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SENATE BILL NO. 1031

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 5, 2007)

(Patron Prior to Substitute—Senator O'Brien)

*A BILL to amend and reenact § 56-46.1 of the Code of Virginia, relating to energy facility approvals.***Be it enacted by the General Assembly of Virginia:****1. That § 56-46.1 of the Code of Virginia is 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.

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

If, prior to such approval, written requests therefor are received from twenty or more interested parties, the Commission shall hold at least one hearing in the area which would be affected by

60 construction of the line, for the purpose of receiving public comment on the proposal. If any hearing is
61 to be held in the area affected, the Commission shall direct that a copy of the transcripts of any
62 previous hearings held in the case be made available for public inspection at a convenient location in the
63 area for a reasonable time before such local hearing.

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

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

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

82 2. That the wheeling service offered by the applicant, pursuant to subdivision D 1 of this section,
83 will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L.
84 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line,
85 the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant
86 intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include
87 in its agreements for such wheeling service.

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

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

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

100 H. *An applicant that is required to obtain (i) a certificate of public convenience and necessity from*
101 *the Commission for any electric generating facility, electric transmission line, natural or manufactured*
102 *gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured*
103 *gas storage facility (hereafter, an "energy facility") and (ii) an environmental permit for the energy*
104 *facility that is subject to issuance by any agency or board within the Secretariat of Natural Resources,*
105 *may request a pre-application planning and review process. In any such request to the Commission or*
106 *the Secretariat of Natural Resources, the applicant shall identify the proposed energy facility for which*
107 *it requests the pre-application planning and review process. The Commission, the Department of*
108 *Environmental Quality, the Marine Resources Commission, the Department of Game and Inland*
109 *Fisheries, the Department of Historic Resources, the Department of Conservation and Recreation, and*
110 *other appropriate agencies of the Commonwealth shall participate in the pre-application planning and*
111 *review process. Participation in such process shall not limit the authority otherwise provided by law to*
112 *the Commission or other agencies or boards of the Commonwealth. The Commission and other*
113 *participating agencies of the Commonwealth may invite federal and local governmental entities charged*
114 *by law with responsibility for issuing permits or approvals to participate in the pre-application planning*
115 *and review process. Through the pre-application planning and review process, the applicant, the*
116 *Commission, and other agencies and boards shall identify the potential impacts and approvals that may*
117 *be required and shall develop a plan that will provide for an efficient and coordinated review of the*
118 *proposed energy facility. The plan shall include (a) a list of the permits or other approvals likely to be*
119 *required based on the information available, (b) a specific plan and preliminary schedule for the*
120 *different reviews, (c) a plan for coordinating those reviews and the related public comment process, and*
121 *(d) designation of points of contact, either within each agency or for the Commonwealth as a whole, to*

122 *facilitate this coordination. The plan shall be made readily available to the public and shall be*
123 *maintained on a dedicated website to provide current information on the status of each component of*
124 *the plan and each approval process including opportunities for public comment.*