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HOUSE BILL NO. 1649

Offered January 10, 2007

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A BILL to amend and reenact §§ 56-46.1 and 56-265.2 of the Code of Virginia, relating to underground placement of electrical transmission lines.

Patrons—Cole and Howell, W.J.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-46.1 and 56-265.2 of the Code of Virginia are amended and reenacted as follows:

§ 56-46.1. Commission to consider environmental, economic and improvements in service reliability factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearings.

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (i) shall consider the effect of the proposed facility on economic development within the Commonwealth and (ii) shall consider any improvements in service reliability that may result from the construction of such facility.

B. No overhead electrical transmission line of 150 kilovolts or more shall be constructed unless the State Corporation Commission shall, after at least thirty days' advance notice by (i) publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, (ii) written notice to the governing body of each such county and municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, approve such line. Such approval shall not be required for transmission lines constructed prior to January 1, 1983, for which the Commission has issued a certificate of convenience and necessity. Such notices shall include a written description of the proposed route the line is to follow, as well as a map or sketch of the route. As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned and, in the case of any application which is filed with the Commission in the years 1991 and 1992, for approval of a line of 500 kilovolts or more, any portion of which is proposed for construction west of the Blue Ridge Mountains, that the applicant will reasonably accommodate requests to wheel or transmit power from new electric generation facilities constructed after January 9, 1991. In addition, no overhead electrical transmission line of 150 kilovolts or more shall be constructed along a route that is within 500 feet of any building erected and used for school or residential purposes or (b) in any area where

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59 *the Commission finds that the construction and operation of such an overhead electrical transmission*
60 *line would unduly impair scenic vistas that are essential to the economic vitality of the affected locality,*
61 *unless the Commission has issued a certificate that the public convenience and necessity require the*
62 *exercise of such right or privilege as provided in subsection E of § 56-265.2.*

63 C. If, prior to such approval, any interested party shall request a public hearing, the Commission
64 shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as
65 may be designated by the Commission. In any hearing the public service company shall provide
66 adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.

67 If, prior to such approval, written requests therefor are received from twenty or more interested
68 parties, the Commission shall hold at least one hearing in the area which would be affected by
69 construction of the line, for the purpose of receiving public comment on the proposal. If any hearing is
70 to be held in the area affected, the Commission shall direct that a copy of the transcripts of any
71 previous hearings held in the case be made available for public inspection at a convenient location in the
72 area for a reasonable time before such local hearing.

73 D. For purposes of this section, "interested parties" shall include the governing bodies of any
74 counties or municipalities through which the line is proposed to be built, and persons residing or owning
75 property in each such county or municipality and "environment" or "environmental" shall be deemed to
76 include in meaning "historic," as well as a consideration of the probable effects of the line on the health
77 and safety of the persons in the area concerned.

78 For purposes of this section, "qualifying facilities" means a cogeneration or small power production
79 facility which meets the criteria of 18 C.F.R. Part 292; "public utility" means a public utility as defined
80 in § 56-265.1; and "reasonably accommodate requests to wheel or transmit power" means:

81 1. That the applicant will make available to new electric generation facilities constructed after
82 January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total
83 megawatts of the additional transmission capacity created by the proposed line, for the purpose of
84 wheeling to public utility purchasers the power generated by such qualifying facilities and other
85 nonutility facilities which are awarded a power purchase contract by a public utility purchaser in
86 compliance with applicable state law or regulations governing bidding or capacity acquisition programs
87 for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant
88 will extend only to those requests for wheeling service made within the twelve months following
89 certification by the State Corporation Commission of the transmission line and with effective dates for
90 commencement of such service within the twelve months following completion of the transmission line.

91 2. That the wheeling service offered by the applicant, pursuant to subdivision D 1 of this section,
92 will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L.
93 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line,
94 the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant
95 intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include
96 in its agreements for such wheeling service.

97 E. In the event that, at any time after the giving of the notice required in subsection B of this
98 section, it appears to the Commission that consideration of a route or routes significantly different from
99 the route described in the notice is desirable, the Commission shall cause notice of the new route or
100 routes to be published and mailed in accordance with subsection B of this section. The Commission
101 shall thereafter comply with the provisions of this section with respect to the new route or routes to the
102 full extent necessary to give interested parties in the newly affected areas the same protection afforded
103 interested parties affected by the route described in the original notice.

104 F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the
105 requirements of § 15.2-2232 and local zoning ordinances with respect to such transmission line.

106 G. The Commission shall enter into a memorandum of agreement with the Department of
107 Environmental Quality regarding the coordination of their reviews of the environmental impact of
108 electric generating plants and associated facilities.

109 § 56-265.2. Certificate of convenience and necessity required for acquisition, etc., of new facilities.

110 A. It shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise,
111 any facilities for use in public utility service, except ordinary extensions or improvements in the usual
112 course of business, without first having obtained a certificate from the Commission that the public
113 convenience and necessity require the exercise of such right or privilege. Any certificate required by this
114 section shall be issued by the Commission only after opportunity for a hearing and after due notice to
115 interested parties. The certificate for overhead electrical transmission lines of 150 kilovolts or more shall
116 be issued by the Commission only after compliance with the provisions of § 56-46.1 and subsection E.

117 B. In exercising its authority under this section, the Commission, notwithstanding the provisions of
118 § 56-265.4, may permit the construction and operation of electrical generating facilities, which shall not
119 be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10
120 (§ 56-232 et seq.) of this title, upon a finding that such generating facility and associated facilities

121 including transmission lines and equipment (i) will have no material adverse effect upon the rates paid
 122 by customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse
 123 effect upon reliability of electric service provided by any such regulated public utility; and (iii) are not
 124 otherwise contrary to the public interest. In review of its petition for a certificate to construct and
 125 operate a generating facility described in this subsection, the Commission shall give consideration to the
 126 effect of the facility and associated facilities, including transmission lines and equipment, on the
 127 environment and establish such conditions as may be desirable or necessary to minimize adverse
 128 environmental impact as provided in § 56-46.1. Facilities authorized by a certificate issued pursuant to
 129 this subsection may be exempted by the Commission from the provisions of Chapter 10 (§ 56-232 et
 130 seq.) of Title 56.

131 C. A map showing the location of any proposed ordinary extension or improvement outside of the
 132 territory in which the public utility is lawfully authorized to operate shall be filed with the Commission,
 133 and prior notice of such ordinary extension shall be given to the public utility or other entity authorized
 134 to provide the same utility service within said territory. Ordinary extensions outside the service territory
 135 of a public utility shall be undertaken only for use in providing its public utility service and shall be
 136 constructed and operated so as not to interfere with the service or facilities of any public utility or other
 137 entity authorized to provide utility service within any other territory. If, upon objection of the affected
 138 utility or entity filed within thirty days of the aforesaid notice and after investigation and opportunity for
 139 a hearing the Commission finds an ordinary extension would not comply with this section, it may alter
 140 or amend the plan for such activity or prohibit its construction.

141 D. Whenever a certificate is required under this section for a pipeline for the transmission or
 142 distribution of natural or manufactured gas, the Commission may issue such a certificate only after
 143 compliance with the provisions of § 56-265.2:1. As used in this section and § 56-265.2:1, "pipeline for
 144 the transmission or distribution of manufactured or natural gas" shall include the pipeline and any
 145 related facilities incidental or necessary to the operation of the pipeline.

146 E. *The construction and operation by a public utility of an overhead electrical transmission line of*
 147 *150 kilovolts or more along a route that is (i) within 500 feet of any building erected and used for*
 148 *school or residential purposes or (ii) in any area where the Commission finds that the construction and*
 149 *operation of such an overhead electrical transmission line would unduly impair scenic vistas that are*
 150 *essential to the economic vitality of the affected locality, shall be presumed by the Commission not to be*
 151 *required by the public convenience and necessity. However, the applicant for such a certificate may*
 152 *rebut such presumption by demonstrating to the Commission that (a) constructing an underground*
 153 *electrical transmission line along such route would not be technologically feasible and (b) there is no*
 154 *viable alternate route for the transmission line. In determining whether constructing an underground*
 155 *electrical transmission line along such route would not be technologically feasible, the Commission shall*
 156 *consider, among such other factors as it deems relevant, whether underground installation of the*
 157 *electrical transmission line would adversely affect the reliability of the electrical transmission system in*
 158 *the Commonwealth.*

159 *Upon finding that the construction of such an overhead electrical transmission line along the route is*
 160 *not required by the public convenience and necessity, the Commission may nevertheless elect to issue a*
 161 *certificate to the public utility authorizing the public utility to construct an underground electrical*
 162 *transmission line along the route, in which event all costs prudently incurred by the public utility in*
 163 *connection with the underground installation of such electrical transmission line shall be deemed to*
 164 *have been incurred through reasonable, proper, and efficient practices, and the public utility shall be*
 165 *entitled to pass through such costs to its customers pursuant to § 56-234.3.*

166 *If the Commission finds that the construction and operation of an overhead electrical transmission*
 167 *line of 150 kilovolts or more along the proposed route would not unduly impair scenic vistas that are*
 168 *essential to the economic vitality of the affected locality, the Commission, upon a petition by the locality*
 169 *in which the proposed route is to be located requesting that the line be installed underground, may elect*
 170 *to issue a certificate authorizing the underground construction of the transmission line in the proposed*
 171 *route if the Commission finds that underground installation of the transmission line in such route is*
 172 *technologically feasible and safe and that the locality has obligated itself to be responsible for*
 173 *reimbursing the public utility for the amount by which the cost of underground installation of the*
 174 *transmission line exceeds the cost of its installation overhead.*

175 F. This section shall be subject to the requirements of § 56-265.3, if any, and nothing herein shall be
 176 construed to supersede § 56-265.3.