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HOUSE BILL NO. 2390

Offered January 18, 2017

A BILL to amend and reenact § 1 of the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013, relating to pilot programs for third party power purchase agreements; institutions of higher education.

Patrons—Kilgore and Toscano

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 1 of the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013 is amended and reenacted as follows:

§ 1. That the State Corporation Commission (Commission) shall conduct ~~a~~ pilot ~~program~~ *programs* under which a person that owns or operates a solar-powered or wind-powered electricity generation facility located on premises owned or leased by an eligible customer-generator, as defined in § 56-594 of the Code of Virginia, shall be permitted to sell the electricity generated from such facility exclusively to such eligible customer-generator under a power purchase agreement used to provide third party financing of the costs of such a renewable generation facility (third party power purchase agreement), subject to the following terms, conditions, and restrictions:

a. ~~The~~ *A* pilot program shall be conducted within the certificated service territory of ~~an~~ *each* investor-owned electric utility ~~that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, which utility is hereafter referred to as the~~ *(*"Pilot Utility"*), provided that within the certificated service territory of an investor-owned utility that was not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, nonprofit, private institutions of higher education as defined in § 23.1-100 of the Code of Virginia shall be deemed to be customer-generators eligible to participate in the pilot program*;

b. The aggregated capacity of all generation facilities that are subject to such third party power purchase agreements at any time during the pilot program shall not exceed 50 megawatts *for an investor-owned utility that was bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, or 10 megawatts for an investor-owned utility that was not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002*. Such limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of one percent of ~~the~~ *each* Pilot Utility's adjusted Virginia peak-load forecast for the previous year that is available to eligible customer-generators pursuant to subsection E of § 56-594 of the Code of Virginia. Notwithstanding any provision of this act that incorporates provisions of § 56-594, the seller and the customer shall elect either to (i) enter into their third party power purchase agreement subject to the conditions and provisions of the Pilot Utility's net energy metering program under § 56-594 or (ii) provide that electricity generated from the generation facilities subject to the third party power purchase agreement will not be net metered under § 56-594, provided that an election not to net meter under § 56-594 shall not exempt the third party power purchase agreement and the parties thereto from the requirements of this act that incorporate provisions of § 56-594;

c. A solar-powered or wind-powered generation facility with a capacity of no less than 50 kilowatts and no more than one megawatt shall be eligible for a third party power purchase agreement under the pilot program; however, if the customer under such agreement is an entity with tax-exempt status in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended, then such facility is eligible for the pilot program even if it does not meet the 50 kilowatts minimum size requirement. The maximum generation capacity of one megawatt shall not affect the limits on the capacity of electrical generating capacities of 20 kilowatts for residential customers and 500 kilowatts for nonresidential customers set forth in subsection B of § 56-594 of the Code of Virginia, which limitations shall continue to apply to net energy metering generation facilities regardless of whether they are the subject of a third party power purchase agreement under the pilot program;

d. A generation facility that is the subject of a third party power purchase agreement under the pilot program shall serve only one customer, and a third party power purchase agreement shall not serve multiple customers;

e. The customer under a third party power purchase agreement under the pilot program shall be subject to the interconnection and other requirements imposed on eligible customer-generators pursuant to subsection C of § 56-594 of the Code of Virginia, including the requirement that the customer bear

the reasonable costs, as determined by the Commission, of the items described in clauses (i), (ii), and (iii) of such subsection;

f. A third party power purchase agreement under the pilot program shall not be valid unless it conforms in all respects to the requirements of the pilot program conducted under the provisions of this act and unless the Commission and the Pilot Utility are provided written notice of the parties' intent to enter into a third party power purchase agreement not less than 30 days prior to the agreement's proposed effective date; and

g. An affiliate of the Pilot Utility shall be permitted to offer and enter into third party power purchase arrangements on the same basis as may any other person that satisfies the requirements of being a seller under a third party power purchase agreement under the pilot program.