20107899D

# HOUSE BILL NO. 1647

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Labor and Commerce on February 6, 2020)

(Patron Prior to Substitute—Delegate Jones)

*A BILL to amend and reenact §§ 56-1.2, 56-265.1, 56-585.1:3, 56-585.1:8, and 56-594 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 15.2-2109.4, 56-1.2:2, 56-232.2:2, 56-585.1:11, 56-585.1:12, and 56-585.1:13, and to repeal Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017, relating to the regulation of retail sales of electricity under third-party sales agreements, net energy metering, and community solar facilities.*

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

**1. That §§ 56-1.2, 56-265.1, 56-585.1:3, 56-585.1:8, and 56-594 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 15.2-2109.4, 56-1.2:2, 56-232.2:2, 56-585.1:11, 56-585.1:12, and 56-585.1:13 as follows:**

***§ 15.2-2109.4. Installation by localities of solar and wind energy facilities; use of electricity generated.***

*Notwithstanding any provision of § 56-594 or § 56-585.1:8, any locality that is a nonjurisdictional customer of an investor-owned electric utility may (i) install solar-powered or wind-powered electric generation facilities with a rated capacity not exceeding five megawatts, whether the facilities are owned by the locality or owned and operated by a third party pursuant to a contract with the locality, on any locality-owned site within the locality and (ii) credit the electricity generated at a facility described in clause (i) as directed by the governing body of the locality to any one or more of the metered accounts of buildings or other facilities of the locality or the locality's public school division that are located within the locality, without regard to whether the buildings and facilities are located at the same site where the electric generation facility is located or at a site contiguous thereto. The amount of the credit for such electricity to the metered accounts of the locality or its public school division shall be identical, with respect to the rate structure, all retail rate components, and monthly charges, to the amount the locality or public school division would otherwise be charged for such amount of electricity under its contract with the public utility, without the assessment by the public utility of any distribution charges, service charges, or fees in connection with or arising out of such crediting.*

**§ 56-1.2. Persons, localities, and school boards not designated as public utility, public service corporation, etc.**

The terms public utility, public service corporation, or public service company, as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) of this title, shall not refer to:

1. Any person who owns or operates property and provides electricity, natural gas, water, or sewer service to residents or tenants on the property, provided that (i) the electricity, natural gas, water, or sewer service provided to the residents or tenants is purchased by the person from a public utility, public service corporation, public service company, or person licensed by the Commission as a competitive provider of energy services, or a county, city or town, or other publicly regulated political subdivision or public body, (ii) the person or his agent charges to the resident or tenant on the property only that portion of the person's utility charges for the electricity, natural gas, water, or sewer service which is attributable to usage by the resident or tenant on the property, and additional service charges permitted by § 55.1-1212 or 55.1-1404, as applicable, and (iii) the person maintains three years' billing records for such charges.

2. Any (i) person who is not a public service corporation and who provides electric vehicle charging service at retail, (ii) school board that operates retail fee-based electric vehicle charging stations on school property pursuant to § 22.1-131, (iii) locality that operates a retail fee-based electric vehicle charging station on property owned or leased by the locality pursuant to § 15.2-967.2, or (iv) board of visitors of any baccalaureate public institution of higher education that operates a retail fee-based electric vehicle charging station on the grounds of such institution pursuant to § 23.1-1301.1. The ownership or operation of a facility at which electric vehicle charging service is sold, and the selling of electric vehicle charging service from that facility, does not render such person, school board, locality, or board of visitors a public utility, public service corporation, or public service company as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale, ownership, or operation.

3. The Department of Conservation and Recreation when operating a retail fee-based electric vehicle charging station on property of any existing state park or similar recreational facility the Department

controls pursuant to § 10.1-104.01. The ownership or operation of a facility at which electric vehicle charging service is sold, or the selling of electric vehicle charging service from that facility, does not render the Department of Conservation and Recreation a public utility, public service corporation, or public service company as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale, ownership, or operation.

4. The Chancellor of the Virginia Community College System when operating a retail fee-based electric vehicle charging station on the grounds of any comprehensive community college pursuant to § 23.1-2908.1. The ownership or operation of a facility at which electric vehicle charging service is sold, or the selling of electric vehicle charging service from that facility, does not render the Chancellor of the Virginia Community College System a public utility, public service corporation, or public service company as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale, ownership, or operation.

5. The Department of General Services, Department of Motor Vehicles, or Department of Transportation when operating a retail fee-based electric vehicle charging station on any property or facility that such agency controls. The ownership or operation of a facility at which electric vehicle charging service is sold, or the selling of electric vehicle charging service from that facility, does not render the agency a public utility, public service corporation, or public service company as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), and 10.2:1 (§ 56-265.13:1 et seq.) solely because of that sale, ownership, or operation.

*6. For investor-owned utilities, any person that is not a public service corporation and that sells electric energy generated from an on-site distributed energy facility to a customer pursuant to a third-party power purchase agreement, as defined in § 56-1.2:2. The ownership or operation of such an on-site distributed energy facility from which electric energy is sold to a customer pursuant to a third-party power purchase agreement, and the selling of electric energy to such a customer from that distributed energy facility, does not render the person a public utility, public service corporation, public service company, or electric utility as used in Chapters 1 (§ 56-1 et seq.), 10 (§ 56-232 et seq.), 10.1 (§ 56-265.1 et seq.), 10.2:1 (§ 56-265.13:1 et seq.), and 23 (§ 56-576 et seq.) solely because of that sale of electric energy or its ownership or operation of such a distributed energy generation facility.*

*7. For electric cooperatives, any third-party power purchase agreement provider, as referred to in subsections K and L of § 56-594.01.*

***§ 56-1.2:2. Sale of electricity in connection with the operation of a distributed energy facility pursuant to a third-party power purchase agreement.***

*A. As used in this section and §§ 56-1.2 and 56-232.2:2, unless the context requires a different meaning:*

*"Distributed energy facility" means a facility sited on property owned or leased by a customer that generates electric energy, at least a portion of whose electric energy is provided to the customer on-site, and that has a rated capacity of no more than five megawatts.*

*"Third-party power purchase agreement" means a power purchase agreement under which a seller sells electricity to a customer from a distributed energy facility located on premises owned or leased by the customer as a means of providing third-party financing of the costs of the distributed energy facility.*

*B. The sale of electricity generated at a distributed energy facility by a person that is not a public utility, public service corporation, or public service company to a customer that is purchasing or leasing the distributed energy facility under the terms of a third-party power purchase agreement shall not constitute the retail sale of electricity.*

*C. The provisions of this section shall only apply to the sale of electricity in the certificated service territories of investor-owned utilities.*

***§ 56-232.2:2. Regulation of third-party power purchase agreements.***

*The Commission shall not regulate or prescribe the rates, charges, and fees for the retail sale by any person that is not a public service corporation of electric energy generated on-site entirely by a distributed energy facility at retail to a customer pursuant to a third-party power purchase agreement. Sales of electricity by public utilities to persons that are not public service corporations pursuant to third-party power purchase agreements shall continue to be regulated by the Commission to the same extent as are other services provided by public utilities. The Commission may adopt regulations implementing this section. The provisions of this section shall only apply to the sale of electricity in the certificated service territories of investor-owned utilities.*

**§ 56-265.1. Definitions.**

In this chapter the following terms shall have the following meanings:

(a) "Company" means a corporation, a limited liability company, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or a county, unless such municipal corporation or county has obtained a certificate pursuant to § 56-265.4:4.

(b) "Public utility" means any company that owns or operates facilities within the Commonwealth of Virginia for the generation, transmission, storage, or distribution of electric energy for sale, for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of telephone service, sewerage facilities or water. As used in this definition, a facility for the storage of electric energy for sale includes one or more pumped hydroelectricity generation and storage facilities located in the coalfield region of Virginia as described in § 15.2-6002. However, the term "public utility" does not include any of the following:

(1) Except as otherwise provided in § 56-265.3:1, any company furnishing sewerage facilities, geothermal resources or water to less than 50 customers. Any company furnishing water or sewer services to 10 or more customers and excluded by this subdivision from the definition of "public utility" for purposes of this chapter nevertheless shall not abandon the water or sewer services unless and until approval is granted by the Commission or all the customers receiving such services agree to accept ownership of the company.

(2) Any company generating and distributing electric energy exclusively for its own consumption.

(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant, and (B) which does not charge separately or by meter for electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within 30 days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ 56-232 et seq.) and 17 (§ 56-509 et seq.) and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.

(4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or delivery service, of natural or manufactured gas to fewer than 35 commercial or industrial customers, which are not themselves "public utilities" as defined in this chapter, or to certain public schools as indicated in this subdivision, for use solely by such purchasing customers at facilities which are not located in a territory for which a certificate to provide gas service has been issued by the Commission under this chapter and which, at the time of the Commission's receipt of the notice provided under § 56-265.4:5, are not located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, provided that such company shall comply with the provisions of § 56-265.4:5. Direct sales or ancillary transmission or delivery services of natural gas to public schools in the following localities may be made without regard to the number of schools involved and shall not count against the "fewer than 35" requirement in this subdivision: the Counties of Dickenson, Wise, Russell, and Buchanan, and the City of Norton.

(5) Any company which is not a public service corporation and which provides compressed natural gas service at retail for the public.

(6) Any company selling landfill gas from a solid waste management facility permitted by the Department of Environmental Quality to a public utility certificated by the Commission to provide gas distribution service to the public in the area in which the solid waste management facility is located. If such company submits to the public utility a written offer for sale of such gas and the public utility does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

(7) Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or industrial customer from a solid waste management facility permitted by the Department of Environmental Quality and operated by that same authority, if such an authority limits off-premises sale, transmission or delivery service of landfill gas to no more than one purchaser. The authority may contract with other persons for the construction and operation of facilities necessary or convenient to the sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility, the public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to

recover the cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or both, that is derived from a solid waste management facility permitted by the Department of Environmental Quality and sold or delivered from any such facility to not more than three commercial or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as authorized by this section. If a purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility or within an area in which a municipal corporation provides gas distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such company shall submit to such public utility or municipal corporation a written offer for sale of that gas prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility or municipal corporation does not agree within 60 days following the date of the offer to purchase such landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover any cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(9) A company that is not organized as a public service company pursuant to subsection D of § 13.1-620 and that sells and delivers propane air only to one or more public utilities. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and enforcement.

(10) A farm or aggregation of farms that owns and operates facilities within the Commonwealth for the generation of electric energy from waste-to-energy technology. As used in this subdivision, (i) "farm" means any person that obtains at least 51 percent of its annual gross income from agricultural operations and produces the agricultural waste used as feedstock for the waste-to-energy technology, (ii) "agricultural waste" means biomass waste materials capable of decomposition that are produced from the raising of plants and animals during agricultural operations, including animal manures, bedding, plant stalks, hulls, and vegetable matter, and (iii) "waste-to-energy technology" means any technology, including but not limited to a methane digester, that converts agricultural waste into gas, steam, or heat that is used to generate electricity on-site.

(11) A company, other than an entity organized as a public service company, that provides non-utility gas service as provided in § 56-265.4:6.

(12) A company, other than an entity organized as a public service company, that provides storage of electric energy that is not for sale to the public.

*(13) For investor-owned utilities, the customer and seller of electric energy generated by a distributed energy facility pursuant to the terms of a third-party power purchase agreement as defined in § 56-1.2:2.*

*(14) For electric cooperatives, any third-party power purchase agreement provider, as referred to in subsections K and L of § 56-594.01.*

(c) "Commission" means the State Corporation Commission.

(d) "Geothermal resources" means those resources as defined in § 45.1-179.2.

**§ 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 third party" means, for investor-owned utilities, a Virginia nonresidential-class customer, an affiliate, a solar development entity, or a nonjurisdictional customer that takes on the obligation, as part of a variable-output contract, of pilot program costs not recovered through the voluntary companion rate schedule as specified in subdivision B 8.

"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~~ *B*.

"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.

"Solar development entity" means a business entity organized primarily for the purpose of proposing, developing, constructing, purchasing, or selling at wholesale all or part of the output of an eligible generation facility. A solar development entity may be organized in any form and may be a special purpose entity.

"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.

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

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

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

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

~~b. Each RFP shall:~~

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

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

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

d. An investor-owned utility shall not select through its RFP an electrical generation facility with a generating capacity of more than two megawatts for its pilot program unless (i) the costs can be appropriately documented for the portion of the facility's output, which portion shall not exceed two megawatts, that is dedicated to the pilot program and (ii) for a Phase II Utility only, the portion of the facility's generating capacity selected pursuant to this subdivision does not exceed 50 percent of the investor-owned utility's pilot program's minimum generating capacity specified in subdivision 3. The portion of the facility's generating capacity that exceeds the portion of the facility's generating capacity that is selected pursuant to this subdivision shall not be applied in determining whether the pilot program satisfies requirements of subdivision 3 regarding a pilot program's minimum generating capacity.

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

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

3. The amount of generating capacity of the eligible generating facilities in an investor-owned utility's pilot program shall not be less than (i) 0.5 megawatt if the pilot program is conducted by a Phase I Utility or (ii) 10 megawatts if the pilot program is conducted by a Phase II Utility.

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

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

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

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

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

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

6. Each pilot program shall expire at the end of its pilot program period, unless renewed or made permanent as provided in subsection G.

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

8. An investor-owned utility shall recover all its pilot program costs primarily through its voluntary companion rate schedule. However, pilot program costs that are not recovered through the voluntary companion rate schedule shall be recoverable from a participating third party and not from the investor-owned utility's Virginia jurisdictional customers. To the extent participating third parties are obligated for pilot program costs not recovered through the voluntary companion rate schedule, variable-output contracts between participating third parties other than affiliates and investor-owned utilities shall be negotiated at arm's length and shall not be reviewable by the Commission and shall require no further Commission approvals pursuant to Chapter 4 (§ 56-76 et seq.) or other applicable law.

9. At the conclusion of the pilot program period, to the extent that the pilot program is not made permanent or extended, each participating generating facility shall cease to be part of the pilot program and shall return to operation under the variable-output contract with a participating third party.

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

~~schedule shall survive the termination of the pilot program.~~

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

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

~~13. As part of an arrangement with a solar development entity, a utility may enter into an agreement that provides for risk sharing and collaboration in marketing a utility's pilot program if the solar development entity is a participating third party.~~

~~14. An investor-owned utility shall have the ability to close its pilot program to new subscribers according to the terms of the voluntary companion rate schedule upon notice to the Commission. This option shall be exercisable once per year, upon the anniversary date of the Commission's order approving the voluntary companion rate schedule.~~

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

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

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

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

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

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

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

7. Recover pilot program costs that are not recovered through the voluntary companion rate schedule by including unrecovered purchased power expense in the cooperative's cost of purchased power and through a regulatory asset for unrecovered costs that are not purchased power expense, subject to the oversight of the cooperative's board of directors, which regulatory asset shall be approved by the Commission.

~~D.~~ *C.* The participation of retail customers in a pilot program administered by a participating utility in the Commonwealth is in the public interest. Voluntary companion rate schedules approved by the Commission pursuant to this section are necessary in order to acquire information which is in furtherance of the public interest. The Commission shall approve the recovery of pilot program costs that it deems to be reasonable and prudent. The Commission shall also approve the pilot program design, the voluntary companion rate schedule, and the portfolio of participating generating facilities. No Commission review or approval of individual participating generating facilities, agreements, sites, or RFPs shall be required pursuant to this section or any other section of the Code.

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

~~F.~~ *E.* Each participating utility shall report on the status of its pilot program, including the number of subscribing customers, to the Governor, the Commission, and the Chairmen of the House and Senate Commerce and Labor Committees. The report shall be filed the earlier of (i) three years after the date a customer of the participating utility first subscribes to its pilot program or (ii) July 1, 2022. If a participating utility closes its pilot program to new subscribers pursuant to subdivision B 14, it shall notify the Governor, the Commission, and the Chairmen of the House and Senate Commerce and Labor Committees not later than three months after such closure, which notification shall (a) describe the

reasons for the closure and (b) be provided in lieu of the status report otherwise required by this subsection.

~~G.~~ *F.* At any time after filing its report on the status of its pilot program as required by subsection ~~F~~ *E,* a participating utility may, in its application proceeding, move the Commission to make its pilot program permanent. The motion shall include a compliance filing with conforming changes to the participating utility's applicable rate schedules. Upon the Commission's granting of the motion, the pilot program shall become a regular rate schedule of the participating utility.

**§ 56-585.1:8. Pilot program for municipal net energy metering.**

A. As used in this section:

"Municipal customer-generator" means a single municipality metered account that owns and operates an electrical generating facility that (i) uses as its total source of fuel renewable energy as defined in § 56-576, (ii) has a generating capacity of not more than two megawatts, (iii) is located on the municipality's premises and is connected to the municipality's wiring on the municipality's side of its interconnection with the utility, (iv) is interconnected and operated in parallel with the utility's transmission and distribution facilities, and (v) is intended primarily to offset all or part of the customer account's own electricity requirements. The capacity of any generating facility installed under this section, other than a generating facility located on airports, landfills, parking lots, parks, post-mine land, or a reservoir that is owned, operated, or leased by the municipality, shall not exceed the same limitation established with respect to an eligible customer-generator as set forth in the definition of such term in subsection B of § 56-594.

"Municipality" means any county, city, or town in the Commonwealth, other than a municipality that owns and operates its own electric utility.

"Net energy metering" means measuring the difference, over the net metering period, between (i) electricity supplied to a municipal customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the municipal customer-generator.

"Net metering period" means the 12-month period following the date of final interconnection of the municipal customer-generator's system with its utility and each 12-month period thereafter.

"Utility" means Phase I Utility or Phase II Utility, as such terms are defined in ~~§ 56-585.1:3~~ *subdivision A 1 of § 56-585.1*.

B. The Commission shall require each utility to submit a proposal to the Commission to conduct a pilot program for municipal net energy metering in accordance with the following terms, conditions, and restrictions:

1. A pilot program shall be conducted within the service territory of each utility. The pilot program shall allow any municipal customer-generator that generates electricity from a renewable energy generation facility in amounts that exceed the amount of the utility's electricity consumed by the host municipal customer-generator account to credit one or more of the municipality's target metered accounts or, if the pilot program is conducted by a Phase I Utility, also to metered accounts of the public school division of the municipality. In each utility's pilot program, the target accounts may be at one or more other separately utility-metered public buildings or facilities at contiguous or noncontiguous sites owned by the municipality and used for a public purpose; however, if the pilot program is conducted by a Phase I Utility, target accounts may also be at one or more other separately utility-metered buildings or facilities of the public school division of the municipality. In each utility's pilot program, excess electricity shall be credited to the metered account of the target municipal customer in the same municipality, such that the generation energy charges on the electric bills of such target's metered accounts shall be reduced by the amount of the excess generation kilowatt-hours apportioned to the metered accounts multiplied by the applicable generation energy rate of the target's accounts. The generation energy rate of the target's accounts includes all applicable kilowatt-hour-based rate adjustment clauses with the exception of any non-fuel-related or non-generation-related kilowatt-hour-based rate adjustment clauses. The netting of the amount of electricity generated and the amount of electricity consumed, and the crediting for the amount of any excess generation determined as a result of such netting, shall occur in the twelfth month following the commencement of the host municipal customer-generator's generation of electricity under a pilot program and annually thereafter, regardless of the municipal customer-generator's regular billing period.

2. The pilot program shall not limit the current authority of any municipality to participate in any other net energy metering program.

3. The amount of generating capacity of the generating facilities that are the subject of a pilot program under this section shall not exceed:

a. If the pilot program is conducted by a Phase I Utility, five megawatts although the Phase I Utility may, in its discretion, increase the generating capacity that is part of the program up to 10 megawatts; or

b. If the pilot program is conducted by a Phase II Utility, 25 megawatts.

4. The aggregated capacity of all generation facilities that are the subject of each utility's pilot

program under this section shall constitute a portion of the existing limit of the utility's adjusted Virginia peak-load forecast of the previous year that is available to (i) municipal customer-generators under this section, (ii) eligible customer-generators and eligible agricultural customer-generators under § 56-594, and (iii) small agricultural generators under § 56-594.2 in the utility's service area. Municipal customer-generators shall be eligible to participate in a utility's pilot program implemented under this section on a first-come, first-served basis in each utility's Virginia service area until the limits set forth in subdivision 3 are met.

5. Any pilot program conducted under this section shall require that:

a. If conducted by a Phase I Utility or Phase II Utility, each participating municipality shall be responsible for all administrative costs associated with implementing the pilot program, including administrative costs associated with crediting excess generation to target accounts; and

b. If conducted by a Phase I Utility, the credit for excess energy, to the extent possible, shall be prioritized to be directed to accounts at buildings or facilities of the public school division of the municipality before the credit is directed to any of the municipality's target accounts.

6. Any pilot program conducted pursuant to this section shall not limit the current authority of any municipality to participate in any other net energy metering program.

7. Neither jurisdictional customers nor non-jurisdictional customers, including those that are members of a joint powers association representing member units of a political subdivision of the Commonwealth, that do not participate in a pilot program under this section shall bear any costs associated with participation in such pilot program by a participating host municipal customer-generator and participating target municipal customer.

C. The duration of any pilot program approved by the Commission pursuant to this section shall be six years. If the pilot program is not extended beyond such initial term, host and target accounts participating at the end of the initial term shall be permitted to continue to participate under the terms of the pilot program that existed during the initial term. The terms of the pilot program shall be included in future contracts for each municipality that elects to continue its program.

D. The Commission shall review the pilot programs established pursuant to this section in 2021 and every two years thereafter for the duration of the pilot program.

***§ 56-585.1:11. Exempt sales of renewable energy to occupants of eligible property.***

*A. As used in this section:*

*"Eligible owner" means the fee simple owner of an eligible property.*

*"Eligible property" means real estate located in the Commonwealth that is either (i) a multifamily residential building consisting of rental units or (ii) common elements of a condominium as such terms are defined in § 55.1-1900.*

*"Eligible purchaser" means (i) a tenant occupying a rental unit in a multifamily residential building that qualifies as eligible property or (ii) the owner, or a person renting from the owner, of a condominium unit in a condominium of which common elements qualify as eligible property.*

*"Power purchase agreement" means an agreement under which an eligible owner sells electricity generated from a renewable energy facility to an eligible purchaser.*

*"Renewable energy facility" means a solar-powered or wind-powered electric generation facility that is installed on (i) eligible property or (ii) a lot or parcel that is (a) owned by the eligible owner and (b) adjacent to the eligible property.*

*"Utility" means the investor-owned electric utility that is the certificated service provider for the eligible property.*

*B. Notwithstanding any provision of this title to the contrary, an eligible owner shall be permitted to sell the electricity generated from a renewable energy facility exclusively to eligible purchasers under power purchase agreements, subject to the following:*

*1. The power purchase agreement provides only for the sale of electric power to meet the needs of an eligible purchaser in the eligible purchaser's rental unit or condominium unit, as applicable, or for charging an eligible purchaser's electric vehicle regularly garaged or parked at the multifamily residential building or condominium, as applicable;*

*2. All rates, charges, fees, and other terms of the sale and delivery of electric power by an eligible owner to an eligible purchaser shall be determined by the terms of the power purchase agreement and shall not be subject to regulation by the Commission; and*

*3. A utility shall not charge an eligible purchaser rates and charges for service provided to the eligible purchaser in order to supplement purchases under a power purchase agreement that exceed its generally applicable rates and charges for electricity and related services provided by the utility to customers of the same class.*

*C. Nothing in this section shall be construed as rendering an eligible owner, by virtue of its selling electric power to an eligible purchaser under a power purchase agreement entered into pursuant to this section, a public utility, public service company, public service corporation, or competitive service*

*provider that is subject to the provisions of this title.*

***§ 56-585.1:12. Shared solar.***

*A. The Commission shall establish by regulation a program that affords eligible customers of investor-owned utilities the opportunity to participate in shared solar projects. The regulations shall be adopted by the Commission by January 1, 2021.*

*B. As used in this section:*

*"Applicable bill credit rate" means the dollar-per-kilowatt-hour rate as defined in subsection D used to calculate a subscriber's bill credit. The applicable bill credit rate shall be set such that the shared solar program results in robust project development and shared solar program access for all customer classes.*

*"Bill credit" means the monetary value of the electricity, in kilowatt-hours, generated by the shared solar facility allocated to a subscriber to offset that subscriber's electricity bill.*

*"Low-income customer" means an individual or household with an income of not more than 80 percent of the area median income based on U.S. Department of Housing and Urban Development guidelines.*

*"Low-income service organization" means a nonresidential customer of the investor-owned utilities whose primary purpose is to serve low-income individuals and households.*

*"Low-income shared solar facility" means a shared solar facility at least 50 percent of the capacity of which is subscribed by low-income customers or low-income service organizations.*

*"Shared solar facility" means a facility that:*

*1. Generates electricity by means of a solar photovoltaic device with a nameplate capacity rating that does not exceed 3,000 kW alternating current;*

*2. Is operated pursuant to a program whereby at least three subscribers receive a bill credit for the electricity generated from the facility in proportion to the size of their subscription;*

*3. Is located in the service territory of an investor-owned utility;*

*4. Is connected to the electric distribution grid serving the Commonwealth;*

*5. Has at least 50 percent of its capacity subscribed by customers with subscriptions of 25 kilowatts or less; and*

*6. Is located on a single parcel of land.*

*"Shared solar program" or "program" means the program created through the adoption of rules to allow for the development of shared solar facilities described in subsection C.*

*"Subscriber" means a retail customer of an investor-owned electric utility that (i) owns one or more subscriptions of a shared solar facility that is interconnected with the utility and (ii) receives service in the service territory of the same utility in whose service territory the shared solar facility is located.*

*"Subscriber organization" means any for-profit or nonprofit entity that owns or operates one or more shared solar facilities. A subscriber organization shall not be considered a utility solely as a result of its ownership or operation of a shared solar facility.*

*"Subscription" means a contract or other agreement between a subscriber and the owner of a shared solar facility. A subscription shall be sized such that the estimated bill credits do not exceed the subscriber's average annual bill for the customer account to which the subscription is attributed.*

*C. An investor-owned utility shall provide a bill credit to a subscriber's subsequent monthly electric bill for the proportional output of a shared solar facility attributable to that subscriber. The shared solar program shall be administered as follows:*

*1. The value of the bill credit for the subscriber shall be calculated by multiplying the subscriber's portion of the kilowatt-hour electricity production from the shared solar facility by the applicable bill credit rate for the subscriber. Any amount of the bill credit that exceeds the subscriber's monthly bill shall be carried over and applied to the next month's bill in perpetuity;*

*2. The utility shall provide bill credits to a shared solar facility's subscribers for not less than 25 years from the date the shared solar facility becomes commercially operational;*

*3. The subscriber organization shall, on a monthly basis and in a standardized electronic format, provide to the investor-owned utility a subscriber list indicating the kilowatt-hours of generation attributable to each of the retail customers participating in a shared solar facility in accordance with the subscriber's portion of the output of the shared solar facility;*

*4. Lists may be updated monthly to reflect canceling subscribers and to add new subscribers. The investor-owned utility shall apply bill credits to subscriber bills within one billing cycle following the cycle during which the energy was generated by the shared solar facility;*

*5. The investor-owned utility shall, on a monthly basis and in a standardized electronic format, provide to the subscriber organization a report indicating the total value of bill credits generated by the shared solar facility in the prior month as well as the amount of the bill credit applied to each subscriber;*

*6. A subscriber organization may accumulate bill credits in the event that all of the electricity generated by a shared solar facility is not allocated to subscribers in a given month. On an annual*

*basis, the subscriber organization shall furnish to the utility allocation instructions for distributing excess bill credits to subscribers; and*

*7. All environmental attributes associated with a shared solar facility, including renewable energy certificates, shall be considered property of the subscriber organization. At the subscriber organization's discretion, those attributes may be distributed to subscribers, sold to investor-owned utilities or other buyers, accumulated, or retired.*

*D. The Commission shall annually calculate the applicable bill credit rate as the effective retail rate of the customer's rate class, which shall be inclusive of all supply charges, delivery charges, demand charges, fixed charges, and any applicable riders or other charges to the customer. This rate shall be expressed in dollars or cents per kilowatt-hour.*

*E. The Commission shall establish by regulation a shared solar program by January 1, 2021, and shall require each investor-owned utility to file any tariffs, agreements, or forms necessary for implementation of the program. Any rule or utility implementation filings approved by the Commission shall:*

*1. Reasonably allow for the creation and financing of shared solar facilities;*

*2. Allow all customer classes to participate in the program, and ensure participation opportunities for all customer classes;*

*3. Not remove a customer from its otherwise applicable customer class in order to participate in a shared solar facility;*

*4. Reasonably allow for the transferability and portability of subscriptions, including allowing a subscriber to retain a subscription in a shared solar facility if the subscriber moves within the same utility territory;*

*5. Establish uniform standards, fees, and processes for the interconnection of shared solar facilities that allow the utility to recover reasonable interconnection costs for each shared solar facility;*

*6. Adopt standardized consumer disclosure forms;*

*7. Allow the investor-owned utilities to recover reasonable costs of administering the program;*

*8. Ensure nondiscriminatory and efficient requirements and utility procedures for interconnecting projects;*

*9. Address the co-location of two or more shared solar facilities on a single parcel of land, and provide guidelines for determining when two or more facilities are co-located; and*

*10. Include a program implementation schedule.*

*F. Within 180 days of finalization of the Commission's adoption of regulations for the shared solar program, utilities shall begin crediting subscriber accounts of each shared solar facility interconnected in its service territory.*

***§ 56-585.1:13. Installation by public bodies of solar or wind energy facilities; use of electricity generated.***

*A. As used in this section, "public body" means any park authority, any public recreational facilities authority, any soil and water conservation district, any community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, or any authority created under the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.).*

*B. Notwithstanding any provision of § 56-594, any public body that is a nonjurisdictional customer of an investor-owned electric utility may (i) install solar-powered or wind-powered electric generation facilities with a rated capacity not exceeding five megawatts, whether the facilities are owned by the public body or owned and operated by a third party pursuant to a contract with the public body, on any site owned by the public body and (ii) credit the electricity generated at a facility described in clause (i) as directed by the public body to any one or more of the metered accounts of buildings or other facilities of the public body that are located on any property owned by the public body, without regard to whether the buildings and facilities are located at the same site where the electric generation facility is located or at a site contiguous thereto. The amount of the credit for such electricity to the metered accounts of the public body shall be identical, with respect to the rate structure, all retail rate components, and monthly charges, to the amount the public body would otherwise be charged for such amount of electricity under its contract with the public utility, without the assessment by the public utility of any distribution charges, service charges, or fees in connection with or arising out of such crediting.*

**§ 56-594. Net energy metering provisions.**

A. The Commission shall establish by regulation a program that affords eligible customer-generators the opportunity to participate in net energy metering, and a program, to begin no later than July 1, 2014, for customers of investor-owned utilities and to begin no later than July 1, 2015, and to end July 1, 2019, for customers of electric cooperatives as provided in subsection G, to afford eligible agricultural customer-generators the opportunity to participate in net energy metering. The regulations may include, but need not be limited to, requirements for (i) retail sellers; (ii) owners or operators of distribution or

transmission facilities; (iii) providers of default service; (iv) eligible customer-generators; (v) eligible agricultural customer-generators; or (vi) any combination of the foregoing, as the Commission determines will facilitate the provision of net energy metering, provided that the Commission determines that such requirements do not adversely affect the public interest. On and after July 1, 2017, small agricultural generators or eligible agricultural customer-generators may elect to interconnect pursuant to the provisions of this section or as small agricultural generators pursuant to § 56-594.2, but not both. Existing eligible agricultural customer-generators may elect to become small agricultural generators, but may not revert to being eligible agricultural customer-generators after such election. On and after July 1, 2019, interconnection of eligible agricultural customer-generators shall cease for electric cooperatives only, and such facilities shall interconnect solely as small agricultural generators. For electric cooperatives, eligible agricultural customer-generators whose renewable energy generating facilities were interconnected before July 1, 2019, may continue to participate in net energy metering pursuant to this section for a period not to exceed 25 years from the date of their renewable energy generating facility's original interconnection.

B. For the purpose of this section:

"Eligible agricultural customer-generator" means a customer that operates a renewable energy generating facility as part of an agricultural business, which generating facility (i) uses as its sole energy source solar power, wind power, or aerobic or anaerobic digester gas, (ii) does not have an aggregate generation capacity of more than 500 kilowatts, (iii) is located on land owned or controlled by the agricultural business, (iv) is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (v) is interconnected and operated in parallel with an electric company's transmission and distribution facilities, and (vi) is used primarily to provide energy to metered accounts of the agricultural business. An eligible agricultural customer-generator may be served by multiple meters that are located at separate but contiguous sites, such that the eligible agricultural customer-generator may aggregate in a single account the electricity consumption and generation measured by the meters, provided that the same utility serves all such meters. The aggregated load shall be served under the appropriate tariff.

"Eligible customer-generator" means a customer that owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than 20 kilowatts for residential customers and not more than ~~one~~ ~~megawatt~~ *three megawatts* for nonresidential customers on an electrical generating facility placed in service after July 1, 2015; (ii) uses as its total source of fuel renewable energy, as defined in § 56-576; (iii) is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is interconnected and operated in parallel with an electric company's transmission and distribution facilities; and (v) is intended primarily to offset all or part of the customer's own electricity requirements. In addition to the electrical generating facility size limitations in clause (i), the capacity of any generating facility installed under this section after July 1, ~~2015~~ *2020*, shall not exceed *150 percent of* the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

"Net energy metering" means measuring the difference, over the net metering period, between (i) electricity supplied to an eligible customer-generator or eligible agricultural customer-generator from the electric grid and (ii) the electricity generated and fed back to the electric grid by the eligible customer-generator or eligible agricultural customer-generator.

"Net metering period" means the 12-month period following the date of final interconnection of the eligible customer-generator's or eligible agricultural customer-generator's system with an electric service provider, and each 12-month period thereafter.

"Small agricultural generator" has the same meaning that is ascribed to that term in § 56-594.2.

C. The Commission's regulations shall ensure that (i) the metering equipment installed for net metering shall be capable of measuring the flow of electricity in two directions and (ii) any eligible customer-generator seeking to participate in net energy metering shall notify its supplier and receive approval to interconnect prior to installation of an electrical generating facility. The electric distribution company shall have 30 days from the date of notification for residential facilities, and 60 days from the date of notification for nonresidential facilities, to determine whether the interconnection requirements have been met. Such regulations shall allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-generator's electrical generating system, and each electrical generating system of an eligible agricultural customer-generator, shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in this section and to ensure public safety, power quality, and reliability of the supplier's electric distribution system, an eligible customer-generator or eligible agricultural customer-generator whose electrical generating system meets those standards and rules shall bear all reasonable costs of equipment required for the interconnection to the supplier's electric distribution

system, including costs, if any, to (a) install additional controls, (b) perform or pay for additional tests, and (c) purchase additional liability insurance.

D. The Commission shall establish minimum requirements for contracts to be entered into by the parties to net metering arrangements. Such requirements shall protect the eligible customer-generator or eligible agricultural customer-generator against discrimination by virtue of its status as an eligible customer-generator or eligible agricultural customer-generator, and permit customers that are served on time-of-use tariffs that have electricity supply demand charges contained within the electricity supply portion of the time-of-use tariffs to participate as an eligible customer-generator or eligible agricultural customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators or eligible agricultural customer-generators served on demand charge-based time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

E. If electricity generated by an eligible customer-generator or eligible agricultural customer-generator over the net metering period exceeds the electricity consumed by the eligible customer-generator or eligible agricultural customer-generator, the customer-generator or eligible agricultural customer-generator shall be compensated for the excess electricity if the entity contracting to receive such electric energy and the eligible customer-generator or eligible agricultural customer-generator enter into a power purchase agreement for such excess electricity. Upon the written request of the eligible customer-generator or eligible agricultural customer-generator, the supplier that serves the eligible customer-generator or eligible agricultural customer-generator shall enter into a power purchase agreement with the requesting eligible customer-generator or eligible agricultural customer-generator that is consistent with the minimum requirements for contracts established by the Commission pursuant to subsection D. The power purchase agreement shall obligate the supplier to purchase such excess electricity at the rate that is provided for such purchases in a net metering standard contract or tariff approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator or eligible agricultural customer-generator owns any renewable energy certificates associated with its electrical generating facility; however, at the time that the eligible customer-generator or eligible agricultural customer-generator enters into a power purchase agreement with its supplier, the eligible customer-generator or eligible agricultural customer-generator shall have a one-time option to sell the renewable energy certificates associated with such electrical generating facility to its supplier and be compensated at an amount that is established by the Commission to reflect the value of such renewable energy certificates. Nothing in this section shall prevent the eligible customer-generator or eligible agricultural customer-generator and the supplier from voluntarily entering into an agreement for the sale and purchase of excess electricity or renewable energy certificates at mutually-agreed upon prices if the eligible customer-generator or eligible agricultural customer-generator does not exercise its option to sell its renewable energy certificates to its supplier at Commission-approved prices at the time that the eligible customer-generator or eligible agricultural customer-generator enters into a power purchase agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and renewable energy certificates from eligible customer-generators or eligible agricultural customer-generators shall be recoverable through its Renewable Energy Portfolio Standard (RPS) rate adjustment clause, if the supplier has a Commission-approved RPS plan. If not, then all costs shall be recoverable through the supplier's fuel adjustment clause. For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-generator or eligible agricultural customer-generator for the purchase of excess electricity and renewable energy certificates and any administrative costs incurred to manage the eligible customer-generator's or eligible agricultural customer-generator's power purchase arrangements. The net metering standard contract or tariff shall be available to eligible customer-generators or eligible agricultural customer-generators on a first-come, first-served basis in each electric distribution company's Virginia service area until the rated generating capacity owned and operated by eligible customer-generators, eligible agricultural customer-generators, and small agricultural generators in the Commonwealth reaches ~~one percent~~ *10 percent* of each electric distribution company's adjusted Virginia peak-load forecast for the previous year (the systemwide cap), and shall require the supplier to pay the eligible customer-generator or eligible agricultural customer-generator for such excess electricity in a timely manner at a rate to be established by the Commission.

F. ~~Any residential eligible customer-generator or eligible agricultural customer-generator who owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility with a capacity that exceeds 10 kilowatts shall pay to its supplier, in addition to any other charges authorized by law, a monthly standby charge. The amount of the standby charge and the terms and conditions under which it is assessed shall be in accordance with a methodology developed by the supplier and approved by the Commission. The Commission shall approve a supplier's proposed standby charge methodology if it finds that the standby charges collected from all such eligible customer-generators and eligible agricultural customer-generators allow the supplier to recover only the portion of the supplier's infrastructure costs that are properly associated with serving such eligible~~

~~customer-generators or eligible agricultural customer-generators. Such an eligible customer-generator or eligible agricultural customer-generator shall not be liable for a standby charge until the date specified in an order of the Commission approving its supplier's methodology.~~ *Standby charges are prohibited.*

G. On and after the later of July 1, 2019, or the effective date of regulations that the Commission is required to adopt pursuant to § 56-594.01, (i) net energy metering in the service territory of each electric cooperative shall be conducted as provided in a program implemented pursuant to § 56-594.01 and (ii) the provisions of this section shall not apply to net energy metering in the service territory of an electric cooperative except as provided in § 56-594.01.

*H. For purposes of this section, the Commission shall liberally construe eligible customer-generators' rights to contract with other persons to own, operate, or both own and operate an electrical generating facility, and such rights include the right to finance electrical generating facilities via leases and power purchase agreements. Nothing in this section shall be construed as (i) rendering any person that contracts with such eligible customer-generator pursuant to this section to be 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 customer account it serves; or (iii) affecting leases, power purchase agreements, or other third-party financing arrangements in effect prior to July 1, 2020.*

**2. That the provisions of this act amending § 56-585.1:3 of the Code of Virginia shall not affect the validity of any existing subscription in a facility entered into prior to January 1, 2021, under a pilot program authorized pursuant to such section or any pilot program made pursuant to § 56-585.1:3 of the Code of Virginia, as amended by this act.**

**3. That Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017, are repealed.**

**4. That the repeal of Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017, shall not affect the validity of any third-party power purchase agreement entered into prior to July 1, 2020, under a pilot project authorized pursuant to Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017.**