

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 56-585 of the Code of Virginia, relating to the provision of default
2 service under the Virginia Electric Utility Restructuring Act.

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

4 **1. That § 56-585 of the Code of Virginia is amended and reenacted as follows:**

5 § 56-585. Default service.

6 A. The Commission shall, after notice and opportunity for hearing, (i) determine the components
7 of default service and (ii) establish one or more programs making such services available to retail
8 customers requiring them commencing with the availability throughout the Commonwealth of customer
9 choice for all retail customers as established pursuant to § 56-577. For purposes of this chapter, "default
10 service" means service made available under this section to retail customers who (i) do not affirmatively
11 select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted
12 with an alternative supplier who fails to perform.

13 B. From time to time, the Commission shall designate one or more providers of default service.

14 In doing so, the Commission:

15 1. Shall take into account the characteristics and qualifications of prospective providers,
16 including proposed rates, experience, safety, reliability, corporate structure, access to electric energy
17 resources necessary to serve customers requiring such services, and other factors deemed necessary to
18 ensure the reliable provision of such services, to prevent the inefficient use of such services, and to
19 protect the public interest;

20 2. May periodically, as necessary, conduct competitive bidding processes under procedures
21 established by the Commission and, upon a finding that the public interest will be served, designate one
22 or more willing and suitable providers to provide one or more components of such services, in one or
23 more regions of the Commonwealth, to one or more classes of customers;

24 3. To the extent that default service is not provided pursuant to a designation under subdivision
25 2, may require a distributor to provide, in a safe and reliable manner, one or more components of such
26 services, or to form an affiliate to do so, in one or more regions of the Commonwealth, at rates
27 determined pursuant to subsection C and for periods specified by the Commission; however, the
28 Commission may not require a distributor, or affiliate thereof, to provide any such services outside the
29 territory in which such distributor provides service; and

30 4. Notwithstanding imposition on a distributor by the Commission of the requirement provided
31 in subdivision 3, the Commission may thereafter, upon a finding that the public interest will be served,
32 designate through the competitive bidding process established in subdivision 2 one or more willing and
33 suitable providers to provide one or more components of such services, in one or more regions of the
34 Commonwealth, to one or more classes of customers.

35 C. If a distributor is required to provide default services pursuant to subdivision B 3, after notice
36 and opportunity for hearing, the Commission shall periodically, for each distributor, determine the rates,
37 terms and conditions for default services, taking into account the characteristics and qualifications set
38 forth in subdivision B 1, as follows:

39 1. Until the expiration or termination of capped rates, the rates for default service provided by a
40 distributor shall equal the capped rates established pursuant to subdivision A 2 of § 56-582. After the
41 expiration or termination of such capped rates, the rates for default services shall be based upon
42 competitive market prices for electric generation services capacity and energy in competitive regional
43 electricity markets, except as provided in subsection G or as provided in subdivision 4 b when the
44 Commission is unable to identify regional electricity markets where competition is an effective regulator
45 of rates.

46 2. The Commission shall, after notice and opportunity for hearing, determine the rates, terms and
47 conditions for default service by such distributor on the basis of the provisions of Chapter 10 (§ 56-232
48 et seq.) of this title, except that the generation-related components of such rates shall be (i) based upon a
49 plan approved by the Commission as set forth in subdivision 3 or (ii) in the absence of an approved plan,
50 based upon prices for generation capacity and energy in competitive regional electricity markets, except

51 as provided in subsection G or as provided in subdivision 4 b when the Commission is unable to identify
52 regional electricity markets where competition is an effective regulator of rates.

53 3. Prior to a distributor's provision of default service, and upon request of such distributor, the
54 Commission shall review any plan filed by the distributor to procure electric generation services for
55 default service. The Commission shall approve such plan if the Commission determines that the
56 procurement of electric generation capacity and energy under such plan is adequately based upon prices
57 of capacity and energy in competitive regional electricity markets. If the Commission determines that
58 the plan does not adequately meet such criteria, then the Commission shall modify the plan, with the
59 concurrence of the distributor, or reject the plan.

60 4. a. For purposes of this subsection, in determining whether regional electricity markets are
61 competitive ~~and rates for default service~~, the Commission shall consider (i) the liquidity and price
62 transparency of such markets, (ii) whether competition is an effective regulator of prices in such
63 markets, (iii) the wholesale or retail nature of such markets, as appropriate, (iv) the reasonable
64 accessibility of such markets to the regional transmission entity to which the distributor belongs, and (v)
65 such other factors it finds relevant. As used in this subsection, the term "competitive regional electricity
66 market" means a market in which competition, and not statutory or regulatory price constraints,
67 effectively regulates the price of electricity.

68 b. If, in establishing a distributor's default service generation rates, the Commission is unable to
69 identify regional electricity markets where competition is an effective regulator of rates, then the
70 Commission shall establish such distributor's default service generation rates by setting rates that ~~would~~
71 approximate those likely to be produced in a competitive regional electricity market (i) seek to ensure
72 the safe and reliable provision of adequate default service to all classes of customers, (ii) do not
73 unreasonably prejudice or disadvantage any class of customers, (iii) provide incentives for improved
74 performance by the distributor in the conduct of its provision of default service, (iv) are not excessive,
75 (v) are adequate, and (vi) are in the public interest. Such proxy generation rates shall take into account:
76 (i) the factors set forth in subdivision C 4 a, and (ii) such additional factors as the Commission deems
77 necessary to produce such proxy generation rates. If a distributor asserts that the default service

78 generation rates so established by the Commission do not allow it to recover its prudently incurred costs
79 and an adequate return, the Commission, after notice and hearing, shall establish such distributor's
80 default service generation rates on the basis of the provisions of Chapter 10 (§ 56-232 et seq.) of this
81 title.

82 D. In implementing this section, the Commission shall take into consideration the need of default
83 service customers for rate stability and for protection from unreasonable rate fluctuations.

84 E. On or before July 1, 2004, and annually thereafter, the Commission shall determine, after
85 notice and opportunity for hearing, whether there is a sufficient degree of competition such that the
86 elimination of default service for particular customers, particular classes of customers or particular
87 geographic areas of the Commonwealth will not be contrary to the public interest. The Commission shall
88 report its findings and recommendations concerning modification or termination of default service to the
89 General Assembly and to the Commission on Electric Utility Restructuring, not later than December 1,
90 2004, and annually thereafter.

91 F. A distribution electric cooperative, or one or more affiliates thereof, shall have the obligation
92 and right to be the supplier of default services in its certificated service territory. A distribution electric
93 cooperative's rates for such default services shall be the capped rate for the duration of the capped rate
94 period and shall be based upon the distribution electric cooperative's prudently incurred cost thereafter.
95 Subsections B and C shall not apply to a distribution electric cooperative or its rates. Such default
96 services, for the purposes of this subsection, shall include the supply of electric energy and all services
97 made competitive pursuant to § 56-581.1. If a distribution electric cooperative, or one or more affiliates
98 thereof, elects or seeks to be a default supplier of another electric utility, then the Commission shall
99 designate the default supplier for that distribution electric cooperative, or any affiliate thereof, pursuant
100 to subsection B.

101 G. To ensure a reliable and adequate supply of electricity, and to promote economic
102 development, an investor-owned distributor that has been designated a default service provider under
103 this section may petition the Commission for approval to construct, or cause to be constructed, a coal-
104 fired generation facility that utilizes Virginia coal and is located in the coalfield region of the

105 Commonwealth, as described in § 15.2-6002, to meet its native load and default service obligations,
106 regardless of whether such facility is located within or without the distributor's service territory. The
107 Commission shall consider any petition filed under this subsection in accordance with its competitive
108 bidding rules promulgated pursuant to § 56-234.3, and in accordance with the provisions of this chapter.
109 Notwithstanding the provisions of subdivision C 3 related to the price of default service, a distributor
110 that constructs, or causes to be constructed, such facility shall have the right to recover the costs of the
111 facility, including allowance for funds used during construction, life-cycle costs, and costs of
112 infrastructure associated therewith, plus a fair rate of return, through its rates for default service. A
113 distributor filing a petition for the construction of a facility under the provisions of this subsection shall
114 file with its application a plan, or a revision to a plan previously filed, as described in subdivision C 3,
115 that proposes default service rates to ensure such cost recovery and fair rate of return. The construction
116 of such facility that utilizes energy resources located within the Commonwealth is in the public interest,
117 and in determining whether to approve such facility, the Commission shall liberally construe the
118 provisions of this title.

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