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## HOUSE BILL NO. 2334

Offered January 23, 2015

A BILL to amend and reenact §§ 56-46.1 and 56-265.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-265.2:2, relating to underground placement of electrical transmission lines.

Patrons—Marshall, R.G.; Senator: Black

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 56-46.1 and 56-265.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-265.2:2 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.

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. *In making a*  
64 *determination about the method of installation of an electrical transmission line proposed by a utility*  
65 *subject to the provisions of Chapter 23 (§ 56-576 et seq.), the Commission shall consider the results of*  
66 *a cost-damage analysis conducted pursuant to § 56-265.2:2 and if the results of the analysis*  
67 *demonstrate that the incremental costs of placing or installing the line underground are less than the*  
68 *damage to affected properties, then the Commission, if the Commission approves the application for the*  
69 *electrical transmission line, shall require the underground placement of the line and the costs of the*  
70 *underground placement of the line shall be recoverable through a rate adjustment clause as charges for*  
71 *new transmission facilities pursuant to subdivision A 4 of § 56-585.1, which rate adjustment clause shall*  
72 *(a) provide for the full and timely recovery of any portion of the costs of placement of the electrical*  
73 *transmission line not recoverable under applicable rates, terms, and conditions approved by the Federal*  
74 *Energy Regulatory Commission, (b) include the use of the fair return on common equity most recently*  
75 *approved in a Commission proceeding for the utility, and (c) provide that the costs of the installation or*  
76 *placement of the electrical transmission line shall be entirely assigned to the utility's Virginia*  
77 *jurisdictional customers. If the local comprehensive plan of an affected county or municipality*  
78 *designates corridors or routes for electric electrical transmission lines and the line is proposed to be*  
79 *constructed outside such corridors or routes, in any hearing the county or municipality may provide*  
80 *adequate evidence that the existing planned corridors or routes designated in the plan can adequately*  
81 *serve the needs of the company. Additionally, the Commission shall consider, upon the request of the*  
82 *governing body of any county or municipality in which the line is proposed to be constructed, (a) the*  
83 *costs and economic benefits likely to result from requiring the underground placement of the line and*  
84 *(b) any potential impediments to timely construction of the line.*

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

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

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

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

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

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

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

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

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

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

121 agreements for such wheeling service.

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

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

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

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

159 I. The provisions of this section shall not apply to the construction and operation of a small  
160 renewable energy project, as defined in § 10.1-1197.5, by a utility regulated pursuant to this title for  
161 which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§  
162 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1.

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

165 **§ 56-265.2. Certificate of convenience and necessity required for acquisition, etc., of new**  
166 **facilities.**

167 A. 1. Subject to the provisions of subdivision 2, it shall be unlawful for any public utility to  
168 construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service, except  
169 ordinary extensions or improvements in the usual course of business, without first having obtained a  
170 certificate from the Commission that the public convenience and necessity require the exercise of such  
171 right or privilege. Any certificate required by this section shall be issued by the Commission only after  
172 opportunity for a hearing and after due notice to interested parties. The certificate for overhead electrical  
173 transmission lines of 138 kilovolts or more shall be issued by the Commission only after compliance  
174 with the provisions of §§ 56-46.1 and 56-265.2:2.

175 2. For construction of any transmission line of 138 kilovolts, a public utility shall either (i) obtain a  
176 certificate pursuant to subdivision 1 or (ii) obtain approval pursuant to the requirements of (a)  
177 § 15.2-2232 and (b) any applicable local zoning ordinances by the locality or localities in which the  
178 transmission line will be located.

179 B. In exercising its authority under this section, the Commission, notwithstanding the provisions of  
180 § 56-265.4, may permit the construction and operation of electrical generating facilities, which shall not  
181 be included in the rate base of any regulated utility whose rates are established pursuant to Chapter 10

182 (§ 56-232 et seq.), upon a finding that such generating facility and associated facilities including  
183 transmission lines and equipment (i) will have no material adverse effect upon the rates paid by  
184 customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse effect  
185 upon reliability of electric service provided by any such regulated public utility; and (iii) are not  
186 otherwise contrary to the public interest. In review of its petition for a certificate to construct and  
187 operate a generating facility described in this subsection, the Commission shall give consideration to the  
188 effect of the facility and associated facilities, including transmission lines and equipment, on the  
189 environment and establish such conditions as may be desirable or necessary to minimize adverse  
190 environmental impact as provided in § 56-46.1. Facilities authorized by a certificate issued pursuant to  
191 this subsection may be exempted by the Commission from the provisions of Chapter 10 (§ 56-232 et  
192 seq.).

193 C. A map showing the location of any proposed ordinary extension or improvement outside of the  
194 territory in which the public utility is lawfully authorized to operate shall be filed with the Commission,  
195 and prior notice of such ordinary extension shall be given to the public utility or other entity authorized  
196 to provide the same utility service within said territory. Ordinary extensions outside the service territory  
197 of a public utility shall be undertaken only for use in providing its public utility service and shall be  
198 constructed and operated so as not to interfere with the service or facilities of any public utility or other  
199 entity authorized to provide utility service within any other territory. If, upon objection of the affected  
200 utility or entity filed within 30 days of the aforesaid notice and after investigation and opportunity for a  
201 hearing the Commission finds an ordinary extension would not comply with this section, it may alter or  
202 amend the plan for such activity or prohibit its construction.

203 D. Whenever a certificate is required under this section for a pipeline for the transmission or  
204 distribution of natural or manufactured gas, the Commission may issue such a certificate only after  
205 compliance with the provisions of § 56-265.2:1. As used in this section and § 56-265.2:1, "pipeline for  
206 the transmission or distribution of manufactured or natural gas" shall include the pipeline and any  
207 related facilities incidental or necessary to the operation of the pipeline.

208 E. This section shall be subject to the requirements of § 56-265.3, if any, and nothing herein shall  
209 be construed to supersede § 56-265.3.

210 **§ 56-265.2:2. Cost-damage analysis required when overhead installation of an electrical**  
211 **transmission line is proposed.**

212 A. As used in this section:

213 *"Affected properties" means the parcels of real property located within one-half mile of any point on*  
214 *the route or corridor proposed by the utility for location of the line.*

215 *"Damage to affected properties" means the aggregate of the diminution in the fair market value of*  
216 *all affected properties, net of the aggregate of the increase in the fair market value of all affected*  
217 *properties, that is likely to result from the overhead installation of the line within the proposed route or*  
218 *corridor.*

219 *"Incremental cost of installing the line underground" means the portion of the costs of installing the*  
220 *line underground that exceeds the utility's costs of installing the line overhead as proposed in the*  
221 *utility's application for a certificate for the line under § 56-265.2.*

222 *"Line" means an electrical transmission line of 138 kilovolts or more.*

223 *"Utility" means an investor-owned electric utility that is subject to the provisions of Chapter 23*  
224 *(§ 56-576 et seq.).*

225 B. When a utility initiates a proceeding under this title for approval of the overhead installation of a  
226 line, the Commission shall conduct a proceeding to ascertain whether the damage to affected properties  
227 exceeds the incremental cost of installing the line underground. In such proceeding, the Commission  
228 shall make findings with regard to (i) the costs that the utility would be likely to incur if the line was  
229 installed overhead as proposed in the utility's application for a certificate, (ii) the costs that the utility  
230 would be likely to incur in installing the line underground within the route or corridor proposed by the  
231 utility for location of the line, (iii) the difference between the costs calculated in accordance with  
232 clauses (i) and (ii), which represents the incremental cost of installing the line underground, and (iv) the  
233 damage to affected properties. In ascertaining the damage to affected properties, the Commission shall  
234 rely on evidence provided under oath by a person or persons licensed by the Real Estate Appraiser  
235 Board as a certified general real estate appraiser, a certified residential real estate appraiser, or a  
236 licensed residential real estate appraiser of what the fair market values of the properties would be on  
237 the date on which the utility has proposed that the line will be completed and energized, if the line (a)  
238 is not installed and (b) is installed overhead.

239 C. The Commission shall rely on its findings in a proceeding conducted pursuant to subsection B in  
240 determining whether the appropriate method of installation of the line is underground or overhead  
241 placement, as set forth in subsection B of § 56-46.1. The Commission's findings in a proceeding  
242 conducted pursuant to subsection B shall not be relied upon in any proceeding for approval of a line,  
243 the need for a line, or the appropriate corridor or route for a line.