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HOUSE BILL NO. 671

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact §§ 56-46.1 and 56-580 of the Code of Virginia, relating to the conduct of public hearings by the State Corporation Commission in proceedings involving electrical utility facilities.

Patrons—May and Greason

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 as follows:**

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

B. No electrical transmission line of 138 kilovolts or more shall be constructed unless the State Corporation Commission shall, after at least ~~thirty~~ 30 days' advance notice by (i) publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, (ii) written notice to the governing body of each such county and municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, approve such line. Such notices shall include a written description of the proposed route the line is to follow, as well as a map or sketch of the route including a digital geographic information system (GIS) map provided by the public utility showing the location of the proposed route. The Commission shall make GIS maps provided under this subsection available to the public on the Commission's website. Such notices shall be in addition to the advance notice to the chief administrative officer of the county or municipality required pursuant to § 15.2-2202. As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned. In making the determinations about need, corridor or route, and method of installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs presented to justify the new line and its proposed method of installation.

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59 If the local comprehensive plan of an affected county or municipality designates corridors or routes for
60 electric transmission lines and the line is proposed to be constructed outside such corridors or routes, in
61 any hearing the county or municipality may provide adequate evidence that the existing planned
62 corridors or routes designated in the plan can adequately serve the needs of the company. Additionally,
63 the Commission shall consider, upon the request of the governing body of any county or municipality in
64 which the line is proposed to be constructed, (i) the costs and economic benefits likely to result from
65 requiring the underground placement of the line and (ii) any potential impediments to timely
66 construction of the line.

67 C. ~~If, prior to such approval, any interested party shall request a public hearing~~ *Prior to approving*
68 *the construction of any electrical utility facility*, the Commission shall, as soon as reasonably practicable
69 after such request, hold such hearing or hearings at such place as may be designated by the Commission
70 *for the purpose of receiving public comment on the proposal. At least one hearing shall be held in the*
71 *area affected by the proposed electrical transmission line or other electrical utility facility, and at least*
72 *one of the Commissioners of the Commission shall be physically present at any hearing held by the*
73 *Commission in the affected area.* In any hearing held with respect to an electrical transmission line, the
74 public service company shall provide adequate evidence that existing rights-of-way cannot adequately
75 serve the needs of the company.

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

82 D. For purposes of this section, "interested parties" shall include the governing bodies of any
83 counties or municipalities through which the line is proposed to be built, and persons residing or owning
84 property in each such county or municipality and "environment" or "environmental" shall be deemed to
85 include in meaning "historic," as well as a consideration of the probable effects of the line on the health
86 and safety of the persons in the area concerned.

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

90 1. That the applicant will make available to new electric generation facilities constructed after
91 January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total
92 megawatts of the additional transmission capacity created by the proposed line, for the purpose of
93 wheeling to public utility purchasers the power generated by such qualifying facilities and other
94 nonutility facilities which are awarded a power purchase contract by a public utility purchaser in
95 compliance with applicable state law or regulations governing bidding or capacity acquisition programs
96 for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant
97 will extend only to those requests for wheeling service made within the ~~twelve~~ 12 months following
98 certification by the State Corporation Commission of the transmission line and with effective dates for
99 commencement of such service within the ~~twelve~~ 12 months following completion of the transmission
100 line.

101 2. That the wheeling service offered by the applicant, pursuant to subdivision D 1 of this section,
102 will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L.
103 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line,
104 the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant
105 intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include
106 in its agreements for such wheeling service.

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

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

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

119 H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from
120 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, by a utility regulated pursuant to this title 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 10.1.

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

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

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

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

D. The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest. In review of a petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1, unless exempt as a small renewable energy project 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 10.1. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in

182 accordance with applicable law. In the case of a proposed facility located in a region that was
183 designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in
184 the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility
185 that is conditioned upon issuance of any environmental permit or approval. *Prior to approving the*
186 *construction and operation of any electrical generating facility, the Commission shall, as soon as*
187 *reasonably practicable after such request, hold such hearing or hearings at such place as may be*
188 *designated by the Commission for the purpose of receiving public comment on the proposal. At least*
189 *one hearing shall be held in the area affected by the proposed facility, and at least one of the*
190 *Commissioners of the Commission shall be physically present at any hearing held by the Commission in*
191 *the affected area.* The Commission shall complete any proceeding under this section, or under any
192 provision of the Utility Facilities Act (§ 56-265.1 et seq.), involving an application for a certificate,
193 permit, or approval required for the construction or operation by a public utility of a small renewable
194 energy project as defined in § 10.1-1197.5, within nine months following the utility's submission of a
195 complete application therefore. Small renewable energy projects as defined in § 10.1-1197.5 are in the
196 public interest and in determining whether to approve such project, the Commission shall liberally
197 construe the provisions of this title.

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

204 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or
205 operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt
206 from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any
207 such electric utility unless (i) that municipality or that authority created by a governmental unit exempt
208 from the referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii)
209 that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail
210 customer eligible to purchase electric energy from any supplier in accordance with § 56-577 if that retail
211 customer is outside the geographic area that was served by such municipality as of July 1, 1999, except
212 (a) any area within the municipality that was served by an incumbent public utility as of that date but
213 was thereafter served by an electric utility owned or operated by a municipality or by an authority
214 created by a governmental unit exempt from the referendum requirement of § 15.2-5403 pursuant to the
215 terms of a franchise agreement between the municipality and the incumbent public utility, or (b) where
216 the geographic area served by an electric utility owned or operated by a municipality is changed
217 pursuant to mutual agreement between the municipality and the affected incumbent public utility in
218 accordance with § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1,
219 1999, or by an authority created by a governmental unit exempt from the referendum requirement of
220 § 15.2-5403 is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this
221 subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities
222 shall also apply to any such utility, mutatis mutandis.

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

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