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HOUSE BILL NO. 129

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 27, 2012)

(Patron Prior to Substitute—Delegate Kilgore)

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.

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 distribution service to the public in the area in which the solid waste management facility is located. If such company submits to the public utility a written offer for sale of such gas and the public utility

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

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

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

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

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

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

113 (12) *A net metering seller as defined in § 56-576.*

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

115 (d) "Geothermal resources" means those resources as defined in § 45.1-179.2.
116 § 56-576. Definitions.

117 As used in this chapter:

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

120 "Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases,
121 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.) of this title.

"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; and (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. 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, 1999, supplied electric energy to retail customers located in an exclusive service territory established by the Commission.

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

"Measured and verified" means a process determined pursuant to methods accepted for use by

183 utilities and industries to measure, verify, and validate energy savings and peak demand savings. This
184 may include the protocol established by the United States Department of Energy, Office of Federal
185 Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects,
186 measurement and verification standards developed by the American Society of Heating, Refrigeration
187 and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand
188 savings associated with specific energy efficiency measures, as determined by the Commission.

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

191 *"Net metering seller" means a person that (i) owns or operates a renewable energy electricity*
192 *generation source on the premises owned, leased, or otherwise controlled by an eligible*
193 *customer-generator, as defined in subsection B of § 56-594 and (ii) sells the electricity generated from*
194 *such renewable energy electricity generation source exclusively to such eligible-customer generator*
195 *under a power purchase agreement.*

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

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

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

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

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

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

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

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

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

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

226 § 56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot
227 programs.

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

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

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

235 3. From January 1, 2004, until the expiration or termination of capped rates, all retail customers of
236 electric energy within the Commonwealth, regardless of customer class, shall be permitted to purchase
237 electric energy from any supplier of electric energy licensed to sell retail electric energy within the
238 Commonwealth. After the expiration or termination of capped rates, and subject to the provisions of
239 subdivisions 4 and 5, only individual retail customers of electric energy within the Commonwealth,
240 regardless of customer class, whose demand during the most recent calendar year exceeded five
241 megawatts but did not exceed one percent of the customer's incumbent electric utility's peak load during
242 the most recent calendar year unless such customer had noncoincident peak demand in excess of 90
243 megawatts in calendar year 2006 or any year thereafter, shall be permitted to purchase electric energy
244 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

306 within the Commonwealth, regardless of customer class, shall be permitted:

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

313 ~~b. To.~~ *Such customers also shall be permitted to continue purchasing renewable energy pursuant to*
314 *the terms of a power purchase agreement in effect on the date there is filed with the Commission a*
315 *tariff for the incumbent electric utility that serves the exclusive service territory in which the customer is*
316 *located to offer electric energy provided 100 percent from renewable energy, for the duration of such*
317 *agreement; and*

318 *b. If they are eligible customer-generators as defined in subsection B of § 56-594, to purchase*
319 *electric energy provided 100 percent from renewable energy exclusively for their own consumption from*
320 *a net metering seller pursuant to a power purchase agreement to supply some or all of such retail*
321 *customer's electric energy requirements. Such retail customer may purchase electric energy provided*
322 *100 percent from renewable energy pursuant to a power purchase agreement from a net metering seller*
323 *without regard to whether the incumbent electric utility serving the exclusive service territory offers an*
324 *approved tariff for electric energy provided 100 percent from renewable energy.*

325 6. A tariff for one or more classes of residential customers filed with the Commission for approval
326 by a cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided
327 100 percent from renewable energy if it provides undifferentiated electric energy and the cooperative
328 retires a quantity of renewable energy certificates equal to 100 percent of the electric energy provided
329 pursuant to such tariff. A tariff for one or more classes of nonresidential customers filed with the
330 Commission for approval by a cooperative on or after July 1, 2012, shall be deemed to offer a tariff for
331 electric energy provided 100 percent from renewable energy if it provides undifferentiated electric
332 energy and the cooperative retires a quantity of renewable energy certificates equal to 100 percent of the
333 electric energy provided pursuant to such tariff. For purposes of this section, "renewable energy
334 certificate" means, with respect to cooperatives, a tradable commodity or instrument issued by a regional
335 transmission entity or affiliate or successor thereof in the United States that validates the generation of
336 electricity from renewable energy sources or that is certified under a generally recognized renewable
337 energy certificate standard. One renewable energy certificate equals 1,000 kWh or one MWh of
338 electricity generated from renewable energy. A cooperative offering electric energy provided 100 percent
339 from renewable energy pursuant to this subdivision that involves the retirement of renewable energy
340 certificates shall disclose to its retail customers who express an interest in purchasing energy pursuant to
341 such tariff (i) that the renewable energy is comprised of the retirement of renewable energy certificates,
342 (ii) the identity of the entity providing the renewable energy certificates, and (iii) the sources of
343 renewable energy being offered.

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

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

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

368 3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585,
369 however, any such customers exempted from any applicable minimum stay periods as provided in
370 subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent
371 electric utilities, or from any distributor required to provide default service under subsection B of
372 § 56-585, at the capped rates established under § 56-582, unless such customers agree to satisfy any
373 minimum stay period then applicable while obtaining retail electric energy at capped rates.

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