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SENATE BILL NO. 450

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact § 56-585.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-585.2:1, relating to the renewable energy portfolio standard program.

Patrons—Whipple and Petersen

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

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

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

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

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

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

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59 the base year.

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

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

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

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

83 F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable
84 energy from existing renewable energy sources owned by the participating utility or purchased as
85 allowed by contract at no additional cost to customers to the extent feasible. A utility participating in
86 such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to
87 any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007,
88 that is operated by a person that is served within a utility's large industrial rate class and that is served
89 at primary or transmission voltage. A participating utility shall be required to fulfill any remaining
90 deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a
91 prudent manner to be determined by the Commission at the time of approval of any application made
92 pursuant to subsection B. Utilities participating in such program shall collectively, either through the
93 installation of new generating facilities, through retrofit of existing facilities or through purchases of
94 electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5
95 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used
96 or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting
97 RPS goals, excluding such fuel used at electric generating facilities using wood as fuel prior to January
98 1, 2007. A *Each* utility with an approved application shall be allocated a portion of the 1.5 million tons
99 per year in proportion to its share of the total electric energy sold in the base year, as defined in
100 subsection A, for all utilities participating in the RPS program. A utility may use in meeting RPS goals,
101 without limitation, the following sustainable biomass and biomass based waste to energy resources: mill
102 residue, except wood chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and
103 construction debris; brush; yard waste; shipping crates; dunnage; non-merchantable waste paper;
104 landscape or right-of-way tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and
105 gas produced from the anaerobic decomposition of animal waste.

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

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

113 I. *If, after notice and comment, the Commission determines that a participating utility has failed to*
114 *meet the RPS Goals, the Commission shall require the utility to pay a noncompliance payment into the*
115 *Virginia Sustainable Energy Fund, established pursuant to § 56-585.2:1. This payment (i) shall not*
116 *constitute a recoverable cost, (ii) shall be an amount that will encourage future compliance with RPS*
117 *Goals, and (iii) shall not be an amount less than the end-of-year market price for the equivalent*
118 *renewable energy certificates needed to achieve RPS Goal compliance for the calendar year.*

119 § 56-585.2:1. Virginia Sustainable Energy Fund established.

120 There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia

121 Sustainable Energy Fund, hereafter referred to as "the Fund." The Fund shall be established on the
122 books of the Comptroller. All noncompliance payments collected by the Commission pursuant to
123 subsection I of § 56-585.2 shall be paid into the state treasury and credited to the Fund. Interest earned
124 on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the
125 Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but
126 shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of increasing the
127 amount of electric energy generated from renewable energy resources and for energy efficiency
128 programs. The moneys may be distributed to existing programs in the Commonwealth administered by
129 agencies, political subdivisions, and universities. Expenditures and disbursements from the Fund shall be
130 made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the
131 Commission or its designee.