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HOUSE BILL NO. 2334

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 31, 2013)

(Patron Prior to Substitute—Delegate Yancey)

A BILL to direct the establishment of a pilot program for third party power purchase agreements.

Be it enacted by the General Assembly of Virginia:

1. § 1. That the State Corporation Commission shall conduct a pilot program under which a person that owns or operates a solar-powered or wind-powered electricity generation facility located on premises owned or leased by an eligible customer-generator, as defined in § 56-594 of the Code of Virginia, shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement used to provide third party financing of the costs of such a renewable generation facility ("third party power purchase agreement"), subject to the following terms, conditions, and restrictions:

a. The pilot program shall be conducted within the certificated service territory of an investor-owned electric utility that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, which utility is hereafter referred to as the "Pilot Utility";

b. The aggregated capacity of all generation facilities that are subject to such third party power purchase agreements at any time during the term of the pilot program shall not exceed 50 megawatts. Such limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of one percent of the Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E of § 56-594 of the Code of Virginia. Notwithstanding any provision of this act that incorporates provisions of § 56-594, the seller and the customer shall elect either to (i) enter into their third party power purchase agreement subject to the conditions and provisions of the Pilot Utility's net energy metering program under § 56-594 or (ii) provide that the third party power purchase agreement will not be net metered under § 56-594, provided that an election not to net meter under § 56-594 shall not exempt the third party power purchase agreement and the parties thereto from the requirements of this act that incorporate provisions of § 56-594;

c. A solar-powered or wind-powered generation facility with a capacity of less than 50 kilowatts shall not be eligible for a third party power purchase agreement under the pilot program unless the customer under such agreement is an entity with tax-exempt status in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended. A solar-powered or wind-powered generation facility with a capacity of more than one megawatt shall not be eligible for a third party power purchase agreement under the pilot program, provided that the maximum generation capacity of one megawatt shall not affect the limits on the capacity of electrical generating capacities of 20 kilowatts for residential customers and 500 kilowatts for nonresidential customers set forth in subsection B of § 56-594 of the Code of Virginia, which limitations shall continue to apply to net energy metering generation facilities that are not the subject of a third party power purchase agreement under the pilot program;

d. A generation facility that is the subject of a third party power purchase agreement under the pilot program shall serve only one customer, and a third party power purchase agreement shall not serve multiple customers;

e. The customer under a third party power purchase agreement shall be subject to the requirements imposed on eligible customer-generators pursuant to subsection C of § 56-594 of the Code of Virginia, including the requirement that the customer bear the reasonable costs, as determined by the State Corporation Commission, of the items described in clauses (i), (ii), and (iii) of such subsection;

f. A third party power purchase agreement shall not be valid unless it conforms in all respects to the requirements of the pilot program conducted under the provisions of this act and unless the State Corporation Commission and the Pilot Utility are provided written notice of the parties' intent to enter into a third party power purchase agreement not less than 30 days prior to the agreement's proposed effective date; and

g. An affiliate of the Pilot Utility shall be permitted to offer and enter into third party power purchase arrangements on the same basis as may any other person that satisfies the requirements of being a seller under a third party power purchase agreement under the pilot program.

§ 2. The State Corporation Commission shall review the pilot program established pursuant to § 1 of this act in 2015 and every two years thereafter during the term of the pilot program. In its review, the Commission shall determine whether the limitations in subdivisions b and c of § 1 should be expanded, reduced, or continued.

§ 3. Any third party power purchase agreement that is not entered into pursuant to the pilot program

HOUSE SUBSTITUTE

HB2334H1

12/2/22 22:12

60 established pursuant to § 1 of this act are prohibited, unless such third party power purchase agreement
61 is entered into between a licensed supplier and a retail customer pursuant to § 56-577 of the Code of
62 Virginia where such supplier is responsible for serving 100 percent of the load requirements for each
63 retail customer it serves.

64 § 4. If the State Corporation Commission approves a tariff proposed for electric power provided 100
65 percent from renewable sources and serves 100 percent of the load requirements for each retail
66 customer it serves under such tariff, hereafter referred to as a "green tariff," such a green tariff shall
67 not be available to any party to a third party power purchase agreement, and such an agreement shall
68 remain in effect notwithstanding the approval of the green tariff.

69 § 5. Nothing in this act shall be construed as (i) rendering any person, by virtue of its selling
70 electric power to an eligible customer-generator under a third party power purchase agreement entered
71 into pursuant to the pilot program established under this act, a public utility or a competitive service
72 provider or (ii) imposing a requirement that such a person meet 100 percent of the load of its
73 customers.

74 **2. That nothing in this act shall abridge any rights of either party to an agreement between a Pilot**
75 **Utility and a group purchasing organization acting on behalf of Virginia local governments**
76 **regarding purchase of electric service.**

77 **3. That the State Corporation Commission shall, by October 31, 2013, adopt appropriate rules and**
78 **standards as may be necessary for administration of the pilot program established pursuant to the**
79 **first enactment of this act.**