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HOUSE BILL NO. 1017

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact § 56-585.2 of the Code of Virginia, relating to the renewable energy portfolio standard program; elimination of Performance Incentive.

Patrons—Poindexter, Crockett-Stark, Jones, Kilgore, Merricks, Rush, Ware, O., Ware, R.L. and Webert

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 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 that seek to have a renewable energy portfolio standard program 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 onshore wind, and triple credit toward meeting the renewable energy portfolio standard for energy derived from offshore wind.

D. To qualify for the Performance Incentive established in subsection C Regarding any renewable energy portfolio standard program, 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.

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

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

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

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

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

89 F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable
90 energy from existing renewable energy sources owned by the participating utility or purchased as
91 allowed by contract at no additional cost to customers to the extent feasible. A utility participating in
92 such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to
93 any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007,
94 that is operated by a person that is served within a utility's large industrial rate class and that is served
95 at primary or transmission voltage. A participating utility shall be required to fulfill any remaining
96 deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a
97 prudent manner to be determined by the Commission at the time of approval of any application made
98 pursuant to subsection B. A participating utility may sell renewable energy certificates produced at its
99 own generation facilities located in the Commonwealth or, if located outside the Commonwealth, owned
100 by such utility and in operation as of January 1, 2010, or renewable energy certificates acquired as part
101 of a purchase power agreement, to another entity and purchase lower cost renewable energy certificates
102 and the net difference in price between the renewable energy certificates shall be credited to customers.
103 Utilities participating in such program shall collectively, either through the installation of new generating
104 facilities, through retrofit of existing facilities or through purchases of electricity from new facilities
105 located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green
106 wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and
107 pulp manufacturing by facilities located in Virginia, towards meeting RPS goals, excluding such fuel
108 used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an
109 approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its
110 share of the total electric energy sold in the base year, as defined in subsection A, for all utilities
111 participating in the RPS program. A utility may use in meeting RPS goals, without limitation, the
112 following sustainable biomass and biomass based waste to energy resources: mill residue, except wood
113 chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and construction debris;
114 brush; yard waste; shipping crates; dunnage; non-merchantable waste paper; landscape or right-of-way
115 tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and gas produced from the
116 anaerobic decomposition of animal waste.

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

120 H. Each investor-owned incumbent electric utility shall report to the Commission annually by

121 November 1 on (i) its efforts, if any, to meet the RPS Goals, (ii) its overall generation of renewable
122 energy, and (iii) advances in renewable generation technology that affect activities described in clauses
123 (i) and (ii).
124 *I. Any Performance Incentive awarded to a utility prior to January 1, 2012, pursuant to this section*
125 *as it was in effect prior to July 1, 2012, for attaining an RPS Goal shall remain in effect through the*
126 *utility's next biennial review. At that time, consistent with this section, no RPS-based performance*
127 *incentive shall be awarded or otherwise utilized in setting a utility's return on equity going forward or*
128 *for any other purpose.*