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HOUSE BILL NO. 965

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.

Patrons—Sullivan and Kory

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.

"Benefit-cost ratio" means the ratio of the net present value of the total benefits of a program or measure, including savings and non-energy benefits, to the net present value of the total incremental costs of implementing that program or measure as calculated over the lifetime of the measures implemented thereunder.

"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.

"Curtailment" 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

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59 same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs
60 that result in improvements in lighting design, heating, ventilation, and air conditioning systems,
61 appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not
62 limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use
63 or losses of electricity and otherwise improve internal operating efficiency in generation, transmission,
64 and distribution systems; and (iii) customer engagement programs that result in measurable and
65 verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs
66 include demand response, combined heat and power and waste heat recovery, curtailment, or other
67 programs that are designed to reduce electricity consumption so long as they reduce the total amount of
68 electricity that is required for the same process or activity. Utilities shall be authorized to install and
69 operate such advanced metering technology and equipment on a customer's premises; however, nothing
70 in this chapter establishes a requirement that an energy efficiency program be implemented on a
71 customer's premises and be connected to a customer's wiring on the customer's side of the
72 inter-connection without the customer's expressed consent.

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

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

76 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,
77 1999, supplied electric energy to retail customers located in an exclusive service territory established by
78 the Commission.

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

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

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

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

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

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

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

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

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

"Renewable thermal energy equivalent" means the electrical equivalent in megawatt hours of renewable thermal energy calculated by dividing (i) the heat content, measured in British thermal units (BTUs), of the renewable thermal energy at the point of transfer to a residential, commercial, institutional, or industrial process by (ii) the standard conversion factor of 3.413 million BTUs per megawatt hour.

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

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

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

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

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

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

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

"Total Resource Cost Test" means a test to determine if the benefit-cost ratio of a proposed energy efficiency program or measure is greater than one. An energy efficiency program or measure that meets the Total Resource Cost Test is in the public interest. An energy efficiency program or measure that fails the Total Resource Cost Test shall be reviewed by the Commission under the other tests for approving energy efficiency set forth in this section and § 56-600.

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

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

§ 56-600. Definitions.

As used in this chapter:

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

"Benefit-cost ratio" means the ratio of the net present value of the total benefits of a program or measure, including savings and non-energy benefits, to the net present value of the total incremental costs of implementing that program or measure as calculated over the lifetime of the measures implemented thereunder.

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

"Cost-effective conservation and energy efficiency program" means a program approved by the Commission that is designed to decrease the average customer's annual, weather-normalized consumption or total gas bill, for gas and nongas elements combined, or avoid energy costs or consumption the customer may otherwise have incurred, and is determined by the Commission to be cost-effective upon consideration, among other factors, that the net present value of the benefits exceeds the net present value of the costs under the following four tests: the Total Resource Cost Test, the Program Administrator Test (also referred to as the Utility Cost Test), the Participant Test, and the Ratepayer Impact Measure Test. Such determination shall include an analysis of all four tests, and a program or portfolio of programs shall not be rejected based solely on the results of a single test. Such determination shall also be made (i) with the assignment of administrative costs associated with the conservation and ratemaking efficiency plan to the portfolio as a whole and (ii) with the assignment of education and outreach costs associated with each program in a portfolio of programs to such program and not to individual measures within a program, when such administrative, education, or outreach costs are not otherwise directly assignable. Without limitation, rate designs or rate mechanisms, customer education, customer incentives, and weatherization programs are examples of conservation and energy

182 efficiency programs that the Commission may consider. Energy efficiency programs that provide
183 measurable and verifiable energy savings to low-income customers or elderly customers may also be
184 deemed cost effective. A cost-effective conservation and energy efficiency program shall not include a
185 program designed to convert propane customers to natural gas.

186 "Decoupling mechanism" means a rate, tariff design or mechanism that decouples the recovery of a
187 utility's allowed distribution revenue from the level of consumption of natural gas by its customers,
188 including (i) a mechanism that adjusts actual nongas distribution revenues per customer to allowed
189 distribution revenues per customer, such as a sales adjustment clause, (ii) rate design changes that
190 substantially align the percentage of fixed charge revenue recovery with the percentage of the utility's
191 fixed costs, such as straight fixed variable rates, provided such mechanism includes a substantial demand
192 component based on a customer's peak usage, or (iii) a combination of clauses (i) and (ii) that
193 substantially decreases the relative amount of nongas distribution revenue affected by changes in per
194 customer consumption of gas.

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

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

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

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

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

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

213 *"Total Resource Cost Test" means a test to determine if the benefit-cost ratio of a proposed energy*
214 *efficiency program or measure is greater than one. An energy efficiency program or measure that meets*
215 *the Total Resource Cost Test is in the public interest. An energy efficiency program or measure that*
216 *fails the Total Resource Cost Test shall be reviewed by the Commission under the other tests for*
217 *approving energy efficiency set forth in this section and § 56-576.*