

VIRGINIA ACTS OF ASSEMBLY -- 2009 RECONVENED SESSION

CHAPTER 807

An Act to amend and reenact §§ 56-15, 56-17, and 56-259 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 67-1110, relating to the location of facilities for the distribution of electricity and steam generated from renewable energy sources and of landfill gas.

[H 2172]

Approved April 8, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-15, 56-17, and 56-259 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 67-1110, as follows:

§ 56-15. Permits to place poles, wires, etc., in roads and streets in certain counties; charge therefor.

A. The governing body of Albemarle County, Chesterfield County, Henrico County, Prince William County, or York County, may adopt an ordinance requiring any person, firm or corporation to obtain a permit from the county engineer or such other officer as may be designated in such ordinance before placing any pole or subsurface structures under, along or in any county road or street in such county which is not included within the ~~primary~~ *state highway system* or secondary system of state highways, or any lines or wires that cross any such road or street, whether or not such road or street be actually opened, and may provide in such ordinance reasonable charges for the issuance of such a permit and penalties for violations of the terms of such ordinance to be imposed by the court, judge or justice trying the case.

B. In the event the county engineer or such other officer as may be designated fails or refuses to issue any such permit requested within thirty days after application therefor, or attaches to such permit conditions to which such person, firm or corporation is unwilling to consent, then such person, firm or corporation may proceed to make such crossing pursuant and subject to the provisions of §§ 56-23 to 56-32, as if the application had been made to the board of supervisors or other governing body of the county.

C. *The provisions of this section shall not apply with regard to the occupancy and use of any public roads, works, turnpikes, streets, avenues, and alleys by a renewable generator that has acquired the authority to locate distribution facilities therein pursuant to Chapter 11 (§ 67-1100 et seq.) of Title 67.*

§ 56-17. Right of one public service corporation to cross the works of another; cost.

If any public service corporation deems it necessary in the construction of its works to cross the works of any other public service corporation, *or if any renewable generator as defined in § 67-1100 deems it necessary to cross the works of a public service corporation in the construction of distribution facilities that are required to (i) connect a renewable energy facility that generates electricity to the electric distribution grid, (ii) distribute steam generated at a renewable energy facility, or (iii) distribute landfill gas*, it may do so; provided such crossing shall be so located, constructed, and operated as not to impair, impede, or obstruct, in any material degree, the works and operations of the railroad, canal, turnpike, or other works to be crossed; and provided such crossing shall be supported by such permanent and proper structures and fixtures, and shall be controlled by such customary and approved appliances, methods, and regulations as will best secure the safe passage and transportation of persons and property along such crossing, and will not be injurious to the works of the company to be crossed. The cost of such crossings, their appliances and apparatus, and of the repair and operation of the same, shall be borne by the party desiring to make the crossing.

§ 56-259. Rights-of-way, etc., may be contracted for; location of easements of public service corporations.

A. Any corporation of the character mentioned in this chapter or in Chapter 2 (§ 56-49 et seq.) may contract with any person or corporation, the owner of lands, or of any interest, franchise, privilege, or easement therein, over, under, or through which any pipeline transmitting petroleum products or natural gas, power or telephone line, sewer or water main or similar works is to be constructed, for the right-of-way for such line, sewer, main or works, and for sufficient land for its necessary offices, plant, or plants, works, stations and structures. All such contracts shall specify with reasonable particularity and definiteness the location of such easement of right-of-way; provided, however, that this provision shall not apply to contracts between any such corporation and any political subdivision of this Commonwealth, but any such corporation shall provide the location of its facilities on land owned by such a political subdivision upon request of such political subdivision.

B. The location of any easement of right-of-way of any public service corporation shall be as specified in the instrument by which such easement was conveyed to such public service corporation;

provided that, with respect to all such easements granted after December 31, 1968, if such location is not specified by metes and bounds or by reference to a center line or survey line showing courses and distances from some ascertainable point of beginning, the location of such easement shall be determined by reference to the facilities constructed thereon, and the center line of those facilities shall be the center line of the easement.

C. Prior to acquiring any easement of right-of-way, public service corporations will consider the feasibility of locating such facilities on, over, or under existing easements of rights-of-way. In the event any public service corporation owning a right-of-way shall deny a request of any other public service corporation for joint use of that right-of-way, the corporation whose request is denied shall have the right, within thirty days after the denial to apply to the Commission for an order requiring such joint use. The Commission shall conduct a hearing on such application and shall direct the corporation owning the right-of-way to allow joint use if the Commission finds that such joint use is reasonable and that the present or future public utility service of such corporation will not be adversely affected by such joint use. In making such determination, the Commission may establish the terms and conditions for such joint use, including, without limitation, a requirement of compensation by the utility making the request to the utility owning the right-of-way, if the Commission finds such a requirement to be appropriate.

D. In any case involving an application for a certificate pursuant to § 56-265.2, the governing body of each locality in which a gas pipeline or electrical transmission line would be located shall have the right to request the Commission to consider directing a joint use of right-of-way within that locality pursuant to the standards in subsection C of this section, provided that the governing body shall file its request no later than the date for public comment on the application established by the Commission.

E. A renewable generator, as defined in § 67-1100, should where feasible locate distribution facilities, as defined in § 67-1100, that are required to connect its renewable energy facility that generates electricity to the electric distribution grid, to distribute steam generated at such facility, or to distribute its landfill gas to customers or a natural gas distribution or transmission pipeline, as applicable, on, over, or under existing easements of rights-of-way of a public service corporation. The renewable generator shall request joint use of the right-of-way from the public service corporation that owns the easement of right-of-way and shall offer to enter into an agreement that will specify the terms and conditions, including rental, under which such joint use will occur. The compensation to be paid to the public service corporation for such joint use shall be as negotiated between the public service corporation and the renewable generator. If any public service corporation owning an easement of right-of-way shall deny a request for the joint use of that right-of-way, the renewable generator shall have the right, exercisable within 30 days after the denial, to apply to the Commission for an order requiring such joint use. The Commission shall conduct a hearing on such application and shall direct the public service corporation owning the easement of right-of-way to allow joint use if the Commission finds that such joint use is reasonable and that the present or future public utility service of such corporation will not be adversely affected by such joint use. In making such determination, the Commission may establish the terms and conditions for such joint use, including, without limitation, the rental compensation that the renewable generator shall pay to the public service corporation owning the easement of right-of-way. The provisions of this subsection shall not apply to railroads.

CHAPTER 11.

RENEWABLE ENERGY CO-LOCATION OF DISTRIBUTION FACILITIES.

§ 67-1100. Definitions.

As used in this chapter, unless the context requires otherwise:

"Commission" means the State Corporation Commission.

"Distribution facilities" includes poles and wires, or cables, or pipelines or other underground conduits by which a renewable generator is able to (i) supply electricity generated at its renewable energy facility to the electric distribution grid, (ii) distribute steam generated at its renewable energy facility to customers, or (iii) supply landfill gas it collects to customers or a natural gas distribution or transmission pipeline.

"Locality" has the meaning ascribed thereto in § 15.2-102.

"Public highway" means, for purposes of computing the public rights-of-way use fee, the centerline mileage of highways and streets that are part of the State Highway System as defined in § 33.1-25, the secondary system of state highways as defined in § 33.1-67, the highways of those cities and certain towns defined in § 33.1-41.1, and the highways and streets maintained and operated by counties that have withdrawn or elect to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that have not elected to return.

"Public rights-of-way use fee" means the fee chargeable to a renewable generator for the occupation and use of public streets, roads, highways, works, turnpikes, streets, avenues, and alleys in the Commonwealth by a locality or the Commonwealth Transportation Board for a renewable generator for its distribution facilities.

"Renewable energy source" means energy derived from any source specified in the definition of renewable energy in § 56-576.

"Renewable energy facility" means (i) an electrical generation facility that produces not more than 2 megawatts peak net power output to the distribution grid, which electricity is generated only from a renewable energy source; (ii) a steam reduction facility with a rated capacity of not more than 5,000 mmBtus per hour that produces steam only from a renewable energy source; or (iii) a solid waste management facility permitted by the Department of Environmental Quality from which landfill gas is transmitted or distributed off premises.

"Renewable generator" means a person that (i) does not have the power of a public service corporation to acquire rights-of-way, easements, or other interests in lands as provided in § 56-49 and (ii) operates a renewable energy facility.

"Restrictions or requirements concerning the use of the public rights-of-way" includes permitting processes; requirements regarding notice, time and location of excavations and repair work; enforcement of the statewide building code; and inspections. Such phrase shall not include any existing franchise fee or public rights-of-way use fee.

§ 67-1101. Right to occupy rights-of-way; location of same.

A. Every renewable generator shall have authority to occupy and use the public roads, works, turnpikes, streets, avenues, and alleys in any county, with the consent of the board of supervisors or other governing authority thereof, or in any incorporated city or town, with the consent of the council thereof, and the waterways within the Commonwealth, with the consent of the Marine Resources Commission, for the erection of distribution facilities. However, if the road or street is in the state highway system or the secondary system of state highways, the consent of the board of supervisors or other governing authority of any county shall not be necessary, provided that a permit for such occupation and use is first obtained from the Commonwealth Transportation Board. The use of any road or street in the state highway system or secondary system of state highways that has been designated a limited access highway in accordance with § 33.1-58 shall not be permitted, unless the Commonwealth Transportation Board approves an exception in accordance with the then current policy.

B. No locality or the Commonwealth Transportation Board shall impose any fees on a renewable generator for the use of public rights-of-way except in the manner prescribed in § 67-1103.

C. No locality or the Commonwealth Transportation Board shall impose on renewable generators, whether by franchise, ordinance, or other means, any restrictions or requirements concerning the use of the public rights-of-way that are (i) unfair or unreasonable or (ii) any greater than those imposed on providers of electric or natural gas utility service.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way or by the Commonwealth Transportation Board of a renewable generator to use the public rights-of-way shall be granted or denied within 45 days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. No locality receiving directly or indirectly a public rights-of-way use fee or the Commonwealth Transportation Board shall require a renewable generator to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the public rights-of-way use fee.

F. This chapter shall not affect the obligation of the Department of Transportation to give notice, pursuant to § 33.1-223.2:11, to localities when it grants its permission for the construction, installation, location, or placement of a landfill gas pipeline within any highway right-of-way.

§ 67-1102. Occupation of property of certain localities; imposition of terms and conditions as to use of property.

A. Any incorporated city or town may impose upon a renewable generator any terms and conditions consistent herewith and supplemental hereto, as to the occupation and use of its streets, avenues, and alleys, and as to the construction and maintenance of the distribution facilities of the renewable generator along, over, or under the same, that the city or town may deem expedient and proper.

B. No locality shall impose any fees on a renewable generator for the use of public rights-of-way except in the manner prescribed in § 67-1103.

C. No locality shall impose on a renewable generator, whether by franchise, ordinance, or other means, any restrictions or requirements concerning the use of the public rights-of-way that are (i) unfair or unreasonable or (ii) any greater than those imposed on providers of electric or natural gas utility service.

D. Notwithstanding any other provision of law, any permit or other permission required by a locality pursuant to a franchise, ordinance, or other permission to use the public rights-of-way of a renewable generator to use the public rights-of-way shall be granted or denied within 45 days from submission and, if denied, accompanied by a written explanation of the reasons the permit was denied and the actions required to cure the denial.

E. No locality receiving directly or indirectly a public rights-of-way use fee shall require a renewable generator to provide in-kind services or physical assets as a condition of consent to use public rights-of-way or easements, or in lieu of the public rights-of-way use fee.

F. A renewable generator shall have the same rights, duties and responsibilities related to the

crossing of a railroad as afforded other public service corporations in §§ 56-12.2, 56-17, 56-18, 56-19, 56-20, 56-21, 56-22, 56-25, 56-26, and 56-27. Nothing in this chapter shall expand the rights of renewable generators to either cross or otherwise have access to railroad property to an extent greater than that afforded other public service corporations in Title 56.

§ 67-1103. Public rights-of-way use fee.

A. Notwithstanding any other provisions of law, there is hereby established a public rights-of-way use fee to be charged in lieu of any and all fees of general application, except for zoning, subdivision, site plan, and comprehensive plan fees of general application, otherwise chargeable to a renewable generator by the Commonwealth Transportation Board or a locality in connection with a permit for such occupation and use granted in accordance with § 67-1101 or 67-1102. The public rights-of-way use fee established by this section is imposed on all renewable generators that occupy and use public rights-of-way in order to (i) supply electricity generated at its renewable energy facility to the electric distribution grid, (ii) distribute steam generated at its renewable energy facility to customers, or (iii) supply landfill gas to customers or to a natural gas distribution or transmission pipeline.

B. The amount of the public rights-of-way use fee for a renewable generator shall be \$1,500 per mile or any portion thereof over which the renewable generator has installed distribution facilities.

C. A renewable generator shall remit its required public rights-of-way use fee to the locality or the Department of Transportation, as applicable, prior to initiation of construction, as follows:

1. The renewable generator shall remit directly to the applicable locality all public rights-of-way use fees billed in (i) cities; (ii) towns whose public streets and roads are not maintained by the Department of Transportation; and (iii) any county that has withdrawn or elects to withdraw from the secondary system of state highways under the provisions of § 11 of Chapter 415 of the Acts of Assembly of 1932 and that has elected not to return.

2. The public rights-of-way use fees in all other counties shall be remitted by each renewable generator to the Department of Transportation, and shall first be used to offset the administrative costs of processing the permit with the remaining fee being added to the secondary system construction improvement program funds of the counties where the facilities are located.

§ 67-1104. Reimbursement for relocation costs.

A. Renewable generators shall be reimbursed 100 percent of the eligible cost of relocating distribution facilities installed in the public rights-of-way, for the first three years after the completion of the installation, that are incurred at the direction of a locality that imposes by ordinance the public rights-of-way use fee or the Department of Transportation in any public rights-of-way in accordance with §§ 56-458 and 56-462. For the fourth through sixth year after the completion of the installation, the renewable generator shall be reimbursed 50 percent of the eligible cost for the relocation of facilities installed in the public rights-of-way. Beginning in the seventh year, the renewable generators shall be responsible for the cost of relocating facilities installed in the public rights-of-way. Such reimbursement shall be received from either (i) the locality that granted the permit or franchise to use such right-of-way or (ii) the Commonwealth Transportation Board if the road or street is in the State Highway System or the secondary system of state highways.

B. The amount of relocation reimbursement in any fiscal year to be reimbursed under this section shall not exceed the amount of public rights-of-way use fees received by that locality or the Department of Transportation from the renewable generator required to relocate its distribution facilities.

§ 67-1105. Relocation of lines or works of renewable generator acquired by Commonwealth Transportation Board.

Whenever a renewable generator is required by the Commonwealth Transportation Board or the Commonwealth Transportation Commissioner to remove any part of its distribution facilities off of the right-of-way of a road now or hereafter included in the state highway system or secondary system, or if any right-of-way, property, or interest therein used and occupied by the renewable generator with its lines or works, or part thereof, is acquired by the Commonwealth Transportation Board or the Commonwealth Transportation Commissioner for the uses of the state highway system or secondary system of state highways, or if the renewable generator is notified by such Board or Commissioner of the desire of such Board or Commissioner to acquire such right-of-way, property, or interest therein, used and occupied by such company with its lines or works, or part thereof, for the uses of the state highway system or secondary system, the renewable generator shall relocate its lines or works, or the part or parts thereof affected.

§ 67-1106. How consent of appropriate authorities obtained; terms of use.

The consent required under § 67-1101, when given, shall be by ordinance regularly adopted by the council or other governing body of the city or town, or by resolution regularly adopted and spread upon the minutes by the board of supervisors or other governing authority of the county in which such line is to be located, or, if such permission is to be given by the Commonwealth Transportation Commissioner or his designee through the issuance of a land use permit. Such use of the public roads, turnpikes, streets, avenues, and alleys in any of the cities or towns or counties of the Commonwealth shall be subject to such terms, regulations and restrictions as may be imposed by the corporate authorities of any such city or town, or the board of supervisors or other governing authority of any such county,

except that if the road or street is in the state highway system or secondary system of state highways, as now or hereafter established, any occupation and use thereof under the provisions of this chapter, whether by consent heretofore or hereafter obtained, shall be subject to such terms, regulations, and restrictions as may be imposed by the Commonwealth Transportation Board not in conflict in incorporated cities and towns with any vested contractual rights of such company with such city or town.

§ 67-1107. Cost to Commonwealth in connection with inspection and coordination of construction of line to be paid by renewable generator.

The actual costs and expenses of the Commonwealth for the inspection or coordination of the construction or installation of any of the distribution facilities of the renewable generator, under the provisions of this chapter, under any permit of the Commonwealth Transportation Board shall be borne by the renewable generator. The sum of the payment required by this section shall be paid to the Department of Transportation within 30 days from the receipt of a progress or final bill from the Department of Transportation.

§ 67-1108. Renewable generator may contract for right-of-way.

A renewable generator may contract with any person that owns lands, or any interest, franchise, privilege, or easement therein or in respect thereto, over which distribution facilities are proposed to be constructed, for the right-of-way for erecting, repairing, and preserving its poles and other structures necessary for operating its facilities, and for sufficient land for the erection and occupation of offices at suitable distances along its distribution facilities.

§ 67-1109. Construction of transmission facilities.

All posts, poles, wires, cables, lines, pipelines, conduits, and other distribution facilities that shall be erected under any authority conferred by this chapter shall be so located as in no way to obstruct or interfere with public travel or the ordinary use of, or the safety and convenience of persons traveling through, on, or over, the public roads, turnpikes, streets, avenues, alleys, railroads, or waters in or upon which the same may be erected. All distribution facilities erected as aforesaid shall be placed at such height as the State Corporation Commission or the Commonwealth Transportation Board by regulation shall provide. Buried distribution facilities shall be laid at such distance below the surface of any public road, turnpike, street, avenue, or alley, and at such distance from the outside of any gas or water main or other conduit already laid under such public road, turnpike, street, avenue, or alley, as may be prescribed by the Commission or by the Commonwealth Transportation Board by regulation. No distribution facilities shall be strung across or laid, nor posts or poles erected, upon the property of any person without first obtaining the consent of the owner thereof. Such distribution facilities shall not damage private property without compensation therefor, nor in any way obstruct the navigation of any stream, or impair or endanger the use thereof by the public or any other person entitled to the use of the same. In consideration of co-locating on existing rights of way, the renewable generator shall meet the respective safety and clearance standards of the public service corporation including but not limited to the National Electrical Safety Code, the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.), gas pipeline safety standards pursuant to § 56-257.2, and the public service corporation's own safety and clearance standards as the same are communicated to the renewable generator in writing, and any applicable federal laws and regulations.

§ 67-1110. Restoring condition of ground.

The portions of the surface of the roads, turnpikes, streets, avenues, or alleys, or of any pavements opened up or disturbed in erecting, repairing, laying or replacing distribution facilities under the provisions of this chapter shall be immediately restored to and maintained in good condition by the renewable generator doing such work. In case of the failure of the renewable generator to restore and maintain the same, the corporate authorities of the city or town, or the board of supervisors or other governing authority of the county, or the Commonwealth Transportation Commissioner, as the case may be, may properly restore and maintain the same, and the costs thereof may be recovered by the city or town, or county, or Commonwealth, from the renewable generator, in any court of proper jurisdiction.