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HOUSE BILL NO. 599

Offered January 11, 2006

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A BILL to amend and reenact §§ 56-232 and 56-265.1 of the Code of Virginia, relating to the definition of a public utility; providers of propane air.

Patron—Cosgrove

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 56-232 and 56-265.1 of the Code of Virginia are amended and reenacted as follows:**

§ 56-232. Public utility and schedules defined.

A. The term "public utility" as used in §§ 56-233 to 56-240 and 56-246 to 56-250:

1. Shall mean and embrace every corporation (other than a municipality), company, individual, or association of individuals or cooperative, their lessees, trustees, or receivers, appointed by any court whatsoever, that now or hereafter may own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages or for the production, transmission, delivery, or furnishing of heat, chilled air, chilled water, light, power, or water, or sewerage facilities, either directly or indirectly, to or for the public.

2. Notwithstanding any provision of subdivision 1 of this subsection or subsection G of § 13.1-620, shall also include any governmental entity established pursuant to the laws of any other state, corporation (other than a municipality established under the laws of this Commonwealth), company, individual, or association of individuals or cooperative, their lessees, trustees, or receivers, appointed by any court whatsoever, that at any time owns, manages or controls any plant or equipment, or any part thereof, located within the Commonwealth, which plant or equipment is used in the provision of sewage treatment services to or for an authority as defined in § 15.2-5101; however, the Commission shall have no jurisdiction to regulate the rates, terms and conditions of sewage treatment services that are provided by any such public utility directly to persons pursuant to the terms of a franchise agreement between the public utility and a municipality established under the laws of this Commonwealth.

3. Except as provided in subdivision 2, shall not be construed to include any corporation created under the provisions of Title 13.1 unless the articles of incorporation expressly state that the corporation is to conduct business as a public service company.

B. Notwithstanding any provision of law to the contrary, no person, firm, corporation, or other entity shall be deemed a public utility or public service company, solely by virtue of engaging in production, transmission, or sale at retail of electric power as a qualifying small power producer using renewable or nondepletable primary energy sources within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617) and not exceeding 7.5 megawatts of rated capacity, nor solely by virtue of serving as an aggregator of the production of such small power producers, provided that the portion of the output of any qualifying small power producer which is sold at retail shall not be sold to residential consumers.

C. No qualifying small power producer, within the meaning of regulations adopted by the Federal Energy Regulatory Commission, shall be deemed a public utility within the meaning of Chapter 7 (§ 62.1-80 et seq.) of Title 62.1.

D. The term "public utility" as herein defined shall not be construed to include any chilled water air-conditioning cooperative serving residences in less than a one square mile area, or any company which is excluded from the definition of "public utility" by subdivision (b) (4) ~~or~~, (b) (8), or (b) (9) of § 56-265.1.

E. Subject to the provisions of § 56-232.1, the term "schedules" as used in §§ 56-234 through 56-245 shall include schedules of rates and charges for service to the public and also contracts for rates and charges in sales at wholesale to other public utilities or for divisions of rates between public utilities, but shall not include contracts of telephone companies with the state government or contracts of other public utilities with municipal corporations or the federal or state government, or any contract executed prior to July 1, 1950.

§ 56-265.1. Definitions.

In this chapter the following terms shall have the following meanings:

(a) "Company" means a corporation, a limited liability company, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in

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59 his capacity as such; but not a municipal corporation or a county, unless such municipal corporation or
60 county has obtained a certificate pursuant to § 56-265.4:4.

61 (b) "Public utility" means any company which owns or operates facilities within the Commonwealth
62 of Virginia for the generation, transmission or distribution of electric energy for sale, for the production,
63 storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or
64 manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of
65 telephone service, sewerage facilities or water; however, the term "public utility" shall not include any
66 of the following:

67 (1) Except as otherwise provided in § 56-265.3:1, any company furnishing sewerage facilities,
68 geothermal resources or water to less than 50 customers. Any company furnishing water or sewer
69 services to 10 or more customers and excluded by this subdivision from the definition of "public utility"
70 for purposes of this chapter nevertheless shall not abandon the water or sewer services unless and until
71 approval is granted by the Commission or all the customers receiving such services agree to accept
72 ownership of the company.

73 (2) Any company generating and distributing electric energy exclusively for its own consumption.

74 (3) Any company (A) which furnishes electric service together with heating and cooling services,
75 generated at a central plant installed on the premises to be served, to the tenants of a building or
76 buildings located on a single tract of land undivided by any publicly maintained highway, street or road
77 at the time of installation of the central plant, and (B) which does not charge separately or by meter for
78 electric energy used by any tenant except as part of a rental charge. Any company excluded by this
79 subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall,
80 within 30 days following the issuance of a building permit, notify the State Corporation Commission in
81 writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard
82 to the quality of electric service furnished, to the provisions of Chapters 10 (§ 56-232 et seq.) and 17
83 (§ 56-509 et seq.) of this title and regulations thereunder and be deemed a public utility for such
84 purposes, if such company furnishes such service to 100 or more lessees.

85 (4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or
86 delivery service, of natural or manufactured gas to fewer than 35 commercial or industrial customers,
87 which are not themselves "public utilities" as defined in this chapter, or to certain public schools as
88 indicated in this subdivision, for use solely by such purchasing customers at facilities which are not
89 located in a territory for which a certificate to provide gas service has been issued by the Commission
90 under this chapter and which, at the time of the Commission's receipt of the notice provided under
91 § 56-265.4:5, are not located within any area, territory, or jurisdiction served by a municipal corporation
92 that provided gas distribution service as of January 1, 1992, provided that such company shall comply
93 with the provisions of § 56-265.4:5. Direct sales or ancillary transmission or delivery services of natural
94 gas to public schools in the following localities may be made without regard to the number of schools
95 involved and shall not count against the "fewer than 35" requirement in this subdivision: the Counties of
96 Dickinson, Wise, Russell, and Buchanan, and the City of Norton.

97 (5) Any company which is not a public service corporation and which provides compressed natural
98 gas service at retail for the public.

99 (6) Any company selling landfill gas from a solid waste management facility permitted by the
100 Department of Environmental Quality to a public utility certificated by the Commission to provide gas
101 distribution service to the public in the area in which the solid waste management facility is located. If
102 such company submits to the public utility a written offer for sale of such gas and the public utility
103 does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company
104 may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within
105 three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been
106 liquefied. The provisions of this subdivision shall not apply to any city with a population of at least
107 64,000 but no more than 69,000 or any county with a population of at least 500,000.

108 (7) Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et
109 seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or
110 industrial customer from a solid waste management facility permitted by the Department of
111 Environmental Quality and operated by that same authority, if such an authority limits off-premises sale,
112 transmission or delivery service of landfill gas to no more than one purchaser. The authority may
113 contract with other persons for the construction and operation of facilities necessary or convenient to the
114 sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely
115 by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located
116 within the certificated service territory of a natural gas public utility, the public utility may file for
117 Commission approval a proposed tariff to reflect any anticipated or known changes in service to the
118 purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the
119 landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities;
120 provided, however, that such tariff may impose such requirements as are reasonably calculated to

121 recover the cost of such service and to protect and ensure the safety and integrity of the public utility's
122 facilities.

123 (8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or
124 both, that is derived from a solid waste management facility permitted by the Department of
125 Environmental Quality and sold or delivered from any such facility to not more than three commercial
126 or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as
127 authorized by this section. If a purchaser of the landfill gas is located within the certificated service
128 territory of a natural gas public utility or within an area in which a municipal corporation provides gas
129 distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such
130 company shall submit to such public utility or municipal corporation a written offer for sale of that gas
131 prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility
132 or municipal corporation does not agree within 60 days following the date of the offer to purchase such
133 landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill
134 gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or
135 county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated
136 or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No
137 such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on
138 similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may
139 impose such requirements as are reasonably calculated to recover any cost of such service and to protect
140 and ensure the safety and integrity of the public utility's facilities.

141 (9) *A company that is not organized as a public service company pursuant to subsection D of*
142 *§ 13.1-620 and that sells and delivers propane air only to one or more public utilities.*

143 (c) "Commission" means the State Corporation Commission.

144 (d) "Geothermal resources" means those resources as defined in § 45.1-179.2.