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HOUSE BILL NO. 2175

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 56-46.1 and 56-580 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 11.1 of Title 10.1 an article numbered 5, consisting of sections numbered 10.1-1197.5, 10.1-1197.6, and 10.1-1197.7, relating to permits for certain renewable energy projects.

Patrons—Hogan, Athey, Cole, Lingamfelter, Merricks, Miller, J.H., Poindexter and Scott, E.T.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-46.1 and 56-580 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 11.1 of Title 10.1 an article numbered 5, consisting of sections numbered 10.1-1197.5 through 10.1-1197.7 as follows:

*Article 5.**Small Renewable Energy Projects.**§ 10.1-1197.5. Definitions.**As used in this article:*

"Renewable energy source" means sunlight, wind, falling water, sustainable biomass, energy from waste, municipal solid waste, wave motion, tides, and geothermal power and does not include coal, oil, natural gas, or nuclear power.

"Small renewable energy project" means an electrical generation facility with a rated capacity not exceeding 100 megawatts that generates electricity only from a renewable energy source.

§ 10.1-1197.6. Permit by rule for small renewable energy projects.

A. Notwithstanding the provisions of § 10.1-1186.2:1, the Department shall develop, by regulations to be effective not later than January 1, 2010, a permit by rule for the construction and operation of small renewable energy projects.

B. The conditions for issuance of the permit by rule for small renewable energy projects shall include:

1. A certification by the governing body of the locality wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;

2. A certification signed by a licensed professional engineer that the maximum generation capacity of the small renewable energy project does not exceed 100 megawatts;

3. An analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

4. If the renewable energy source to be used by the small renewable energy project is wind, an analysis of the potential effects of the small renewable energy project on migratory avian species, including 12 months of site-specific preconstruction monitoring;

5. A certification signed by a licensed professional engineer that the small renewable energy project is designed and will be constructed in accordance with all of the standards that are established in the regulations applicable to the permit by rule;

6. An operating plan describing how any standards established in the regulations applicable to the permit by rule will be achieved;

7. A detailed site plan with project location maps that show the location of all components of the small renewable energy project, including any towers; and

8. A certification signed by a licensed professional engineer that the small renewable energy project complies with the requirements of any other environmental permit required for the project.

§ 10.1-1197.7. No other permit required.

An operator of a small renewable energy project to whom the Department has issued a permit by rule pursuant to this article shall be exempt from any provision of § 56-46.1 and subsection D of § 56-580 that applies to permitting by the State Corporation Commission of the construction and operation of such project.

§ 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

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59 as may be desirable or necessary to minimize adverse environmental impact. In order to avoid
60 duplication of governmental activities, any valid permit or approval required for an electric generating
61 plant and associated facilities issued or granted by a federal, state or local governmental entity charged
62 by law with responsibility for issuing permits or approvals regulating environmental impact and
63 mitigation of adverse environmental impact or for other specific public interest issues such as building
64 codes, transportation plans, and public safety, whether such permit or approval is granted prior to or
65 after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect
66 to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were
67 considered by, the governmental entity in issuing such permit or approval, and the Commission shall
68 impose no additional conditions with respect to such matters. Nothing in this section shall affect the
69 ability of the Commission to keep the record of a case open. Nothing in this section shall affect any
70 right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed
71 facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the
72 one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a
73 decision approving such proposed facility that is conditioned upon issuance of any environmental permit
74 or approval. In every proceeding under this subsection, the Commission shall receive and give
75 consideration to all reports that relate to the proposed facility by state agencies concerned with
76 environmental protection; and if requested by any county or municipality in which the facility is
77 proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3
78 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (i) shall consider the
79 effect of the proposed facility on economic development within the Commonwealth and (ii) shall
80 consider any improvements in service reliability that may result from the construction of such facility.

81 B. No electrical transmission line of 138 kilovolts or more shall be constructed unless the State
82 Corporation Commission shall, after at least thirty days' advance notice by (i) publication in a newspaper
83 or newspapers of general circulation in the counties and municipalities through which the line is
84 proposed to be built, (ii) written notice to the governing body of each such county and municipality, and
85 (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route
86 of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which
87 requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in
88 the land books maintained by the commissioner of revenue, director of finance or treasurer of the county
89 or municipality, approve such line. Such notices shall include a written description of the proposed route
90 the line is to follow, as well as a map or sketch of the route including a digital geographic information
91 system (GIS) map provided by the public utility showing the location of the proposed route. The
92 Commission shall make GIS maps provided under this subsection available to the public on the
93 Commission's website. Such notices shall be in addition to the advance notice to the chief administrative
94 officer of the county or municipality required pursuant to § 15.2-2202. As a condition to approval the
95 Commission shall determine that the line is needed and that the corridor or route the line is to follow
96 will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the
97 area concerned. In making the determinations about need, corridor or route, and method of installation,
98 the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability
99 needs presented to justify the new line and its proposed method of installation. If the local
100 comprehensive plan of an affected county or municipality designates corridors or routes for electric
101 transmission lines and the line is proposed to be constructed outside such corridors or routes, in any
102 hearing the county or municipality may provide adequate evidence that the existing planned corridors or
103 routes designated in the plan can adequately serve the needs of the company. Additionally, the
104 Commission shall consider, upon the request of the governing body of any county or municipality in
105 which the line is proposed to be constructed, (i) the costs and economic benefits likely to result from
106 requiring the underground placement of the line and (ii) any potential impediments to timely
107 construction of the line.

108 C. If, prior to such approval, any interested party shall request a public hearing, the Commission
109 shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as
110 may be designated by the Commission. In any hearing the public service company shall provide
111 adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.

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

118 D. For purposes of this section, "interested parties" shall include the governing bodies of any
119 counties or municipalities through which the line is proposed to be built, and persons residing or owning
120 property in each such county or municipality and "environment" or "environmental" shall be deemed to

include in meaning "historic," as well as a consideration of the probable effects of the line on the health and safety of the persons in the area concerned.

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

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

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

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

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

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

H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from the Commission for any electric generating facility, electric transmission line, natural or manufactured gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured gas storage facility (hereafter, an energy facility) and (ii) an environmental permit for the energy facility that is subject to issuance by any agency or board within the Secretariat of Natural Resources, may request a pre-application planning and review process. In any such request to the Commission or the Secretariat of Natural Resources, the applicant shall identify the proposed energy facility for which it requests the pre-application planning and review process. The Commission, the Department of Environmental Quality, the Marine Resources Commission, the Department of Game and Inland Fisheries, the Department of Historic Resources, the Department of Conservation and Recreation, and other appropriate agencies of the Commonwealth shall participate in the pre-application planning and review process. Participation in such process shall not limit the authority otherwise provided by law to the Commission or other agencies or boards of the Commonwealth. The Commission and other participating agencies of the Commonwealth may invite federal and local governmental entities charged by law with responsibility for issuing permits or approvals to participate in the pre-application planning and review process. Through the pre-application planning and review process, the applicant, the Commission, and other agencies and boards shall identify the potential impacts and approvals that may be required and shall develop a plan that will provide for an efficient and coordinated review of the proposed energy facility. The plan shall include (a) a list of the permits or other approvals likely to be required based on the information available, (b) a specific plan and preliminary schedule for the different reviews, (c) a plan for coordinating those reviews and the related public comment process, and (d) designation of points of contact, either within each agency or for the Commonwealth as a whole, to facilitate this coordination. The plan shall be made readily available to the public and shall be maintained on a dedicated website to provide current information on the status of each component of the plan and each approval process including opportunities for public comment.

I. *The provisions of this section shall not apply to the construction and operation of a small renewable energy project, as defined in § 10.1-1197.5, for which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title*

182 10.1.

183 § 56-580. Transmission and distribution of electric energy.

184 A. Subject to the provisions of § 56-585.1, the Commission shall continue to regulate pursuant to this
185 title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent
186 not prohibited by federal law, the transmission of electric energy in the Commonwealth.

187 B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the
188 reliability, quality and maintenance by transmitters and distributors of their transmission and retail
189 distribution systems.

190 C. The Commission shall develop codes of conduct governing the conduct of incumbent electric
191 utilities and affiliates thereof when any such affiliates provide, or control any entity that provides,
192 generation, distribution, or transmission services, to the extent necessary to prevent impairment of
193 competition. Nothing in this chapter shall prevent an incumbent electric utility from offering metering
194 options to its customers.

195 D. The Commission shall permit the construction and operation of electrical generating facilities in
196 Virginia upon a finding that such generating facility and associated facilities (i) will have no material
197 adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are
198 required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007,
199 and if they are to be constructed and operated by any regulated utility whose rates are regulated
200 pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest. *The provisions of this*
201 *subsection shall not apply to the construction and operation of a small renewable energy project, as*
202 *defined in § 10.1-1197.5, for which the Department of Environmental Quality has issued a permit by*
203 *rule pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1.* In review of a petition
204 for a certificate to construct and operate a generating facility described in this subsection, the
205 Commission shall give consideration to the effect of the facility and associated facilities on the
206 environment and establish such conditions as may be desirable or necessary to minimize adverse
207 environmental impact as provided in § 56-46.1. In order to avoid duplication of governmental activities,
208 any valid permit or approval required for an electric generating plant and associated facilities issued or
209 granted by a federal, state or local governmental entity charged by law with responsibility for issuing
210 permits or approvals regulating environmental impact and mitigation of adverse environmental impact or
211 for other specific public interest issues such as building codes, transportation plans, and public safety,
212 whether such permit or approval is prior to or after the Commission's decision, shall be deemed to
213 satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or
214 approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing
215 such permit or approval, and the Commission shall impose no additional conditions with respect to such
216 matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case
217 open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance
218 with applicable law. In the case of a proposed facility located in a region that was designated as of July
219 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air
220 Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon
221 issuance of any environmental permit or approval.

222 E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric
223 utilities, and incumbent electric utilities shall continue to provide distribution services within their
224 exclusive service territories as established by the Commission. Subject to the provisions of § 56-585.1,
225 the Commission shall continue to exercise its existing authority over the provision of electric distribution
226 services to retail customers in the Commonwealth including, but not limited to, the authority contained
227 in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

228 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or
229 operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt
230 from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any
231 such electric utility unless (i) that municipality or that authority created by a governmental unit exempt
232 from the referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii)
233 that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail
234 customer eligible to purchase electric energy from any supplier in accordance with § 56-577 if that retail
235 customer is outside the geographic area that was served by such municipality as of July 1, 1999, except
236 (a) any area within the municipality that was served by an incumbent public utility as of that date but
237 was thereafter served by an electric utility owned or operated by a municipality or by an authority
238 created by a governmental unit exempt from the referendum requirement of § 15.2-5403 pursuant to the
239 terms of a franchise agreement between the municipality and the incumbent public utility, or (b) where
240 the geographic area served by an electric utility owned or operated by a municipality is changed
241 pursuant to mutual agreement between the municipality and the affected incumbent public utility in
242 accordance with § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1,
243 1999, or by an authority created by a governmental unit exempt from the referendum requirement of

§ 15.2-5403 is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities shall also apply to any such utility, mutatis mutandis.

G. The applicability of all provisions of this chapter except § 56-594 to any investor-owned incumbent electric utility supplying electric service to retail customers on January 1, 2003, whose service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell, Scott, and Wise Counties shall be suspended effective July 1, 2003, so long as such utility does not provide retail electric services in any other service territory in any jurisdiction to customers who have the right to receive retail electric energy from another supplier. During any such suspension period, the utility's rates shall be (i) its capped rates established pursuant to § 56-582 for the duration of the capped rate period established thereunder, and (ii) determined thereafter by the Commission on the basis of such utility's prudently incurred costs pursuant to Chapter 10 (§ 56-232 et seq.) of this title.

H. The expiration date of any certificates granted by the Commission pursuant to subsection D, for which applications were filed with the Commission prior to July 1, 2002, shall be extended for an additional two years from the expiration date that otherwise would apply.