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SENATE BILL NO. 1269

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 4, 2013)

(Patron Prior to Substitute—Senator McEachin)

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

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:

"Qualified investment" means an expense incurred in the Commonwealth by a participating utility in conducting, either by itself or in partnership with institutions of higher education in the Commonwealth or with industrial or commercial customers that have established renewable energy research and development programs in the Commonwealth, research and development activities related to renewable or alternative energy sources, which expense (i) is designed to enhance the participating utility's understanding of emerging energy technologies and their potential impact on and value to the utility's system and customers within the Commonwealth; (ii) promotes economic development within the Commonwealth; (iii) supplements customer-driven alternative energy or energy efficiency initiatives; (iv) supplements alternative energy and energy efficiency initiatives at state or local governmental facilities in the Commonwealth; or (v) is designed to mitigate the environmental impacts of renewable energy projects.

"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 renewable energy certificates. "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 certificate" means either (i) a certificate issued by an affiliate of the regional transmission entity of which the participating utility is a member, as it may change from time to time, or any successor to such affiliate, and held or acquired by such utility, that validates the generation of renewable energy by eligible sources in the interconnection region of the regional transmission entity or (ii) a certificate issued by the Commission pursuant to subsection J and held or acquired by a participating utility, that validates a qualified investment made by the participating utility.

"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

60 same time periods. However, if the utility receives any other Performance Incentive increasing its fair
61 combined rate of return on common equity by more than 50 basis points, the utility shall be entitled to
62 such other Performance Incentive in lieu of this Performance Incentive during the term of such other
63 Performance Incentive. A utility shall receive double credit toward meeting the renewable energy
64 portfolio standard for energy derived from sunlight, from onshore wind, or from facilities in the
65 Commonwealth fueled primarily by animal waste, and triple credit toward meeting the renewable energy
66 portfolio standard for energy derived from offshore wind.

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

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

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

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

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

82 *For compliance with any RPS Goal for calendar years 2016 through 2025, inclusive, a utility may*
83 *only apply (i) renewable energy generated from renewable energy generation facilities owned by the*
84 *utility, (ii) renewable thermal energy as defined in § 56-576, (iii) certificates issued by the Commission*
85 *pursuant to subsection J and held or acquired by a participating utility, that validate a qualified*
86 *investment made by the participating utility, (iv) renewable energy sales achieved or renewable energy*
87 *certificates acquired prior to January 1, 2013, or (v) renewable energy sales or renewable energy*
88 *certificates from electric energy derived from any combination of sunlight, onshore wind, offshore wind,*
89 *wave motion, tides, or geothermal power generated or purchased in the interconnection region of the*
90 *regional transmission entity of which the participating utility is a member, as it may change from time*
91 *to time. A utility shall be able to apply renewable energy from run-of-river generation obtained via*
92 *power purchase agreements entered into prior to January 1, 2013. A utility shall receive double credit*
93 *toward meeting the renewable energy portfolio standard for energy derived from onshore wind obtained*
94 *via power purchase agreements entered into prior to January 1, 2013.*

95 A utility may not apply renewable energy certificates issued pursuant to subsection J to meet more
96 than 20 percent of the sales requirement for the RPS Goal in any year.

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

100 E. A utility participating in such program shall have the right to recover all incremental costs
101 incurred for the purpose of such participation in such program, as accrued against income, through rate
102 adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to,
103 administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described
104 in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for
105 funds used during construction until such time as an enhanced rate of return, as determined pursuant to
106 subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected
107 construction work in progress, planning, development and construction costs, life-cycle costs, and costs
108 of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to
109 subdivision A 6 of § 56-585.1. This subsection shall not apply to qualified investments as provided in
110 subsection K. All incremental costs of the RPS program shall be allocated to and recovered from the
111 utility's customer classes based on the demand created by the class and within the class based on energy
112 used by the individual customer in the class, except that the incremental costs of the RPS program shall
113 not be allocated to or recovered from customers that are served within the large industrial rate classes of
114 the participating utilities and that are served at primary or transmission voltage.

115 F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable
116 energy from existing renewable energy sources owned by the participating utility or purchased as
117 allowed by contract at no additional cost to customers to the extent feasible. A utility participating in
118 such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to
119 any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007,
120 that is operated by a person that is served within a utility's large industrial rate class and that is served
121 at primary or transmission voltage, except for those persons providing renewable thermal energy

equivalents to the utility. A participating utility shall be required to fulfill any remaining deficit needed to fulfill its RPS 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 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 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 goals are met in accordance with this section.

H. Each investor-owned incumbent electric utility shall report to the Commission annually by November 1 identifying:

1. The utility's efforts, if any, to meet the RPS Goals, specifically identifying:
 - a. A list of all states where the purchased or owned renewable energy was generated, specifying the number of megawatt hours or renewable energy certificates originating from each state;
 - b. A list of the decades in which the purchased or owned renewable energy generating units were placed in service, specifying the number of megawatt hours or renewable energy certificates originating from those units; and
 - c. A list of fuel types used to generate the purchased or owned renewable energy, specifying the number of megawatt hours or renewable energy certificates originating from each fuel type;
2. The utility's overall generation of renewable energy; and
3. Advances in renewable generation technology that affect activities described in subdivisions 1 and 2.

I. The Commission shall post on its website the reports submitted by each investor-owned incumbent electric utility pursuant to subsection H.

J. The Commission shall issue to a participating utility a number of renewable energy certificates for qualified investments, upon request by a participating utility, if it finds that an expense satisfies the conditions set forth in this section for a qualified investment, as follows:

1. By March 31 of each year, the participating utility shall provide an analysis, as reasonably determined by a qualified independent broker, of the average for the preceding year of the publicly available prices for Tier 1 renewable energy certificates and Tier 2 renewable energy certificates, validating the generation of renewable energy by eligible sources, that were issued in the interconnection region of the regional transmission entity of which the participating utility is a member;
2. In the same annual analysis provided to the Commission, the participating utility shall divide the amount of the participating utility's qualified investments in the applicable period by the average price determined pursuant to subdivision 1;
3. The number of renewable energy certificates to be issued to the participating utility shall equal the product obtained pursuant to subdivision 2; and
4. The Commission shall review and validate the analysis provided by the participating utility within 90 days of submittal of its analysis to the Commission. If no corrections are made by the Commission, then the analysis shall be deemed correct and the renewable energy certificates shall be deemed issued to the participating utility.

Each renewable energy certificate issued to a participating utility pursuant to this subsection shall represent the equivalent of one megawatt hour of renewable energy sales achieved when applied to an RPS Goal.

K. Qualified investments shall constitute reasonable and prudent operating expenses of a participating

183 utility. Notwithstanding subsection E, a participating utility shall not be authorized to recover the costs
184 associated with qualified investments through rate adjustment clauses as provided in subdivisions A 5
185 and A 6 of § 56-585.1. In any proceeding conducted pursuant to § 56-585.1 or other provision of this
186 title in which a participating utility seeks recovery of its qualified investments as an operating expense,
187 the participating utility shall not be authorized to earn a return on its qualified investments.

188 L. A participating utility shall not be eligible for a research and development tax credit pursuant to
189 § 58.1-439.12:08 with regard to any expense incurred or investment made by the participating utility that
190 constitutes a qualified investment pursuant to this section.