

11102761D

HOUSE BILL NO. 2353

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact § 56-585.2 of the Code of Virginia, relating to renewable power goals to be met by electric utilities in providing renewable power; Virginia Sustainable Energy Fund created.*

Patron—Morrissey

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 as follows:

§ 56-585.2. Sale of electricity from renewable energy sources.

A. As used in this section:

"Community-based project" means a renewable energy source that (i) has a rated capacity of not greater than 30 megawatts, (ii) is located in the Commonwealth, and (iii) is owned by (a) individual residents of a community, (b) an organization or cooperative that is controlled by individual residents of a community, or (c) a locality.

"Customer-generator" means an eligible customer-generator as defined in subsection B of § 56-594.

"Electric utility" or "utility" means an investor-owned electric utility or an electric distribution cooperative.

"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~~ electric utility is a member, as it may change from time to time; (ii) generated by a ~~public~~ an electric 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~~ an electric 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.

"Renewable energy source" means a facility at which a form of renewable energy is used to generate electricity.

"Renewable power goal" means the amount of electric energy sold by an electric utility to retail customers in the Commonwealth that is required to be generated by a renewable energy source in a calendar year as specified in subdivisions C 1 through C 6.

"Retail distributed generation" means electric generation added to a utility's distribution network by a customer-generator pursuant to its participation in the net energy metering program established under § 56-594.

"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.

"Wholesale distributed generation" means electric generation connected to a utility's distribution network that provides wholesale capacity and energy to a utility for use by multiple customers in contiguous distribution substation services areas at normal distribution voltages.

B. ~~Any investor-owned incumbent~~ Each electric utility ~~may apply to the Commission for approval to participate in a renewable energy portfolio standard program, as defined that fails to meet the renewable power goals commencing in 2013 shall be required to pay an alternative compliance payment as set forth 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.~~ Effective July 1, 2011, the Commission shall not approve any request for a rate adjustment clause in connection with an investor owned electric utility's participation in the RPS program that existed prior to July 1, 2011.

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

INTRODUCED

HB2353

59 rate of return on common equity for each utility participating in such program by a single Performance
60 Incentive, as defined in subdivision A 2 of § 56-585.1, of 50 basis points whenever the utility attains an
61 RPS Goal established in subsection D. Such Performance Incentive shall first be used in the calculation
62 of a fair combined rate of return for the purposes of the immediately succeeding biennial review
63 conducted pursuant to § 56-585.1 after any such RPS Goal is attained, and shall remain in effect if the
64 utility continues to meet the RPS Goals established in this section through and including the third
65 succeeding biennial review conducted thereafter. Any such Performance Incentive, if implemented, shall
66 be in lieu of any other Performance Incentive reducing or increasing such utility's fair combined rate of
67 return on common equity for the same time periods. However, if the utility receives any other
68 Performance Incentive increasing its fair combined rate of return on common equity by more than 50
69 basis points, the utility shall be entitled to such other Performance Incentive in lieu of this Performance
70 Incentive during the term of such other Performance Incentive. During each calendar year commencing
71 on or after January 1, 2013, the minimum amount of renewable energy acquired by an electric utility
72 for sale to its retail customers in the Commonwealth shall be:

73 1. In calendar year 2013, an amount equal to three percent of the total electric energy sold in the
74 base year;

75 2. In each of calendar years 2014 and 2015, an amount equal to five percent of the total electric
76 energy sold in the base year, of which renewable energy an amount equal to one percent of the total
77 electric energy sold in the base year shall be from wholesale distributed generation and retail
78 distributed generation;

79 3. In calendar year 2016, an amount equal to five percent of the total electric energy sold in the
80 base year, of which renewable energy an amount equal to 1.25 percent of the total electric energy sold
81 in the base year shall be from wholesale distributed generation and retail distributed generation;

82 4. In calendar year 2017, an amount equal to 12 percent of the total electric energy sold in the base
83 year, of which renewable energy an amount equal to 1.25 percent of the total electric energy sold in the
84 base year shall be from wholesale distributed generation and retail distributed generation;

85 5. In each of calendar years 2018 and 2019, an amount equal to 12 percent of the total electric
86 energy sold in the base year, of which renewable energy an amount equal to 1.75 percent of the total
87 electric energy sold in the base year shall be from wholesale distributed generation and retail
88 distributed generation; and

89 6. In calendar years 2020 and each year thereafter, an amount equal to 20 percent of the total
90 electric energy sold in the base year, of which renewable energy an amount equal to two percent of the
91 total electric energy sold in the base year shall be from wholesale distributed generation and retail
92 distributed generation.

93 D. The following shall apply in determining whether a participating utility has complied with its
94 obligations under this section, provided that any provision in this subsection granting extra credit
95 toward meeting a renewable power goal cannot be combined with any other credit, and only one type of
96 additional credit may be claimed with respect to any renewable energy source:

97 1. A utility shall receive double credit toward meeting the renewable energy portfolio standard a
98 renewable power goal for renewable energy derived from sunlight or from onshore wind, and triple
99 credit toward meeting the renewable energy portfolio standard a renewable power goal for renewable
100 energy derived from offshore wind;:

101 2. A utility shall receive 125 percent credit toward meeting a renewable power goal for renewable
102 energy that is generated within the Commonwealth but which does not qualify as retail distributed
103 generation;

104 3. A utility shall receive 150 percent credit toward meeting a renewable power goal for renewable
105 energy that is generated at a community-based project;

106 D4. To qualify for the Performance Incentive established in subsection C, the total electric energy
107 sold by a utility to meet the RPS Goals shall be composed of the following amounts In determining the
108 amount of a utility's sales of electric energy from that is renewable energy sources, as adjusted the
109 Commission shall adjust for any sales volumes lost through operation of the customer choice provisions
110 of subdivision A 3 or A 4 of § 56-577:

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

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

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

118 RPS Goal IV: For calendar years 2023 and 2024, inclusive, an average of 12 percent of total electric
119 energy sold in the base year, and in calendar year 2025, 15 percent of total electric energy sold in the
120 base year; and

5. A utility may apply renewable energy sales achieved or renewable energy certificates acquired during the periods covered by any such ~~RPS Goal~~ *renewable power goal* that are in excess of the sales requirement for that ~~RPS Goal~~ *renewable power goal* to the sales requirements for any future ~~RPS Goal~~ *renewable power goal*.

E. ~~A An investor owned utility participating in such program~~ shall have the right to recover all incremental costs incurred for the purpose of ~~such participation in such program~~ *complying with the renewable power goals*, as accrued against income, through rate adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to, administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for funds used during construction until such time as an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected construction work in progress, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1. ~~An electric distribution cooperative shall have the right to recover all incremental costs incurred for the purpose of complying with the renewable power goals to the extent permitted under § 56-585.3.~~ All incremental costs of ~~the RPS program complying with the renewable power goals~~ shall be allocated to and recovered from the utility's customer classes based on the demand created by the class and within the class based on energy used by the individual customer in the class, except that the incremental costs of ~~the RPS program complying with the renewable power goals~~ shall not be allocated to or recovered from customers that are served within the large industrial rate classes of the ~~participating~~ utilities and that are served at primary or transmission voltage.

F. ~~A Each electric utility participating in such program~~ shall apply towards meeting its ~~RPS Goals~~ *renewable power goals* any renewable energy from existing renewable energy sources owned by the ~~participating~~ utility or purchased as allowed by contract at no additional cost to customers to the extent feasible. A utility ~~participating in such program~~ shall not apply towards meeting its ~~RPS Goals~~ *renewable power goals* any renewable energy certificates attributable to any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007, that is operated by a person that is served within a utility's large industrial rate class and that is served at primary or transmission voltage. A ~~participating~~ utility shall be required to fulfill any remaining deficit needed to fulfill its ~~RPS Goals~~ *renewable power goals* from new renewable energy supplies at reasonable cost and in a prudent manner to be determined by the Commission ~~at the time of approval of any application made pursuant to subsection B.~~ A ~~participating~~ utility may sell renewable energy certificates produced at its own generation facilities located in the Commonwealth or, if located outside the Commonwealth, owned by such utility and in operation as of January 1, 2010, or renewable energy certificates acquired as part of a purchase power agreement, to another entity and purchase lower cost renewable energy certificates and the net difference in price between the renewable energy certificates shall be credited to customers. Utilities ~~participating in such program~~ shall collectively, either through the installation of new generating facilities, through retrofit of existing facilities or through purchases of electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting ~~RPS~~ *renewable power goals*, excluding such fuel used at electric generating facilities using wood as fuel prior to January 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~~ *renewable power 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~~ *renewable power goals* are met in accordance with this section.

H. A utility shall satisfy the *renewable power goals of acquiring renewable energy for sale to its retail customers in the Commonwealth* by (i) self-generating renewable energy, (ii) purchasing sufficient renewable energy certificates, or (iii) a combination of clauses (i) and (ii). A utility shall submit documentation of compliance with the *renewable power goals* to the Commission at such times and in such format as the Commission requests. The Commission shall create and administer a *renewable energy certificate certification, tracking, and reporting program*. This program should include a process for determining when and how renewable energy certificates shall be created, accounted for,

182 transferred, and retired. The renewable energy certificates program shall include a true-up period
183 during which utilities may obtain the required number of renewable energy certificates in the
184 marketplace to meet each year's renewable power goals.

185 I. If, after notice and opportunity for a hearing, the Commission determines that a participating
186 utility has failed to meet its renewable power goal for a year, the Commission shall order the
187 participating utility to make an alternative compliance payment. The amount of a participating utility's
188 alternative compliance payment shall be the end-of-year market price for the equivalent renewable
189 energy certificates needed to achieve the renewable power for the total amount of electricity from
190 renewable energy sources that would satisfy the applicable requirement of subsection C for that year.
191 Alternative compliance payments shall be paid into the Virginia Sustainable Energy Fund established
192 pursuant to subsection J. Alternative compliance payments made by a participating utility shall not
193 constitute an incremental cost of compliance with this section incurred by the participating utility under
194 subsection E and shall not be recoverable by the participating utility under this section or subdivision A
195 5 d of § 56-585.1.

196 J. There is hereby created in the state treasury a special nonreverting fund to be known as the
197 Virginia Sustainable Energy Fund, hereafter referred to as "the Fund." The Fund shall be established
198 on the books of the Comptroller. All alternative compliance payments collected by the Commission
199 pursuant to subsection I shall be paid into the state treasury and credited to the Fund. Interest earned
200 on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the
201 Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but
202 shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of providing funding
203 for projects and programs that have the purpose of increasing the amount of electric energy generated
204 from renewable energy sources in the Commonwealth.

205 K. Each ~~investor-owned incumbent~~ electric utility shall report to the Commission annually by
206 November 1 each year commencing in 2013 on (i) its efforts, if any, to meet the ~~RPS Goals~~ renewable
207 power goals, (ii) its overall generation of renewable energy, and (iii) advances in renewable generation
208 technology that affect activities described in clauses (i) and (ii).

209 2. That an investor-owned electric utility that prior to July 1, 2011, was authorized to receive a
210 Performance Incentive as a consequence of its participation in the renewable portfolio standard
211 program pursuant to § 56-585.2 of the Code of Virginia as it existed prior to the effective date of
212 this act shall continue to receive its Performance Incentive following the effective date of this act
213 until the effective date of an order of the State Corporation Commission establishing the utility's
214 authorized rate of return on equity in the utility's next biennial rate review proceeding conducted
215 pursuant to § 56-585.1 of the Code of Virginia.