

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 56-577 of the Code of Virginia, relating to electric utility regulation;*
3 *purchasing from competitive suppliers.*

4 [H 868]
5 Approved

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

7 **1. That § 56-577 of the Code of Virginia is amended and reenacted as follows:**

8 **§ 56-577. Schedule for transition to retail competition; Commission authority; exemptions; pilot**
9 **programs.**

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

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

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

17 3. Subject to the provisions of subdivisions 4 and 5, only individual retail customers of electric
18 energy within the Commonwealth, regardless of customer class, whose demand during the most recent
19 calendar year exceeded five megawatts but did not exceed one percent of the customer's incumbent
20 electric utility's peak load during the most recent calendar year unless such customer had noncoincident
21 peak demand in excess of 90 megawatts in calendar year 2006 or any year thereafter, shall be permitted
22 to purchase electric energy from any supplier of electric energy licensed to sell retail electric energy
23 within the Commonwealth, except for any incumbent electric utility other than the incumbent electric
24 utility serving the exclusive service territory in which such a customer is located, subject to the
25 following conditions:

26 a. If such customer does not purchase electric energy from licensed suppliers, such customer shall
27 purchase electric energy from its incumbent electric utility.

28 b. Except as provided in subdivision 4, the demands of individual retail customers may not be
29 aggregated or combined for the purpose of meeting the demand limitations of this provision, any other
30 provision of this chapter to the contrary notwithstanding. For the purposes of this section, each
31 noncontiguous site will nevertheless constitute an individual retail customer even though one or more
32 such sites may be under common ownership of a single person.

33 c. If such customer does purchase electric energy from licensed suppliers after the expiration or
34 termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the
35 incumbent electric utility without giving five years' advance written notice of such intention to such
36 utility, except where such customer demonstrates to the Commission, after notice and opportunity for
37 hearing, through clear and convincing evidence that its supplier has failed to perform, or has
38 anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of
39 the customer, and that such customer is unable to obtain service at reasonable rates from an alternative
40 supplier. If, as a result of such proceeding, the Commission finds it in the public interest to grant an
41 exemption from the five-year notice requirement, such customer may thereafter purchase electric energy
42 at the costs of such utility, as determined by the Commission pursuant to subdivision 3 d hereof, for the
43 remainder of the five-year notice period, after which point the customer may purchase electric energy
44 from the utility under rates, terms and conditions determined pursuant to § 56-585.1. However, such
45 customer shall be allowed to individually purchase electric energy from the utility under rates, terms,
46 and conditions determined pursuant to § 56-585.1 if, upon application by such customer, the
47 Commission finds that neither such customer's incumbent electric utility nor retail customers of such
48 utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in
49 a manner contrary to the public interest by granting such petition. In making such determination, the
50 Commission shall take into consideration, without limitation, the impact and effect of any and all other
51 previously approved petitions of like type with respect to such incumbent electric utility. Any customer
52 that returns to purchase electric energy from its incumbent electric utility, before or after expiration of
53 the five-year notice period, shall be subject to minimum stay periods equal to those prescribed by the
54 Commission pursuant to subdivision C 1.

55 d. The costs of serving a customer that has received an exemption from the five-year notice
56 requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the

57 actual expenses of procuring such electric energy from the market, (ii) additional administrative and
58 transaction costs associated with procuring such energy, including, but not limited to, costs of
59 transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as determined
60 pursuant to the provisions of subdivision A 2 of § 56-585.1. The methodology established by the
61 Commission for determining such costs shall ensure that neither utilities nor other retail customers are
62 adversely affected in a manner contrary to the public interest.

63 4. Two or more individual nonresidential retail customers of electric energy within the
64 Commonwealth, whose individual demand during the most recent calendar year did not exceed five
65 megawatts, may petition the Commission for permission to aggregate or combine their demands, for the
66 purpose of meeting the demand limitations of subdivision 3, so as to become qualified to purchase
67 electric energy from any supplier of electric energy licensed to sell retail electric energy within the
68 Commonwealth under the conditions specified in subdivision 3. The Commission may, after notice and
69 opportunity for hearing, approve such petition if it finds that:

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

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

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

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

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

92 ~~b. To continue purchasing renewable energy pursuant to the terms of a power purchase agreement in~~
93 ~~effect on the date there is filed with the Commission a tariff for the incumbent electric utility that serves~~
94 ~~the exclusive service territory in which the customer is located to offer electric energy provided 100~~
95 ~~percent from renewable energy, for the duration of such agreement.~~

96 6. To the extent that an incumbent electric utility has elected as of February 1, 2019, the Fixed
97 Resource Requirement alternative as a Load Serving Entity in the PJM Region and continues to make
98 such election and is therefore required to obtain capacity for all load and expected load growth in its
99 service area, any customer of a utility subject to that requirement that purchases energy pursuant to
100 subdivision 3 or 4 from a supplier licensed to sell retail electric energy within the Commonwealth shall
101 continue to pay its incumbent electric utility for the non-fuel generation capacity and transmission
102 related costs incurred by the incumbent electric utility in order to meet the customer's capacity
103 obligations, pursuant to the incumbent electric utility's standard tariff that has been approved by and is
104 on file with the Commission. In the case of such customer, the advance written notice period established
105 in subdivisions 3 c and d shall be three years. This subdivision shall not apply to the customers of
106 licensed suppliers that (i) had an agreement with a licensed supplier entered into before February 1,
107 2019, or (ii) had aggregation petitions pending before the Commission prior to January 1, 2019, unless
108 and until any customer referenced in clause (i) or (ii) has returned to purchase electric energy from its
109 incumbent electric utility, pursuant to the provisions of subdivision 3 or 4, and is receiving electric
110 energy from such incumbent electric utility.

111 7. *Notwithstanding anything to the contrary in this section, cooperative customers that are eligible to*
112 *purchase from licensed suppliers shall be subject to the following additional conditions:*

113 A tariff for one or more classes of residential customers filed with the Commission for approval by a
114 cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided 100
115 percent from renewable energy if it provides undifferentiated electric energy and the cooperative retires
116 a quantity of renewable energy certificates equal to 100 percent of the electric energy provided pursuant
117 to such tariff. A tariff for one or more classes of nonresidential customers filed with the Commission for

118 approval by a cooperative on or after July 1, 2012, shall be deemed to offer a tariff for electric energy
 119 provided 100 percent from renewable energy if it provides undifferentiated electric energy and the
 120 cooperative retires a quantity of renewable energy certificates equal to 100 percent of the electric energy
 121 provided pursuant to such tariff. For purposes of this section, "renewable energy certificate" means, with
 122 respect to cooperatives, a tradable commodity or instrument issued by a regional transmission entity or
 123 affiliate or successor thereof in the United States that validates the generation of electricity from
 124 renewable energy sources or that is certified under a generally recognized renewable energy certificate
 125 standard. One renewable energy certificate equals 1,000 kWh or one MWh of electricity generated from
 126 renewable energy. A cooperative offering electric energy provided 100 percent from renewable energy
 127 pursuant to this subdivision that involves the retirement of renewable energy certificates shall disclose to
 128 its retail customers who express an interest in purchasing energy pursuant to such tariff (i) that the
 129 renewable energy is comprised of the retirement of renewable energy certificates, (ii) the identity of the
 130 entity providing the renewable energy certificates, and (iii) the sources of renewable energy being
 131 offered. *A cooperative customer eligible to take service under a tariff for electric energy provided 100*
 132 *percent from renewable energy shall not purchase electric energy provided 100 percent from renewable*
 133 *energy from a licensed supplier pursuant to subdivision 5, except such customer may continue*
 134 *purchasing renewable energy pursuant to the terms of a power purchase agreement in effect on the date*
 135 *the cooperative serving it filed with the Commission such tariff for electric energy provided 100 percent*
 136 *from renewable energy, as set forth in this subdivision, for the duration of such agreement.*

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

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

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

161 3. Notwithstanding the provisions of subsection D of § 56-582 and subsection C of § 56-585,
 162 however, any such customers exempted from any applicable minimum stay periods as provided in
 163 subdivision 2 shall not be entitled to purchase retail electric energy thereafter from their incumbent
 164 electric utilities, or from any distributor required to provide default service under subsection B of
 165 § 56-585, at the capped rates established under § 56-582, unless such customers agree to satisfy any
 166 minimum stay period then applicable while obtaining retail electric energy at capped rates.

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

170 **2. That the provisions of this act shall not become effective unless reenacted by the 2021 Session of**
 171 **the General Assembly.**