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HOUSE BILL NO. 1252

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor on February 26, 2018)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by the first enactment of Chapter 803 of the Acts of Assembly of 2017, and to repeal the second enactment of Chapter 803 of the Acts of Assembly of 2017, relating to pilot programs for certain power purchase agreements.

Be it enacted by the General Assembly of Virginia:

1. That the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by the first enactment of Chapter 803 of the Acts of Assembly of 2017, is amended and reenacted as follows:

§ 1. That the State Corporation Commission (Commission) shall conduct pilot 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. A pilot program shall be conducted within the certificated service territory of each investor-owned electric utility ~~other than a utility described in subsection G of § 56-580 of the Code of Virginia~~ ("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, *only entities that are not being served by generation provided under subdivision A 5 of § 56-577 of the Code of Virginia and are (i) exempt from paying federal income tax under § 501(c)(3) of the Internal Revenue Code of 1954, as amended; (ii) governmental instrumentalities of the Commonwealth as defined in § 2.2-5000 of the Code of Virginia; (iii) elementary and secondary or middle schools as defined in § 22.1-1 of the Code of Virginia; or (iv) public or* nonprofit, private institutions of higher education as defined in § 23.1-100 of the Code of Virginia ~~that are not being served by generation provided under subdivision A 5 of § 56-577 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 seven 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 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*, provided that no election pursuant to this clause (ii) shall enable an eligible customer-generator to, at the same time, be a small agricultural generator pursuant to § 56-594.2*;

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~~ *one megawatt* 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~~ *a* pilot program shall serve only one customer, and a third party power purchase agreement shall not serve multiple customers. *Such generation facility shall comply with the conditions of interconnection as described in 20VAC5-315-40*;

e. The customer under a third party power purchase agreement under ~~the~~ *a* 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~~ *a* pilot program shall not be valid unless it conforms in all respects to the requirements of ~~the~~ *a* 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~~ *agreements* 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~~ *a* pilot program.

§ 2. The Commission shall review the pilot ~~program~~ *programs* established pursuant to § 1 of this act in ~~2015~~ *2018* and every two years thereafter during the pilot program. In its review, the Commission shall determine whether the limitations in subdivisions b and c of § 1 should be expanded, reduced, or continued.

§ 3. Any third party power purchase agreement that is not entered into pursuant to ~~the~~ *a* pilot program established pursuant to § 1 of this act is prohibited in the Pilot Utility's service territory, unless such third party power purchase agreement is entered into between a licensed supplier and a retail customer pursuant to § 56-577 of the Code of Virginia where such supplier is responsible for serving 100 percent of the load requirements for each retail customer account it serves.

§ 4. If the Commission approves a tariff proposed for electric power provided 100 percent from renewable energy that serves 100 percent of the load requirements for each retail customer account it serves under such tariff, hereafter referred to as a "green tariff," such a green tariff shall not be available to any party to a third party power purchase agreement for the account being served by such power purchase agreement, and such an agreement shall remain in effect notwithstanding the approval of the green tariff.

§ 5. Nothing in this act shall be construed as (i) rendering any person, by virtue of its selling electric power to an eligible customer-generator under a third party power purchase agreement entered into pursuant to ~~the~~ *a* pilot program established under this act, a public utility or a competitive service provider, (ii) imposing a requirement that such a person meet 100 percent of the load requirements for each retail customer account it serves, ~~or~~ (iii) affecting third party power purchase agreements in effect prior to the effective date of this act, *or (iv) affecting any third party power purchase agreements in effect as of July 1, 2018, that are based upon predecessor versions of this act.*

2. That the second enactment of Chapter 803 of the Acts of Assembly of 2017 is repealed.

3. That nothing in this act shall abridge any rights of either party to an agreement between a Pilot Utility, as defined in the first enactment of this act, and a group purchasing organization acting on behalf of Virginia local governments regarding the purchase of electric service.

4. That the State Corporation Commission shall, by December 1, 2018, establish guidelines concerning (i) information to be provided in notices required under subdivision f of § 1 of the first enactment of this act and (ii) procedures for aggregating and posting to the Commission's website information derived from the aforesaid notices, including total capacity utilized by pilot projects for which notice has been received and capacity remaining available for future pilot projects. In addition, the Commission may adopt such rules or establish such guidelines as may be necessary for its general administration of a pilot program established under this act.