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SENATE BILL NO. 719

Offered January 26, 2006

A BILL to amend and reenact § 56-49 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-265.2:2, relating to eminent domain; approval of routes for petroleum product pipelines.

Patron—Howell

Unanimous consent to introduce

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 56-49 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-265.2:2 as follows:

§ 56-49. Powers.

In addition to the powers conferred by Title 13.1, each public service corporation of this Commonwealth organized to conduct a public service business other than a railroad shall have the power:

1. To cause to be made such examinations and surveys for its proposed line or location of its works as are necessary to the selection of the most advantageous location or route or for the improvement or straightening of its line or works, or changes of location or construction, or providing additional facilities, and for such purposes, by its officers and servants, to enter upon the lands or waters of any person but subject to responsibility for all damages that are done thereto, and subject to permission from, or notice to, the landowner as provided in § 25.1-203.

2. To acquire by the exercise of the right of eminent domain any lands or estates or interests therein, sand, earth, gravel, water or other material, structures, rights-of-way, easements or other interests in lands, including lands under water and riparian rights, of any person, which are deemed necessary for the purposes of construction, reconstruction, alteration, straightening, relocation, operation, maintenance, improvement or repair of its lines, facilities or works, and for all its necessary business purposes incidental thereto, for its use in serving the public either directly or indirectly through another public service corporation, including permanent, temporary, continuous, periodical or future use, whenever the corporation cannot agree on the terms of purchase or settlement with any such person because of the incapacity of such person or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because any such person cannot with reasonable diligence be found or is unknown, or is a nonresident of the Commonwealth, or is unable to convey valid title to such property. Such proceeding shall be conducted in the manner provided by Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 and shall be subject to the provisions of § 25.1-102. However, the corporation shall not take by condemnation proceedings a strip of land for a right-of-way within 60 feet of the dwelling house of any person except (i) when the court having jurisdiction of the condemnation proceeding finds, after notice of motion to be granted authority to do so to the owner of such dwelling house, given in the manner provided in §§ 25.1-209, 25.1-210, and 25.1-212, and a hearing thereon, that it would otherwise be impractical, without unreasonable expense, to construct the proposed works of the corporation at another location; (ii) in case of occupancy of the streets or alleys, public or private, of any county, city or town, in pursuance of permission obtained from the board of supervisors of such county or the corporate authorities of such city or town; or (iii) in case of occupancy of the highways of this Commonwealth or of any county, in pursuance of permission from the authorities having jurisdiction over such highways. A public service corporation which has not been (i) allotted territory for public utility service by the ~~State Corporation~~ Commission or (ii) issued a certificate to provide public utility service shall acquire lands or interests therein by eminent domain as provided in this subdivision for lines, facilities, works or purposes only after it has obtained any certificate of public convenience and necessity required for such lines, facilities, works or purposes under Chapter 10.1 (§ 56-265.1 et seq.) of this title.

And provided, further, that notwithstanding the foregoing nor any other provision of the law the right of eminent domain shall not be exercised for the purpose of acquiring any lands or estates or interests therein nor any other property for the construction, reconstruction, maintenance or operation of any pipeline for (1) the transportation of coal or (2) the transportation of one or more petroleum products, as defined in § 56-265.2:2, unless the route for such petroleum products pipeline is approved by the Commission pursuant to § 56-265.2:2.

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59 For the purposes of this section, the words "public service corporation" shall include any Virginia
60 limited liability company as defined in § 56-1 that has been issued a certificate of public convenience
61 and necessity authorizing it to furnish telecommunications services of a public utility set forth in
62 subdivision (b) of § 56-265.1 and that seeks to construct or acquire facilities for use in providing the
63 certificated telecommunications service.

64 § 56-265.2:2. *Approval of route for petroleum product pipelines.*

65 A. *The Commission shall not approve, as provided in § 56-49, the proposed route of a pipeline for*
66 *the transportation of one or more petroleum products until it has considered the effect of the pipeline on*
67 *the environment, public safety, and economic development in the Commonwealth, and may establish*
68 *such reasonably practical conditions, including but not limited to maximizing the use of existing streets*
69 *or other public rights-of-way, as may be necessary to minimize any adverse environmental or public*
70 *safety impact.*

71 B. *Approval of the route of the proposed petroleum product pipeline shall not be granted pursuant to*
72 *subdivision A unless the public service corporation has provided 30 days' advance public notice of the*
73 *proposed pipeline by (i) publishing a notice in a newspaper or newspapers of general circulation in*
74 *each of the counties and municipalities through which the pipeline is proposed to be constructed; (ii)*
75 *providing written notice to the governing body of each such county and municipality; (iii) causing to be*
76 *sent a copy of the notice by first-class mail to all owners of property within the route of the proposed*
77 *pipeline, as indicated on the map or sketch of the route filed with the Commission, which requirement*
78 *shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land*
79 *books maintained by the commissioner of revenue, director of finance, or treasurer of the county or*
80 *municipality; and (iv) filing a copy of any plans, specifications, or maps of the proposed pipeline with*
81 *the Commission, which plans, specifications, or maps shall be made available for public inspection at*
82 *the Commission's business office, during normal business hours. Any notice required by this subsection*
83 *shall include a written description of the proposed route the pipeline is to follow, a map or sketch of the*
84 *route, and information regarding the time period during which persons may request a public hearing*
85 *under subsection C.*

86 C. *If, within 45 days after publication and mailing of the notices required in subsection B, any*
87 *interested party requests a public hearing, the Commission shall, as soon as reasonably practicable*
88 *after such request, hold such hearing or hearings at such place as may be designated by the*
89 *Commission. If written requests therefor are received from 20 or more interested parties, the*
90 *Commission shall hold at least one hearing in the area that would be affected by construction of the*
91 *pipeline, for the purpose of receiving public comment on the proposal. If any hearing is to be held in*
92 *the area affected, the Commission shall direct that a copy of the transcripts of any previous hearings*
93 *held in the case be made available for public inspection at a convenient location in the area for a*
94 *reasonable time before such local hearing.*

95 D. *If a significantly different route is determined to be more desirable after the giving of the notice*
96 *required in subsection B, the Commission shall cause notice of the new route or routes to be published*
97 *and mailed in accordance with subsection B. The Commission shall thereafter comply with the*
98 *provisions of this section to the full extent necessary to give interested parties in the newly affected*
99 *areas the same protection afforded interested parties affected by the route described in the original*
100 *notice.*

101 E. *As used in this section:*

102 *"Interested parties" means the governing bodies of any counties or municipalities through which the*
103 *petroleum products pipeline is to be constructed, and persons residing or owning property within*
104 *one-half mile of such pipeline. For the purposes of this section, "environment" or "environmental" shall*
105 *be deemed to include in meaning "historic."*

106 *"Petroleum products" means any grade of gasoline, kerosene, diesel fuel, home heating oil, aviation*
107 *fuel, or transmix.*