

19102468D

## SENATE BILL NO. 1460

Offered January 9, 2019

Prefiled January 8, 2019

*A BILL to amend and reenact § 1, as amended by the first enactment of Chapter 803 of the Acts of Assembly of 2017, and §§ 2 through 5 of the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013 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.*

Patron—McClellan

Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:**

**1. That § 1, as amended by the first enactment of Chapter 803 of the Acts of Assembly of 2017, and §§ 2 through 5 of the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013 are 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, ~~nonprofit, private education 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~~ 150 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~~ 21 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;

c. A solar-powered or wind-powered generation facility with a capacity of no less than 50 kilowatts and no more than ~~one megawatt~~ three megawatts shall be eligible for a third party power purchase agreement under ~~the~~ a 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~~ three megawatts 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~~ a 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;

INTRODUCED

SB1460

59 e. The customer under a third party power purchase agreement under ~~the~~ a pilot program shall be  
60 subject to the interconnection and other requirements imposed on eligible customer-generators pursuant  
61 to subsection C of § 56-594 of the Code of Virginia, including the requirement that the customer bear  
62 the reasonable costs, as determined by the Commission, of the items described in clauses (i), (ii), and  
63 (iii) of such subsection;

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

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

72 § 2. The Commission shall review the pilot ~~program~~ *programs* established pursuant to § 1 of this act  
73 in ~~2015~~ 2019 and every two years thereafter during the pilot program. In its review, the Commission  
74 shall determine whether the limitations in subdivisions b and c of § 1 should be expanded, reduced, or  
75 continued.

76 § 3. Any third party power purchase agreement that is not entered into pursuant to ~~the~~ a pilot  
77 program established pursuant to § 1 of this act is prohibited in the Pilot Utility's service territory, unless  
78 such third party power purchase agreement is entered into between a licensed supplier and a retail  
79 customer pursuant to § 56-577 of the Code of Virginia where such supplier is responsible for serving  
80 100 percent of the load requirements for each retail customer account it serves.

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

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

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

94 **3. That nothing in this act shall abridge any rights of either party to an agreement between an**  
95 **investor-owned utility and a group purchasing organization acting on behalf of Virginia local**  
96 **government regarding the purchase of electric service.**

97 **4. That the State Corporation Commission shall, by December 1, 2019, update its guidelines**  
98 **concerning (i) information to be provided in notices required under subdivision f of § 1 of the first**  
99 **enactment of this act and (ii) procedures for aggregating and posting to the Commission's website**  
100 **information derived from the aforesaid notices, including total capacity utilized by pilot projects**  
101 **for which notice has been received and capacity remaining available for future pilot projects, as is**  
102 **required to address the provisions of this act. In addition, the Commission may update its rules or**  
103 **guidelines as may be necessary for its general administration of the pilot program as amended by**  
104 **the provisions of this act.**