service provider, after a period of receiving service
 138 from other suppliers of electric energy, shall be required to use such service from such incumbent
 139 electric utility or default service provider, as determined to be in the public interest by the Commission.

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

157 3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585,
 158 however, any such customers exempted from any applicable minimum stay periods as provided in
 159 subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent
 160 electric utilities, or from any distributor required to provide default service under subsection B of
 161 § 56-585, at the capped rates established under § 56-582, unless such customers agree to satisfy any
 162 minimum stay period then applicable while obtaining retail electric energy at capped rates.

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

166 **§ 56-587. Licensure of retail electric energy suppliers and persons providing other competitive**
 167 **services.**

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

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

175 B. 1. As a condition of obtaining, retaining and renewing any license issued pursuant to this section,
 176 a person shall satisfy such reasonable and nondiscriminatory requirements as may be specified by the
 177 Commission, which may include requirements that such person (i) demonstrate, in a manner satisfactory
 178 to the Commission, financial responsibility; (ii) post a bond as deemed adequate by the Commission to

179 ensure that financial responsibility; (iii) pay an annual license fee to be determined by the Commission;
180 and (iv) pay all taxes and fees lawfully imposed by the Commonwealth or by any municipality or other
181 political subdivision of the Commonwealth. In addition, as a condition of obtaining, retaining and
182 renewing any license pursuant to this section, a person shall satisfy such reasonable and
183 nondiscriminatory requirements as may be specified by the Commission, including but not limited to
184 requirements that such person demonstrate (i) technical capabilities as the Commission may deem
185 appropriate; (ii) in the case of a person seeking to sell, offering to sell, or selling electric energy to any
186 retail customer in the Commonwealth, access to generation and generation reserves; and (iii) adherence
187 to minimum market conduct standards.

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

192 C. 4. The Commission shall:

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

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

199 D. *Each licensed supplier serving customers of a Phase I Utility, as defined in subdivision A 1 of*
200 *§ 56-585.1, shall file a report, verified by the president or the equivalent executive of such supplier, with*
201 *the Commission by March 31 of each year that contains:*

202 1. *Copies of all marketing materials and other public information conveyed to potential customers*
203 *regarding the services offered by the supplier;*

204 2. *Usage and revenue data for the most recent year submitted to the U.S. Energy Information*
205 *Administration;*

206 3. *Copies of all agreements entered into during the previous calendar year with such customers*
207 *taking service under subdivision A 3 of § 56-577. Such agreements may be filed under seal, and if so*
208 *will be afforded confidential treatment and will not be disclosed beyond the Commission or its staff; and*

209 4. *A statement that the agreements submitted comply with the Commission's Rules Governing Retail*
210 *Access to Competitive Energy Services (20VAC5-312-10 et seq.).*

211 *Failure to provide such report may be grounds for suspension or revocation of the supplier's license*
212 *to sell retail electric energy within the Commonwealth.*

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