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SENATE BILL NO. 1394

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 30, 2017)

(Patrons Prior to Substitute—Senators Wagner and Edwards [SB 917])

A *BILL to amend and reenact § 56-594 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-594.2, relating to small agricultural generators; sale of electric power; net metering.*

Be it enacted by the General Assembly of Virginia:

1. That § 56-594 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-594.2 as follows:

§ 56-594. Net energy metering provisions.

A. The Commission shall establish by regulation a program that affords eligible customer-generators the opportunity to participate in net energy metering, and a program, to begin no later than July 1, 2014, for customers of investor-owned utilities and no later than July 1, 2015, for customers of electric cooperatives, to afford eligible agricultural customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners or operators of distribution or transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; (v) eligible agricultural customer-generators; or (vi) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest. *On and after July 1, 2017, small agricultural generators or eligible agricultural customer-generators may elect to interconnect pursuant to the provisions of this section or as small agricultural generators pursuant to § 56-594.2, but not both. Existing eligible agricultural customer-generators may elect to become small agricultural generators, but may not revert to being eligible agricultural customer-generators after such election. On and after July 1, 2019, interconnection of eligible agricultural customer-generators shall cease for electric cooperatives only, and such facilities shall interconnect solely as small agricultural generators. For electric cooperatives, eligible agricultural customer-generators whose renewable energy generating facilities were interconnected before July 1, 2019, may continue to participate in net energy metering pursuant to this section for a period not to exceed 25 years from the date of their renewable energy generating facility's original interconnection.*

B. For the purpose of this section:

"Eligible agricultural customer-generator" means a customer that operates a renewable energy generating facility as part of an agricultural business, which generating facility (i) uses as its sole energy source solar power, wind power, or aerobic or anaerobic digester gas, (ii) does not have an aggregate generation capacity of more than 500 kilowatts, (iii) is located on land owned or controlled by the agricultural business, (iv) is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (v) is interconnected and operated in parallel with an electric company's transmission and distribution facilities, and (vi) is used primarily to provide energy to metered accounts of the agricultural business. An eligible agricultural customer-generator may be served by multiple meters that are located at separate but contiguous sites, such that the eligible agricultural customer-generator may aggregate in a single account the electricity consumption and generation measured by the meters, provided that the same utility serves all such meters. The aggregated load shall be served under the appropriate tariff.

"Eligible customer-generator" means a customer that owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers on an electrical generating facility placed in service after July 1, 2015; (ii) uses as its total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements. In addition to the electrical generating facility size limitations in clause (i), the capacity of any generating facility installed under this section after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

"Net energy metering" means measuring the difference, over the net metering period, between (i) electricity supplied to an eligible customer-generator or eligible agricultural customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible

60 customer-generator or eligible agricultural customer-generator.

61 "Net metering period" means the 12-month period following the date of final interconnection of the
62 eligible customer-generator's or eligible agricultural customer-generator's system with an electric service
63 provider, and each 12-month period thereafter.

64 *"Small agricultural generator" has the same meaning that is ascribed to that term in § 56-594.2.*

65 C. The Commission's regulations shall ensure that (i) the metering equipment installed for net
66 metering shall be capable of measuring the flow of electricity in two directions and (ii) any eligible
67 customer-generator seeking to participate in net energy metering shall notify its supplier and receive
68 approval to interconnect prior to installation of an electrical generating facility. The electric distribution
69 company shall have 30 days from the date of notification for residential facilities, and 60 days from the
70 date of notification for nonresidential facilities, to determine whether the interconnection requirements
71 have been met. Such regulations shall allocate fairly the cost of such equipment and any necessary
72 interconnection. An eligible customer-generator's electrical generating system, and each electrical
73 generating system of an eligible agricultural customer-generator, shall meet all applicable safety and
74 performance standards established by the National Electrical Code, the Institute of Electrical and
75 Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the
76 requirements set forth in this section and to ensure public safety, power quality, and reliability of the
77 supplier's electric distribution system, an eligible customer-generator or eligible agricultural
78 customer-generator whose electrical generating system meets those standards and rules shall bear all
79 reasonable costs of equipment required for the interconnection to the supplier's electric distribution
80 system, including costs, if any, to (a) install additional controls, (b) perform or pay for additional tests,
81 and (c) purchase additional liability insurance.

82 D. The Commission shall establish minimum requirements for contracts to be entered into by the
83 parties to net metering arrangements. Such requirements shall protect the eligible customer-generator or
84 eligible agricultural customer-generator against discrimination by virtue of its status as an eligible
85 customer-generator or eligible agricultural customer-generator, and permit customers that are served on
86 time-of-use tariffs that have electricity supply demand charges contained within the electricity supply
87 portion of the time-of-use tariffs to participate as an eligible customer-generator or eligible agricultural
88 customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible
89 customer-generators or eligible agricultural customer-generators served on demand charge-based
90 time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

91 E. If electricity generated by an eligible customer-generator or eligible agricultural customer-generator
92 over the net metering period exceeds the electricity consumed by the eligible customer-generator or
93 eligible agricultural customer-generator, the customer-generator or eligible agricultural
94 customer-generator shall be compensated for the excess electricity if the entity contracting to receive
95 such electric energy and the eligible customer-generator or eligible agricultural customer-generator enter
96 into a power purchase agreement for such excess electricity. Upon the written request of the eligible
97 customer-generator or eligible agricultural customer-generator, the supplier that serves the eligible
98 customer-generator or eligible agricultural customer-generator shall enter into a power purchase
99 agreement with the requesting eligible customer-generator or eligible agricultural customer-generator that
100 is consistent with the minimum requirements for contracts established by the Commission pursuant to
101 subsection D. The power purchase agreement shall obligate the supplier to purchase such excess
102 electricity at the rate that is provided for such purchases in a net metering standard contract or tariff
103 approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator
104 or eligible agricultural customer-generator owns any renewable energy certificates associated with its
105 electrical generating facility; however, at the time that the eligible customer-generator or eligible
106 agricultural customer-generator enters into a power purchase agreement with its supplier, the eligible
107 customer-generator or eligible agricultural customer-generator shall have a one-time option to sell the
108 renewable energy certificates associated with such electrical generating facility to its supplier and be
109 compensated at an amount that is established by the Commission to reflect the value of such renewable
110 energy certificates. Nothing in this section shall prevent the eligible customer-generator or eligible
111 agricultural customer-generator and the supplier from voluntarily entering into an agreement for the sale
112 and purchase of excess electricity or renewable energy certificates at mutually-agreed upon prices if the
113 eligible customer-generator or eligible agricultural customer-generator does not exercise its option to sell
114 its renewable energy certificates to its supplier at Commission-approved prices at the time that the
115 eligible customer-generator or eligible agricultural customer-generator enters into a power purchase
116 agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and
117 renewable energy certificates from eligible customer-generators or eligible agricultural
118 customer-generators shall be recoverable through its Renewable Energy Portfolio Standard (RPS) rate
119 adjustment clause, if the supplier has a Commission-approved RPS plan. If not, then all costs shall be
120 recoverable through the supplier's fuel adjustment clause. For purposes of this section, "all costs" shall
121 be defined as the rates paid to the eligible customer-generator or eligible agricultural customer-generator

for the purchase of excess electricity and renewable energy certificates and any administrative costs incurred to manage the eligible customer-generator's or eligible agricultural customer-generator's power purchase arrangements. The net metering standard contract or tariff shall be available to eligible customer-generators or eligible agricultural customer-generators on a first-come, first-served basis in each electric distribution company's Virginia service area until the rated generating capacity owned and operated by eligible customer-generators ~~or~~, eligible agricultural customer-generators, and *small agricultural generators* in the state reaches one percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year, and shall require the supplier to pay the eligible customer-generator or eligible agricultural customer-generator for such excess electricity in a timely manner at a rate to be established by the Commission.

F. Any residential eligible customer-generator or eligible agricultural customer-generator who owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility with a capacity that exceeds 10 kilowatts shall pay to its supplier, in addition to any other charges authorized by law, a monthly standby charge. The amount of the standby charge and the terms and conditions under which it is assessed shall be in accordance with a methodology developed by the supplier and approved by the Commission. The Commission shall approve a supplier's proposed standby charge methodology if it finds that the standby charges collected from all such eligible customer-generators and eligible agricultural customer-generators allow the supplier to recover only the portion of the supplier's infrastructure costs that are properly associated with serving such eligible customer-generators or eligible agricultural customer-generators. Such an eligible customer-generator or eligible agricultural customer-generator shall not be liable for a standby charge until the date specified in an order of the Commission approving its supplier's methodology.

§ 56-594.2. *Small agricultural generators.*

A. As used in this section:

"Small agricultural generating facility" means an electrical generating facility that:

1. Has a capacity:

a. Of not more than 1.5 megawatts; and

b. That does not exceed 150 percent of the customer's expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available;

2. Uses as its total source of fuel renewable energy;

3. Is located on the customer's premises and is interconnected with its utility through a separate meter;

4. Is interconnected and operated in parallel with an electric utility's distribution but not transmission facilities;

5. Is designed so that the electricity generated by the facility is expected to remain on the utility's distribution system; and

6. Is a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Small agricultural generator" means a customer that:

1. Is not an eligible agricultural customer-generator pursuant to § 56-594;

2. Operates a small agricultural generating facility as part of an agricultural business;

3. May be served by multiple meters that are located at separate but contiguous sites;

4. May aggregate the electricity consumption measured by the meters, solely for purposes of calculating 150 percent of the customer's expected annual energy consumption, but not for billing or retail service purposes, provided that the same utility serves all of its meters;

5. Uses not more than 25 percent of contiguous land owned or controlled by the agricultural business for purposes of the renewable energy generating facility; and

6. Issues a certification under oath as to the amount of land being used for renewable generation.

"Utility" includes supplier or distributor, as applicable.

B. A small agricultural generator electing to interconnect pursuant to this section shall:

1. Enter into a power purchase agreement with its utility to sell all of the electricity generated from its small agricultural generating facility, which power purchase agreement obligates the utility to purchase all the electricity generated, at a rate agreed upon by the parties, but at a rate not less than the utility's Commission-approved avoided cost tariff for energy and capacity;

2. Have the rights described in subsection E of § 56-594 pertaining to an eligible agricultural customer-generator as to the renewable energy certificates or other environmental attributes generated by the renewable energy generating facility;

3. Abide by the appropriate small generator interconnection process as described in 20VAC5-314; and

4. Pay to its utility any necessary additional expenses as required by this section.

C. Utilities:

1. Shall purchase, through the power purchase agreement described in subdivision B 1, all of the output of the small agricultural generator;

2. Shall recover the cost for its distribution facilities to the generating meter either through a proportional cost-sharing agreement with the small agricultural generator or through metering the total capacity and energy placed on the distribution system by the small agricultural generator;

3. Shall recover all costs incurred by the utility to purchase electricity, capacity, and renewable energy certificates from the small agricultural generator:

a. If the utility has a Commission-approved Renewable Energy Portfolio Standard (RPS) plan and rate adjustment clause, through the utility's RPS rate adjustment clause; or

b. If the utility does not have a Commission-approved RPS rate adjustment clause, through the utility's fuel adjustment clause or through the utility's cost of purchased power;

4. May conduct settlement transactions for purchased power in dollars on the small agricultural generator's electric bill or through other means of settlement, in the utility's sole discretion;

5. Shall bill the small agricultural generator eligible costs for small generator interconnection studies required pursuant to the appropriate small generator interconnection process described in subdivision B 3; and

6. Shall bill its expenses, at cost, for any additional engineering studies that a small agricultural generator is required to pay prior to interconnection.

2. That the State Corporation Commission shall conduct a single docketed proceeding to implement the provisions of this act. The proceeding shall be initiated between August 1, 2017, and December 1, 2017. The proceeding shall provide notice to the public and an opportunity for public comment. A final order amending or adopting regulations under §§ 56-578, 56-594, as amended by this act, and 56-594.1 of the Code of Virginia that the Commission deems necessary to effectuate the provisions of this act shall be issued not later than June 1, 2018. Utilities shall be required to each make a compliance filing, containing a schedule to accommodate small agricultural generators, to the Commission for administrative approval not sooner than three months following the issuance of the Commission's order amending or adopting regulations under this enactment. Utilities shall not be required to undergo rate proceedings or individual proceedings of any kind to implement the provisions of this act.