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HOUSE BILL NO. 436

Offered January 10, 2018

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A BILL to amend and reenact § 56-585.2 of the Code of Virginia, relating to electric utility regulation; mandatory renewable portfolio standard.

Patron—Sullivan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-585.2 of the Code of Virginia is amended and reenacted as follows:

§ 56-585.2. Renewable energy portfolio standard program.

A. As used in this section:

~~"Qualified investment" means an expense incurred in the Commonwealth by a participating utility in conducting, either by itself or in partnership with institutions of higher education in the Commonwealth or with industrial or commercial customers that have established renewable energy research and development programs in the Commonwealth, research and development activities related to renewable or alternative energy sources, which expense (i) is designed to enhance the participating utility's understanding of emerging energy technologies and their potential impact on and value to the utility's system and customers within the Commonwealth; (ii) promotes economic development within the Commonwealth; (iii) supplements customer-driven alternative energy or energy efficiency initiatives; (iv) supplements alternative energy and energy efficiency initiatives at state or local governmental facilities in the Commonwealth; or (v) is designed to mitigate the environmental impacts of renewable energy projects.~~

"Qualifying renewable source" means an electric generation facility that has as its sole source of power onshore or offshore wind, solar energy, tides, falling water, or geothermal energy. "Qualifying renewable source" does not include a pumped storage facility unless the source of the electric energy used to pump water to its storage area is onshore or offshore wind, solar energy, tides, falling water, or geothermal energy.

"Renewable energy"~~shall have the same meaning ascribed to it in§ 56-576, provided such renewable~~ *means electric* energy ~~is (i)~~ generated in the Commonwealth ~~or in the interconnection region of the regional transmission entity of which the participating utility is a member, as it may change from time to time, and purchased by a participating utility under a power purchase agreement; provided, however, that if such agreement was executed on or after July 1, 2013, the agreement shall expressly transfer ownership of renewable attributes, in addition to ownership of the energy, to the participating utility; (ii) generated by a public utility providing electric service in the Commonwealth from a facility in which the public utility owns at least a 49 percent interest and that is located in the Commonwealth, in the interconnection region of the regional transmission entity of which the participating utility is a member, or in a control area adjacent to such interconnection region; or (iii) represented by renewable energy certificates~~ *from a qualifying renewable source*. ~~"Renewable energy" shall not include electricity generated from pumped storage, but shall include run-of-river generation from a combined pumped-storage and run-of-river facility.~~

~~"Renewable energy certificate" means either (i) a certificate issued by an affiliate of the regional transmission entity of which the participating utility is a member, as it may change from time to time, or any successor to such affiliate, and held or acquired by such utility, that validates the generation of renewable energy by eligible sources in the interconnection region of the regional transmission entity or (ii) a certificate issued by the Commission pursuant to subsection J and held or acquired by a participating utility, that validates a qualified investment made by the participating utility.~~

~~"Total electric energy sold in the base year" means total electric energy sold to Virginia jurisdictional retail customers by a participating utility in calendar year 2007, excluding an amount equivalent to the average of the annual percentages of the electric energy that was supplied to such customers from nuclear generating plants for the calendar years 2004 through 2006.~~

"Renewable energy portfolio standard program" or "RPS program" means a program conducted by a utility under which the utility is required to achieve the RPS standards in accordance with the requirements of this section.

"RPS standard" means the requirement that the total electric energy sold by a utility in the Commonwealth in a calendar year be from renewable energy sources in accordance with the schedule set forth in subsection D.

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"Utility" means an investor-owned incumbent electric utility.

B. ~~Any investor-owned incumbent electric~~ *Each* utility ~~may~~ *shall, by January 1, 2019,* apply to the Commission for approval ~~to participate in~~ *of* a renewable energy portfolio standard program~~, as defined in this section~~. The Commission shall approve such application if the applicant demonstrates that it has a reasonable expectation of achieving ~~12 percent of its base year electric energy sales from renewable energy sources during calendar year 2022, and 15 percent of its base year electric energy sales from renewable energy sources during calendar year 2025, as provided in subsection D~~ *the RPS standards in accordance with the requirements of this section.*

C. *Each utility shall adopt and implement a renewable energy portfolio standard program that has been approved by the Commission.* It is in the public interest for utilities ~~that seek~~ to ~~have~~ *adopt and implement* a renewable energy portfolio standard program *pursuant to which the utility is required* to achieve the ~~goals~~ *RPS standards* set forth in subsection D~~, such goals being referred to herein as "RPS Goals." A utility shall receive double credit toward meeting the renewable energy portfolio standard for energy derived from sunlight, from onshore wind, or from facilities in the Commonwealth fueled primarily by animal waste, and triple credit toward meeting the renewable energy portfolio standard for energy derived from offshore wind.~~

D. ~~Regarding any~~ *Any utility's* renewable energy portfolio standard program~~,~~ *shall require* the total electric energy sold by ~~a~~ *the* utility to ~~meet the RPS Goals shall~~ be composed of the following amounts of ~~electric~~ *renewable* energy ~~or renewable thermal energy equivalent from renewable energy sources, as adjusted for any sales volumes lost through operation of the customer choice provisions of subdivision A 3 or A 4 of § 56-577~~:

~~RPS Goal I: In calendar year 2010, 4 percent of total electric energy sold in the base year.~~

~~RPS Goal II: For calendar years 2011 through 2015, inclusive, an average of 4 percent of total electric energy sold in the base year, and in calendar year 2016, 7 percent of total electric energy sold in the base year.~~

~~RPS Goal III: For calendar years 2017 through 2021, inclusive, an average of 7 percent of total electric energy sold in the base year, and in calendar year 2022, 12 percent of total electric energy sold in the base year.~~

~~RPS Goal IV: For calendar years 2023 and 2024, inclusive, an average of 12 percent of total electric energy sold in the base year, and in calendar year 2025, 15 percent of total electric energy sold in the base year.~~

~~A utility may not apply renewable energy certificates issued pursuant to subsection J to meet more than 20 percent of the sales requirement for the RPS Goal in any year.~~

1. Not less than 20 percent of total electric energy sold in calendar year 2019 shall be renewable energy;

2. Not less than 30 percent of total electric energy sold in each of calendar years 2020 and 2021 shall be renewable energy;

3. Not less than 40 percent of total electric energy sold in each of calendar years 2022 and 2023 shall be renewable energy;

4. Not less than 60 percent of total electric energy sold in each of calendar years 2024 and 2025 shall be renewable energy; and

5. Eighty percent of total electric energy sold in 2026 and each calendar year thereafter shall be renewable energy.

A utility may apply renewable energy sales achieved ~~or renewable energy certificates acquired~~ during the periods covered by any such RPS ~~Goal~~ *standard* that are in excess of the sales requirement for that RPS ~~Goal~~ *standard* to the sales requirements for any future RPS ~~Goals~~ *standards* in the five calendar years after the renewable energy was generated ~~or the renewable energy certificates were created, except that a utility shall be able to apply renewable energy certificates acquired by the utility prior to January 1, 2014~~.

E. A utility ~~participating in such program~~ shall have the right to recover all incremental costs incurred for the purpose of ~~such participation in such~~ *achieving the requirements of its* program, as accrued against income, through rate adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to, administrative costs, ancillary costs, capacity costs, ~~costs of energy represented by certificates described in subsection A,~~ and, in the case of construction of renewable energy generation facilities, allowance for funds used during construction until such time as an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected construction work in progress, planning, development and construction costs, life-cycle costs, and costs of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to subdivision A 6 of § 56-585.1. ~~This subsection shall not apply to qualified investments as provided in subsection K.~~ All incremental costs of the RPS program shall be allocated to and recovered from the utility's customer classes based on the demand created by the class and within the class based on energy used by the individual customer in the class~~, except that the~~

~~incremental costs of the RPS program shall not be allocated to or recovered from customers that are served within the large industrial rate classes of the participating utilities and that are served at primary or transmission voltage~~.

F. A utility ~~participating in such program~~ shall apply towards meeting its RPS ~~Goals~~ *standards* any renewable energy from existing renewable energy sources owned by the participating utility or purchased as allowed by contract at no additional cost to customers to the extent feasible. ~~A utility participating in such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007, that is operated by a person that is served within a utility's large industrial rate class and that is served at primary or transmission voltage, except for those persons providing renewable thermal energy equivalents to the utility.~~ A ~~participating~~ utility shall be required to ~~fulfill any remaining deficit needed to fulfill its~~ *achieve the* RPS ~~Goals~~ *standards* from ~~new~~ renewable energy supplies at reasonable cost and in a prudent manner to be determined by the Commission at the time of approval of any application made pursuant to subsection B. A ~~participating~~ utility may sell renewable energy certificates produced at its own generation facilities located in the Commonwealth or, if located outside the Commonwealth, owned by such utility and in operation as of January 1, 2010, or renewable energy certificates acquired as part of a purchase power agreement, to another entity and purchase lower cost renewable energy certificates and the net difference in price between the renewable energy certificates shall be credited to customers. ~~Utilities participating in such program shall collectively, either through the installation of new generating facilities, through retrofit of existing facilities or through purchases of electricity from new facilities located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and pulp manufacturing by facilities located in Virginia, towards meeting RPS goals , excluding such fuel used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its share of the total electric energy sold in the base year, as defined in subsection A, for all utilities participating in the RPS program. A utility may use in meeting RPS goals , without limitation, the following sustainable biomass and biomass based waste to energy resources: mill residue, except wood chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and construction debris; brush; yard waste; shipping crates; dunnage; non-merchantable waste paper; landscape or right-of-way tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and gas produced from the anaerobic decomposition of animal waste.~~

G. The Commission shall promulgate such rules and regulations as may be necessary to implement the provisions of this section including a requirement that ~~participants~~ *utilities* verify whether the RPS ~~goals~~ *standards* are met in accordance with this section.

H. Each ~~investor-owned incumbent electric~~ utility shall report to the Commission annually by November 1 identifying:

1. The utility's efforts~~, if any,~~ to meet the RPS ~~Goals~~ *standards*, specifically identifying:

a. ~~A list of all states~~ *The localities in the Commonwealth* where the purchased or owned renewable energy was generated, specifying the number of megawatt hours ~~or renewable energy certificates~~ originating from each ~~state~~ *facility in the locality*;

b. A list of the ~~decades~~ *years* in which the purchased or owned renewable energy generating units were placed in service, specifying the number of megawatt hours ~~or renewable energy certificates~~ originating from those units; and

c. A list of ~~fuel~~ *the* types *of qualifying renewable sources* used to generate the purchased or owned renewable energy, specifying the number of megawatt hours ~~or renewable energy certificates~~ originating from each fuel type;

2. The utility's overall generation of ~~renewable energy~~ *electricity from qualifying renewable sources*; and

3. Advances in renewable generation technology that affect activities described in subdivisions 1 and 2.

I. The Commission shall post on its website the reports submitted by each ~~investor-owned incumbent electric~~ utility pursuant to subsection H.

J. ~~The Commission shall issue to a participating utility a number of renewable energy certificates for qualified investments, upon request by a participating utility, if it finds that an expense satisfies the conditions set forth in this section for a qualified investment, as follows:~~

~~1. By March 31 of each year, the participating utility shall provide an analysis, as reasonably determined by a qualified independent broker, of the average for the preceding year of the publicly available prices for Tier 1 renewable energy certificates and Tier 2 renewable energy certificates, validating the generation of renewable energy by eligible sources, that were issued in the interconnection region of the regional transmission entity of which the participating utility is a member;~~

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~~2. In the same annual analysis provided to the Commission, the participating utility shall divide the amount of the participating utility's qualified investments in the applicable period by the average price determined pursuant to subdivision 1;~~

~~3. The number of renewable energy certificates to be issued to the participating utility shall equal the product obtained pursuant to subdivision 2; and~~

~~4. The Commission shall review and validate the analysis provided by the participating utility within 90 days of submittal of its analysis to the Commission. If no corrections are made by the Commission, then the analysis shall be deemed correct and the renewable energy certificates shall be deemed issued to the participating utility.~~

~~Each renewable energy certificate issued to a participating utility pursuant to this subsection shall represent the equivalent of one megawatt hour of renewable energy sales achieved when applied to an RPS Goal.~~

~~K. Qualified investments shall constitute reasonable and prudent operating expenses of a participating utility. Notwithstanding subsection E, a participating utility shall not be authorized to recover the costs associated with qualified investments through rate adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1. In any proceeding conducted pursuant to § 56-585.1 or other provision of this title in which a participating utility seeks recovery of its qualified investments as an operating expense, the participating utility shall not be authorized to earn a return on its qualified investments.~~

~~L. A participating utility shall not be eligible for a research and development tax credit pursuant to § 58.1-439.12:08 or 58.1-439.12:11 with regard to any expense incurred or investment made by the participating utility that constitutes a qualified investment pursuant to this section~~ *A utility that fails to achieve an RPS standard established for any year shall pay into the Renewable Electricity Production Grant Fund established pursuant to § 67-902 a compliance fee of 10 cents for each kilowatt-hour of electric energy by which the utility fails to achieve an RPS standard.*