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**SENATE BILL NO. 1031**

Offered January 10, 2007

Prefiled January 9, 2007

*A BILL to amend and reenact §§ 56-46.1 and 56-265.1 of the Code of Virginia and to amend the Code of Virginia by adding in Title 67 a chapter numbered 11, consisting of sections numbered 67-1100 through 67-1106, and to repeal § 10.1-1186.2:1, relating to power plant siting.*

Patron—O'Brien

Referred to Committee on Commerce and Labor

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

**1. That §§ 56-46.1 and 56-265.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 67 a chapter numbered 11, consisting of sections numbered 67-1100 through 67-1106, 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 *with an installed rating of less than 10 megawatts* 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

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59 the Blue Ridge Mountains, that the applicant will reasonably accommodate requests to wheel or transmit  
60 power from new electric generation facilities constructed after January 9, 1991.

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

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

71 D. *For purposes of this section, "electrical utility facility" shall not include any facility that is*  
72 *included within the definition of a power plant in § 67-1100.*

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

78 For purposes of this section, "qualifying facilities" means a cogeneration or small power production  
79 facility *with an installed rating of less than 10 megawatts* which meets the criteria of 18 C.F.R. Part  
80 292; "public utility" means a public utility as defined in § 56-265.1; and "reasonably accommodate  
81 requests to wheel or transmit power" means:

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

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

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

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

107 G. The Commission shall enter into a memorandum of agreement with the Department of  
108 Environmental Quality regarding the coordination of their reviews of the environmental impact of  
109 electric generating plants *with an installed rating of less than 10 megawatts* and associated facilities.

110 § 56-265.1. Definitions.

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

112 (a) "Company" means a corporation, a limited liability company, an individual, a partnership, an  
113 association, a joint-stock company, a business trust, a cooperative, or an organized group of persons,  
114 whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in  
115 his capacity as such; but not a municipal corporation or a county, unless such municipal corporation or  
116 county has obtained a certificate pursuant to § 56-265.4:4.

117 (b) "Public utility" means any company which owns or operates facilities within the Commonwealth  
118 of Virginia for the generation, transmission or distribution of electric energy for sale, for the production,  
119 storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or  
120 manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of

telephone service, sewerage facilities or water; however, the term "public utility" shall not include any of the following:

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

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

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

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

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

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

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

(8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or both, that is derived from a solid waste management facility permitted by the Department of Environmental Quality and sold or delivered from any such facility to not more than three commercial

or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as authorized by this section. If a purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility or within an area in which a municipal corporation provides gas distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such company shall submit to such public utility or municipal corporation a written offer for sale of that gas prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility or municipal corporation does not agree within 60 days following the date of the offer to purchase such landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover any cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(9) A company that is not organized as a public service company pursuant to subsection D of § 13.1-620 and that sells and delivers propane air only to one or more public utilities. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and enforcement.

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

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

(e) "Electrical generating facility" shall not include any facility that is included within the definition of a power plant in § 67-1100.

#### CHAPTER 11. POWER PLANT SITING.

§ 67-1100. Definitions,

As used in this chapter:

"Board" means the Siting Board established by this chapter.

"Permitting Board" means the State Air Pollution Control Board or State Water Control Board, as applicable, when exercising a permitting function under the delegated authority of federal law.

"Power plant" means an electric power generation plant with an installed capacity rating of 10 megawatts or more.

§ 67-1101. Siting Board.

A. The Siting Board (the "Board") is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government.

B. The Board shall consist of five members, as follows: the chair of the State Corporation Commission, who shall serve as chair of the Board; the director of the Department of Environmental Quality; one designee of the Speaker of the House of Delegate; one designee of the chairman of the Senate Committee on Rules; and one designee of the public, to be appointed by the Governor. Vacancies other than by expiration of term shall be filled by the Governor by appointment for the unexpired term.

C. The Board may call upon any state department or agency for technical assistance. All departments and agencies of the Commonwealth shall, upon request, assist the Board in the performance of its duties.

D. The Board shall meet upon the call of the chairman or upon written request of any two members. All members shall be notified of the time and place of any meeting at least five days in advance of the meeting. Three members of the Board shall constitute a quorum for the transaction of business. A majority vote of the Board shall be required for all actions, including permitting decisions.

E. The Board shall keep a complete and accurate record of the proceedings at all its meetings, a copy of which shall be kept on file in the office of the Director and available for public inspection.

F. The members of the Board shall serve without compensation, but shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties. The Board may engage any consultants or expert witnesses that it deems necessary to implement its statutory responsibilities; provided, however, that to the maximum extent possible, Board staff shall be drawn from existing state agencies.

G. The Board shall maintain and grant access to records and reports in its files to members of the public during normal working hours and shall permit copies of those records and reports to be made by interested members of the public at their expense; provided, however, that the Board shall not permit disclosure, other than to another government agency for the sole purpose of rendering an advisory opinion of any information obtained by or submitted to the Board pursuant to the provisions of this chapter, upon a showing, satisfactory to the Board, that the information is entitled to protection as trade secrets or as privileged, confidential, or proprietary information. No other governmental agency shall

disclose any trade secrets or privileged, confidential, or proprietary information.

§ 67-1102. Permit required prior to operation or construction of a power plant.

No person shall construct or operate a power plant without first obtaining a permit authorizing the siting of the power plant from the Board.

§ 67-1103. Powers of Board.

A. The Board is the sole authority for all permits, licenses, certificates, authorizations and other governmental approvals which, under any statute of the Commonwealth or ordinance of any political subdivision, including localities, would be required for the siting, construction, or operation of a power plant in the Commonwealth. Any department, agency, commission, or other administrative or regulatory body of the Commonwealth or political subdivision of the state which, absent this chapter, would be required to issue a permit or other governmental approval in order to allow the siting, construction, or operation of a power plant shall operate at the direction of the Board. These agencies shall follow the procedures established by statute, ordinance, and regulation provided for reviewing the application for a permit or other governmental approval, but, instead of issuing the permit or other governmental approval, shall forward their findings from the proceeding, together with the record supporting the findings and a recommendation for final action to the Board. Notwithstanding any provision in this chapter to the contrary, in those instances in which a Permitting Board exercises a permitting function under the delegated authority of federal law, including, but not limited to, the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), and state laws and regulations that implement those federal laws, the Permitting Board shall be the permitting authority, but in all other respects the Permitting Board shall follow the procedures set forth in this Act.

B. The Board is authorized and empowered to summon and examine witnesses and to compel the production and examination of documents and any other evidence that may be necessary for the discharging of the duties imposed by this chapter.

C. The Board is empowered to issue any regulations as may be required to carry out the purposes of this chapter.

§ 67-1104. Contents of applications for siting power plants.

The rules and regulations promulgated by the Board shall set forth the form and contents of an application for a permit authorizing the siting of a power plant under this chapter. The applications shall contain at least the following, where applicable:

1. Identification of the proposed owner of the power plant, including identification of all affiliates of the proposed owners.

2. Detailed description of the proposed power plant, including its location, function, and operating characteristics, and complete plans as to all structures, including transmission facilities, associated with the proposed power plant.

§ 67-1105. Review of applications.

The Board shall use the following procedures in reviewing an application for a permit authorizing the siting of a power plant:

1. Within 30 days of the filing of an application with the Board, the Board shall notify the applicant whether the application is in the form and addresses the matters that are required by this section and the rules and regulations as are promulgated pursuant to this chapter. An application meeting these requirements shall then be docketed. Any application deemed to be deficient shall be returned to the applicant, together with a concise statement of the application's deficiencies. Within 15 days of the resubmission of an application following a rejection for deficiency, the Board shall docket the application together with specification of any additional deficiencies noted by the Board, if any.

2. Within 60 days following the Board's docketing of an application, the Board shall determine the issues to be considered by the Board in evaluating the application, and designate those departments and agencies of state government and of political subdivisions of the state that shall act at the direction of the Board for the purpose of providing findings and recommendations for final action on those issues.

3. The Board shall consider as issues the ability of the proposed power plant to comply with the requirements of the laws, rules, regulations, and ordinances under which, absent this chapter, the applicant would be required to obtain a permit or other governmental approval. The agency of the Commonwealth or of a locality which, absent this chapter, would have statutory authority to grant or deny the permit, shall function at the direction of the Board for hearing the issue and providing its findings and recommendations for final action thereon.

4. The Board shall limit the scope of any agency's investigation where it finds that more than one agency has jurisdiction over a matter at issue in the permitting process. In these instances, the Board shall determine which agency shall make the necessary findings on the issue after giving proper consideration to the expertise and resources available to each of the agencies involved.

5. Each agency of the Commonwealth or locality designated shall proceed to consider the issue or issues assigned to it for review. Each agency shall conclude its consideration and issue its findings and

recommendations for final action not more than 90 days following its designation or any lesser time that the Board may require, or the right to exercise the function shall be forfeited to the Board.

6. Within 30 days after the final date of submission of agency findings and recommendations for final action pursuant to this Act, the Board shall convene a hearing on the application. The purpose of this hearing shall not be to rehear the evidence that was presented previously before agencies designated by the Board, but rather to provide the opportunity to address in a single forum, and from a consolidated, statewide prospective, the issues reviewed, and the recommendations made by the designated agencies. The Board shall limit the presentation of repetitive or cumulative evidence. The hearing shall proceed on not less than 30 days' notice to the parties and the public, shall be concluded not more than 30 days following its initiation, and shall be conducted expeditiously. In the discretion of the Board, for good cause shown, the time prescribed for the hearing may be extended for up to 30 additional days.

7. Within 60 days of the conclusion of the hearing, the Board shall issue its final decision on the application. A decision in favor of the application shall constitute a granting of all permits or other governmental approvals that would, under any law, rule, regulation, or ordinance of the Commonwealth or of a locality absent this chapter, be required for the proposed power plant. The decision may be issued conditional upon the applicant's receipt of permits required by federal law. The Board's decision shall explicitly address each of the findings and recommendations received from agencies, and include the Board's reasons for accepting, rejecting, or modifying, in whole or in part, any of those findings and recommendations.

8. The decision issued by the Board shall constitute the sole, final, binding, and determinative regulatory decision within the Commonwealth for the purposes of siting a power plant.

9. If the Board's decision is to approve the siting of the power plant, no action may be taken by any department or agency of the Commonwealth, any locality, or any other person that would prevent the power plant from fully accessing the market for electricity or impose limitations or restrictions on the ability of the power plant to enter into contracts for the sale of electricity, including requiring the sale of electricity to any designated users.

§ 67-1106. Appeals.

A. Any person that was deemed to be a party to the case during the hearing before the Board and is aggrieved by the decision of the Board may within 10 days from the date of the decision, obtain judicial review of the decision in the manner and according to the standards and procedures provided by law. The only issues to be decided in an administrative or judicial review of a decision by the Board shall be whether the Board acted arbitrarily or capriciously, abused its discretion, or acted contrary to law in its review of the issues presented at the hearing.

B. No automatic stay of the Board decision is allowed as a matter of law without a finding by the court that the appeal will likely be successful.

2. That § 10.1-1186.2:1 of the Code of Virginia is repealed.