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**HOUSE BILL NO. 1133**

Offered January 8, 2020

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*A BILL to amend and reenact §§ 56-576 and 56-585.1:4 of the Code of Virginia, relating to electric utilities; projects on previously developed project sites.*

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Referred to Committee on Labor and Commerce

**Be it enacted by the General Assembly of Virginia:****1. That §§ 56-576 and 56-585.1:4 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.

(Expires December 31, 2023) "Business park" means a land development containing a minimum of 100 contiguous acres classified as a Tier 4 site under the Virginia Economic Development Partnership's Business Ready Sites Program that is developed and constructed by an industrial development authority, or a similar political subdivision of the Commonwealth created pursuant to § 15.2-4903 or other act of the General Assembly, in order to promote business development and that is located in an area of the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

"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 distribution grid transformation project" means a project associated with electric distribution infrastructure, including related data analytics equipment, that is designed to accommodate or facilitate the integration of utility-owned or customer-owned renewable electric generation resources with the utility's electric distribution grid or to otherwise enhance electric distribution grid reliability, electric

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59 distribution grid security, customer service, or energy efficiency and conservation, including advanced  
60 metering infrastructure; intelligent grid devices for real time system and asset information; automated  
61 control systems for electric distribution circuits and substations; communications networks for service  
62 meters; intelligent grid devices and other distribution equipment; distribution system hardening projects  
63 for circuits, other than the conversion of overhead tap lines to underground service, and substations  
64 designed to reduce service outages or service restoration times; physical security measures at key  
65 distribution substations; cyber security measures; energy storage systems and microgrids that support  
66 circuit-level grid stability, power quality, reliability, or resiliency or provide temporary backup energy  
67 supply; electrical facilities and infrastructure necessary to support electric vehicle charging systems; LED  
68 street light conversions; and new customer information platforms designed to provide improved customer  
69 access, greater service options, and expanded access to energy usage information.

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

73 "Energy efficiency program" means a program that reduces the total amount of electricity that is  
74 required for the same process or activity implemented after the expiration of capped rates. Energy  
75 efficiency programs include equipment, physical, or program change designed to produce measured and  
76 verified reductions in the amount of electricity required to perform the same function and produce the  
77 same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs  
78 that result in improvements in lighting design, heating, ventilation, and air conditioning systems,  
79 appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not  
80 limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use  
81 or losses of electricity and otherwise improve internal operating efficiency in generation, transmission,  
82 and distribution systems; and (iii) customer engagement programs that result in measurable and  
83 verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs  
84 include demand response, combined heat and power and waste heat recovery, curtailment, or other  
85 programs that are designed to reduce electricity consumption so long as they reduce the total amount of  
86 electricity that is required for the same process or activity. Utilities shall be authorized to install and  
87 operate such advanced metering technology and equipment on a customer's premises; however, nothing  
88 in this chapter establishes a requirement that an energy efficiency program be implemented on a  
89 customer's premises and be connected to a customer's wiring on the customer's side of the  
90 inter-connection without the customer's expressed consent.

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

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

94 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,  
95 1999, supplied electric energy to retail customers located in an exclusive service territory established by  
96 the Commission.

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

100 "In the public interest," for purposes of assessing energy efficiency programs, describes an energy  
101 efficiency program if the Commission determines that the net present value of the benefits exceeds the  
102 net present value of the costs as determined by not less than any three of the following four tests: (i) the  
103 Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator Test);  
104 (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall include  
105 an analysis of all four tests, and a program or portfolio of programs shall be approved if the net present  
106 value of the benefits exceeds the net present value of the costs as determined by not less than any three  
107 of the four tests. If the Commission determines that an energy efficiency program or portfolio of  
108 programs is not in the public interest, its final order shall include all work product and analysis  
109 conducted by the Commission's staff in relation to that program, including testimony relied upon by the  
110 Commission's staff, that has bearing upon the Commission's decision. If the Commission reduces the  
111 proposed budget for a program or portfolio of programs, its final order shall include an analysis of the  
112 impact such budget reduction has upon the cost-effectiveness of such program or portfolio of programs.  
113 An order by the Commission (a) finding that a program or portfolio of programs is not in the public  
114 interest or (b) reducing the proposed budget for any program or portfolio of programs shall adhere to  
115 existing protocols for extraordinarily sensitive information. In addition, an energy efficiency program  
116 may be deemed to be "in the public interest" if the program provides measurable and verifiable energy  
117 savings to low-income customers or elderly customers.

118 "Measured and verified" means a process determined pursuant to methods accepted for use by  
119 utilities and industries to measure, verify, and validate energy savings and peak demand savings. This  
120 may include the protocol established by the United States Department of Energy, Office of Federal

Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects, measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

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

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

"Peak-shaving" means measures aimed solely 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.

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

*"Previously developed project site" means any property, including related buffer areas, if any, that has been previously disturbed or developed for non-single-family residential, non-agricultural, or non-silvicultural use, regardless of whether such property currently is being used for any purpose.*

*"Previously developed project site" includes a brownfield as defined in § 10.1-1230 or any parcel that has been previously used (i) for a retail, commercial, or industrial purpose; (ii) as a parking lot; (iii) as the site of a parking lot canopy or structure; (iv) for mining or quarrying; or (v) as a landfill.*

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

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

"Rooftop solar installation" means a distributed electric generation facility, storage facility, or generation and storage facility utilizing energy derived from sunlight, with a rated capacity of not less than 50 kilowatts, that is installed on the roof structure of an incumbent electric utility's commercial or industrial class customer, including host sites on commercial buildings, multifamily residential buildings, school or university buildings, and buildings of a church or religious body.

"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

182 retail customer.

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

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

188 **§ 56-585.1:4. Development of solar and wind generation capacity in the Commonwealth.**

189 A. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar  
190 or wind generation facilities located in the Commonwealth or off the Commonwealth's Atlantic  
191 shoreline, each having a rated capacity of at least one megawatt and having in the aggregate a rated  
192 capacity that does not exceed 5,000 megawatts, or (ii) the purchase by a public utility of energy,  
193 capacity, and environmental attributes from solar facilities described in clause (i) owned by persons  
194 other than a public utility is in the public interest, and the Commission shall so find if required to make  
195 a finding regarding whether such construction or purchase is in the public interest.

196 B. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar  
197 or wind generation facilities located in the Commonwealth or off the Commonwealth's Atlantic  
198 shoreline, each having a rated capacity of less than one megawatt, including rooftop solar installations  
199 with a capacity of not less than 50 kilowatts, and having in the aggregate a rated capacity that does not  
200 exceed 500 megawatts, or (ii) the purchase by a public utility of energy, capacity, and environmental  
201 attributes from solar facilities described in clause (i) owned by persons other than a public utility is in  
202 the public interest, and the Commission shall so find if required to make a finding regarding whether  
203 such construction or purchase is in the public interest.

204 C. The aggregate cap of 5,000 megawatts of rated capacity described in clause (i) of subsection A  
205 ~~and, the aggregate cap of 500 megawatts of rated capacity described in clause (i) of subsection B, and~~  
206 ~~the aggregate cap of 200 megawatts of rated capacity described in subsection G~~ are separate and  
207 independent from each other. The capacity of facilities in subsection B shall not be counted in  
208 determining the capacity of facilities in subsection A, ~~and or G~~; the capacity of facilities in subsection  
209 A shall not be counted in determining the capacity of facilities in subsection B ~~or G~~; ~~and the capacity~~  
210 ~~of facilities in subsection G shall not be counted in determining the capacity of facilities in subsection A~~  
211 ~~or B.~~

212 D. Twenty-five percent of the solar generation capacity placed in service on or after July 1, 2018,  
213 located in the Commonwealth, and found to be in the public interest pursuant to subsection A or B shall  
214 be from the purchase by a public utility of energy, capacity, and environmental attributes from solar  
215 facilities owned by persons other than a public utility. The remainder shall be construction or purchase  
216 by a public utility of one or more solar generation facilities located in the Commonwealth. All of the  
217 solar generation capacity located in the Commonwealth and found to be in the public interest pursuant  
218 to subsection A or B shall be subject to competitive procurement, provided that a public utility may  
219 select solar generation capacity without regard to whether such selection satisfies price criteria if the  
220 selection of the solar generating capacity materially advances non-price criteria, including favoring  
221 geographic distribution of generating capacity, areas of higher employment, or regional economic  
222 development, if such non-price solar generating capacity selected does not exceed 25 percent of the  
223 utility's solar generating capacity.

224 E. Construction, purchasing, or leasing activities for a test or demonstration project for a new  
225 utility-owned and utility-operated generating facility or facilities utilizing energy derived from offshore  
226 wind with an aggregate capacity of not more than 16 megawatts are in the public interest.

227 F. A utility may elect to petition the Commission, outside of a triennial review proceeding conducted  
228 pursuant to § 56-585.1, at any time for a prudency determination with respect to the construction or  
229 purchase by the utility of one or more solar or wind generation facilities located in the Commonwealth  
230 or off the Commonwealth's Atlantic Shoreline or the purchase by the utility of energy, capacity, and  
231 environmental attributes from solar or wind facilities owned by persons other than the utility. The  
232 Commission's final order regarding any such petition shall be entered by the Commission not more than  
233 three months after the date of the filing of such petition.

234 G. Prior to January 1, 2024, (i) the construction or purchase by a public utility of one or more solar  
235 or wind generation facilities located on a previously developed project site in the Commonwealth having  
236 in the aggregate a rated capacity that does not exceed 200 megawatts or (ii) the purchase by a public  
237 utility of energy, capacity, and environmental attributes from solar facilities described in clause (i)  
238 owned by persons other than a public utility, is in the public interest.