

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 528

An Act to amend and reenact §§ 56-88, 56-232, and 56-265.1 of the Code of Virginia, relating to public utilities; exemption for sale or delivery of landfill gas.

[H 792]

Approved April 6, 2000

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-88, 56-232, and 56-265.1 of the Code of Virginia are amended and reenacted as follows:

§ 56-88. Definitions.

In this chapter the following terms shall have the following meanings:

"Acquire" or "acquisition" includes any purchase or other acquisition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Company" means a corporation, a partnership, an association, a joint-stock company, a business trust or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or county.

"Dispose of" or "disposition" includes any sale or other disposition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Public utility" means any company which owns or operates facilities within the Commonwealth for the generation, transmission or distribution of electric energy for sale; for the production, transmission or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas for sale for heat, light or power, *but excluding any company described in subdivision (b) (8) of § 56-265.1*; or for the furnishing of sewerage facilities or water.

"Utility assets" means the facilities in place of any public utility or municipality for the production, transmission or distribution of electric energy or natural or manufactured gas, or for the furnishing of sewerage facilities or water.

"Utility security" means any note, draft, debenture, bond, share of stock, certificate, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, receiver's or trustee's certificate or any other instrument or interest commonly known as a security which is issued, assumed or guaranteed by any public utility or any company which would be a public utility if the facilities owned or operated by it were within the Commonwealth, or any company substantially engaged in the ownership of any of the aforesaid securities or in supplying management or advice to any of the aforesaid companies; or any certificate of deposit for, voting trust certificate for, certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase or acquire, any of the aforesaid securities.

§ 56-232. Public utility and schedules defined.

The term "public utility" as used in §§ 56-233 to 56-240 and 56-246 to 56-250 shall mean and embrace every corporation (other than a municipality), company, individual, or association of individuals or cooperative, their lessees, trustees, or receivers, appointed by any court whatsoever, that now or hereafter may own, manage or control any plant or equipment or any part of a plant or equipment within the Commonwealth for the conveyance of telephone messages or for the production, transmission, delivery, or furnishing of heat, chilled air, chilled water, light, power, or water, or sewerage facilities, either directly or indirectly, to or for the public.

But the term "public utility" as herein defined shall not be construed to include any corporation created under the provisions of Title 13.1 unless the articles of incorporation expressly state that the corporation is to conduct business as a public service company. Notwithstanding any provision of law to the contrary, no person, firm, corporation, or other entity shall be deemed a public utility or public service company, solely by virtue of engaging in production, transmission, or sale at retail of electric power as a qualifying small power producer using renewable or nondepletable primary energy sources within the meaning of regulations adopted by the Federal Energy Regulatory Commission in implementation of the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617) and not exceeding 7.5 megawatts of rated capacity, nor solely by virtue of serving as an aggregator of the production of such small power producers, provided that the portion of the output of any qualifying small power producer which is sold at retail shall not be sold to residential consumers. No qualifying small power producer, within the meaning of regulations adopted by the Federal Energy Regulatory Commission, shall be deemed a public utility within the meaning of Chapter 7 (§ 62.1-80 et seq.) of Title 62.1. The term "public utility" as herein defined shall not be construed to include any chilled water air-conditioning cooperative serving residences in less than a one square mile area, or any company

which is excluded from the definition of "public utility" by subdivision (b) (4) *or* (b) (8) of § 56-265.1.

Subject to the provisions of § 56-232.1, the term "schedules" as used in §§ 56-234 through 56-245 shall include schedules of rates and charges for service to the public and also contracts for rates and charges in sales at wholesale to other public utilities or for divisions of rates between public utilities, but shall not include contracts of telephone companies with the state government or contracts of other public utilities with municipal corporations or the federal or state government, or any contract executed prior to July 1, 1950.

§ 56-265.1. Definitions.

In this chapter the following terms shall have the following meanings:

(a) "Company" means a corporation, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or a county.

(b) "Public utility" means any company which owns or operates facilities within the Commonwealth of Virginia for the generation, transmission or distribution of electric energy for sale, for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of telephone service, sewerage facilities or water; however, the term "public utility" shall not include any of the following:

(1) Except as otherwise provided in § 56-265.3:1, any company furnishing sewerage facilities, geothermal resources or water to less than fifty customers. Any company furnishing water or sewer services to ten or more customers and excluded by this subdivision from the definition of "public utility" for purposes of this chapter nevertheless shall not abandon the water or sewer services unless and until approval is granted by the Commission or all the customers receiving such services agree to accept ownership of the company.

(2) Any company generating and distributing electric energy exclusively for its own consumption.

(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant, and (B) which does not charge separately or by meter for electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within thirty days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ 56-232 et seq.) and 17 (§ 56-509 et seq.) of this title and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.

(4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or delivery service, of natural or manufactured gas to fewer than thirty-five commercial or industrial customers, which are not themselves "public utilities" as defined in this chapter, for use solely by such purchasing customers at facilities which are not located in a territory for which a certificate to provide gas service has been issued by the Commission under this chapter and which, at the time of the Commission's receipt of the notice provided under § 56-265.4:5, are not located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, provided that such company shall comply with the provisions of § 56-265.4:5.

(5) Any company which is not a public service corporation and which provides compressed natural gas service at retail for the public.

(6) Any company selling landfill gas from a solid waste management facility permitted by the Department of Environmental Quality to a public utility certificated by the Commission to provide gas distribution service to the public in the area in which the solid waste management facility is located. If such company submits to the public utility a written offer for sale of such gas and the public utility does not agree within sixty days to purchase such gas on mutually satisfactory terms, then the company may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been liquefied. The provisions of this subdivision shall not apply to any city with a population of at least 64,000 but no more than 69,000 or any county with a population of at least 500,000.

(7) Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or industrial customer from a solid waste management facility permitted by the Department of Environmental Quality and operated by that same authority, if such an authority limits off-premises sale, transmission or delivery service of landfill gas to no more than one purchaser. The authority may contract with other persons for the construction and operation of facilities necessary or convenient to the sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located

within the certificated service territory of a natural gas public utility, the public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover the cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or both, that is derived from a solid waste management facility permitted by the Department of Environmental Quality and sold or delivered from any such facility to not more than one commercial or industrial purchaser or to a natural gas or electric public utility, municipal corporation or county as authorized by this section. If the purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility or within an area in which a municipal corporation provides gas distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such company shall submit to such public utility or municipal corporation a written offer for sale of that gas prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility or municipal corporation does not agree within sixty days following the date of the offer to purchase such landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill gas, electricity, or both, to a commercial or industrial purchaser, utility, municipal corporation, or county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover any cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(c) "Commission" means the State Corporation Commission.

(d) "Geothermal resources" means those resources as defined in § 45.1-179.2.