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HOUSE BILL NO. 1970

Offered January 14, 2009

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A BILL to amend and reenact § 56-265.1 of the Code of Virginia, relating to definition of a public utility under the Utility Facilities Act; delivery of propane service.

Patron—Ware, R.L.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 56-265.1 of the Code of Virginia is amended and reenacted as follows:****§ 56-265.1. Definitions.**

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

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

(b) "Public utility" means any company which owns or operates facilities within the Commonwealth of Virginia for the generation, transmission or distribution of electric energy for sale, for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or 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 Dickenson, 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

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59 distribution service to the public in the area in which the solid waste management facility is located. If
60 such company submits to the public utility a written offer for sale of such gas and the public utility
61 does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company
62 may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within
63 three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been
64 liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

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

80 (8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or
81 both, that is derived from a solid waste management facility permitted by the Department of
82 Environmental Quality and sold or delivered from any such facility to not more than three commercial
83 or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as
84 authorized by this section. If a purchaser of the landfill gas is located within the certificated service
85 territory of a natural gas public utility or within an area in which a municipal corporation provides gas
86 distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such
87 company shall submit to such public utility or municipal corporation a written offer for sale of that gas
88 prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility
89 or municipal corporation does not agree within 60 days following the date of the offer to purchase such
90 landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill
91 gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or
92 county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated
93 or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No
94 such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on
95 similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may
96 impose such requirements as are reasonably calculated to recover any cost of such service and to protect
97 and ensure the safety and integrity of the public utility's facilities.

98 (9) A company that is not organized as a public service company pursuant to subsection D of
99 § 13.1-620 and that sells and delivers propane air only to one or more public utilities. Any company
100 excluded by this subdivision from the definition of "public utility" for the purposes of this chapter
101 nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and
102 enforcement.

103 (10) *A company that provides delivery of propane service by way of an underground distribution*
104 *system; however, notwithstanding the exclusion of such a company from the scope of the term "public*
105 *utility," the company, with respect to any underground distribution system that is within the scope of 49*
106 *CFR Part 192.1, shall be required to meet all requirements established by 49 CFR Parts 191 and 192,*
107 *including requirements thereof pertaining to operator qualifications.*

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

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