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HOUSE BILL NO. 1943

Offered January 9, 2013

Prefiled January 9, 2013

A BILL to amend and reenact § 56.1-46.1 of the Code of Virginia, relating to approval of electrical utility facilities; consideration of stability of fuel prices.

Patron—Lopez

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-46.1 of the Code of Virginia is 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 (a) shall consider the effect of the proposed facility on economic development within the Commonwealth, including but not limited to furtherance of the economic and job creation objectives of the Commonwealth Energy Policy set forth in §§ 67-101 and 67-102, and (b) shall consider any improvements in service reliability that may result from the construction of such facility, and (c) shall consider the long-term price stability of any fuels used in the generation of energy from such facility.

B. Subject to the provisions of subsection J, no electrical transmission line of 138 kilovolts or more shall be constructed unless the State Corporation Commission shall, after at least 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. To assist the Commission in this determination,

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59 as part of the application for Commission approval of the line, the applicant shall summarize its efforts
60 to reasonably minimize adverse impact on the scenic assets, historic districts, and environment of the
61 area concerned. In making the determinations about need, corridor or route, and method of installation,
62 the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability
63 needs presented to justify the new line and its proposed method of installation. If the local
64 comprehensive plan of an affected county or municipality designates corridors or routes for electric
65 transmission lines and the line is proposed to be constructed outside such corridors or routes, in any
66 hearing the county or municipality may provide adequate evidence that the existing planned corridors or
67 routes designated in the plan can adequately serve the needs of the company. Additionally, the
68 Commission shall consider, upon the request of the governing body of any county or municipality in
69 which the line is proposed to be constructed, (a) the costs and economic benefits likely to result from
70 requiring the underground placement of the line and (b) any potential impediments to timely
71 construction of the line.

72 C. If, prior to such approval, any interested party shall request a public hearing, the Commission
73 shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as
74 may be designated by the Commission. In any hearing the public service company shall provide
75 adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.

76 If, prior to such approval, written requests therefor are received from 20 or more interested parties,
77 the Commission shall hold at least one hearing in the area which would be affected by construction of
78 the line, for the purpose of receiving public comment on the proposal. If any hearing is to be held in the
79 area affected, the Commission shall direct that a copy of the transcripts of any previous hearings held in
80 the case be made available for public inspection at a convenient location in the area for a reasonable
81 time before such local hearing.

82 D. As used in this section, unless the context requires a different meaning:

83 "Environment" or "environmental" shall be deemed to include in meaning "historic," as well as a
84 consideration of the probable effects of the line on the health and safety of the persons in the area
85 concerned.

86 "Interested parties" shall include the governing bodies of any counties or municipalities through
87 which the line is proposed to be built, and persons residing or owning property in each such county or
88 municipality.

89 "Public utility" means a public utility as defined in § 56-265.1.

90 "Qualifying facilities" means a cogeneration or small power production facility which meets the
91 criteria of 18 C.F.R. Part 292.

92 "Reasonably accommodate requests to wheel or transmit power" means:

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

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

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

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

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

121 H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from
122 the Commission for any electric generating facility, electric transmission line, natural or manufactured
123 gas transmission line as defined in 49 Code of Federal Regulations § 192.3, or natural or manufactured
124 gas storage facility (hereafter, an energy facility) and (ii) an environmental permit for the energy facility
125 that is subject to issuance by any agency or board within the Secretariat of Natural Resources, may
126 request a pre-application planning and review process. In any such request to the Commission or the
127 Secretariat of Natural Resources, the applicant shall identify the proposed energy facility for which it
128 requests the pre-application planning and review process. The Commission, the Department of
129 Environmental Quality, the Marine Resources Commission, the Department of Game and Inland
130 Fisheries, the Department of Historic Resources, the Department of Conservation and Recreation, and
131 other appropriate agencies of the Commonwealth shall participate in the pre-application planning and
132 review process. Participation in such process shall not limit the authority otherwise provided by law to
133 the Commission or other agencies or boards of the Commonwealth. The Commission and other
134 participating agencies of the Commonwealth may invite federal and local governmental entities charged
135 by law with responsibility for issuing permits or approvals to participate in the pre-application planning
136 and review process. Through the pre-application planning and review process, the applicant, the
137 Commission, and other agencies and boards shall identify the potential impacts and approvals that may
138 be required and shall develop a plan that will provide for an efficient and coordinated review of the
139 proposed energy facility. The plan shall include (a) a list of the permits or other approvals likely to be
140 required based on the information available, (b) a specific plan and preliminary schedule for the
141 different reviews, (c) a plan for coordinating those reviews and the related public comment process, and
142 (d) designation of points of contact, either within each agency or for the Commonwealth as a whole, to
143 facilitate this coordination. The plan shall be made readily available to the public and shall be
144 maintained on a dedicated website to provide current information on the status of each component of the
145 plan and each approval process including opportunities for public comment.

146 I. The provisions of this section shall not apply to the construction and operation of a small
147 renewable energy project, as defined in § 10.1-1197.5, by a utility regulated pursuant to this title for
148 which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5
149 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1.

150 J. Approval under this section shall not be required for any transmission line for which a certificate
151 of public convenience and necessity is not required pursuant to subdivision A of § 56-265.2.