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SENATE BILL NO. 1306

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend the Code of Virginia by adding in Chapter 11 of Title 15.2 a section numbered 15.2-1133, and to amend the Code of Virginia by adding in Chapter 11 of Title 23 an article numbered 7, consisting of a section numbered 23-155.05, relating to the purchase of electric power and energy.

Patrons—Newman, Hawkins, Puckett and Reynolds; Delegate: Putney

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 11 of Title 15.2 a section numbered 15.2-1133, and by adding in Chapter 11 of Title 23 an article numbered 7, consisting of a section numbered 23-155.05 as follows:

§ 15.2-1133. Purchase of electric power and energy; duration of contracts; source of payments.

A. For purposes of this section:

"Other party" means any other entity, including but not limited to (i) another municipality or public institution of higher education or any political subdivision, public authority, agency, or instrumentality of the Commonwealth, another state, or the United States of America or (ii) a partnership, limited liability company, not-for-profit corporation, electric cooperative, or investor-owned utility, whether created, incorporated, or otherwise organized and existing under the laws of the Commonwealth or another state or the United States of America.

"Project" means any system or facilities for the generation, transmission, transformation, or supply of electrical power and energy by any means whatsoever, including but not limited to fuel, fuel transportation, and fuel supply resources and other related facilities, any one or more electric generating units situated at a particular site, in the continental United States of America, or any interest in the foregoing, whether an undivided interest as a tenant in common or otherwise, or any right to output, capacity or services thereof.

B. Any municipal corporation in the Commonwealth that on January 1, 2006, owned and operated an electric utility system may contract with any other party to buy power and energy required for its present or future requirements, including the capacity and output of one or more specified projects located in the continental United States of America. Any such contract may provide that the municipal corporation so contracting shall be obligated to make payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance by any other party. Such contracts, with respect to any project, may also provide, in the event of default by any municipal corporation or other party that is a party to any such contract for such project in the performance of its obligations thereunder, for any municipal corporation or other party to any such contract for such project to succeed to the rights and interests and assume the obligations of the defaulting party, pro rata or otherwise, as may be agreed upon in such contracts.

Notwithstanding the provisions of any other law or charter provision to the contrary, any such contract, with respect to the sale or purchase of capacity, output, power, or energy from a project, may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation; and the execution and effectiveness thereof shall not be subject to any authorizations or approvals by the Commonwealth or any agency, commission, instrumentality, or political subdivision thereof except as specifically required by law.

Any such contract shall provide that payments by a municipal corporation under any such contract be made solely from and may be secured by a pledge of and lien upon the revenues derived by such municipal corporation from the ownership and operation of the electric system of such municipal corporation, and such payments shall constitute an operating expense of such electric system. No obligation under such contract shall constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipal corporation or upon any of its income, receipts, or revenues, except the revenues of its electric system, and neither the faith and credit nor the taxing power of the municipal corporation are, or may be, pledged for the payment of any obligation under any such contract. A municipal corporation shall be obligated to fix, charge, and collect rents, rates, fees, and

charges for electric power and energy and other services, facilities, and commodities sold, furnished, or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on bonds of such municipal corporation heretofore or hereafter issued for purposes related to its electric system. Any pledge made by a municipal corporation pursuant to this paragraph shall be governed by the laws of the Commonwealth.

Article 7

Purchase of electric power and energy.

§ 23-155.05. Purchase of electric power and energy; duration of contracts; source of payments.

A. For purposes of this section:

"Other party" means any other entity, including but not limited to (i) another municipality or public institution of higher education or any political subdivision, public authority, agency, or instrumentality of the Commonwealth, another state, or the United States of America or (ii) a partnership, limited liability company, not-for-profit corporation, electric cooperative, or investor-owned utility, whether created, incorporated, or otherwise organized and existing under the laws of the Commonwealth or another state or the United States of America.

"Project" means any system or facilities for the generation, transmission, transformation, or supply of electrical power and energy by any means whatsoever, including but not limited to fuel, fuel transportation, and fuel supply resources and other related facilities, any one or more electric generating units situated at a particular site, in the continental United States of America, or any interest in the foregoing, whether an undivided interest as a tenant in common or otherwise, or any right to output, capacity or services thereof.

B. Virginia Polytechnic Institute and State University may contract with any other party to buy power and energy required for its present or future requirements, including the capacity and output of one or more specified projects located in the continental United States of America. Any such contract may provide that the University shall be obligated to make payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for, and that such payments under the contract shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon the performance or nonperformance by any other party. Such contracts, with respect to any project, may also provide, in the event of default by any other party to any such contract for such project in the performance of its obligations thereunder, for the University to succeed to the rights and interests and assume the obligations of the defaulting party, pro rata or otherwise as may be agreed upon in such contracts.

Notwithstanding the provisions of any other law or charter provision to the contrary, any such contract, with respect to the sale or purchase of capacity, output, power, or energy from a project, may extend for a period not exceeding 50 years from the date a project is estimated to be placed in normal continuous operation; and the execution and effectiveness thereof shall not be subject to any authorizations or approvals by the Commonwealth or any agency, commission, or instrumentality or political subdivision thereof except as specifically required by law.

Any such contract shall provide that payments by the University under any such contract be made solely from, and may be secured by a pledge of and lien upon, the revenues derived by the University from the ownership and operation of the electric system of the University, and such payments shall constitute an operating expense of such electric system. No obligation under such contract shall constitute a legal or equitable pledge, charge, lien or encumbrance upon any property of the University or upon any of its income, receipts or revenues, except the revenues of its electric system, and the faith and credit of the University are not, or may not be, pledged for the payment of any obligation under any such contract. The University shall be obligated to fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services, facilities, and commodities sold, furnished, or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on bonds of the University heretofore or hereafter issued for purposes related to its electric system. Any pledge made by the University pursuant to this paragraph shall be governed by the laws of the Commonwealth.

2. That if the provisions of this act should conflict with any provision of general law, local law, or charter, then the provisions of this act shall prevail.

3. That the provisions of this act are declared to be severable. If any provision of this act or the application thereof to the University or other party is held invalid by a court of competent jurisdiction, then such invalidity shall not affect other provisions or applications of this act that can be given effect without the invalid provision or application.