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SENATE BILL NO. 1339
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Governor
 on March 30, 2009)

(Patron Prior to Substitute—Senator Herring)

A BILL to amend and reenact §§ 56-585.2 and 56-594 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-234.2:1, relating to the regulation of electric utilities in the Commonwealth.

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-585.2 and 56-594 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-234.2:1 as follows:

§ 56-234.2:1. Electric utilities to offer real-time rates.

A. The Commission, after notice and opportunity for hearing, shall adopt regulations that require each public utility providing electric service in the Commonwealth to offer electric service to customers in each customer class under a tariff that utilizes rates that vary in accordance with changes in the utility's costs of providing electricity seasonally, daily, and throughout each day. Such dynamic or variable rates shall be offered in a manner that permits customers taking service under such tariff to receive information regarding the costs of electricity from the utility that allows customers to shift or curtail their usage in response to variations in rates that correspond to changes in the utility's cost of generating or purchasing electric power. Such tariff shall be in addition to any other tariff currently offered by the utility.

B. Regulations adopted under subsection A shall require that any such tariff (i) is in the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, (iii) will not jeopardize the continuation of reliable electric service, and (iv) will not penalize customers taking service under such tariff for a permissible use of utility services.

C. The Commission shall enter a scheduling order to each public utility providing electric service in the Commonwealth that requires the utility to submit a plan setting forth how the utility will comply with the regulations. Such regulations may require utilities to offer service under such tariff initially as a pilot program in limited areas or to a limited number of customers, or to individual customer classes. The Commission shall, after notice and the opportunity for hearing, determine whether a utility's plan complies with the regulations. If the Commission finds that the utility's plan complies with the regulations, the utility shall offer electric service to eligible customers at the rates and upon the terms and conditions contained in such plans. Eligible customers shall have the option to purchase electric service under such tariff, but shall not be precluded from receiving electric service under any other approved rate, toll, charge, or schedule.

§ 56-585.2. Sale of electricity from renewable sources through a renewable energy portfolio standard program.

A. As used in this section:

"Renewable energy" shall have the same meaning ascribed to it in § 56-576, provided such renewable energy is (i) generated or purchased in the Commonwealth or in the interconnection region of the regional transmission entity of which the participating utility is a member, as it may change from time to time; (ii) generated by a public utility providing electric service in the Commonwealth from a facility in which the public utility owns at least a 49 percent interest and that is located in a control area adjacent to such interconnection region; or (iii) represented by certificates issued by an affiliate of such regional transmission entity, or any successor to such affiliate, and held or acquired by such utility, which validate the generation of renewable energy by eligible sources in such region. "Renewable energy" shall not include electricity generated from pumped storage, but shall include run-of-river generation from a combined pumped-storage and run-of-river facility.

"Total electric energy sold in the base year" means total electric energy sold to Virginia jurisdictional retail customers by a participating utility in calendar year 2007, excluding an amount equivalent to the average of the annual percentages of the electric energy that was supplied to such customers from nuclear generating plants for the calendar years 2004 through 2006.

B. Any investor-owned incumbent electric utility may apply to the Commission for approval to participate in a renewable energy portfolio standard program, as defined in this section. The Commission shall approve such application if the applicant demonstrates that it has a reasonable expectation of achieving 12 percent of its base year electric energy sales from renewable energy sources during calendar year 2022, and 15 percent of its base year electric energy sales from renewable energy sources during calendar year 2025, as provided in subsection D.

C. It is in the public interest for utilities to achieve the goals set forth in subsection D, such goals

60 being referred to herein as "RPS Goals". Accordingly, the Commission, in addition to providing
61 recovery of incremental RPS program costs pursuant to subsection E, shall increase the fair combined
62 rate of return on common equity for each utility participating in such program by a single Performance
63 Incentive, as defined in subdivision A 2 of § 56-585.1, of 50 basis points whenever the utility attains an
64 RPS Goal established in subsection D. Such Performance Incentive shall first be used in the calculation
65 of a fair combined rate of return for the purposes of the immediately succeeding biennial review
66 conducted pursuant to § 56-585.1 after any such RPS Goal is attained, and shall remain in effect if the
67 utility continues to meet the RPS Goals established in this section through and including the third
68 succeeding biennial review conducted thereafter. Any such Performance Incentive, if implemented, shall
69 be in lieu of any other Performance Incentive reducing or increasing such utility's fair combined rate of
70 return on common equity for the same time periods. However, if the utility receives any other
71 Performance Incentive increasing its fair combined rate of return on common equity by more than 50
72 basis points, the utility shall be entitled to such other Performance Incentive in lieu of this Performance
73 Incentive during the term of such other Performance Incentive. A utility shall receive double credit
74 toward meeting the renewable energy portfolio standard for energy derived from sunlight or from wind.

75 D. To qualify for the Performance Incentive established in subsection C, the total electric energy sold
76 by a utility to meet the RPS Goals shall be composed of the following amounts of electric energy from
77 renewable energy sources, as adjusted for any sales volumes lost through operation of the customer
78 choice provisions of subdivision A 3 or A 4 of § 56-577:

79 RPS Goal I: In calendar year 2010, 4 percent of total electric energy sold in the base year.

80 RPS Goal II: For calendar years 2011 through 2015, inclusive, an average of 4 percent of total
81 electric energy sold in the base year, and in calendar year 2016, 7 percent of total electric energy sold in
82 the base year.

83 RPS Goal III: For calendar years 2017 through 2021, inclusive, an average of 7 percent of total
84 electric energy sold in the base year, and in calendar year 2022, 12 percent of total electric energy sold
85 in the base year.

86 *RPS Goal IV: For calendar years 2023 and 2024, inclusive, an average of 12 percent of total*
87 *electric energy sold in the base year, and in calendar year 2025, 15 percent of total electric energy sold*
88 *in the base year.*

89 A utility may apply renewable energy sales achieved or renewable energy certificates acquired during
90 the periods covered by any such RPS Goal that are in excess of the sales requirement for that RPS Goal
91 to the sales requirements for any future RPS Goal.

92 E. A utility participating in such program shall have the right to recover all incremental costs
93 incurred for the purpose of such participation in such program, as accrued against income, through rate
94 adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to,
95 administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described
96 in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for
97 funds used during construction until such time as an enhanced rate of return, as determined pursuant to
98 subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected
99 construction work in progress, planning, development and construction costs, life-cycle costs, and costs
100 of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to
101 subdivision A 6 of § 56-585.1. All incremental costs of the RPS program shall be allocated to and
102 recovered from the utility's customer classes based on the demand created by the class and within the
103 class based on energy used by the individual customer in the class, except that the incremental costs of
104 the RPS program shall not be allocated to or recovered from customers that are served within the large
105 industrial rate classes of the participating utilities and that are served at primary or transmission voltage.

106 F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable
107 energy from existing renewable energy sources owned by the participating utility or purchased as
108 allowed by contract at no additional cost to customers to the extent feasible. A utility participating in
109 such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to
110 any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007,
111 that is operated by a person that is served within a utility's large industrial rate class and that is served
112 at primary or transmission voltage. A participating utility shall be required to fulfill any remaining
113 deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a
114 prudent manner to be determined by the Commission at the time of approval of any application made
115 pursuant to subsection B. Utilities participating in such program shall collectively, either through the
116 installation of new generating facilities, through retrofit of existing facilities or through purchases of
117 electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5
118 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used
119 or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting
120 RPS goals, excluding such fuel used at electric generating facilities using wood as fuel prior to January
121 1, 2007. A utility with an approved application shall be allocated a portion of the 1.5 million tons per

year in proportion to its share of the total electric energy sold in the base year, as defined in subsection A, for all utilities participating in the RPS program. A utility may use in meeting RPS goals, without limitation, the following sustainable biomass and biomass based waste to energy resources: mill residue, except wood chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and construction debris; brush; yard waste; shipping crates; dunnage; non-merchantable waste paper; landscape or right-of-way tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and gas produced from the anaerobic decomposition of animal waste.

G. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section including a requirement that participants verify whether the RPS goals are met in accordance with this section.

H. Each investor-owned incumbent electric utility shall report to the Commission annually by November 1 on (i) its efforts, if any, to meet the RPS Goals, (ii) its overall generation of renewable energy, and (iii) advances in renewable generation technology that affect activities described in clauses (i) and (ii).

§ 56-594. Net energy metering provisions.

A. The Commission shall establish by regulation a program, to begin no later than July 1, 2000, ~~which~~ *that* affords eligible customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners and/or operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; or (v) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest.

B. For the purpose of this section:

"Eligible customer-generator" means a customer that owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than 10 kilowatts for residential customers and 500 kilowatts for nonresidential customers, *unless a utility elects a higher capacity limit for such a facility*; (ii) uses as its total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements.

"Net energy metering" means measuring the difference, over the net metering period, between (i) electricity supplied to an eligible customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-generator.

"Net metering period" means the 12-month period following the date of final interconnection of the eligible customer-generator's system with an electric service provider, and each 12-month period thereafter.

C. The Commission's regulations shall ensure that the metering equipment installed for net metering shall be capable of measuring the flow of electricity in two directions, and shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's electrical generating system shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in this section, an eligible customer-generator whose electrical generating system meets those standards and rules shall bear the reasonable cost, if any, as determined by the Commission, to (i) install additional controls, (ii) perform or pay for additional tests, or (iii) purchase additional liability insurance.

D. The Commission shall establish minimum requirements for contracts to be entered into by the parties to net metering arrangements. Such requirements shall protect the customer-generator against discrimination by virtue of its status as a customer-generator, *and permit customers that are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariffs to participate as an eligible customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators served on demand charge-based time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.*

E. If electricity generated by an eligible customer-generator over the net metering period exceeds the electricity consumed by the customer-generator, the customer-generator shall be compensated for the excess electricity if the entity contracting to receive such electric energy and the customer-generator enter into a power purchase agreement for such excess electricity. ~~If the eligible customer-generator receives generation service from a default service provider, the default service provider, upon~~ *Upon* the written request of the customer-generator, ~~the supplier that serves the eligible customer-generator~~ shall enter into a power purchase agreement with the requesting eligible customer-generator that is consistent with the minimum requirements for contracts established by the Commission pursuant to subsection D.

183 The power purchase agreement shall obligate the ~~default service provider~~ supplier to purchase such
184 excess electricity at the rate that is provided for such purchases in a net metering standard contract or
185 tariff approved by the Commission, unless the parties agree to a higher rate. *The eligible*
186 *customer-generator owns the renewable energy certificates associated with its electrical generating*
187 *facility, however, at the time that the eligible customer-generator enters into a power purchase*
188 *agreement with its supplier, the customer-generator shall have a one-time option to sell the renewable*
189 *energy certificates associated with such electrical generating facility to its supplier and be compensated*
190 *at an amount that is established by the Commission to reflect the value of such renewable energy*
191 *certificates. Nothing in this section shall prevent the eligible customer-generator and the supplier from*
192 *voluntarily entering into an agreement for the sale and purchase of excess electricity or renewable*
193 *energy certificates at mutually agreed-upon prices if the eligible customer-generator does not exercise*
194 *its option to sell its renewable energy certificates to its supplier at Commission-approved prices at the*
195 *time that the eligible customer-generator enters into a power purchase agreement with its supplier. All*
196 *costs incurred by the supplier to purchase excess electricity and renewable energy certificates from*
197 *eligible customer-generators shall be recoverable through its Renewable Energy Portfolio Standard*
198 *(RPS) rate adjustment clause, if the supplier has a Commission-approved RPS plan. If not, then all*
199 *costs shall be recoverable through the supplier's fuel adjustment clause. For purposes of this section,*
200 *"all costs" shall be defined as the rates paid to the eligible customer-generator for the purchase of*
201 *excess electricity and renewable energy certificates and any administrative costs incurred to manage the*
202 *eligible customer-generator's power purchase arrangements. The net metering standard contract or tariff*
203 *shall be available to eligible customer-generators on a first-come, first-served basis in each electric*
204 *distribution company's Virginia service area until the rated generating capacity owned and operated by*
205 *eligible customer-generators in the state reaches one percent of each electric distribution company's*
206 *adjusted Virginia peak-load forecast for the previous year, and shall require the ~~default service provider~~*
207 *supplier to pay the eligible customer-generator for such excess electricity in a timely manner at a rate to*
208 *be established by the Commission.*

209 **2. That each investor-owned incumbent electric utility that received approval from the State**
210 **Corporation Commission of its application to participate in the renewable energy portfolio**
211 **standard program pursuant to § 56-585.2 of the Code of Virginia prior to July 1, 2009, shall**
212 **update its application no later than July 1, 2011, to address its plan for meeting the RPS Goal IV,**
213 **as set out in subsection D of § 56-585.2, for sales in calendar year 2025 of 15 percent of total**
214 **electric energy sold in the base year. The temporal scope of any Commission proceeding relative to**
215 **an updated application filed pursuant to this enactment shall be limited to calendar years 2023,**
216 **2024, and 2025.**