

VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

CHAPTER 707

An Act to amend and reenact §§ 56-77, 56-82, 56-209, 56-210, 56-212, 56-217, 56-218, 56-225, 56-226, and 56-229 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-217.1, relating to electric cooperatives; business activities.

[S 687]

Approved April 16, 1998

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-77, 56-82, 56-209, 56-210, 56-212, 56-217, 56-218, 56-225, 56-226, and 56-229 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-217.1 as follows:

§ 56-77. Certain contracts must be approved by the Commission.

A. No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right or thing, other than those above enumerated, or for the purchase or sale of treasury bonds or treasury capital stock made or entered into between a public service company and any affiliated interest shall be valid or effective unless and until it shall have been filed with and approved by the Commission. *The Commission shall, after the filing of such a contract or arrangement, approve or disapprove the contract or arrangement within sixty days. The sixty-day period may be extended by Commission order for an additional period not to exceed thirty days. The contract or arrangement shall be deemed approved if the Commission fails to act within sixty days or any extended period ordered by the Commission.* It shall be the duty of every public service company to file with the Commission a verified copy of any such contract or arrangement, regardless of the amount involved, and the general rule herein referred to shall remain in full force and effect as to all other public service companies.

B. The Commission may, in its discretion and upon petition of the public service company or upon the Commission's own action, choose to exempt a public service company from all or any part of the requirements imposed by subsection A if the Commission determines that such an exemption is in the public interest. In addition to exemptions for individual public service companies, the Commission may adopt rules implementing exemptions from all or any part of the requirements imposed by subsection A. The Commission may revoke any exemptions granted under this subsection if it finds that such action is in the public interest.

C. Notwithstanding the provisions of § 56-481.2, the Commission, after giving notice and an opportunity for a hearing, may, in its discretion, require any company certificated to provide, and engaged in the provision of, local exchange telephone service to meet the requirements of subsection A.

§ 56-82. Approval of loans to affiliates, etc.

No public service company shall henceforth make, extend or renew any loan of money to any affiliated interest or assume, extend or renew any obligation or liability whatsoever of any affiliated interest, whether as guarantor, endorser, surety or otherwise, unless the Commission shall first have approved such loan or assumption, or the extension or renewal of such loan, obligation, or liability, as being not inconsistent with the public interest, and then only upon such terms and conditions as may be set forth in the order of the Commission approving such transaction. *The Commission shall, after the filing of such a loan, obligation, or liability, approve or disapprove the loan, obligation, or liability within sixty days. The sixty-day period may be extended by Commission order for an additional period not to exceed thirty days. The loan, obligation, or liability shall be deemed approved if the Commission fails to act within sixty days or any extended period ordered by the Commission.* This section shall not be construed so as to invalidate or impair any such loan, obligation, or liability lawfully made, extended or renewed, or assumed, extended or renewed, and entered into prior to March 29, 1934.

§ 56-209. Definitions.

The following terms whenever used or referred to in this article, shall have the following meanings, unless a different meaning clearly appears from the context:

- (a) "Cooperative" shall mean an electric corporation formed under or subject to this article.
- (b) "Municipality" shall mean any city or incorporated town of the Commonwealth.
- (c) "Person" shall mean and include natural persons, firms, associations, cooperatives, corporations, business trusts, partnerships and bodies politic.
- (d) "Energy" shall mean and include any and all electric energy no matter how or where generated or produced.
- (e) "Acquire" shall mean and include construct, acquire by purchase, lease, devise, gift or the exercise of the power of eminent domain, or other mode of acquisition.

(f) "System" shall mean and include any plant, works, system, facilities, or properties, or any part or parts thereof, together with all appurtenances thereto, used or useful in connection with the generation, production, transmission or distribution of energy.

(g) "Law" shall mean any act or statute, general, special or local, of this Commonwealth, including this Code, or any section thereof.

(h) "Obligations" shall mean and include bonds, interim certificates or receipts, notes, debentures, and all other evidences of indebtedness either issued by, or the payment of which is assumed by, a cooperative.

(i) "Federal agency" shall mean and include the United States of America, the President of the United States of America, Tennessee Valley Authority, the Federal Administrator of the Rural Electrification Administration and any and all other authorities, agencies, and instrumentalities of the United States of America, heretofore or hereafter created.

(j) "Improve" shall mean and include construct, reconstruct, replace, extend, enlarge, alter, better or repair.

(k) "Board" shall mean the board of directors of a cooperative formed under this article.

(l) "Member" shall mean and include each natural person signing the articles of incorporation of a cooperative and each person admitted to membership therein pursuant to law or its bylaws.

(m) "Patronage capital" shall mean all amounts received by a distribution cooperative in excess of the distribution cooperative's cost of furnishing power.

(n) "Commission" shall mean the State Corporation Commission of Virginia.

(o) "HVACR" shall mean heating, ventilation, air conditioning and refrigeration.

(p) "Propane or fuel oil equipment" shall mean equipment and related systems to store or use propane or fuel oil products.

§ 56-210. Organization; purpose.

Any number of natural persons not less than five may, by executing, filing and recording articles of incorporation as hereinafter set forth, form a cooperative, either with or without capital stock, not organized for pecuniary profit, for the *principal* purpose of promoting and encouraging the fullest possible use of electric energy by making electric energy available at the lowest cost consistent with sound economy and prudent management of the business of such cooperative *and such other purposes as its membership shall approve: (i) provided, however, that within its certificated service territory, no such cooperative shall, prior to July 1, 1999, undertake or initiate any new program (a) to buy or maintain an inventory of HVACR equipment or household appliances, (b) to install or service any such equipment or household appliances for customers, unless such service is not provided by the cooperative but by a third party individual, firm or corporation licensed to perform such service, (c) to sell HVACR equipment or household appliances to customers metered and billed on residential rates, (d) to sell HVACR equipment to customers other than those metered and billed on residential rates except where such sale is an incidental part of providing other energy services or providing traditional cooperative activities, (e) to sell or distribute propane or fuel oil; sell, install or service propane or fuel oil equipment; or maintain or buy an inventory of propane or fuel oil equipment for resale, or (f) to serve as a coordinator of nonelectric energy services or provide engineering consulting services except when such energy or engineering services are an incidental part of a marketing effort to provide other energy or engineering services or as a part of providing services that are traditional cooperative activities; (ii) provided further, that notwithstanding clause (i), such cooperative may engage within its certificated service territory in any of the activities enumerated in clause (i) that (a) have received State Corporation Commission approval prior to February 1, 1998, (b) such cooperative is ordered or required to undertake by any jurisdictional court or regulatory authority, (c) were lawfully undertaken prior to February 1, 1998, (d) are specifically permitted by statute, or (e) are undertaken by any other regulated public service company or its unregulated affiliate within such cooperative's certificated service territory; and (iii) also provided that such cooperative or its affiliate may not undertake such activities as are prohibited by clause (i) within the certificated service territory of another public service company unless such activities are undertaken by such public service company or its unregulated affiliate within such cooperative's certificated service territory.* In addition, such cooperative may, in accordance with the provisions of subdivision (1) of § 56-217, establish a subsidiary one or more subsidiaries to engage in the distribution, servicing and maintenance of television reception, satellite dishes, encrypted television programs, and decryption equipment, but notwithstanding the provisions of subdivision (k) of § 56-217, may not engage in the sale of television sets or video cassette recorders; provided, that to the extent such subsidiary engages in the provision of cable service, as defined in § 15.1-23.1, such subsidiary shall comply with the provisions of § 15.1-23.1 applicable to cable television systems. Such cooperative may also establish a subsidiary to engage in the furnishing of water or in the furnishing of sewer facilities, provided that no such water or sewer facilities shall be furnished by a cooperative except after an affirmative resolution by the county board of supervisors or municipal government of any jurisdiction in which such service is proposed; and further provided that no such water or sewer facilities shall be provided by a cooperative to any area in which an authority created for either or both such purposes pursuant to Chapter 28 (§ 15.1-1239 et seq.) of Title 15.1 has such

facilities available, except after an affirmative resolution by such authority any other business activities not prohibited by law; notwithstanding the foregoing, no such subsidiary may engage in any business activities that the cooperatives are prohibited from engaging in under this section.

§ 56-212. Name of other corporations not to include term "electric cooperative."

The words "electric cooperative" shall not be used in the corporate name of corporations other than (1) those formed pursuant to the provisions of this chapter and, (2) nonstock corporations of which electric cooperatives are members, and (3) corporations, all of the stock of which is owned by electric cooperatives.

§ 56-217. General powers granted.

Each corporation formed under this article shall have power to do any and all lawful acts or things necessary or incidental for carrying out the purpose for which it is formed, including, but not limited to the power:

- (a) To produce, generate, transmit and distribute electric energy.
- (b) To sue and be sued.
- (c) To have a seal and alter the same at pleasure.
- (d) To acquire, hold and dispose of property, real and personal, tangible and intangible, or interests therein and to pay therefor in cash or property or on credit, and to secure and procure payment of all or any part of the purchase price thereof on such terms and conditions as the board shall determine.
- (e) To render service and to acquire, own, operate, maintain and improve a system or systems.
- (f) To accept gifts or grants of money or of property, real or personal, from any person, municipality or federal agency and to accept voluntary or uncompensated services.
- (g) To sell, lease, mortgage or otherwise encumber or dispose of all or any parts of its property, as hereinafter provided.
- (h) To contract debts, borrow money and to issue or assume the payment of bonds, and other obligations.
- (i) To fix, maintain and collect reasonable fees, rents, tolls and other charges for service rendered.
- (j) To exercise all the powers set forth in § 56-49, including the power of eminent domain as prescribed for other public service corporations by general law.
- (k) To assist its members and customers, by loans or otherwise, in the acquisition by them of such installation and wiring, and the obtaining of such machinery, equipment and appliances, as will enable them to secure the greatest benefit from the use of energy supplied by the cooperative.
- (l) To issue nonassessable nonvoting common and preferred capital stock and pay noncumulative dividends thereon.
- (l 1) To become a member or stockholder in one or more other cooperatives or corporations created to engage in any business related or incidental to the purpose for which a cooperative is formed including the provision of distribution, servicing and maintenance of television reception, satellite dishes, encrypted television programs and decryption equipment, and including the business of cable television systems subject to § 15-1-23.1, and water or sewer facilities not prohibited by law, provided that such business is not one which cooperatives are prohibited from engaging in under § 56-210.
- (m) To perform any and all of the foregoing acts and do any and all of the foregoing things under, through or by means of its own officers, agents and employees, or by contracts with any person, federal agency or municipality.

§ 56-217.1. Voluntary codes and standards of conduct.

Any voluntary code or standard of conduct adopted or agreed to by a cooperative relating to limitations on the terms and conditions under which it will undertake a business activity other than one pursuant to its principal purpose shall also apply to its undertaking any other kind of business activity that is not pursuant to its principal purpose.

§ 56-218. Power to dispose of property.

No cooperative may sell, lease or dispose of any of its property (other than property which, in the judgment of the board, is neither necessary nor useful in operating and maintaining the cooperative's system and which in any one year shall not exceed ten percent in value of the value of all the property of the cooperative, or merchandise), unless authorized so to do by the votes of at least a two-thirds majority of its members; however, a cooperative: (i) may mortgage, finance (including, without limitation, pursuant to a sale and leaseback or lease and leaseback transaction), or otherwise encumber its assets by a vote of at least two-thirds of its board of directors; (ii) may sell or transfer its assets to another cooperative upon the vote of a majority of its members at any regular or special meeting if the notice of such meeting contains a copy of the terms of the proposed sale or transfer; or (iii) may sell or transfer distribution system facilities to a city or town at any time following the annexation of additional territory pursuant to § 56-265.4:2 by a vote of at least two-thirds of its board of directors.

§ 56-225. Service to members.

Except as hereinafter provided, the corporate purpose of each cooperative formed hereunder shall be to render service to its members, and No person shall become or remain a member unless such person shall use electric energy supplied by such cooperative and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such cooperative. However, except as

provided in § 56-210 and subdivision (1 1) of § 56-217, nothing in this article shall prevent a cooperative from engaging, in accordance with the provisions of subdivision (1 1) of § 56-217, in the furnishing of water, in the furnishing of sewer facilities, in the distribution, servicing and maintenance of television reception, satellite dishes, encrypted television programs or decryption equipment to members or nonmembers or, subject to § 15-1-23.1, in the provision of cable service in other lawful activities or enterprises. The membership fee of the cooperative shall not exceed ten dollars. Should the cooperative acquire any electric facilities already dedicated or devoted to the public use it may, for the purpose of continuing existing service and avoiding hardship, continue to serve the persons served directly from such facilities at the time of such acquisition without requiring that such persons become members. In no event shall the number of such nonmembers served exceed forty-nine per centum percent of the total number of persons served by the cooperative. Such nonmember electric service customers shall have the right to become members upon nondiscriminatory terms. The rates for electric service to such nonmembers shall be on a cost basis similar to those charged members.

§ 56-226. Adequate service; rates.

A cooperative formed hereunder shall be required to furnish reasonably adequate *electric* services and facilities, subject to the regulations of the State Corporation Commission, as provided in § 56-227. The charge made by any such cooperative for any *electric* service rendered or to be rendered, either directly or in connection therewith, shall be nondiscriminatory, reasonable and just, and every discriminatory, unjust or unreasonable charge for such *electric* service is prohibited and declared unlawful. Reasonable and just charges for service within the meaning of this section shall be such charges as shall produce sufficient revenue to pay all legal and other necessary expenses incident to the operation of the system, to include maintenance cost, operating charges, interest charges on bonds or other obligations, to provide for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as reasonable reserves and funds for making replacements and also for the payment of any taxes that may be assessed against such cooperative or its property, it being the intent and purpose hereof that such charges shall produce an income sufficient to maintain such cooperative property in a sound physical and financial condition to render adequate and efficient service. Any rate too low to meet the foregoing requirements shall be unlawful.

§ 56-229. Construction of article; conflicting laws.

This article is to be liberally construed and the enumeration of any object, purpose, power, manner, method or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods or things, and any provisions of other laws in conflict with the provisions of this article shall not apply to cooperatives operating hereunder. *Any object, purpose, power, manner, method or thing which is not specifically prohibited is permitted.*