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HOUSE BILL NO. 2708

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on March 26, 2007)

(Patron Prior to Substitute—Delegate Hugo)

A *BILL to amend and reenact §§ 56-580 and 56-594 of the Code of Virginia, relating to net energy metering; purchase of excess electricity generated by an eligible customer-generator.*

Be it enacted by the General Assembly of Virginia:**1. That §§ 56-580 and 56-594 of the Code of Virginia are amended and reenacted as follows:**

§ 56-580. Transmission and distribution of electric energy.

A. The Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution, transmission or any services made competitive pursuant to § 56-581.1, to the extent necessary to prevent impairment of competition.

D. The Commission shall permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest. In review of a petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1. 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 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.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Nothing in this chapter shall impair the Commission's existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any such electric utility unless (i) that municipality or that authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii) that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer outside the geographic area that was served by such municipality as of July 1, 1999, except (a) any area within the municipality that was served by an incumbent public utility as of that date but was thereafter served by an electric utility owned or operated by a municipality or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 pursuant to the terms of a franchise agreement between the municipality and the incumbent public utility, or (b) where the

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60 geographic area served by an electric utility owned or operated by a municipality is changed pursuant to
61 mutual agreement between the municipality and the affected incumbent public utility in accordance with
62 § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1, 1999, or by an
63 authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403 is
64 made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in
65 such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any
66 such utility, mutatis mutandis.

67 G. The applicability of *all provisions of this chapter except § 56-594* to any investor-owned
68 incumbent electric utility supplying electric service to retail customers on January 1, 2003, whose
69 service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell,
70 Scott, and Wise Counties shall be suspended effective July 1, 2003, so long as such utility does not
71 provide retail electric services in any other service territory in any jurisdiction to customers who have
72 the right to receive retail electric energy from another supplier. During any such suspension period, the
73 utility's rates shall be (i) its capped rates established pursuant to § 56-582 for the duration of the capped
74 rate period established thereunder, and (ii) determined thereafter by the Commission on the basis of such
75 utility's prudently incurred costs pursuant to Chapter 10 (§ 56-232 et seq.) of this title.

76 H. The expiration date of any certificates granted by the Commission pursuant to subsection D, for
77 which applications were filed with the Commission prior to July 1, 2002, shall be extended for an
78 additional two years from the expiration date that otherwise would apply.

79 § 56-594. Net energy metering provisions.

80 A. The Commission shall establish by regulation a program, to begin no later than July 1, 2000,
81 which affords eligible customer-generators the opportunity to participate in net energy metering. The
82 regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners and/or
83 operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible
84 customer-generators; or (v) any combination of the foregoing, as the Commission determines will
85 facilitate the provision of net energy metering, provided that the Commission determines that such
86 requirements do not adversely affect the public interest.

87 B. For the purpose of this section:

88 "Eligible customer-generator" means a customer that owns and operates, or contracts with other
89 persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than
90 10 kilowatts for residential customers and 500 kilowatts for nonresidential customers; (ii) uses as its
91 total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises
92 and is connected to the customer's wiring on the customer's side of its interconnection with the
93 distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and
94 distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity
95 requirements.

96 "Net energy metering" means measuring the difference, over the net metering period, between (i)
97 electricity supplied to an eligible customer-generator from the electric grid and (ii) the electricity
98 generated and fed back to the electric grid by the eligible customer-generator.

99 "Net metering period" means the 12-month period following the date of final interconnection of the
100 eligible customer-generator's system with an electric service provider, and each 12-month period
101 thereafter.

102 C. The Commission's regulations shall ensure that the metering equipment installed for net metering
103 shall be capable of measuring the flow of electricity in two directions, and shall allocate fairly the cost
104 of such equipment and any necessary interconnection. An eligible customer-generator's electrical
105 generating system shall meet all applicable safety and performance standards established by the National
106 Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories
107 such as Underwriters Laboratories. Beyond the requirements set forth in this section, an eligible
108 customer-generator whose electrical generating system meets those standards and rules shall bear the
109 reasonable cost, if any, as determined by the Commission, to (i) install additional controls, (ii) perform
110 or pay for additional tests, or (iii) purchase additional liability insurance.

111 D. The Commission shall establish minimum requirements for contracts to be entered into by the
112 parties to net metering arrangements. Such requirements shall protect the customer-generator against
113 discrimination by virtue of its status as a customer-generator.

114 ~~Where~~E. If electricity generated by ~~the~~ an eligible customer-generator over the net metering period
115 exceeds the electricity consumed by the customer-generator, the customer-generator shall ~~not~~ be
116 compensated for the excess electricity ~~unless~~ if the entity contracting to receive such electric energy and
117 the customer-generator enter into a power purchase agreement for such excess electricity. *If the eligible*
118 *customer-generator receives generation service from a default service provider, the default service*
119 *provider, upon the written request of the customer-generator, shall enter into a power purchase*
120 *agreement with the requesting eligible customer-generator that is consistent with the minimum*
121 *requirements for contracts established by the Commission pursuant to subsection D. The power purchase*

122 *agreement shall obligate the default service provider to purchase such excess electricity at the rate that*
123 *is provided for such purchases in a net metering standard contract or tariff approved by the*
124 *Commission, unless the parties agree to a higher rate. The net metering standard contract or tariff shall*
125 *be available to eligible customer-generators on a first-come, first-served basis in each electric*
126 *distribution company's Virginia service area until the rated generating capacity owned and operated by*
127 *eligible customer-generators in the state reaches 0.1 percent of each electric distribution company's*
128 *adjusted Virginia peak-load forecast for the previous year, and shall require the default service provider*
129 *to pay the eligible customer-generator for such excess electricity in a timely manner at a rate to be*
130 *established by the Commission.*