VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 56-594 and 67-102 of the Code of Virginia and § 1 of the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by Chapter 803 of the Acts of Assembly of 2017, and to amend the Code of Virginia by adding a section numbered 56-585.1:11, relating to the regulation of sales of electricity under third-party sales agreements; net energy; and the removal of other barriers to the increased implementation of distributed solar and other renewable energy in the Commonwealth.

[S 710]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-594 and 67-102 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-585.1:11 as follows:

§ 56-585.1:11. Multi-family shared solar program.

A. 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.

"Investor-owned utility" means each investor-owned utility in the Commonwealth including, notwithstanding subsection G of § 56-580, any investor-owned utility whose service territory assigned to it by the Commission is located entirely within the Counties of Dickenson, Lee, Russell, Scott and Wise. "Investor-owned utility" does not include a Phase I Utility, as that term is defined in subdivision A 1 of § 56-585.1.

"Multi-family 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.

"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 at any single location or that does not exceed 5,000 kW alternating current at contiguous locations owned by the same entity or affiliated entities;

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; and

5. Is located on a parcel of land on the premises of the multi-family utility customer or adjacent thereto.

"Subscriber" means a multi-family customer of an investor-owned electric utility that owns one or more subscriptions of a shared solar facility that is interconnected with the utility.

"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.

B. The Commission shall establish by regulation a program that affords eligible multi-family 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.

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 multi-family 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 colocation of two or more shared solar facilities on a single parcel of land, and provide guidelines for determining when two or more facilities are colocated; 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.

§ 56-594. 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 *serving the eligible agricultural customer-generator* that are located at ~~separate but contiguous~~ *the same or adjacent* 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~~ *25* 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~~ *land owned or leased by the customer* 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~~ *between* July 1, 2015, *and July 1, 2020*, shall not exceed 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. *In addition to the electrical generating facility size limitation in clause (i), in the certificated service territory of a Phase I Utility, the capacity of any generating facility installed under this section after July 1, 2020, shall not exceed 100 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, and in the certificated service territory of a Phase II Utility, the capacity of any generating facility installed under this section after July 1, 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~~ *six* percent, *in the aggregate, five percent of which is available to all customers and one percent of which is available only to low-income utility customers* 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.

On and after the earlier of (i) 2024 for a Phase I Utility or 2025 for a Phase II Utility or (ii) when the aggregate rated generating capacity owned and operated by eligible customer-generators, eligible

agricultural customer-generators, and small agricultural generators in the Commonwealth reaches three percent of a Phase I or Phase II Utility's adjusted Virginia peak-load forecast for the previous year, the Commission shall conduct a net energy metering proceeding.

In any net energy metering proceeding, the Commission shall, after notice and opportunity for hearing, evaluate and establish (a) an amount customers shall pay on their utility bills each month for the costs of using the utility's infrastructure; (b) an amount the utility shall pay to appropriately compensate the customer, as determined by the Commission, for the total benefits such facilities provide; (c) the direct and indirect economic impact of net metering to the Commonwealth; and (d) any other information the Commission deems relevant. The Commission shall establish an appropriate rate structure related thereto, which shall govern compensation related to all eligible customer-generators, eligible agricultural customer-generators, and small agricultural generators, except low-income utility customers, that interconnect after the effective date established in the Commission's final order. Nothing in the Commission's final order shall affect any eligible customer-generators, eligible agricultural customer-generators, and small agricultural generators who interconnect before the effective date of such final order. As part of the net energy metering proceeding, the Commission shall evaluate the six percent aggregate net metering cap and may, if appropriate, raise or remove such cap. The Commission shall enter its final order in such a proceeding no later than 12 months after it commences such proceeding, and such final order shall establish a date by which the new terms and conditions shall apply for interconnection and shall also provide that, if the terms and conditions of compensation in the final order differ from the terms and conditions available to customers before the proceeding, low-income utility customers may interconnect under whichever terms are most favorable to them.

F. Any residential eligible customer-generator or eligible agricultural customer-generator*, in the service territory of a Phase II Utility* who owns and operates, or contracts with other persons to own, operate, or both, an electrical generating facility with a capacity that exceeds ~~10~~ *15* 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. *For customers of all other investor-owned utilities, on and after July 1, 2020, standby charges are prohibited for any residential eligible customer-generator or agricultural customer-generator.*

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. The Commission may adopt such rules or establish such guidelines as may be necessary for its general administration of this section.

I. When the Commission conducts a net energy metering proceeding, it shall:

1. Investigate and determine the costs and benefits of the current net energy metering program;

2. Establish an appropriate netting measurement interval for a successor tariff that is just and reasonable in light of the costs and benefits of the net metering program in aggregate, and applicable to new requests for net energy metering service; and

3. Determine a specific avoided cost for customer-generators, the different type of customer-generator technologies where the Commission deems it appropriate, and establish the methodology for determining the compensation rate for any net excess generation determined according to the applicable net measurement interval for any new tariff.

J. In evaluating the costs and benefits of the net energy metering program, the Commission shall consider:

1. The aggregate impact of customer-generators on the electric utility's long-run marginal costs of generation, distribution, and transmission;

2. The cost of service implications of customer-generators on other customers within the same class, including an evaluation of whether customer-generators provide an adequate rate of return to the electrical utility compared to the otherwise applicable rate class when, for analytical purposes only, examined as a separate class within a cost of service study;

3. The direct and indirect economic impact of the net energy metering program to the

Commonwealth; and

4. Any other information it deems relevant, including environmental and resilience benefits of customer-generator facilities.

K. Notwithstanding the provisions of this section, § 56-585.1:8, or any other provision of law to the contrary, any locality that is a nonjurisdictional customer of a Phase II Utility, as defined in § 56-585.1:3, and is in Planning District Eight with a population greater than 1 million 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 any such facility 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.

§ 67-102. Commonwealth Energy Policy.

A. To achieve the objectives enumerated in § 67-101, it shall be the policy of the Commonwealth to:

1. Support research and development of, and promote the use of, renewable energy sources;

2. Ensure that the combination of energy supplies and energy-saving systems are sufficient to support the demands of economic growth;

3. Promote research and development of clean coal technologies, including but not limited to integrated gasification combined cycle systems;

4. Promote cost-effective conservation of energy and fuel supplies;

5. Ensure the availability of affordable natural gas throughout the Commonwealth by expanding Virginia's natural gas distribution and transmission pipeline infrastructure; developing coalbed methane gas resources and methane hydrate resources; encouraging the productive use of landfill gas; and siting one or more liquefied natural gas terminals;

6. Promote the generation of electricity through technologies that do not contribute to greenhouse gases and global warming;

7. Facilitate the development of new, and the expansion of existing, petroleum refining facilities within the Commonwealth;

8. Promote the use of motor vehicles that utilize alternate fuels and are highly energy efficient;

9. Support efforts to reduce the demand for imported petroleum by developing alternative technologies, including but not limited to the production of synthetic and hydrogen-based fuels, and the infrastructure required for the widespread implementation of such technologies;

10. Promote the sustainable production and use of biofuels produced from silvicultural and agricultural crops grown in the Commonwealth, and support the delivery infrastructure needed for statewide distribution to consumers;

11. Ensure that development of new, or expansion of existing, energy resources or facilities does not have a disproportionate adverse impact on economically disadvantaged or minority communities; ~~and~~

12. Ensure that energy generation and delivery systems that may be approved for development in the Commonwealth, including liquefied natural gas and related delivery and storage systems, should be located so as to minimize impacts to pristine natural areas and other significant onshore natural resources, and as near to compatible development as possible*; and*

13. Support the distributed generation of renewable electricity by:

a. Encouraging private sector investments in distributed renewable energy;

b. Increasing the security of the electricity grid by supporting distributed renewable energy projects with the potential to supply electric energy to critical facilities during a widespread power outage; and

c. Augmenting the exercise of private property rights by landowners desiring to generate their own energy from renewable energy sources on their lands.

B. The elements of the policy set forth in subsection A shall be referred to collectively in this title as the Commonwealth Energy Policy.

C. All agencies and political subdivisions of the Commonwealth, in taking discretionary action with regard to energy issues, shall recognize the elements of the Commonwealth Energy Policy and where appropriate, shall act in a manner consistent therewith.

D. The Commonwealth Energy Policy is intended to provide guidance to the agencies and political subdivisions of the Commonwealth in taking discretionary action with regard to energy issues, and shall

not be construed to amend, repeal, or override any contrary provision of applicable law. The failure or refusal of any person to recognize the elements of the Commonwealth Energy Policy, to act in a manner consistent with the Commonwealth Energy Policy, or to take any other action whatsoever, shall not create any right, action, or cause of action or provide standing for any person to challenge the action of the Commonwealth or any of its agencies or political subdivisions.

2. That § 1 of the first enactment of Chapters 358 and 382 of the Acts of Assembly of 2013, as amended by 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~~ *Notwithstanding subsection G of § 56-580 of the Code of Virginia or any other provision of law, 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 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~~ *500* megawatts *for Virginia jurisdictional customers and 500 megawatts for Virginia nonjurisdictional customers* 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~~ *40* 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~~ *six* 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~~ *25* kilowatts for residential customers and ~~500 kilowatts~~ *three megawatts* for nonresidential customers set forth in subsection B of § 56-594 of the Code of Virginia, which limitations shall continue to apply to net energy metering generation facilities regardless of whether they are the subject of a third party power purchase agreement under the pilot program;

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

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

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

proposed effective date; and

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