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HOUSE BILL NO. 2531

Offered January 19, 2009

A BILL to direct the State Corporation Commission to conduct a proceeding to determine appropriate energy conservation and demand response targets that can realistically be accomplished through demand-side management portfolios and other energy conservation, energy efficiency, and demand-side management programs to be administered by generating electric utilities, and directing the Department of Environmental Quality to adopt regulations providing exemptions to certain air quality requirements.

Patrons—Kilgore and Hugo

Referred to Committee on Commerce and Labor

Whereas, there is substantial public sentiment in support of identifying and implementing sensible energy conservation, energy efficiency, and demand-side management (DSM) measures in the Commonwealth; and

Whereas, in light of the current economic crisis, it is especially critical to ensure that the Commonwealth and its citizens receive measurable, cost-effective benefits in environmental impact, energy efficiency, energy reliability, and energy cost for every dollar spent and for every resource allocated to these purposes by the Commonwealth, consumers, utilities, and others; and

Whereas, the third enactment of Chapters 888 and 933 of the Acts of Assembly of 2007 directed the State Corporation Commission to conduct a proceeding on cost-effective conservation through fair and effective DSM, conservation, energy efficiency, and load management programs, including consumer education; to answer specific questions regarding the same; and, on or before December 15, 2007, to submit its findings and recommendations to the Governor and the General Assembly; and

Whereas, the proceeding conducted under the auspices of the State Corporation Commission included extensive participation by numerous stakeholders and resulted in a staff report on the process, which the Commission transmitted to the General Assembly without endorsement on December 14, 2007; and

Whereas, among other things, the State Corporation Commission's memorandum transmitting the Staff Report to the Governor and the General Assembly noted that "[a] plan for 'cost-effective' conservation cannot be implemented without a determination of how cost-effectiveness will be defined or measured"; and

Whereas, it is in the public interest, and is consistent with the energy policy goals in § 67-102 of the Code of Virginia, to promote the generation of electricity through technologies that do not contribute to greenhouse gases and global warming; and

Whereas, the Joint Legislative Audit and Review Commission (JLARC), in consultation with the Office of Attorney General, will submit a report to the Governor and General Assembly by November 1, 2010, that analyzes the cost implications of the December 15, 2008, Governor's Commission on Climate Change Report pursuant to Executive Order 59 (2007); and

Whereas, JLARC must at a minimum determine the direct and indirect cost implications to consumers for energy, development and land use, business operations, state and local government operations, infrastructure, transportation, construction and the overall economy of the Governor's Climate Change Commission recommendations; and

Whereas, demand-side management programs that reduce, or "shave," peak demand through the use of distributed generation facilities during peak demand periods can place participating utility customers in jeopardy of violating air emissions limitations, which establishes a conflict between public policy goals favoring energy efficiency and environmental protection; now, therefore

Be it enacted by the General Assembly of Virginia:

1. § 1. That the State Corporation Commission shall conduct a formal public proceeding that will include an evidentiary hearing for the purpose of determining achievable, cost-effective energy conservation and demand response targets that can realistically be accomplished in the Commonwealth through demand-side management portfolios administered by each generating electric utility in the Commonwealth. As used in this act, "generating electric utility" means a public service corporation that serves electric load at retail, has rates regulated by the State Corporation Commission, and that, as of January 1, 2009, directly owns and operates electric generation facilities, other than diesel generators used for voltage control. The cost-benefit analysis to be performed by the State Corporation Commission in determining the achievable targets shall take into consideration data on program costs and data on avoided costs provided by the Commonwealth's utilities or from any other reputable and publicly available source. The determination of what consumption and peak load reductions can be achieved

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59 *cost-effectively shall consider the four standard industry-recognized tests, including the Ratepayer*
60 *Impact Measure Test, the Participants' Test, the Utility Cost Test, and the Total Resource Cost Test. The*
61 *Commission shall determine which test should be given greatest weight when preparing a cost-benefit*
62 *analysis of a demand-side management program, taking into consideration the public interest and the*
63 *potential impact on economic development in the Commonwealth.*

64 § 2. *That the State Corporation Commission shall report its findings to the Governor and the*
65 *General Assembly on or before November 15, 2009. Such report shall (i) indicate the range of*
66 *consumption and peak load reductions that are potentially achievable by each generating electric utility,*
67 *the range of costs that consumers would pay to achieve those reductions, and the range of financial*
68 *benefits or savings that could be realized if the targets were met over a 15-year period; and (ii)*
69 *determine a just and reasonable ratemaking methodology to be employed to quantify the cost*
70 *responsibility of each customer class to pay for generating electric utility-administered demand-side*
71 *management programs. This evaluation shall include an examination of the class cost responsibility*
72 *methods used in other jurisdictions, including, but not limited to, the allocation of costs based on*
73 *projected class benefits and the allocation of costs based on program participation. The analysis shall*
74 *also examine other jurisdictions that permit certain nonresidential customers or classes of customers to*
75 *either be exempt from paying for the utility demand-side management programs or to opt out of*
76 *participating in or paying for the utility demand-side management programs, and determine if it would*
77 *be in the public interest for the Commonwealth to have a similar policy.*

78 § 3. *That the State Corporation Commission, for the service area of a generating electric utility that*
79 *is committed to a regional transmission entity's fixed resource requirement structure for purposes of*
80 *determining such generating electric utility's capacity and reserve requirements, shall approve any*
81 *demand-side management program proposed to be offered to retail customers by the generating electric*
82 *utility or any other qualified nonutility provider if, following notice and the opportunity for a hearing,*
83 *the State Corporation Commission finds (i) any nonutility provider to be qualified, (ii) the program to*
84 *be effective, reliable, and verifiable as a capacity resource, and (iii) such program to be in the public*
85 *interest. A State Corporation Commission order issued pursuant to this section shall not affect any*
86 *contract between a retail customer and a demand-side management program provider executed prior to*
87 *July 1, 2009.*

88 § 4. *That the Department of Environmental Quality, in consultation with the State Corporation*
89 *Commission and Department of Mines, Minerals and Energy, shall adopt regulations that (i) provide*
90 *electric utility customers that participate in peak demand control efforts with appropriate exemptions to*
91 *the major and minor new source review regulations during verifiable peak shaving periods as*
92 *prescribed by PJM Interconnection or an electric utility, (ii) create a class or classes of general permits*
93 *that would create the same exemptions, or (iii) both, even if the creation of the exemptions would*
94 *require amendments to the Commonwealth's state implementation plan that has been approved by the*
95 *U.S. Environmental Protection Agency.*