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HOUSE BILL NO. 975
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)
(Patron Prior to Substitute--Delegate Lopez)

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

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 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

26 serving the exclusive service territory in which such a customer is located, subject to the following
27 conditions:

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

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

35 c. If such customer does purchase electric energy from licensed suppliers after the expiration or
36 termination of capped rates, it shall not thereafter be entitled to purchase electric energy from the
37 incumbent electric utility without giving ~~five years'~~ 90 days' advance written notice of such intention to
38 such utility, except where such customer demonstrates to the Commission, after notice and opportunity
39 for hearing, through clear and convincing evidence that its supplier has failed to perform, or has
40 anticipatorily breached its duty to perform, or otherwise is about to fail to perform, through no fault of the
41 customer, and that such customer is unable to obtain service at reasonable rates from an alternative
42 supplier. If, as a result of such proceeding, the Commission finds it in the public interest to grant an
43 exemption from the ~~five-year~~ 90-day notice requirement, such customer may thereafter purchase electric
44 energy at the costs of such utility, as determined by the Commission pursuant to subdivision 3 d hereof,
45 for the remainder of the ~~five-year~~ 90-day notice period, after which point the customer may purchase
46 electric energy from the utility under rates, terms and conditions determined pursuant to § 56-585.1.
47 However, such customer shall be allowed to individually purchase electric energy from the utility under
48 rates, terms, and conditions determined pursuant to § 56-585.1 if, upon application by such customer, the
49 Commission finds that neither such customer's incumbent electric utility nor retail customers of such
50 utility that do not choose to obtain electric energy from alternate suppliers will be adversely affected in a
51 manner contrary to the public interest by granting such petition. In making such determination, the
52 Commission shall take into consideration, without limitation, the impact and effect of any and all other

53 previously approved petitions of like type with respect to such incumbent electric utility. Any customer
54 that returns to purchase electric energy from its incumbent electric utility, before or after expiration of the
55 ~~five-year~~ 90-day notice period, shall be subject to minimum stay periods equal to those prescribed by the
56 Commission pursuant to subdivision C 1. Any customer that requests a return to service by an incumbent
57 electric utility pursuant to this subdivision after a period of receiving service from another supplier of
58 electric energy shall be subject to a three-year period from the date of such request during which, if such
59 customer leaves service by such incumbent electric utility, such customer shall not be permitted to return
60 to service by such incumbent electric utility. However, such incumbent electric utility may waive this
61 three-year period and may permit such customer to return to service notwithstanding this subdivision.

62 d. The costs of serving a customer that has received an exemption from the ~~five-year~~ 90-day notice
63 requirement under subdivision 3 c hereof shall be the market-based costs of the utility, including (i) the
64 actual expenses of procuring such electric energy from the market, (ii) additional administrative and
65 transaction costs associated with procuring such energy, including, but not limited to, costs of
66 transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin as determined
67 pursuant to the provisions of subdivision A 2 of § 56-585.1. The methodology established by the
68 Commission for determining such costs shall ensure that neither utilities nor other retail customers are
69 adversely affected in a manner contrary to the public interest.

70 e. By January 1, 2026, the Commission shall promulgate rules and regulations establishing a
71 variable scale fee that an incumbent electric utility may charge a customer leaving service by such
72 incumbent electric utility to defray the related costs. In establishing such fee, the Commission shall
73 consider customer size and demand, the costs of existing infrastructure, and other factors as determined
74 by the Commission.

75 4. Two or more individual nonresidential retail customers of electric energy within the
76 Commonwealth, whose individual demand during the most recent calendar year did not exceed five
77 megawatts, may petition the Commission for permission to aggregate or combine their demands, for the
78 purpose of meeting the demand limitations of subdivision 3, so as to become qualified to purchase electric
79 energy from any supplier of electric energy licensed to sell retail electric energy within the Commonwealth

80 under the conditions specified in subdivision 3. The Commission may, after notice and opportunity for
81 hearing, approve such petition if it finds that:

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

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

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

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

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

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

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

122 7. A tariff for one or more classes of residential customers filed with the Commission for approval
123 by a cooperative on or after July 1, 2010, shall be deemed to offer a tariff for electric energy provided 100
124 percent from renewable energy if it provides undifferentiated electric energy and the cooperative retires a
125 quantity of renewable energy certificates equal to 100 percent of the electric energy provided pursuant to
126 such tariff. A tariff for one or more classes of nonresidential customers filed with the Commission for
127 approval by a cooperative on or after July 1, 2012, shall be deemed to offer a tariff for electric energy
128 provided 100 percent from renewable energy if it provides undifferentiated electric energy and the
129 cooperative retires a quantity of renewable energy certificates equal to 100 percent of the electric energy
130 provided pursuant to such tariff. For purposes of this section, "renewable energy certificate" means, with
131 respect to cooperatives, a tradable commodity or instrument issued by a regional transmission entity or
132 affiliate or successor thereof in the United States that validates the generation of electricity from renewable
133 energy sources or that is certified under a generally recognized renewable energy certificate standard. One

134 renewable energy certificate equals 1,000 kWh or one MWh of electricity generated from renewable
135 energy. A cooperative offering electric energy provided 100 percent from renewable energy pursuant to
136 this subdivision that involves the retirement of renewable energy certificates shall disclose to its retail
137 customers who express an interest in purchasing energy pursuant to such tariff (i) that the renewable
138 energy is comprised of the retirement of renewable energy certificates, (ii) the identity of the entity
139 providing the renewable energy certificates, and (iii) the sources of renewable energy being offered.

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

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

147 2. Subject to (i) the availability of capped rate service under § 56-582, and (ii) the transfer of the
148 management and control of an incumbent electric utility's transmission assets to a regional transmission
149 entity after approval of such transfer by the Commission under § 56-579, retail customers of such utility
150 (a) purchasing such energy from licensed suppliers and (b) otherwise subject to minimum stay periods
151 prescribed by the Commission pursuant to subdivision 1, shall nevertheless be exempt from any such
152 minimum stay obligations by agreeing to purchase electric energy at the market-based costs of such utility
153 or default providers after a period of obtaining electric energy from another supplier. Such costs shall
154 include (i) the actual expenses of procuring such electric energy from the market, (ii) additional
155 administrative and transaction costs associated with procuring such energy, including, but not limited to,
156 costs of transmission, transmission line losses, and ancillary services, and (iii) a reasonable margin. The
157 methodology of ascertaining such costs shall be determined and approved by the Commission after notice
158 and opportunity for hearing and after review of any plan filed by such utility to procure electric energy to
159 serve such customers. The methodology established by the Commission for determining such costs shall
160 be consistent with the goals of (a) promoting the development of effective competition and economic

161 development within the Commonwealth as provided in subsection A of § 56-596, and (b) ensuring that
162 neither incumbent utilities nor retail customers that do not choose to obtain electric energy from alternate
163 suppliers are adversely affected.

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

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

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