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HOUSE BILL NO. 1261

Offered January 10, 2018

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A BILL to amend and reenact §§ 56-576 and 56-600 of the Code of Virginia, relating to electric and natural gas utilities; energy efficiency programs.

Patron—Hugo

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-576 and 56-600 of the Code of Virginia are amended and reenacted as follows:

§ 56-576. Definitions.

As used in this chapter:

"Affiliate" means any person that controls, is controlled by, or is under common control with an electric utility.

"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § 56-585; (v) engaging in activities of a retail electric energy supplier, licensed pursuant to § 56-587, which are authorized by such supplier's license; and (vi) engaging in actions of a retail customer, in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy for consumption by such retail customers.

"Combined heat and power" means a method of using waste heat from electrical generation to offset traditional processes, space heating, air conditioning, or refrigeration.

"Commission" means the State Corporation Commission.

"Cooperative" means a utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.).

"Covered entity" means a provider in the Commonwealth of an electric service not subject to competition but shall not include default service providers.

"Covered transaction" means an acquisition, merger, or consolidation of, or other transaction involving stock, securities, voting interests or assets by which one or more persons obtains control of a covered entity.

"Curtailement" means inducing retail customers to reduce load during times of peak demand so as to ease the burden on the electrical grid.

"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase electric energy from any supplier licensed and seeking to sell electric energy to that customer.

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

"Distribute," "distributing," or "distribution of" electric energy means the transfer of electric energy through a retail distribution system to a retail customer.

"Distributor" means a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.

"Electric utility" means any person that generates, transmits, or distributes electric energy for use by retail customers in the Commonwealth, including any investor-owned electric utility, cooperative electric utility, or electric utility owned or operated by a municipality.

"Energy efficiency program" means a program that reduces the total amount of electricity that is required for the same process or activity implemented after the expiration of capped rates. Energy efficiency programs include equipment, physical, or program change designed to produce measured and verified reductions in the amount of electricity required to perform the same function and produce the same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs that result in improvements in lighting design, heating, ventilation, and air conditioning systems, appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use

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59 or losses of electricity and otherwise improve internal operating efficiency in generation, transmission,  
60 and distribution systems; and (iii) customer engagement programs that result in measurable and  
61 verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs  
62 include demand response, combined heat and power and waste heat recovery, curtailment, or other  
63 programs that are designed to reduce electricity consumption so long as they reduce the total amount of  
64 electricity that is required for the same process or activity. Utilities shall be authorized to install and  
65 operate such advanced metering technology and equipment on a customer's premises; however, nothing  
66 in this chapter establishes a requirement that an energy efficiency program be implemented on a  
67 customer's premises and be connected to a customer's wiring on the customer's side of the  
68 inter-connection without the customer's expressed consent.

69 "Generate," "generating," or "generation of" electric energy means the production of electric energy.

70 "Generator" means a person owning, controlling, or operating a facility that produces electric energy  
71 for sale.

72 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,  
73 1999, supplied electric energy to retail customers located in an exclusive service territory established by  
74 the Commission.

75 "Independent system operator" means a person that may receive or has received, by transfer pursuant  
76 to this chapter, any ownership or control of, or any responsibility to operate, all or part of the  
77 transmission systems in the Commonwealth.

78 "In the public interest," for purposes of assessing energy efficiency programs, describes an energy  
79 efficiency program if, ~~among other factors,~~ *the Commission determines that the net present value of the*  
80 *benefits exceeds the net present value of the costs as determined by the Commission upon consideration*  
81 *not less than any three of the following four tests: (i) the Total Resource Cost Test; (ii) the Utility Cost*  
82 *Test (also referred to as the Program Administrator Test); (iii) the Participant Test; and (iv) the*  
83 *Ratepayer Impact Measure Test. Such determination shall include an analysis of all four tests, and a*  
84 *program or portfolio of programs shall not be rejected based solely on the results of a single test*  
85 *approved if the net present value of the benefits exceeds the net present value of the costs as determined*  
86 *by not less than any three of the four tests. In addition, an energy efficiency program may be deemed to*  
87 *be "in the public interest" if the program provides measurable and verifiable energy savings to*  
88 *low-income customers or elderly customers.*

89 "Measured and verified" means a process determined pursuant to methods accepted for use by  
90 utilities and industries to measure, verify, and validate energy savings and peak demand savings. This  
91 may include the protocol established by the United States Department of Energy, Office of Federal  
92 Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects,  
93 measurement and verification standards developed by the American Society of Heating, Refrigeration  
94 and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand  
95 savings associated with specific energy efficiency measures, as determined by the Commission.

96 "Municipality" means a city, county, town, authority, or other political subdivision of the  
97 Commonwealth.

98 "New underground facilities" means facilities to provide underground distribution service. "New  
99 underground facilities" includes underground cables with voltages of 69 kilovolts or less, pad-mounted  
100 devices, connections at customer meters, and transition terminations from existing overhead distribution  
101 sources.

102 "Peak-shaving" means measures aimed solely at shifting time of use of electricity from peak-use  
103 periods to times of lower demand by inducing retail customers to curtail electricity usage during periods  
104 of congestion and higher prices in the electrical grid.

105 "Person" means any individual, corporation, partnership, association, company, business, trust, joint  
106 venture, or other private legal entity, and the Commonwealth or any municipality.

107 "Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or  
108 otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas,  
109 municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived  
110 from coal, oil, natural gas, or nuclear power. Renewable energy shall also include the proportion of the  
111 thermal or electric energy from a facility that results from the co-firing of biomass.

112 "Renewable thermal energy" means the thermal energy output from (i) a renewable-fueled combined  
113 heat and power generation facility that is (a) constructed, or renovated and improved, after January 1,  
114 2012, (b) located in the Commonwealth, and (c) utilized in industrial processes other than the combined  
115 heat and power generation facility or (ii) a solar energy system, certified to the OG-100 standard of the  
116 Solar Ratings and Certification Corporation or an equivalent certification body, that (a) is constructed, or  
117 renovated and improved, after January 1, 2013, (b) is located in the Commonwealth, and (c) heats water  
118 or air for residential, commercial, institutional, or industrial purposes.

119 "Renewable thermal energy equivalent" means the electrical equivalent in megawatt hours of  
120 renewable thermal energy calculated by dividing (i) the heat content, measured in British thermal units

121 (BTUs), of the renewable thermal energy at the point of transfer to a residential, commercial,  
122 institutional, or industrial process by (ii) the standard conversion factor of 3.413 million BTUs per  
123 megawatt hour.

124 "Renovated and improved facility" means a facility the components of which have been upgraded to  
125 enhance its operating efficiency.

126 "Retail customer" means any person that purchases retail electric energy for its own consumption at  
127 one or more metering points or nonmetered points of delivery located in the Commonwealth.

128 "Retail electric energy" means electric energy sold for ultimate consumption to a retail customer.

129 "Revenue reductions related to energy efficiency programs" means reductions in the collection of  
130 total non-fuel revenues, previously authorized by the Commission to be recovered from customers by a  
131 utility, that occur due to measured and verified decreased consumption of electricity caused by energy  
132 efficiency programs approved by the Commission and implemented by the utility, less the amount by  
133 which such non-fuel reductions in total revenues have been mitigated through other program-related  
134 factors, including reductions in variable operating expenses.

135 "Solar energy system" means a system of components that produces heat or electricity, or both, from  
136 sunlight.

137 "Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who offers  
138 to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but it  
139 does not mean a generator that produces electric energy exclusively for its own consumption or the  
140 consumption of an affiliate.

141 "Supply" or "supplying" electric energy means the sale of or the offer to sell electric energy to a  
142 retail customer.

143 "Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric energy  
144 through the Commonwealth's interconnected transmission grid from a generator to either a distributor or  
145 a retail customer.

146 "Transmission system" means those facilities and equipment that are required to provide for the  
147 transmission of electric energy.

148 **§ 56-600. Definitions.**

149 As used in this chapter:

150 "Allowed distribution revenue" means the average annual, weather-normalized, nongas commodity  
151 revenue per customer associated with the rates in effect as adopted in the applicable utility's last  
152 Commission-approved rate case or performance-based regulation plan, multiplied by the average number  
153 of customers served.

154 "Conservation and ratemaking efficiency plan" means a plan filed by a natural gas utility pursuant to  
155 this chapter that includes a decoupling mechanism.

156 "Cost-effective conservation and energy efficiency program" means a program approved by the  
157 Commission that is designed to decrease the average customer's annual, weather-normalized consumption  
158 or total gas bill, for gas and nongas elements combined, or avoid energy costs or consumption the  
159 customer may otherwise have incurred, and is determined by the Commission to be cost-effective ~~upon~~  
160 ~~consideration, among other factors, that if~~ the net present value of the benefits exceeds the net present  
161 value of the costs ~~under as determined by not less than any three of~~ the following four tests: the Total  
162 Resource Cost Test, the Program Administrator Test (also referred to as the Utility Cost Test), the  
163 Participant Test, and the Ratepayer Impact Measure Test. Such determination shall include an analysis of  
164 all four tests, and a program or portfolio of programs shall ~~not be rejected based solely on the results of~~  
165 ~~a single test approved if the net present value of the benefits exceeds the net present value of the costs~~  
166 ~~as determined by not less than any three of the four tests.~~ Such determination shall also be made (i)  
167 with the assignment of administrative costs associated with the conservation and ratemaking efficiency  
168 plan to the portfolio as a whole and (ii) with the assignment of education and outreach costs associated  
169 with each program in a portfolio of programs to such program and not to individual measures within a  
170 program, when such administrative, education, or outreach costs are not otherwise directly assignable.  
171 Without limitation, rate designs or rate mechanisms, customer education, customer incentives, and  
172 weatherization programs are examples of conservation and energy efficiency programs that the  
173 Commission may consider. Energy efficiency programs that provide measurable and verifiable energy  
174 savings to low-income customers or elderly customers may also be deemed cost effective. A  
175 cost-effective conservation and energy efficiency program shall not include a program designed to  
176 convert propane customers to natural gas.

177 "Decoupling mechanism" means a rate, tariff design or mechanism that decouples the recovery of a  
178 utility's allowed distribution revenue from the level of consumption of natural gas by its customers,  
179 including (i) a mechanism that adjusts actual nongas distribution revenues per customer to allowed  
180 distribution revenues per customer, such as a sales adjustment clause, (ii) rate design changes that  
181 substantially align the percentage of fixed charge revenue recovery with the percentage of the utility's

182 fixed costs, such as straight fixed variable rates, provided such mechanism includes a substantial demand  
183 component based on a customer's peak usage, or (iii) a combination of clauses (i) and (ii) that  
184 substantially decreases the relative amount of nongas distribution revenue affected by changes in per  
185 customer consumption of gas.

186 "Fixed costs" means any and all of the utility's nongas costs of service, together with an authorized  
187 return thereon, that are not associated with the cost of the natural gas commodity flowing through and  
188 measured by the customer's meter.

189 "Measure" means an individual item, service, offering, or rebate available to a customer of a natural  
190 gas utility as part of the utility's conservation and ratemaking efficiency plan.

191 "Natural gas utility" or "utility" means any investor-owned public service company engaged in the  
192 business of furnishing natural gas service to the public.

193 "Portfolio" means the program or programs included in a natural gas utility's conservation and  
194 ratemaking efficiency plan.

195 "Program" means a group of one or more related measures for a customer class.

196 "Revenue-neutral" means a change in a rate, tariff design or mechanism as a component of a  
197 conservation and ratemaking efficiency plan that does not shift annualized allowed distribution revenue  
198 between customer classes, and does not increase or decrease the utility's average, weather-normalized  
199 nongas utility revenue per customer for any given rate class by more than 0.25 percent when compared  
200 to (i) the rate, tariff design or mechanism in effect at the time a conservation and ratemaking efficiency  
201 plan is filed pursuant to this chapter or (ii) the allocation of costs approved by the Commission in a rate  
202 case using the cost of service methodology set forth in § 56-235.2 or a performance-based regulation  
203 plan authorized by § 56-235.6, where a plan is filed in conjunction with such case.