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SENATE BILL NO. 1160

Offered January 14, 2015

Prefiled January 13, 2015

A *BILL to amend the Code of Virginia by adding a section numbered 56-594.2 and to repeal Chapters 358 and 382 of the Acts of Assembly of 2013, relating to electric utilities; third-party power purchase agreements; financing of certain renewable generation facilities.*

Patron—Edwards

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-594.2 as follows:
§ 56-594.2. Third-party power purchase agreements with eligible customer-generators.

A. As used in this section:

"Customer" means an eligible customer-generator as defined in § 56-594.

"Renewable energy facility" means a solar-powered or wind-powered electricity generation facility.

"Seller" means a person that owns or operates a renewable energy facility located on premises owned or leased by a customer.

"Third-party power purchase agreement" means a power purchase agreement under which a seller sells electricity to a customer as a means of providing third-party financing of the costs of a renewable energy facility located on premises owned or leased by a customer.

"Utility" means any investor-owned electric utility other than one for which the provisions of this chapter are suspended pursuant to subsection G of § 56-580.

B. The Commission shall conduct programs under which a seller shall be permitted to sell the electricity generated from a renewable energy facility exclusively to the customer on whose premises the renewable energy facility is located under a third-party power purchase agreement, subject to the following terms, conditions, and restrictions:

1. The aggregated capacity of all renewable generation facilities that are subject to third-party power purchase agreements at any time during the program shall not exceed 100 megawatts. Such limitation on the aggregated capacity of such facilities shall constitute a portion of the limit of the affected utility's adjusted Virginia peak-load forecast for the previous year that is available to customers pursuant to subsection E of § 56-594. Notwithstanding any provision of this section 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 affected utility's net energy metering program under § 56-594 or (ii) provide that electricity generated from the renewable generation facilities subject to 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 section that incorporate provisions of § 56-594;

2. A renewable energy facility shall be ineligible for a third-party power purchase agreement under the program if its rated capacity is (i) less than 50 kilowatts or (ii) more than two megawatts; however, if the renewable energy facility is located on premises owned or leased by a customer that is an entity with tax-exempt status in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended, then the renewable energy facility shall not be ineligible for a third-party power purchase agreement due to having a rated capacity of less than 50 kilowatts. The maximum generation capacity of two megawatts shall not affect the limits on the capacity of electrical generating capacities set forth in subsection B of § 56-594, which limitations shall continue to apply to net energy metering generation facilities regardless of whether they are the subject of a third-party power purchase agreement under the program;

3. A renewable energy facility that is the subject of a third-party power purchase agreement under the program shall serve only one customer, and a third-party power purchase agreement shall not serve multiple customers;

4. The customer under a third-party power purchase agreement under the program shall be subject to the interconnection and other requirements imposed on eligible customer-generators pursuant to subsection C of § 56-594, including the requirement that the customer bear the reasonable costs, as determined by the Commission, of the items described in clauses (a), (b), and (c) of such subsection;

5. A third-party power purchase agreement under the program shall not be valid unless it conforms in all respects to the requirements of the program conducted under the provisions of this section and

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59 unless the Commission and the affected utility are provided written notice of the parties' intent to enter
60 into a third-party power purchase agreement not less than 30 days prior to the agreement's proposed
61 effective date; and

62 6. An affiliate of an electric utility shall be permitted to offer and enter into third-party power
63 purchase agreements on the same basis as may any other person that satisfies the requirements of being
64 a seller under a third-party power purchase agreement under the program.

65 C. The Commission shall review the program in 2017 and every two years thereafter during the
66 program. In its review, the Commission shall determine whether the limitations in subdivisions B 1 and
67 2 should be expanded, reduced, or continued.

68 D. Any third-party power purchase agreement that is not entered into pursuant to the program is
69 prohibited in a utility's service territory, unless such third-party power purchase agreement is entered
70 into between a licensed supplier and a retail customer pursuant to § 56-577 where such supplier is
71 responsible for serving 100 percent of the load requirements for each retail customer account it serves.

72 E. If the Commission approves a tariff proposed for electric power provided 100 percent from
73 renewable energy that serves 100 percent of the load requirements for each retail customer account it
74 serves under such tariff, hereafter referred to as a "green tariff," such a green tariff shall not be
75 available to any party to a third-party power purchase agreement for the account being served by such
76 power purchase agreement, and such an agreement shall remain in effect notwithstanding the approval
77 of the green tariff.

78 F. Nothing in this section shall be construed as (i) rendering any person, by virtue of its selling
79 electric power to a customer under a third-party power purchase agreement entered into pursuant to the
80 program established under this section, a public utility or a competitive service provider, (ii) imposing a
81 requirement that such a person meet 100 percent of the load requirements for each retail customer
82 account it serves, or (iii) affecting third-party power purchase agreements in effect prior to July 1,
83 2015.

84 G. Nothing in this section shall abridge any rights of either party to an agreement between an
85 electric utility and a group purchasing organization acting on behalf of Virginia local governments
86 regarding the purchase of electric service.

87 H. The Commission, by December 1, 2015, shall establish guidelines concerning (i) information to be
88 provided in notices required under subdivision B 5 and (ii) procedures for aggregating and posting to
89 the Commission's website information derived from such notices, including total capacity utilized by
90 projects for which notice has been received and capacity remaining available for future projects. In
91 addition, the Commission may adopt such rules or establish such guidelines as may be necessary for its
92 general administration of the program established under this section.

93 2. That Chapters 358 and 382 of the Acts of Assembly of 2013 are repealed.

94 3. That the repeal of Chapters 358 and 382 of the Acts of Assembly of 2013 shall not affect the
95 validity of any third-party power purchase agreement entered into prior to July 1, 2015, under a
96 pilot project authorized pursuant to Chapters 358 and 382 of the Acts of Assembly of 2013.