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## SENATE BILL NO. 1245

Offered January 10, 2007

Prefiled January 10, 2007

*A BILL to amend and reenact §§ 56-46.1 and 56-542 of the Code of Virginia, relating to the conduct of certain public hearings by the State Corporation Commission.*

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Patrons—Herring; Delegate: May

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Referred to Committee on Commerce and Labor**Be it enacted by the General Assembly of Virginia:****1. That §§ 56-46.1 and 56-542 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.

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

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59 may be designated by the Commission. *However, the Commission shall hold a public hearing or*  
60 *hearings on an application for construction of an overhead electrical transmission line of 150 kilovolts*  
61 *or more.* In any hearing the public service company shall provide adequate evidence that existing  
62 rights-of-way cannot adequately serve the needs of the company.

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

69 *No fewer than one of the Commissioners of the Commission shall be physically present at any*  
70 *hearing conducted by the Commission pursuant to this section at which public comment on the proposal*  
71 *is allowed or required.*

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

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

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

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

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

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

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

108 § 56-542. Powers of the Commission.

109 The Commission shall have the power to regulate the operator under this title as a public service  
110 corporation. The Commission shall also have the power, and be charged with the duties of reviewing  
111 and approving or denying the application, of supervising and controlling the operator in the performance  
112 of its duties under this chapter and title, and of correcting any abuse in the performance of the operator's  
113 public duties. Pursuant to § 56-36, the Commission shall require from the operator a verified report  
114 describing the nature of its contractual and other relationships with individuals or entities contracting  
115 with the operator for the provision of significant financial, construction, or maintenance services. The  
116 Commission shall review the report and such other materials as it shall deem necessary for the purpose  
117 of determining improper or excessive costs, and shall exclude from the operator's costs any amounts  
118 which it finds are improper or excessive. The Commission also shall have the duty and authority to  
119 approve or revise the toll rates charged by the operator. Initial rates shall be approved if they appear  
120 reasonable to the user in relation to the benefit obtained, not likely to materially discourage use of the

121 roadway and provide the operator no more than a reasonable rate of return as determined by the  
122 Commission. Thereafter, the Commission, upon application, complaint or its own initiative, and after  
123 investigation, may order substituted for any toll being charged by the operator, a toll which is set at a  
124 level which is reasonable to the user in relation to the benefit obtained and which will not materially  
125 discourage use of the roadway by the public and which will provide the operator no more than a  
126 reasonable return as determined by the Commission. *The Commission shall hold a public hearing or*  
127 *hearings on any proposed substitution for the toll at such place as may be designated by the*  
128 *Commission. The Commission shall hold at least one hearing in the jurisdiction through which the*  
129 *roadway passes, for the purpose of receiving public comment on the proposed substitution for the toll,*  
130 *and the Commission shall direct that a copy of the transcripts of any previous hearings held in the case*  
131 *be made available for public inspection at a convenient location in the area for a reasonable time*  
132 *before such local hearing. No fewer than one of the Commissioners of the Commission shall be*  
133 *physically present at any hearing conducted by the Commission pursuant to this section at which public*  
134 *comment is allowed or required.* The Commission may charge a reasonable annual fee to cover the costs  
135 of supervision and controlling the operator in the performance of its duties under this chapter and  
136 pursuant to this section.