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**HOUSE BILL NO. 2173**

Offered January 14, 2009

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*A BILL to amend and reenact §§ 56-1, 56-88, 56-232, and 56-265.1 of the Code of Virginia, relating to definition of a public utility under the Utility Facilities Act; aggregated renewable energy systems.*

Patrons—Hogan and Cole

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 56-1, 56-88, 56-232, and 56-265.1 of the Code of Virginia are amended and reenacted as follows:**

§ 56-1. Definitions.

Whenever used in this title, unless the context requires a different meaning:

"Broadband connection," for purposes of this section, means a connection where transmission speeds exceed 200 kilobits per second in at least one direction.

"Commission" means the State Corporation Commission.

"Corporation" or "company" includes all corporations created by acts of the General Assembly of Virginia, or under the general incorporation laws of this Commonwealth, or doing business therein, and shall exclude all municipal corporations, other political subdivisions, and public institutions owned or controlled by the Commonwealth.

"Interexchange telephone service" means telephone service between points in two or more exchanges that is not classified as local exchange telephone service. "Interexchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Local exchange telephone service" means telephone service provided in a geographical area established for the administration of communication services and consists of one or more central offices together with associated facilities which are used in providing local exchange service. Local exchange service, as opposed to interexchange service, consists of telecommunications between points within an exchange or between exchanges which are within an area where customers may call at rates and charges specified in local exchange tariffs filed with the Commission. "Local exchange telephone service" shall not include Voice-over-Internet protocol service for purposes of regulation by the Commission, including the imposition of certification processing fees and other administrative requirements, and the filing or approval of tariffs. Nothing herein shall be construed to either mandate or prohibit the payment of switched network access rates or other intercarrier compensation, if any, related to Voice-over-Internet protocol service.

"Municipality" or "municipal corporation" shall include an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403.

"Person" includes individuals, partnerships, limited liability companies, and corporations.

"Public service corporation" or "public service company" includes gas, pipeline, electric light, heat, power and water supply companies, sewer companies, telephone companies, telegraph companies, and all persons authorized to transport passengers or property as a common carrier. "Public service corporation" or "public service company" shall not include (i) a municipal corporation, other political subdivision or public institution owned or controlled by the Commonwealth; however, if such an entity has obtained a certificate to provide services pursuant to § 56-265.4:4, then such entity shall be deemed to be a public service corporation or public service company and subject to the authority of the Commission with respect only to its provision of the services it is authorized to provide pursuant to such certificate; or (ii) any company described in subdivision (b) (10) of § 56-265.1.

"Railroad" includes all railroad or railway lines, whether operated by steam, electricity, or other motive power, except when otherwise specifically designated.

"Railroad company" includes any company, trustee or other person owning, leasing or operating a railroad.

"Rate" means rate charged for any service rendered or to be rendered.

"Rate," "charge" and "regulation" include joint rates, joint charges and joint regulations, respectively.

"Transportation company" includes any railroad company, any company transporting express by

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59 railroad, and any ship or boat company.

60 "Virginia limited liability company" means (i) any limited liability company organized under Chapter  
61 12 (§ 13.1-1000 et seq.) of Title 13.1, (ii) any entity that has become a limited liability company  
62 pursuant to Article 12.2 (§ 13.1-722.8 et seq.) of Chapter 9 of Title 13.1 or pursuant to conversion or  
63 domestication under Chapter 12 (§ 13.1-1000 et seq.) of Title 13.1, or (iii) any foreign limited liability  
64 company that is organized or is domesticated by filing articles of organization that meet the  
65 requirements of §§ 13.1-1003 and 13.1-1011 and include (a) the name of the foreign limited liability  
66 company immediately prior to the filing of the articles of organization; (b) the date on which and the  
67 jurisdiction in which the foreign limited liability company was first formed, organized, created or  
68 otherwise came into being; and (c) the jurisdiction that constituted the seat, siege social, or principal  
69 place of business or central administration of the foreign limited liability company, or any equivalent  
70 thereto under applicable law, immediately prior to the filing of the articles of organization. With respect  
71 to an organization or domestication pursuant to clause (iii), the terms and conditions of a domestication  
72 shall be approved in the manner provided for by the document, instrument, agreement or other writing,  
73 as the case may be, governing the internal affairs of the foreign limited liability company in the conduct  
74 of its business or by applicable law other than the law of the Commonwealth, as appropriate, and the  
75 provisions governing the status, powers, obligations, and choice of law applicable under § 13.1-1010.3  
76 shall apply to any limited liability company so domesticated or organized.

77 "Voice-over-Internet protocol service" or "VoIP service" means any service that: (i) enables real-time,  
78 two-way voice communications that originate or terminate from the user's location using Internet  
79 protocol or any successor protocol and (ii) uses a broadband connection from the user's location. This  
80 definition includes any such service that permits users generally to receive calls that originate on the  
81 public switched telephone network and to terminate calls to the public switched telephone network.

82 § 56-88. Definitions.

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

84 "Acquire" or "acquisition" includes any purchase or other acquisition, whether by payment, exchange,  
85 gift, conveyance, lease, license, merger, consolidation or otherwise.

86 "Company" means a corporation, a partnership, an association, a joint-stock company, a business  
87 trust or an organized group of persons, whether incorporated or not; or any receiver, trustee or other  
88 liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or  
89 county.

90 "Dispose of" or "disposition" includes any sale or other disposition, whether by payment, exchange,  
91 gift, conveyance, lease, license, merger, consolidation or otherwise.

92 "Public utility" means any company which owns or operates facilities within the Commonwealth for  
93 the generation, transmission or distribution of electric energy for sale; for the production, transmission or  
94 distribution, otherwise than in enclosed portable containers, of natural or manufactured gas for sale for  
95 heat, light or power, but excluding any company described in subdivision (b) (8) or (b) (10) of  
96 § 56-265.1; or for the furnishing of sewerage facilities or water.

97 "Utility assets" means the facilities in place of any public utility or municipality for the production,  
98 transmission or distribution of electric energy or natural or manufactured gas, or for the furnishing of  
99 sewerage facilities or water.

100 "Utility security" means any note, draft, debenture, bond, share of stock, certificate, collateral trust  
101 certificate, preorganization certificate or subscription, transferable share, investment contract, receiver's or  
102 trustee's certificate or any other instrument or interest commonly known as a security which is issued,  
103 assumed or guaranteed by any public utility or any company which would be a public utility if the  
104 facilities owned or operated by it were within the Commonwealth, or any company substantially  
105 engaged in the ownership of any of the aforesaid securities or in supplying management or advice to  
106 any of the aforesaid companies; or any certificate of deposit for, voting trust certificate for, certificate of  
107 interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of  
108 liability on, or warrant or right to subscribe to or purchase or acquire, any of the aforesaid securities.

109 § 56-232. Public utility and schedules defined.

110 A. The term "public utility" as used in §§ 56-233 to 56-240 and 56-246 to 56-250:

111 1. Shall mean and embrace every corporation (other than a municipality), company, individual, or  
112 association of individuals or cooperative, their lessees, trustees, or receivers, appointed by any court  
113 whatsoever, that now or hereafter may own, manage or control any plant or equipment or any part of a  
114 plant or equipment within the Commonwealth for the conveyance of telephone messages or for the  
115 production, transmission, delivery, or furnishing of heat, chilled air, chilled water, light, power, or water,  
116 or sewerage facilities, either directly or indirectly, to or for the public.

117 2. Notwithstanding any provision of subdivision 1 of this subsection or subsection G of § 13.1-620,  
118 shall also include any governmental entity established pursuant to the laws of any other state,  
119 corporation (other than a municipality established under the laws of this Commonwealth), company,  
120 individual, or association of individuals or cooperative, their lessees, trustees, or receivers, appointed by

any court whatsoever, that at any time owns, manages or controls any plant or equipment, or any part thereof, located within the Commonwealth, which plant or equipment is used in the provision of sewage treatment services to or for an authority as defined in § 15.2-5101; however, the Commission shall have no jurisdiction to regulate the rates, terms and conditions of sewage treatment services that are provided by any such public utility directly to persons pursuant to the terms of a franchise agreement between the public utility and a municipality established under the laws of this Commonwealth.

3. Except as provided in subdivision 2, shall not be construed to include any corporation created under the provisions of Title 13.1 unless the articles of incorporation expressly state that the corporation is to conduct business as a public service company.

B. Notwithstanding any provision of law to the contrary, no person, firm, corporation, or other entity shall be deemed a public utility or public service company, solely by virtue of engaging in production, transmission, or sale at retail of electric power as a qualifying small power producer using renewable or nondepletable primary energy sources within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617) and not exceeding 7.5 megawatts of rated capacity, nor solely by virtue of serving as an aggregator of the production of such small power producers, provided that the portion of the output of any qualifying small power producer which is sold at retail shall not be sold to residential consumers.

C. No qualifying small power producer, within the meaning of regulations adopted by the Federal Energy Regulatory Commission, shall be deemed a public utility within the meaning of Chapter 7 (§ 62.1-80 et seq.) of Title 62.1.

D. The term "public utility" as herein defined shall not be construed to include any chilled water air-conditioning cooperative serving residences in less than a one square mile area, or any company which ~~that~~ is excluded from the definition of "public utility" by subdivision (b) (4), (b) (8), ~~or~~ (b) (9), or (b) (10) of § 56-265.1.

E. Subject to the provisions of § 56-232.1, the term "schedules" as used in §§ 56-234 through 56-245 shall include schedules of rates and charges for service to the public and also contracts for rates and charges in sales at wholesale to other public utilities or for divisions of rates between public utilities, but shall not include contracts of telephone companies with the state government or contracts of other public utilities with municipal corporations or the federal or state government, or any contract executed prior to July 1, 1950.

§ 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.

182 (4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or  
183 delivery service, of natural or manufactured gas to fewer than 35 commercial or industrial customers,  
184 which are not themselves "public utilities" as defined in this chapter, or to certain public schools as  
185 indicated in this subdivision, for use solely by such purchasing customers at facilities which are not  
186 located in a territory for which a certificate to provide gas service has been issued by the Commission  
187 under this chapter and which, at the time of the Commission's receipt of the notice provided under  
188 § 56-265.4:5, are not located within any area, territory, or jurisdiction served by a municipal corporation  
189 that provided gas distribution service as of January 1, 1992, provided that such company shall comply  
190 with the provisions of § 56-265.4:5. Direct sales or ancillary transmission or delivery services of natural  
191 gas to public schools in the following localities may be made without regard to the number of schools  
192 involved and shall not count against the "fewer than 35" requirement in this subdivision: the Counties of  
193 Dickenson, Wise, Russell, and Buchanan, and the City of Norton.

194 (5) Any company which is not a public service corporation and which provides compressed natural  
195 gas service at retail for the public.

196 (6) Any company selling landfill gas from a solid waste management facility permitted by the  
197 Department of Environmental Quality to a public utility certificated by the Commission to provide gas  
198 distribution service to the public in the area in which the solid waste management facility is located. If  
199 such company submits to the public utility a written offer for sale of such gas and the public utility  
200 does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company  
201 may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within  
202 three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been  
203 liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

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

219 (8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or  
220 both, that is derived from a solid waste management facility permitted by the Department of  
221 Environmental Quality and sold or delivered from any such facility to not more than three commercial  
222 or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as  
223 authorized by this section. If a purchaser of the landfill gas is located within the certificated service  
224 territory of a natural gas public utility or within an area in which a municipal corporation provides gas  
225 distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such  
226 company shall submit to such public utility or municipal corporation a written offer for sale of that gas  
227 prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility  
228 or municipal corporation does not agree within 60 days following the date of the offer to purchase such  
229 landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill  
230 gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or  
231 county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated  
232 or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No  
233 such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on  
234 similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may  
235 impose such requirements as are reasonably calculated to recover any cost of such service and to protect  
236 and ensure the safety and integrity of the public utility's facilities.

237 (9) A company that is not organized as a public service company pursuant to subsection D of  
238 § 13.1-620 and that sells and delivers propane air only to one or more public utilities. Any company  
239 excluded by this subdivision from the definition of "public utility" for the purposes of this chapter  
240 nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and  
241 enforcement.

242 (10) A company, including an aggregation of not more than five companies, selling to not more than  
243 five commercial or industrial customers steam or electricity that is generated or produced at a facility

244 or facilities operated by the company within the Commonwealth, which steam or electricity is derived  
245 entirely from sunlight, wind, falling water, sustainable biomass, energy from waste, municipal solid  
246 waste, wave motion, tides, or geothermal power, provided that the nameplate capacity of such a facility  
247 that generates electricity does not exceed one megawatt. An electric utility whose certificated service  
248 territory includes purchasers of electricity generated and distributed by the company may file for  
249 Commission approval a proposed tariff to reflect any anticipated or known changes in service to the  
250 purchasers as a result of the use of such electricity. No such tariff shall impose on the purchasers of  
251 such electricity terms less favorable than customers that generate and distribute electric energy  
252 exclusively for their own consumption; however, such tariff may impose such requirements as are  
253 reasonably calculated to recover the cost of such service and to protect and ensure the safety and  
254 integrity of the electric utility's facilities.

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

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