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SENATE BILL NO. 1393

Offered January 11, 2017

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A *BILL to amend the Code of Virginia by adding a section numbered 56-585.1:3, relating to electric utility regulation; pilot programs for community solar development.*

Patrons—Wagner, Wexton, Ebbin and McPike

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 56-585.1:3 as follows:****§ 56-585.1:3. Pilot programs for community solar development.**

A. As used in this section:

"Eligible generation facility" means an electrical generation facility that:

1. Exclusively uses energy derived from sunlight;

2. Is placed in service on or after July 1, 2017;

3. Is not constructed by an investor-owned utility and either (i) is acquired by an investor-owned utility through an asset purchase agreement or (ii) is subject to a power purchase agreement under which an investor-owned utility purchases the facility's output from a third party; and

4. Has a generating capacity of:

a. Not more than two megawatts; or

b. More than two megawatts if not more than two megawatts of the output from the electrical generation facility is selected in an investor-owned utility's RFP for dedication to its pilot program.

"Generating capacity" means an electrical generation facility's nameplate rated capacity measured in direct current megawatts.

"Investor-owned utility" means an electric utility that is a Phase I Utility or a Phase II Utility.

"Participating generating facility" means an eligible generation facility that is selected by an investor-owned utility through its RFP for inclusion in its pilot program.

"Participating utility" means (i) each investor-owned utility and (ii) any utility consumer services cooperative that elects to conduct a pilot program under subsection C.

"Phase I Utility" means an investor-owned incumbent electric utility that was, as of July 1, 1999, not bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002.

"Phase II Utility" means an investor-owned incumbent electric utility that was, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002.

"Pilot program" means a community solar pilot program conducted by a participating utility pursuant to this section following approval by the Commission, under which the participating utility sells electric power to subscribing customers under a voluntary companion rate schedule and the participating utility generates or purchases electric power from participating generation facilities selected by the participating utility.

"Pilot program costs" means all of a participating utility's identified, projected, and actual costs of its pilot program, including costs for (i) purchased power; (ii) renewable and other environmental attributes; (iii) transmission and distribution services; (iv) generating capacity and energy balancing; (v) RFP process costs; (vi) administrative and marketing charges; (vii) capital costs and operations and maintenance expenses related to building, owning, and operating eligible generating facilities; and (viii) a reasonable margin, which margin shall be the weighted average cost of capital.

"Pilot program period" means the three-year period ending three years following the date the first subscription is entered into by a customer.

"RFP" means the request for proposal process conducted by an investor-owned utility.

"Small eligible generation facility" means an eligible generation facility with a generating capacity of less than 0.5 megawatt.

"Utility aggregation cooperative" has the same meaning ascribed to "cooperative" in § 56-231.38.

"Utility consumer services cooperative" has the same meaning ascribed to "cooperative" in § 56-231.15.

"Voluntary companion rate schedule" means a rate schedule approved by the Commission upon application by a participating utility that provides for the recovery of the pilot program costs by the participating utility.

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59 *B. Notwithstanding the provisions of subsection B of § 56-234 and §§ 56-249.6 and 56-585.1, each*
60 *investor-owned utility shall conduct a pilot program for retail customers as follows:*

61 *1. Each investor-owned utility shall design its own pilot program and within six months of receiving*
62 *Commission approval shall make subscriptions for participation in its pilot program available to its*
63 *retail customers on a voluntary basis.*

64 *2. An investor-owned utility shall select eligible generating facilities for dedication to its pilot*
65 *program through an RFP process, under which process:*

66 *a. Each investor-owned utility shall have issued one or more public RFPs for eligible generating*
67 *facilities and the purchase of all energy output and associated renewable energy certificates and other*
68 *environmental attributes.*

69 *b. Each RFP shall:*

70 *(1) State the price and non-price criteria used by the investor-owned utility in selecting proposals for*
71 *dedication to its pilot program; and*

72 *(2) Require as a criteria for selection that eligible generating facilities with a combined generating*
73 *capacity of not less than two megawatts, and any eligible generating facility with a generating capacity*
74 *of more than two megawatts, be first placed in service on or after July 1, 2017.*

75 *c. Each investor-owned utility is authorized to select, under an asset purchase or power purchase*
76 *agreement, small eligible generating facilities for dedication to its pilot program without regard to*
77 *whether price criteria are satisfied by their selection if the selection of the small eligible generating*
78 *facilities materially advances non-price criteria, including a criterion favoring geographic distribution of*
79 *eligible generating facilities, provided that the generating capacity of small eligible generating facilities*
80 *does not exceed 25 percent of the utility's pilot program's minimum generating capacity specified in*
81 *subdivision 3.*

82 *d. An investor-owned utility shall not select through its RFP an electrical generation facility with a*
83 *generating capacity of more than two megawatts for its pilot program unless (i) the costs can be*
84 *appropriately documented for the portion of the facility's output, which portion shall not exceed two*
85 *megawatts, that is dedicated to the pilot program and (ii) the portion of the facility's generating*
86 *capacity selected pursuant to this subdivision does not exceed 25 percent of the investor-owned utility's*
87 *pilot program's minimum generating capacity specified in subdivision 3. The portion of the facility's*
88 *generating capacity that exceeds the portion of the facility's generating capacity that is selected*
89 *pursuant to this subdivision shall not be applied in determining whether the pilot program satisfies*
90 *requirements of subdivision 3 regarding a pilot program's minimum generating capacity.*

91 *e. In selecting eligible generating facilities for dedication to its pilot program, an investor-owned*
92 *utility shall give due consideration to relative costs, economic development benefits, and geographic*
93 *diversity of eligible generating facilities.*

94 *f. The investor-owned utility's application to the Commission shall include a description of the*
95 *application of the price and non-price criteria in the investor-owned utility's selection of participating*
96 *generating facilities from among the proposals submitted in response to the RFP.*

97 *3. The amount of generating capacity of the eligible generating facilities in an investor-owned*
98 *utility's pilot program shall not be less than (i) four megawatts if the pilot program is conducted by a*
99 *Phase I Utility or (ii) 25 megawatts if the pilot program is conducted by a Phase II Utility.*

100 *4. The amount of generating capacity of the eligible generating facilities in an investor-owned*
101 *utility's pilot program shall not exceed (i) 10 megawatts if the pilot program is conducted by a Phase I*
102 *Utility or (ii) 40 megawatts if the pilot program is conducted by a Phase II Utility.*

103 *5. An investor-owned utility shall have the option of increasing the amount of generating capacity of*
104 *the eligible generating facilities in its pilot program above the amount most recently approved by the*
105 *Commission, in such increments as the investor-owned utility elects, as follows:*

106 *a. Any such increase shall not result in an amount of generating capacity that exceeds the cap*
107 *specified for the investor-owned utility's pilot program under subdivision 4;*

108 *b. No such increase shall be authorized until such time that 90 percent of the amount of generating*
109 *capacity of the eligible generating facilities then approved for its pilot program has been subscribed by*
110 *customers through the investor-owned utility's voluntary companion rate schedule;*

111 *c. An investor-owned utility may seek any number of increases in the amount of generating capacity*
112 *of the eligible generating facilities in its pilot program, subject to the conditions in subdivisions a and*
113 *b; and*

114 *d. The investor-owned utility shall select eligible generating facilities for any increase in the*
115 *generating capacity of its pilot program through an RFP process that complies with the requirements of*
116 *subdivision 2.*

117 *6. Each pilot program shall expire at the end of its pilot program period, unless renewed or made*
118 *permanent.*

119 *7. The renewable energy certificates and other environmental attributes associated with the voluntary*
120 *companion rate schedule shall be retired by the investor-owned utility on the subscribing customer's*

121 behalf.

122 8. An investor-owned utility shall recover all its pilot program costs through its voluntary companion
123 rate schedule. However, pilot program costs that are not recovered through the voluntary companion
124 rate schedule shall be recoverable from customers through the utility's annual proceeding pursuant to
125 § 56-249.6 or subdivision A 6 of § 56-585.1. The pilot program costs of an investor-owned utility shall
126 be recovered entirely from the utility's Virginia customers.

127 9. At the conclusion of the pilot program period, to the extent that the pilot program is not made
128 permanent or extended, each participating generating facility shall cease to be part of the pilot
129 program. If the participating generating facility is a utility-owned generation facility, the facility shall
130 continue to operate as a utility-owned generating facility, the costs for which shall be recoverable from
131 customers through the utility's annual proceeding pursuant to § 56-249.6 or subdivision A 6 of
132 § 56-585.1. If the participating generating facility is owned by a third party, the facility shall continue
133 to provide power to the investor-owned utility pursuant to the terms of the power purchase agreement
134 under which the participating generating facility was selected. Such power purchase agreements shall
135 remain in effect for the duration of the agreement's term, the costs for which shall be recoverable from
136 customers through the utility's annual proceeding pursuant to § 56-249.6 or subdivision A 6 of
137 § 56-585.1.

138 10. Any fixed generation costs and fixed purchased power costs shall remain fixed for subscribing
139 customers throughout the duration of the subscribing customers' continuous and uninterrupted
140 participation in the voluntary companion rate schedule. A subscribing customer's participation in the
141 voluntary companion rate schedule shall be deemed to be continuous and uninterrupted notwithstanding
142 a change in the location where the customer receives service if the new location continues to be within
143 the investor-owned utility's service territory and the customer provides the investor-owned utility with
144 notice of the change prior to or within 90 days following the change. Investor-owned utilities are
145 authorized to decrease the generation or purchased power rate, or both, at any time to reflect cost
146 reductions, if any, subject to Commission review. If, pursuant to subdivision 9, the pilot program is not
147 made permanent or continued, the subscribing customers' subscriptions to the voluntary companion rate
148 schedule shall survive the termination of the pilot program.

149 11. A subscribing customer's usage that exceeds the amount subscribed for under the voluntary
150 companion rate schedule shall be billed under the customer's applicable standard rate.

151 12. An investor-owned utility shall not require a subscribing customer to enter an agreement or
152 subscription for participation in a pilot program of more than 12 months' duration unless the
153 subscribing customer's subscription exceeds 100 kW, or its equivalent in kWh, at the time the customer
154 initially enters into the agreement or subscription.

155 C. Notwithstanding the provisions of subsection B of § 56-234 and §§ 56-249.6 and 56-585.1, upon
156 application of a utility consumer services cooperative the Commission shall review a proposal submitted
157 by the cooperative for a voluntary companion rate schedule. If the Commission finds that the proposal
158 is reasonable and prudent, it shall approve the voluntary companion rate schedule for the cooperative to
159 conduct a pilot program pursuant to this section. No utility consumer services cooperative shall be
160 required to conduct a pilot program pursuant to this section. In making an application to the
161 Commission pursuant to this subsection, a utility consumer services cooperative shall have flexibility to
162 design its voluntary companion rate schedule in a manner that, notwithstanding anything to the contrary
163 in this section, provides the cooperative the ability to:

164 1. Construct or purchase its generating facilities, or dedicate a portion of its existing power supply
165 portfolio, for its community solar pilot program along with one or more other utility consumer services
166 cooperatives, one or both Phase I or Phase II Utilities, or a utility aggregation cooperative, through
167 requests for proposal or through a contract with a third party or a utility aggregation cooperative;

168 2. If constructing or purchasing its generating facilities, or dedicating a portion of its existing power
169 supply portfolio, for its pilot program through a utility aggregation cooperative, include generating
170 facilities that may be already in service or may be first placed into service at any time;

171 3. Utilize generating facilities of any generating capacity for its pilot program;

172 4. Physically locate the generating facilities used for the pilot program inside or outside of its
173 certificated service territory;

174 5. Design its voluntary companion rate schedule in coordination with one or more utility consumer
175 services cooperatives, such that participating subscribers from both cooperatives subscribe to an
176 identical rate schedule;

177 6. Permanently end its pilot program for all subscribers according to the terms of the voluntary
178 companion rate schedule; and

179 7. Recover pilot program costs that are not recovered through the voluntary companion rate
180 schedule through inclusion in the cooperative's cost of purchased power.

181 D. The participation of retail customers in a pilot program administered by a participating utility in

182 *the Commonwealth is in the public interest. Voluntary companion rate schedules approved by the*
183 *Commission pursuant to this section are necessary in order to acquire information which is in*
184 *furtherance of the public interest. The Commission shall approve the recovery of pilot program costs*
185 *that it deems to be reasonable and prudent. The Commission shall also approve the pilot program*
186 *design, the voluntary companion rate schedule, and the portfolio of participating generating facilities.*
187 *No Commission review or approval of individual participating generating facilities, agreements, sites, or*
188 *RFPs shall be required pursuant to this section or any other section of the Code.*

189 *E. Any voluntary companion rate schedule approved by the Commission pursuant to this section shall*
190 *not be considered a tariff for electric energy provided 100 percent from renewable energy pursuant to*
191 *§ 56-577.*

192 *F. Each participating utility shall report on the status of its pilot program, including the number of*
193 *subscribing customers, to the Governor, the Commission, and the Chairmen of the House and Senate*
194 *Commerce and Labor Committees. The report shall be filed the earlier of (i) three years after the date a*
195 *customer of the participating utility first subscribes to its pilot program or (ii) July 1, 2022.*

196 **2. That the provisions of this act do not abridge, amend, repeal, or otherwise affect any**
197 **applications brought before the State Corporation Commission or programs and tariffs approved**
198 **by the Commission pursuant to any section of the Code of Virginia that is not enacted by this act.**

199 **3. That prior to submitting a proposed community solar pilot program to the Commission for**
200 **approval, each Phase I and Phase II Utility, as defined in § 56-585.1:3 of the Code of Virginia, as**
201 **created by this act, shall examine, in cooperation with representatives of relevant governmental,**
202 **nonprofit, and for-profit entities, options to facilitate the subscription by low-income customers to**
203 **the utility's community solar pilot program. The utility may apply to governmental, nonprofit, and**
204 **for-profit entities for grants, sponsorships, donations, or other funds to be applied to the specific**
205 **purpose of lowering the costs to low-income customers of subscribing to the utility's community**
206 **solar pilot program.**