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HOUSE BILL NO. 657

Offered January 11, 2012

Prefiled January 11, 2012

A BILL to amend and reenact § 56-585.2 of the Code of Virginia, relating to electric utilities; renewable energy portfolio standard program.

Patrons—Rust, Toscano, Englin, Hope, Keam and Kory

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. Sale of electricity from renewable sources through a renewable energy portfolio standard program.

A. As used in this section:

"Renewable energy" shall have the same meaning ascribed to it in § 56-576, provided such renewable energy is (i) generated or purchased in the Commonwealth or in the *state or federal waters off its coast*; (ii) *wind or solar power purchased through a power purchase agreement entered into on or before July 1, 2012, 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; ~~(ii)~~ (iii) 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 a control area adjacent to such interconnection region; or ~~(iii)~~ (iv) represented by certificates issued by an affiliate of ~~such the~~ regional transmission entity *of which the participating utility is a member*, or any successor to such affiliate, and held or acquired by such utility, which validate the generation of renewable energy by eligible sources in ~~such region the Commonwealth~~ *or in the state or federal waters off its coast, provided such certificates are obtained from sources with an in-service date of or after July 1, 2007.* "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.

"Total *non-nuclear* 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.

B. Any investor-owned incumbent electric utility may apply to the Commission for approval to participate in 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.

C. It is in the public interest for utilities to achieve the goals set forth in subsection D, such goals being referred to herein as "RPS Goals". Accordingly, the Commission, in addition to providing recovery of incremental RPS program costs pursuant to subsection E, shall increase the fair combined rate of return on common equity for each utility participating in such program by a single Performance Incentive, as defined in subdivision A 2 of § 56-585.1, of 50 basis points whenever the utility attains an RPS Goal established in subsection D. Such Performance Incentive shall first be used in the calculation of a fair combined rate of return for the purposes of the immediately succeeding biennial review conducted pursuant to § 56-585.1 after any such RPS Goal is attained, and shall remain in effect if the utility continues to meet the RPS Goals established in this section through and including the third succeeding biennial review conducted thereafter. Any such Performance Incentive, if implemented, shall be in lieu of any other Performance Incentive reducing or increasing such utility's fair combined rate of return on common equity for the same time periods. However, if the utility receives any other Performance Incentive increasing its fair combined rate of return on common equity by more than 50 basis points, the utility shall be entitled to such other Performance Incentive in lieu of this Performance Incentive during the term of such other Performance Incentive. A utility shall receive double credit toward meeting the renewable energy portfolio standard for energy derived from sunlight or from onshore wind, and triple credit toward meeting the renewable energy portfolio standard for energy derived from offshore wind.

D. To qualify for the Performance Incentive established in subsection C, the total *non-nuclear* electric energy sold by a utility to meet the RPS Goals shall be composed of the following amounts of

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59 electric energy from renewable energy sources, as adjusted for any sales volumes lost through operation
60 of the customer choice provisions of subdivision A 3 or A 4 of § 56-577:

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

62 RPS Goal II: For calendar years 2011 through 2015, inclusive, an average of 4 percent of total
63 *non-nuclear* electric energy sold in the base year, and in calendar year 2016, 7 percent of total
64 *non-nuclear* electric energy sold in the base year. *A utility shall permanently retire one renewable*
65 *energy certificate for each megawatt hour or renewable energy certificate claimed for compliance with*
66 *this goal.*

67 RPS Goal III: For calendar years 2017 through 2021, inclusive, an average of 7 percent of total
68 *non-nuclear* electric energy sold in the base year, and in calendar year 2022, 12 percent of total
69 *non-nuclear* electric energy sold in the base year. *A utility shall permanently retire one renewable*
70 *energy certificate for each megawatt hour or renewable energy certificate claimed for compliance with*
71 *this goal. At least 20 percent of the energy or certificates in a utility's compliance demonstration shall*
72 *be attributable to a combination of energy derived from sunlight, onshore wind, or offshore wind.*

73 RPS Goal IV: For calendar years 2023 and 2024, inclusive, an average of 12 percent of total
74 *non-nuclear* electric energy sold in the base year, and in calendar year 2025, 15 percent of total
75 *non-nuclear* electric energy sold in the base year. *A utility shall permanently retire one renewable*
76 *energy certificate for each megawatt hour or renewable energy certificate claimed for compliance with*
77 *this goal. At least 40 percent of the energy or certificates in a utility's compliance demonstration shall*
78 *be attributable to a combination of energy derived from sunlight, onshore wind, or offshore wind.*

79 A utility may apply renewable energy sales achieved or renewable energy certificates acquired during
80 the periods covered by any such RPS Goal that are in excess of the sales requirement for that RPS Goal
81 to the sales requirements for any future RPS Goal.

82 E. A utility participating in such program shall have the right to recover all incremental costs
83 incurred for the purpose of such participation in such program, as accrued against income, through rate
84 adjustment clauses as provided in subdivisions A 5 and A 6 of § 56-585.1, including, but not limited to,
85 administrative costs, ancillary costs, capacity costs, costs of energy represented by certificates described
86 in subsection A, and, in the case of construction of renewable energy generation facilities, allowance for
87 funds used during construction until such time as an enhanced rate of return, as determined pursuant to
88 subdivision A 6 of § 56-585.1, on construction work in progress is included in rates, projected
89 construction work in progress, planning, development and construction costs, life-cycle costs, and costs
90 of infrastructure associated therewith, plus an enhanced rate of return, as determined pursuant to
91 subdivision A 6 of § 56-585.1. All incremental costs of the RPS program shall be allocated to and
92 recovered from the utility's customer classes based on the demand created by the class and within the
93 class based on energy used by the individual customer in the class, except that the incremental costs of
94 the RPS program shall not be allocated to or recovered from customers that are served within the large
95 industrial rate classes of the participating utilities and that are served at primary or transmission voltage.

96 F. A utility participating in such program shall apply towards meeting its RPS Goals any renewable
97 energy from existing renewable energy sources owned by the participating utility or purchased as
98 allowed by contract at no additional cost to customers to the extent feasible. A utility participating in
99 such program shall not apply towards meeting its RPS Goals renewable energy certificates attributable to
100 any renewable energy generated at a renewable energy generation source in operation as of July 1, 2007,
101 that is operated by a person that is served within a utility's large industrial rate class and that is served
102 at primary or transmission voltage. A participating utility shall be required to fulfill any remaining
103 deficit needed to fulfill its RPS Goals from new renewable energy supplies at reasonable cost and in a
104 prudent manner to be determined by the Commission at the time of approval of any application made
105 pursuant to subsection B. A participating utility may sell renewable energy certificates produced at its
106 own generation facilities located in the Commonwealth or, if located outside the Commonwealth, owned
107 by such utility and in operation as of January 1, 2010, or renewable energy certificates acquired as part
108 of a purchase power agreement, to another entity and purchase lower cost renewable energy certificates
109 and the net difference in price between the renewable energy certificates shall be credited to customers.
110 Utilities participating in such program shall collectively, either through the installation of new generating
111 facilities, through retrofit of existing facilities or through purchases of electricity from new facilities
112 located in Virginia, use or cause to be used no more than a total of 1.5 million tons per year of green
113 wood chips, bark, sawdust, a tree or any portion of a tree which is used or can be used for lumber and
114 pulp manufacturing by facilities located in Virginia, towards meeting RPS goals, excluding such fuel
115 used at electric generating facilities using wood as fuel prior to January 1, 2007. A utility with an
116 approved application shall be allocated a portion of the 1.5 million tons per year in proportion to its
117 share of the total *non-nuclear* electric energy sold in the base year, as defined in subsection A, for all
118 utilities participating in the RPS program. A utility may use in meeting RPS goals, without limitation,
119 the following sustainable biomass and biomass based waste to energy resources: mill residue, except
120 wood chips, sawdust and bark; pre-commercial soft wood thinning; slash; logging and construction

121 debris; brush; yard waste; shipping crates; dunnage; non-merchantable waste paper; landscape or
122 right-of-way tree trimmings; agricultural and vineyard materials; grain; legumes; sugar; and gas produced
123 from the anaerobic decomposition of animal waste.

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

127 H. Each investor-owned incumbent electric utility shall report to the Commission annually by
128 November 1 on (i) its efforts, if any, to meet the RPS Goals, (ii) its overall generation of renewable
129 energy, and (iii) advances in renewable generation technology that affect activities described in clauses
130 (i) and (ii).