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SENATE BILL NO. 783

Offered January 12, 2005

Prefiled January 6, 2005

A BILL to amend and reenact § 56-46.1 of the Code of Virginia, relating to electrical transmission lines; State Corporation Commission consideration of underground placement of electrical transmission lines in certain localities.

Patrons—Mims; Delegates: May and Rust

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-46.1 of the Code of Virginia is amended and reenacted as follows:

§ 56-46.1. Commission to consider environmental, economic and improvements in service reliability factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearings.

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned with environmental protection; and if requested by any county or municipality in which the facility is proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (i) shall consider the effect of the proposed facility on economic development within the Commonwealth and (ii) shall consider any improvements in service reliability that may result from the construction of such facility.

B. No overhead electrical transmission line of 150 kilovolts or more shall be constructed unless the State Corporation Commission shall, after at least ~~thirty~~ 30 days' advance notice by (i) publication in a newspaper or newspapers of general circulation in the counties and municipalities through which the line is proposed to be built, (ii) written notice to the governing body of each such county and municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of property within the route of the proposed line, as indicated on the map or sketch of the route filed with the Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of the county or municipality, approve such line. Such approval shall not be required for transmission lines constructed prior to January 1, 1983, for which the Commission has issued a certificate of convenience and necessity. Such notices shall include a written description of the proposed route the line is to follow, as well as a map or sketch of the route. As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned and, in the case of any application which is filed with the Commission in the years 1991 and 1992, for approval of a line of 500 kilovolts or more, any portion of which is proposed for construction west of the Blue Ridge Mountains, that the applicant will reasonably accommodate requests to wheel or transmit power from new electric generation facilities constructed after January 9, 1991.

C. If, prior to such approval, any interested party shall request a public hearing, the Commission

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59 shall, as soon as reasonably practicable after such request, hold such hearing or hearings at such place as
60 may be designated by the Commission. In any hearing the public service company shall provide
61 adequate evidence that existing rights-of-way cannot adequately serve the needs of the company.

62 If, prior to such approval, written requests therefor are received from ~~twenty~~ 20 or more interested
63 parties, the Commission shall hold at least one hearing in the area which would be affected by
64 construction of the line, for the purpose of receiving public comment on the proposal. If any hearing is
65 to be held in the area affected, the Commission shall direct that a copy of the transcripts of any
66 previous hearings held in the case be made available for public inspection at a convenient location in the
67 area for a reasonable time before such local hearing.

68 D. For purposes of this section, "interested parties" shall include the governing bodies of any
69 counties or municipalities through which the line is proposed to be built, and persons residing or owning
70 property in each such county or municipality and "environment" or "environmental" shall be deemed to
71 include in meaning "historic," as well as a consideration of the probable effects of the line on the health
72 and safety of the persons in the area concerned.

73 For purposes of this section, "qualifying facilities" means a cogeneration or small power production
74 facility which meets the criteria of 18 C.F.R. Part 292; "public utility" means a public utility as defined
75 in § 56-265.1; and "reasonably accommodate requests to wheel or transmit power" means:

76 1. That the applicant will make available to new electric generation facilities constructed after
77 January 9, 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total
78 megawatts of the additional transmission capacity created by the proposed line, for the purpose of
79 wheeling to public utility purchasers the power generated by such qualifying facilities and other
80 nonutility facilities which are awarded a power purchase contract by a public utility purchaser in
81 compliance with applicable state law or regulations governing bidding or capacity acquisition programs
82 for the purchase of electric capacity from nonutility sources, provided that the obligation of the applicant
83 will extend only to those requests for wheeling service made within the ~~twelve~~ 12 months following
84 certification by the State Corporation Commission of the transmission line and with effective dates for
85 commencement of such service within the twelve months following completion of the transmission line.

86 2. That the wheeling service offered by the applicant, pursuant to subdivision D 1 of this section,
87 will reasonably further the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L.
88 95-617), as demonstrated by submitting to the Commission, with its application for approval of the line,
89 the cost methodologies, terms, conditions, and dispatch and interconnection requirements the applicant
90 intends, subject to any applicable requirements of the Federal Energy Regulatory Commission, to include
91 in its agreements for such wheeling service.

92 E. In the event that, at any time after the giving of the notice required in subsection B of this
93 section, it appears to the Commission that consideration of a route or routes significantly different from
94 the route described in the notice is desirable, the Commission shall cause notice of the new route or
95 routes to be published and mailed in accordance with subsection B of this section. The Commission
96 shall thereafter comply with the provisions of this section with respect to the new route or routes to the
97 full extent necessary to give interested parties in the newly affected areas the same protection afforded
98 interested parties affected by the route described in the original notice.

99 F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the
100 requirements of § 15.2-2232 and local zoning ordinances with respect to such transmission line.

101 G. The Commission shall enter into a memorandum of agreement with the Department of
102 Environmental Quality regarding the coordination of their reviews of the environmental impact of
103 electric generating plants and associated facilities.

104 *H. Whenever the Commission is required to consider the effects of an electrical transmission line to*
105 *be located in any city or county with a population of more than 225,000, based on the latest population*
106 *estimates of the Weldon Cooper Center for Public Service of the University of Virginia, and the*
107 *governing body of the city or county requests the Commission to consider requiring that the line be*
108 *located underground, then the Commission shall consider in its review of the proposed facility, in*
109 *addition to all other matters within the scope of its review pursuant to this section, the impact of such*
110 *transmission line if it were to be located underground. In addition to any other conditions that the*
111 *Commission may impose in connection therewith, if the Commission finds that underground location*
112 *would minimize adverse environmental impact and is otherwise in the public interest, the Commission*
113 *may condition its approval of the electrical transmission line upon the line being located underground.*
114 *If the Commission approves the construction of the electrical transmission line without imposing such a*
115 *condition, the Commission shall state, in its order approving the construction of the facility, its reason*
116 *or reasons for declining to impose such a condition.*