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SENATE BILL NO. 918

Offered January 11, 2017

Prefiled December 27, 2016

A BILL to amend and reenact § 56-1.2 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 56-1.2:2, 56-232.2:2, and 56-594.2; and to repeal Chapters 358 and 382 of the Acts of Assembly of 2013, relating to the regulation of retail sales of electricity under third-party sales agreements.

Patron—Edwards

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-1.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 56-1.2:2, 56-232.2:2, and 56-594.2 as follows:

§ 56-1.2. Persons not designated as public utility, public service corporation, etc.

The terms public utility, public service corporation, or public service company, as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) of this title, shall not refer to:

1. Any person who owns or operates property and provides electricity, natural gas, water, or sewer service to residents or tenants on the property, provided that (i) the electricity, natural gas, water or sewer service provided to the residents or tenants is purchased by the person from a public utility, public service corporation, public service company, or person licensed by the Commission as a competitive provider of energy services, or a county, city or town, or other publicly regulated political subdivision or public body, (ii) the person or his agent charges to the resident or tenant on the property only that portion of the person's utility charges for the electricity, natural gas, water, or sewer service which is attributable to usage by the resident or tenant on the property, and additional service charges permitted by § 55-226.2, and (iii) the person maintains three years' billing records for such charges; ~~or~~

2. Any person who is not a public service corporation and who provides electric vehicle charging service at retail. The ownership or operation of a facility at which electric vehicle charging service is sold, and the selling of electric vehicle charging service from that facility, does not render the person a public utility, public service corporation, or public service company as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale, ownership, or operation*; or*

3. Any person who is not a public service corporation and who sells electricity generated on site entirely from sources of renewable energy as defined in § 56-576 at retail to a customer pursuant to a third-party power purchase agreement, as defined in § 56-1.2:2, if the sale of electricity is conducted pursuant to a program conducted by the Commission under § 56-594.2. The ownership or operation of such an on-site facility generating electric energy derived entirely from sources of renewable energy from which electric energy is sold to a customer pursuant to a third-party power purchase agreement, and the selling of electric energy to such a customer from that facility, does not render the person a public utility, public service corporation, public service company, or electric utility as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), 10.2:1 (§ 56-265.13:1 et seq.), and 23 (§ 56-576) solely because of that sale of electricity or its ownership or operation of such a generation facility.

§ 56-1.2:2. Retail sale of electricity in connection with the sale of a renewable generation facility pursuant to a third-party power purchase agreement.

A. As used in this section and §§ 56-1.2 and 56-232.2:2, unless the context requires a different meaning:

"Renewable energy facility" means a facility that generates electricity derived entirely from sources of renewable energy as defined in § 56-576.

"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.

B. The retail sale of electricity generated at a renewable energy facility to a customer who is purchasing or leasing the renewable energy facility by a person who is not a public utility, public service corporation, or public service company shall not constitute the retail sale of electricity if the sale is conducted pursuant to a program conducted by the Commission under § 56-594.2.

§ 56-232.2:2. Regulation of third-party power purchase agreements.

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SB918

9/14/22 17:28

The Commission shall not regulate or prescribe the rates, charges, and fees for the retail sale by any person that is not a public service corporation of electric energy generated on site entirely from sources of renewable energy at retail to a customer pursuant to a third-party power purchase agreement entered into pursuant to a program conducted under § 56-594.2. Sales of electricity by public utilities to persons who are not public service corporations pursuant to third-party power purchase agreements shall continue to be regulated by the Commission to the same extent as are other services provided by public utilities. The Commission may adopt regulations implementing this section.

§ 56-594.2. Third-party power purchase agreements.

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

"Renewable energy facility" means a facility that generates electricity derived entirely from sources of renewable energy as defined in § 56-576.

"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.

B. The Commission shall conduct programs for each electric utility 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. 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 under the program shall not serve multiple customers;

2. 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 subsection C of § 56-594;

3. 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 unless the electric utility in whose service territory the renewable energy facility will be located is 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

4. An affiliate of an electric utility shall be permitted to offer and enter into third-party power purchase agreements 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 program.

C. The Commission shall review the program in 2018 and every two years thereafter during the program.

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

E. Nothing in this section shall be construed as (i) rendering any person, by virtue of its selling electric power to a customer under a third-party power purchase agreement entered into pursuant to the program established under this section, a public utility or a competitive service provider; (ii) imposing a requirement that such a person meet 100 percent of the load requirements for each retail customer account it serves; or (iii) affecting third-party power purchase agreements in effect prior to July 1, 2017.

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

G. The Commission may adopt such rules or establish such guidelines as may be necessary for its general administration of the program established under this section.

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

3. That the repeal of Chapters 358 and 382 of the Acts of Assembly of 2013 shall not affect the validity of any third-party power purchase agreement entered into prior to July 1, 2017, under a pilot project authorized pursuant to Chapters 358 and 382 of the Acts of Assembly of 2013.