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**SENATE BILL NO. 1023**

Offered January 9, 2013

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*A BILL to amend and reenact §§ 56-265.1, 56-576, 56-577, and 56-594 of the Code of Virginia, relating to electric utility regulation; exemption for purchases from renewable energy sellers.*

Patrons—Edwards; Delegate: Torian

Referred to Committee on Commerce and Labor

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

**1. That §§ 56-265.1, 56-576, 56-577, and 56-594 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

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59 Department of Environmental Quality to a public utility certificated by the Commission to provide gas  
60 distribution service to the public in the area in which the solid waste management facility is located. If  
61 such company submits to the public utility a written offer for sale of such gas and the public utility  
62 does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company  
63 may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within  
64 three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been  
65 liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

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

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

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

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

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

115 (12) *A renewable energy seller as defined in § 56-576.*

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

117 (d) "Geothermal resources" means those resources as defined in § 45.1-179.2.

118 **§ 56-576. Definitions.**

119 As used in this chapter:

120 "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.

"Curtailement" 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 or losses of electricity and otherwise improve internal operating efficiency in generation, transmission, and distribution systems; and (iii) customer engagement programs that result in measurable and verifiable energy savings that lead to efficient use patterns and practices. 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

182 to this chapter, any ownership or control of, or any responsibility to operate, all or part of the  
183 transmission systems in the Commonwealth.

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

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

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

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

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

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

212 "Renewable energy seller" means a person that (i) owns or operates a renewable energy electricity  
213 generation source on the premises owned, leased, or otherwise controlled by an eligible  
214 customer-generator, as defined in subsection B of § 56-594 and (ii) sells the electricity generated from  
215 such renewable energy electricity generation source exclusively to such eligible customer-generator  
216 under a power purchase agreement.

217 "Renewable thermal energy" means the thermal energy output from a renewable-fueled combined  
218 heat and power generation facility that is (i) constructed, or renovated and improved, after January 1,  
219 2012, (ii) located in the Commonwealth, and (iii) utilized in industrial processes other than the  
220 combined heat and power generation facility.

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

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

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

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

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

236 "Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who offers  
237 to sell or sells electric energy to retail customers and is licensed by the Commission to do so; ~~but it;~~  
238 however, "supplier" does not mean (i) a generator that produces electric energy exclusively for its own  
239 consumption or the consumption of an affiliate or (ii) a renewable energy seller.

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

242 "Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric energy  
243 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.

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

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

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

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

6. 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.

**§ 56-594. Net energy metering provisions.**

A. The Commission shall establish by regulation a program, to begin no later than July 1, 2000, that affords eligible customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners and/or operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; or (v) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest.

B. For the purpose of this section:

"Eligible customer-generator" means a customer that owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than 20 kilowatts for residential customers and 500 kilowatts for nonresidential customers unless a utility elects a higher capacity limit for such a facility; (ii) uses as its total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises and is connected to the customer's wiring on the customer's side of its ~~interconnection~~ meter with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements.

"Net energy metering" means measuring the difference, over the net metering period, between (i) electricity supplied to an eligible customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-generator.

"Net metering period" means the 12-month period following the date of final interconnection of the eligible customer-generator's system with an electric service provider, and each 12-month period thereafter.

C. The Commission's regulations shall ensure that the metering equipment installed for net metering shall be capable of measuring the flow of electricity in two directions, and shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's electrical generating system shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in this section, an eligible customer-generator whose electrical generating system meets those standards and rules shall bear the

reasonable cost, if any, as determined by the Commission, to (i) install additional controls, (ii) perform or pay for additional tests, or (iii) purchase additional liability insurance.

D. The Commission shall establish minimum requirements for contracts to be entered into by the parties to net metering arrangements. Such requirements shall protect the customer-generator against discrimination by virtue of its status as a customer-generator, and permit customers that are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariffs to participate as an eligible customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators served on demand charge-based time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

E. If electricity generated by an eligible customer-generator over the net metering period exceeds the electricity consumed by the customer-generator, the customer-generator shall be compensated for the excess electricity if the entity contracting to receive such electric energy and the customer-generator enter into a power purchase agreement for such excess electricity. Upon the written request of the customer-generator, the supplier that serves the eligible customer-generator shall enter into a power purchase agreement with the requesting eligible customer-generator that is consistent with the minimum requirements for contracts established by the Commission pursuant to subsection D. The power purchase agreement shall obligate the supplier to purchase such excess electricity at the rate that is provided for such purchases in a net metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator owns the renewable energy certificates associated with its electrical generating facility, however, at the time that the eligible customer-generator enters into a power purchase agreement with its supplier, the customer-generator shall have a one-time option to sell the renewable energy certificates associated with such electrical generating facility to its supplier and be compensated at an amount that is established by the Commission to reflect the value of such renewable energy certificates. Nothing in this section shall prevent the eligible customer-generator and the supplier from voluntarily entering into an agreement for the sale and purchase of excess electricity or renewable energy certificates at mutually-agreed upon prices if the eligible customer-generator does not exercise its option to sell its renewable energy certificates to its supplier at Commission-approved prices at the time that the eligible customer-generator enters into a power purchase agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and renewable energy certificates from eligible customer-generators shall be recoverable through its Renewable Energy Portfolio Standard (RPS) rate adjustment clause, if the supplier has a Commission-approved RPS plan. If not, then all costs shall be recoverable through the supplier's fuel adjustment clause. For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-generator for the purchase of excess electricity and renewable energy certificates and any administrative costs incurred to manage the eligible customer-generator's power purchase arrangements. The net metering standard contract or tariff shall be available to eligible customer-generators on a first-come, first-served basis in each electric distribution company's Virginia service area until the rated generating capacity owned and operated by eligible customer-generators in the state reaches one percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year, and shall require the supplier to pay the eligible customer-generator for such excess electricity in a timely manner at a rate to be established by the Commission.

F. Any residential eligible customer-generator who owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility with a capacity that exceeds 10 kilowatts shall pay to its supplier, in addition to any other charges authorized by law, a monthly standby charge. The amount of the standby charge and the terms and conditions under which it is assessed shall be in accordance with a methodology developed by the supplier and approved by the Commission. The Commission shall approve a supplier's proposed standby charge methodology if it finds that the standby charges collected from all such eligible customer-generators allow the supplier to recover only the portion of the supplier's infrastructure costs that are properly associated with serving such eligible customer-generators. Such an eligible customer-generator shall not be liable for a standby charge until the date specified in an order of the Commission approving its supplier's methodology.

G. *Nothing in this section shall prevent an eligible customer-generator from entering into a non-net-metered power purchase agreement with a renewable energy generator for onsite qualifying renewable energy generation facilities that are greater than the maximum allowable net metering project size provided they have a capacity of less than five megawatts, unless the utility permits a larger size. However, the aggregate of (i) the rated generating capacity of such onsite qualifying renewable energy generation facilities that are subject to a non-net-metered power purchase agreement and (ii) the rated generating capacity owned and operated by eligible customer-generators shall not exceed one percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year.*

**2. That arrangements between customers and generators involving different parameters shall not be impacted by the fact that certain arrangements are expressly permitted by this act. Provisions of Title 56 of the Code of Virginia governing utility service, including self-generation, standard**

490 terms of service, and net energy metering, shall apply to aspects of the relationship between an  
491 electric utility and a renewable energy seller to the extent such application is not inconsistent with  
492 the provisions of this act. Net metering power purchase agreement projects authorized by this act  
493 shall be subject to the net metering project size cap set forth in § 56-594 of the Code of Virginia.

**INTRODUCED**

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