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SENATE BILL NO. 591

Offered January 10, 2024

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A *BILL to amend and reenact § 56-577 of the Code of Virginia, relating to electric utilities; customer energy choice; notice required for customer return to service.*

Patron—McPike

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 56-577 of the Code of Virginia is amended and reenacted as follows:****§ 56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot programs.**

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

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

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

3. 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~~ *one megawatt* 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, 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'~~ *six months'* 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~~ *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, *including, at such utility's election, any applicable market-based tariff.* Any customer that returns to purchase electric energy from its incumbent electric utility, before or after expiration of the ~~five-year~~ *six-month* notice period, shall be subject to minimum stay periods equal to those prescribed by the Commission pursuant

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59 to subdivision C 1.

60 d. The costs of serving a *If a* customer that has received an exemption from the five-year notice
61 requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the
62 actual expenses of procuring such *located in the service territory of an incumbent electric utility*
63 *purchases* electric energy from the market, (ii) additional administrative and transaction costs associated
64 with procuring such energy, including, but not limited to, costs of transmission, transmission line losses,
65 and ancillary services, and (iii) a reasonable margin as determined pursuant to the provisions of
66 subdivision A 2 of ~~§ 56-585.1~~. The methodology established by the Commission for determining such
67 costs *a licensed supplier pursuant to this subdivision, such licensed supplier shall ensure that neither*
68 *utilities nor other retail customers are adversely affected in a manner contrary to the public interest*
69 *satisfy the annual RPS Program requirement established by subsection C of § 56-585.5 on an aggregate*
70 *basis for all electric energy sold by such licensed supplier within such incumbent electric utility's service*
71 *territory.*

72 4. Two or more individual nonresidential retail customers of electric energy within the
73 Commonwealth, whose individual demand during the most recent calendar year did not exceed five
74 megawatts, may petition the Commission for permission *one megawatt shall be permitted* to aggregate
75 or combine their demands, for the purpose of meeting the demand limitations of subdivision 3, so as to
76 become qualified to purchase electric energy from any supplier of electric energy licensed to sell retail
77 electric energy within the Commonwealth under the conditions specified in subdivision 3. The
78 Commission may, after notice and opportunity for hearing, approve such petition if it finds that:

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

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

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

93 5. Individual retail customers of electric energy within the Commonwealth, regardless of customer
94 class, shall be permitted:

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

101 b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in
102 effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves
103 the exclusive service territory in which the customer is located to offer electric energy provided 100
104 percent from renewable energy, for the duration of such agreement *provided by a licensed supplier*
105 *during each calendar month must match the customer's load served by such supplier for that month.*
106 *Such supplier shall retire renewable energy certificates matching the amount of load served by such*
107 *supplier during each calendar year. Such renewable energy certificates shall be generated by any source*
108 *qualifying as renewable energy pursuant to § 56-576 during such calendar year and may be from a*
109 *different generating unit than the unit that matched such customer's load.*

110 6. To the extent that an incumbent electric utility has elected as of February 1, 2019, the Fixed
111 Resource Requirement alternative as a Load Serving Entity in the PJM Region and continues to make
112 such election and is therefore required to obtain capacity for all load and expected load growth in its
113 service area, any customer of a utility subject to that requirement that purchases energy pursuant to
114 subdivision 3 or 4 from a supplier licensed to sell retail electric energy within the Commonwealth shall
115 continue to pay its incumbent electric utility for the non-fuel generation capacity and transmission
116 related costs incurred by the incumbent electric utility in order to meet the customer's capacity
117 obligations, pursuant to the incumbent electric utility's standard tariff that has been approved by and is
118 on file with the Commission. In the case of such customer, the advance written notice period established
119 in subdivisions 3 c and d shall be three years. This subdivision shall not apply to the customers of
120 licensed suppliers that (i) had an agreement with a licensed supplier entered into before February 1,

121 2019, or (ii) had aggregation petitions pending before the Commission prior to January 1, 2019, unless
122 and until any customer referenced in clause (i) or (ii) has returned to purchase electric energy from its
123 incumbent electric utility, pursuant to the provisions of subdivision 3 or 4, and is receiving electric
124 energy from such incumbent electric utility.

125 7. A tariff for one or more classes of residential customers filed with the Commission for approval
126 by a cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided
127 100 percent from renewable energy if it provides undifferentiated electric energy and the cooperative
128 retires a quantity of renewable energy certificates equal to 100 percent of the electric energy provided
129 pursuant to such tariff. A tariff for one or more classes of nonresidential customers filed with the
130 Commission for approval by a cooperative on or after July 1, 2012, shall be deemed to offer a tariff for
131 electric energy provided 100 percent from renewable energy if it provides undifferentiated electric
132 energy and the cooperative retires a quantity of renewable energy certificates equal to 100 percent of the
133 electric energy provided pursuant to such tariff. For purposes of this section, "renewable energy
134 certificate" means, with respect to cooperatives, a tradable commodity or instrument issued by a regional
135 transmission entity or affiliate or successor thereof in the United States that validates the generation of
136 electricity from renewable energy sources or that is certified under a generally recognized renewable
137 energy certificate standard. One renewable energy certificate equals 1,000 kWh or one MWh of
138 electricity generated from renewable energy. A cooperative offering electric energy provided 100 percent
139 from renewable energy pursuant to this subdivision that involves the retirement of renewable energy
140 certificates shall disclose to its retail customers who express an interest in purchasing energy pursuant to
141 such tariff (i) that the renewable energy is comprised of the retirement of renewable energy certificates,
142 (ii) the identity of the entity providing the renewable energy certificates, and (iii) the sources of
143 renewable energy being offered.

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

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

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

168 3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585,
169 however, any such customers exempted from any applicable minimum stay periods as provided in
170 subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent
171 electric utilities, or from any distributor required to provide default service under subsection B of
172 § 56-585, at the capped rates established under § 56-582, unless such customers agree to satisfy any
173 minimum stay period then applicable while obtaining retail electric energy at capped rates.

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