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SENATE BILL NO. 837

Offered January 15, 2018

A BILL to amend and reenact § 56-577 of the Code of Virginia, relating to electric utility regulation; retail competition.

Patron—Suetterlein

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. 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 (i) individual retail customers of *investor-owned electric energy utilities* within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded *one megawatt* and (ii) *individual retail customers of cooperative electric utilities within the Commonwealth, regardless of customer class, whose demand during the most recent calendar year exceeded five megawatts, but in either case 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 the~~ customer ~~does purchase~~ of:

(1) *An investor-owned electric utility purchases electric energy from licensed suppliers after the expiration or termination of capped rates, it shall not thereafter be entitled to purchase electric energy from such incumbent electric utility at standard tariffed rates applicable to all customers without giving three months' advance written notice of such intention to such utility. The Commission may, however, determine that such customer may return to the incumbent electric utility on less than three months' notice where such customer demonstrates to the Commission 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. However, the utility may petition the Commission to impose additional costs upon the returning customer if the utility demonstrates to the Commission that the recovery of such costs is necessary to avoid adverse impacts to the utility's other customers; and*

(2) *A cooperative electric utility purchases 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*

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59 anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of
60 the customer, and that such customer is unable to obtain service at reasonable rates from an alternative
61 supplier. If, as a result of such proceeding, the Commission finds it in the public interest to grant an
62 exemption from the five-year notice requirement, such customer may thereafter purchase electric energy
63 at the costs of such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the
64 remainder of the five-year notice period, after which point the customer may purchase electric energy
65 from the utility under rates, terms and conditions determined pursuant to § 56-585.1. However, such
66 customer shall be allowed to individually purchase electric energy from the utility under rates, terms,
67 and conditions determined pursuant to § 56-585.1 if, upon application by such customer, the
68 Commission finds that neither such customer's incumbent electric utility nor retail customers of such
69 utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in
70 a manner contrary to the public interest by granting such petition. In making such determination, the
71 Commission shall take into consideration, without limitation, the impact and effect of any and all other
72 previously approved petitions of like type with respect to such incumbent electric utility. Any customer
73 that returns to purchase electric energy from its incumbent electric utility, before or after expiration of
74 the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the
75 Commission pursuant to subdivision C 1-; and

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

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

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

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

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

106 5. After the expiration or termination of capped rates, individual retail customers of:

107 a. ~~An investor-owned electric energy utility within the Commonwealth, regardless of customer class,~~
108 *shall be permitted to purchase electric energy provided 100 percent from renewable energy from any*
109 *supplier of electric energy licensed to sell retail electric energy within the Commonwealth, other than*
110 *any incumbent electric utility that is not the incumbent electric utility serving the exclusive service*
111 *territory in which such a customer is located. The Commission shall determine, either by issuing a rule*
112 *of general application or in particular cases, the manner in which a supplier may supply 100 percent*
113 *renewable energy; and*

114 b. A cooperative electric utility within the Commonwealth, regardless of customer class, shall be
115 permitted:

116 a. (1) To purchase electric energy provided 100 percent from renewable energy from any supplier of
117 electric energy licensed to sell retail electric energy within the Commonwealth, other than any
118 incumbent electric utility that is not the incumbent electric utility serving the exclusive service territory
119 in which such a customer is located, if the ~~incumbent~~ cooperative electric utility serving the exclusive
120 service territory does not offer an approved tariff for electric energy provided 100 percent from

121 renewable energy; and

122 b. (2) To continue purchasing renewable energy pursuant to the terms of a power purchase agreement
123 in effect on the date there is filed with the Commission a tariff for the ~~incumbent~~ cooperative electric
124 utility that serves the exclusive service territory in which the customer is located to offer electric energy
125 provided 100 percent from renewable energy, for the duration of such agreement.

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

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

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

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

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

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