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HOUSE BILL NO. 2371

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 23, 2009)

(Patron Prior to Substitute—Delegate Nutter)

A BILL to direct the State Corporation Commission to conduct a proceeding relating to pilot programs under which certain customers that generate renewable energy may purchase electric power from, and sell electric power to, participating utilities.

Be it enacted by the General Assembly of Virginia:

1. § 1. That the State Corporation Commission (the "Commission") shall conduct a proceeding to establish pilot programs as described in this act. Each of the two investor-owned utilities with the largest number of customers in the Commonwealth (a "participating utility") shall be a party to the proceeding. The purpose of the pilot programs shall be to determine the feasibility, and the implications on the public interest, of making specific rate structures available to the participating utilities' customers that generate electricity on-site with renewable generation facilities, or that generate electricity at off-site renewable generation facilities that have a rated capacity to generate not more than five megawatts from falling water and are located within six miles of the nonresidential customer, connected on the customer's side of the meter. The Commission shall determine the scope of the pilot programs and thresholds for participation, based on the rated capacity of their facilities, by customer/renewable generators. In the proceeding, the Commission shall establish requirements relating to the implementation of the following pilot programs:

1. A pilot program under which eligible customer/renewable generators that volunteer to participate are provided the ability to purchase electricity at dynamic rates. In establishing the parameters of such a pilot program, the Commission shall:

a. Determine imbedded cost-based rates related to non-generation elements of service, including transmission and distribution;

b. Consider voluntary dynamic pricing for generation on an hourly, daily, monthly, or seasonal basis as is determined by the Commission to be appropriate;

c. Ensure that dynamic pricing rates under any such tariff reflect, where practicable, the marginal energy and capacity costs of the participating utility;

d. The design of any dynamic rates that are developed for this pilot program should take into consideration and, to the extent practical, include charges that reflect the marginal generation-related capacity or demand costs that would be imposed on the utility's system by customer/renewable generators, recognizing that the customer/renewable generator's operating characteristics will vary depending on the renewable technologies utilized; and

e. Ensure that the rates established under this pilot program are in the public interest, will not unreasonably prejudice or disadvantage any customer or class of customers, and will not jeopardize the continuation of reliable electric service; and

2. A pilot program under which eligible customer/renewable generators that volunteer to participate are provided the ability to sell electricity to a participating utility at dynamic rates. In establishing eligibility criteria, the Commission may limit participation to customer/renewable generators that have been designated as qualified facilities by the Federal Energy Regulatory Commission and that have been determined by the Commission not to be prohibited by applicable federal law from participating in the pilot program. In establishing the parameters of such a pilot program, the Commission shall:

a. Consider dynamic rates for purchases of electricity on hourly, daily, monthly, or seasonal basis as the Commission determines is appropriate;

b. Ensure that the dynamic energy rates reflect, where practical, the participating utility's marginal cost of service;

c. Determine capacity rates, which shall reflect avoided generation capacity costs where practical;

d. Ensure that the rates established under this pilot program are in the public interest, will not unreasonably prejudice or disadvantage any customer or class of customers or the public utility, and will not jeopardize the continuation of reliable electric service; and

e. Provide that any customer/renewable generator shall have the option to sell the electric power it generates into the competitive wholesale market; however, unless the Commission's authority to so provide is preempted by contrary federal law, any such election to sell to the utility or into the competitive wholesale market shall be binding upon the customer/renewable generator for a period of not less than five years.

§ 2. A participating utility that has a tariff approved by the Commission that satisfies the requirements of one or both pilots, or that has applied for Commission approval of a tariff that satisfies

60 *the requirements of one or both pilots, shall be exempt from the corresponding portions of the*
61 *proceeding conducted pursuant to § 1 of this act and from any requirement that it implement the*
62 *corresponding pilot.*

63 *§ 3. If a participating utility is a member of a regional transmission entity that supports an active*
64 *market for energy and capacity, the energy and capacity prices related to that market may be used as*
65 *surrogates for the marginal or avoided energy and capacity costs of that utility for purposes of § 1 of*
66 *this act.*