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HOUSE BILL NO. 2330

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on January 28, 2021)

(Patron Prior to Substitute—Delegate Kory)

A *BILL to amend and reenact §§ 56-576 and 56-585.6 of the Code of Virginia, relating to electric utilities; Percentage of Income Payment Program.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-576 and 56-585.6 of the Code of Virginia are amended and reenacted as follows:

§ 56-576. Definitions.

As used in this chapter:

"Affiliate" means any person that controls, is controlled by, or is under common control with an electric utility.

"Aggregator" means a person that, as an agent or intermediary, (i) offers to purchase, or purchases, electric energy or (ii) offers to arrange for, or arranges for, the purchase of electric energy, for sale to, or on behalf of, two or more retail customers not controlled by or under common control with such person. The following activities shall not, in and of themselves, make a person an aggregator under this chapter: (i) furnishing legal services to two or more retail customers, suppliers or aggregators; (ii) furnishing educational, informational, or analytical services to two or more retail customers, unless direct or indirect compensation for such services is paid by an aggregator or supplier of electric energy; (iii) furnishing educational, informational, or analytical services to two or more suppliers or aggregators; (iv) providing default service under § 56-585; (v) engaging in activities of a retail electric energy supplier, licensed pursuant to § 56-587, which are authorized by such supplier's license; and (vi) engaging in actions of a retail customer, in common with one or more other such retail customers, to issue a request for proposal or to negotiate a purchase of electric energy for consumption by such retail customers.

(Expires December 31, 2023) "Business park" means a land development containing a minimum of 100 contiguous acres classified as a Tier 4 site under the Virginia Economic Development Partnership's Business Ready Sites Program that is developed and constructed by an industrial development authority, or a similar political subdivision of the Commonwealth created pursuant to § 15.2-4903 or other act of the General Assembly, in order to promote business development and that is located in an area of the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

"Combined heat and power" means a method of using waste heat from electrical generation to offset traditional processes, space heating, air conditioning, or refrigeration.

"Commission" means the State Corporation Commission.

"Community in which a majority of the population are people of color" means a U.S. Census tract where more than 50 percent of the population comprises individuals who identify as belonging to one or more of the following groups: Black, African American, Asian, Pacific Islander, Native American, other non-white race, mixed race, Hispanic, Latino, or linguistically isolated.

"Cooperative" means a utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.).

"Covered entity" means a provider in the Commonwealth of an electric service not subject to competition but does not include default service providers.

"Covered transaction" means an acquisition, merger, or consolidation of, or other transaction involving stock, securities, voting interests or assets by which one or more persons obtains control of a covered entity.

"Curtailement" means inducing retail customers to reduce load during times of peak demand so as to ease the burden on the electrical grid.

"Customer choice" means the opportunity for a retail customer in the Commonwealth to purchase electric energy from any supplier licensed and seeking to sell electric energy to that customer.

"Demand response" means measures aimed at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

"Distribute," "distributing," or "distribution of" electric energy means the transfer of electric energy through a retail distribution system to a retail customer.

"Distributor" means a person owning, controlling, or operating a retail distribution system to provide electric energy directly to retail customers.

"Electric distribution grid transformation project" means a project associated with electric distribution infrastructure, including related data analytics equipment, that is designed to accommodate or facilitate the integration of utility-owned or customer-owned renewable electric generation resources with the

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60 utility's electric distribution grid or to otherwise enhance electric distribution grid reliability, electric
61 distribution grid security, customer service, or energy efficiency and conservation, including advanced
62 metering infrastructure; intelligent grid devices for real time system and asset information; automated
63 control systems for electric distribution circuits and substations; communications networks for service
64 meters; intelligent grid devices and other distribution equipment; distribution system hardening projects
65 for circuits, other than the conversion of overhead tap lines to underground service, and substations
66 designed to reduce service outages or service restoration times; physical security measures at key
67 distribution substations; cyber security measures; energy storage systems and microgrids that support
68 circuit-level grid stability, power quality, reliability, or resiliency or provide temporary backup energy
69 supply; electrical facilities and infrastructure necessary to support electric vehicle charging systems; LED
70 street light conversions; and new customer information platforms designed to provide improved customer
71 access, greater service options, and expanded access to energy usage information.

72 "Electric utility" means any person that generates, transmits, or distributes electric energy for use by
73 retail customers in the Commonwealth, including any investor-owned electric utility, cooperative electric
74 utility, or electric utility owned or operated by a municipality.

75 *"Electrification" means converting building systems that use coal, gas, oil, or propane to*
76 *high-efficiency equipment powered by electricity supplied by an electric utility.*

77 "Energy efficiency program" means a program that reduces the total amount of electricity that is
78 required for the same process or activity implemented after the expiration of capped rates. Energy
79 efficiency programs include equipment, physical, or program change designed to produce measured and
80 verified reductions in the amount of electricity required to perform the same function and produce the
81 same or a similar outcome. Energy efficiency programs may include, but are not limited to, (i) programs
82 that result in improvements in lighting design, heating, ventilation, and air conditioning systems,
83 appliances, building envelopes, and industrial and commercial processes; (ii) measures, such as but not
84 limited to the installation of advanced meters, implemented or installed by utilities, that reduce fuel use
85 or losses of electricity and otherwise improve internal operating efficiency in generation, transmission,
86 and distribution systems; and (iii) customer engagement programs that result in measurable and
87 verifiable energy savings that lead to efficient use patterns and practices. Energy efficiency programs
88 include demand response, combined heat and power and waste heat recovery, curtailment, or other
89 programs that are designed to reduce electricity consumption so long as they reduce the total amount of
90 electricity that is required for the same process or activity. Utilities shall be authorized to install and
91 operate such advanced metering technology and equipment on a customer's premises; however, nothing
92 in this chapter establishes a requirement that an energy efficiency program be implemented on a
93 customer's premises and be connected to a customer's wiring on the customer's side of the
94 inter-connection without the customer's expressed consent.

95 "Generate," "generating," or "generation of" electric energy means the production of electric energy.

96 "Generator" means a person owning, controlling, or operating a facility that produces electric energy
97 for sale.

98 "Historically economically disadvantaged community" means (i) a community in which a majority of
99 the population are people of color or (ii) a low-income geographic area.

100 "Incumbent electric utility" means each electric utility in the Commonwealth that, prior to July 1,
101 1999, supplied electric energy to retail customers located in an exclusive service territory established by
102 the Commission.

103 "Independent system operator" means a person that may receive or has received, by transfer pursuant
104 to this chapter, any ownership or control of, or any responsibility to operate, all or part of the
105 transmission systems in the Commonwealth.

106 "In the public interest," for purposes of assessing energy efficiency programs, describes an energy
107 efficiency program if the Commission determines that the net present value of the benefits exceeds the
108 net present value of the costs as determined by not less than any three of the following four tests: (i) the
109 Total Resource Cost Test; (ii) the Utility Cost Test (also referred to as the Program Administrator Test);
110 (iii) the Participant Test; and (iv) the Ratepayer Impact Measure Test. Such determination shall include
111 an analysis of all four tests, and a program or portfolio of programs shall be approved if the net present
112 value of the benefits exceeds the net present value of the costs as determined by not less than any three
113 of the four tests. If the Commission determines that an energy efficiency program or portfolio of
114 programs is not in the public interest, its final order shall include all work product and analysis
115 conducted by the Commission's staff in relation to that program, including testimony relied upon by the
116 Commission's staff, that has bearing upon the Commission's decision. If the Commission reduces the
117 proposed budget for a program or portfolio of programs, its final order shall include an analysis of the
118 impact such budget reduction has upon the cost-effectiveness of such program or portfolio of programs.
119 An order by the Commission (a) finding that a program or portfolio of programs is not in the public
120 interest or (b) reducing the proposed budget for any program or portfolio of programs shall adhere to
121 existing protocols for extraordinarily sensitive information. In addition, an energy efficiency program

may be deemed to be "in the public interest" if the program (1) provides measurable and verifiable energy savings to low-income customers or elderly customers or (2) is a pilot program of limited scope, cost, and duration, that is intended to determine whether a new or substantially revised program or technology would be cost-effective.

"Low-income geographic area" means any locality, or community within a locality, that has a median household income that is not greater than 80 percent of the local median household income, or any area in the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

"Low-income utility customer" means any person or household whose income is no more than 80 percent of the median income of the locality in which the customer resides. The median income of the locality is determined by the U.S. Department of Housing and Urban Development.

"Measured and verified" means a process determined pursuant to methods accepted for use by utilities and industries to measure, verify, and validate energy savings and peak demand savings. This may include the protocol established by the United States Department of Energy, Office of Federal Energy Management Programs, Measurement and Verification Guidance for Federal Energy Projects, measurement and verification standards developed by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), or engineering-based estimates of energy and demand savings associated with specific energy efficiency measures, as determined by the Commission.

"Municipality" means a city, county, town, authority, or other political subdivision of the Commonwealth.

"New underground facilities" means facilities to provide underground distribution service. "New underground facilities" includes underground cables with voltages of 69 kilovolts or less, pad-mounted devices, connections at customer meters, and transition terminations from existing overhead distribution sources.

"Peak-shaving" means measures aimed solely at shifting time of use of electricity from peak-use periods to times of lower demand by inducing retail customers to curtail electricity usage during periods of congestion and higher prices in the electrical grid.

"Percentage of Income Payment Program (PIPP) eligible utility customer" means any person or household participating in any of the following public assistance programs: the Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, Special Supplemental Nutrition Program for Women, Infants and Children, Virginia Low Income Home Energy Assistance Program, federal Low Income Home Energy Assistance Program, state plan for medical assistance, Medicaid, Housing Choice Voucher Program, or Family Access to Medical Insurance Security Plan whose income does not exceed 200 percent of the federal poverty level.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity, and the Commonwealth or any municipality.

"Previously developed project site" means any property, including related buffer areas, if any, that has been previously disturbed or developed for non-single-family residential, non-agricultural, or non-silvicultural use, regardless of whether such property currently is being used for any purpose. "Previously developed project site" includes a brownfield as defined in § 10.1-1230 or any parcel that has been previously used (i) for a retail, commercial, or industrial purpose; (ii) as a parking lot; (iii) as the site of a parking lot canopy or structure; (iv) for mining, which is any lands affected by coal mining that took place before August 3, 1977, or any lands upon which extraction activities have been permitted by the Department of Mines, Minerals and Energy under Title 45.1; (v) for quarrying; or (vi) as a landfill.

"Qualified waste heat resource" means (i) exhaust heat or flared gas from an industrial process that does not have, as its primary purpose, the production of electricity and (ii) a pressure drop in any gas for an industrial or commercial process.

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power. "Renewable energy" also includes the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass. "Renewable energy" does not include waste heat from fossil-fired facilities or electricity generated from pumped storage but includes run-of-river generation from a combined pumped-storage and run-of-river facility.

"Renewable thermal energy" means the thermal energy output from (i) a renewable-fueled combined heat and power generation facility that is (a) constructed, or renovated and improved, after January 1, 2012, (b) located in the Commonwealth, and (c) utilized in industrial processes other than the combined heat and power generation facility or (ii) a solar energy system, certified to the OG-100 standard of the Solar Ratings and Certification Corporation or an equivalent certification body, that (a) is constructed, or renovated and improved, after January 1, 2013, (b) is located in the Commonwealth, and (c) heats water

183 or air for residential, commercial, institutional, or industrial purposes.

184 "Renewable thermal energy equivalent" means the electrical equivalent in megawatt hours of
185 renewable thermal energy calculated by dividing (i) the heat content, measured in British thermal units
186 (BTUs), of the renewable thermal energy at the point of transfer to a residential, commercial,
187 institutional, or industrial process by (ii) the standard conversion factor of 3.413 million BTUs per
188 megawatt hour.

189 "Renovated and improved facility" means a facility the components of which have been upgraded to
190 enhance its operating efficiency.

191 "Retail customer" means any person that purchases retail electric energy for its own consumption at
192 one or more metering points or nonmetered points of delivery located in the Commonwealth.

193 "Retail electric energy" means electric energy sold for ultimate consumption to a retail customer.

194 "Revenue reductions related to energy efficiency programs" means reductions in the collection of
195 total non-fuel revenues, previously authorized by the Commission to be recovered from customers by a
196 utility, that occur due to measured and verified decreased consumption of electricity caused by energy
197 efficiency programs approved by the Commission and implemented by the utility, less the amount by
198 which such non-fuel reductions in total revenues have been mitigated through other program-related
199 factors, including reductions in variable operating expenses.

200 "Rooftop solar installation" means a distributed electric generation facility, storage facility, or
201 generation and storage facility utilizing energy derived from sunlight, with a rated capacity of not less
202 than 50 kilowatts, that is installed on the roof structure of an incumbent electric utility's commercial or
203 industrial class customer, including host sites on commercial buildings, multifamily residential buildings,
204 school or university buildings, and buildings of a church or religious body.

205 "Solar energy system" means a system of components that produces heat or electricity, or both, from
206 sunlight.

207 "Supplier" means any generator, distributor, aggregator, broker, marketer, or other person who offers
208 to sell or sells electric energy to retail customers and is licensed by the Commission to do so, but it
209 does not mean a generator that produces electric energy exclusively for its own consumption or the
210 consumption of an affiliate.

211 "Supply" or "supplying" electric energy means the sale of or the offer to sell electric energy to a
212 retail customer.

213 "Total annual energy savings" means (i) the total combined kilowatt-hour savings achieved by
214 electric utility energy efficiency and demand response programs and measures installed in that program
215 year, as well as savings still being achieved by measures and programs implemented in prior years, or
216 (ii) savings attributable to newly installed combined heat and power facilities, including waste
217 heat-to-power facilities, and any associated reduction in transmission line losses, provided that biomass
218 is not a fuel and the total efficiency, including the use of thermal energy, for eligible combined heat and
219 power facilities must meet or exceed 65 percent and have a nameplate capacity rating of less than 25
220 megawatts.

221 "Transmission of," "transmit," or "transmitting" electric energy means the transfer of electric energy
222 through the Commonwealth's interconnected transmission grid from a generator to either a distributor or
223 a retail customer.

224 "Transmission system" means those facilities and equipment that are required to provide for the
225 transmission of electric energy.

226 "Waste heat to power" means a system that generates electricity through the recovery of a qualified
227 waste heat resource.

228 *"Whole home retrofit" means significant improvements to a building's shell and operations that*
229 *include any necessary health and safety repairs, weatherization, efficiency, and electrification.*

230 **§ 56-585.6. Universal service fee; Percentage of Income Payment Program and Fund.**

231 A. The Commission shall, after notice and opportunity for hearing, initiate a proceeding to establish
232 the rates, terms, and conditions of a non-bypassable universal service fee to fund the Percentage of
233 Income Payment Program (PIPP). Such universal service fee shall be allocated to retail electric
234 customers of a Phase I and Phase II Utility on the basis of the amount of kilowatt-hours used and be
235 established at such level to adequately address the PIPP's objectives to (i) reduce the energy burden of
236 eligible participants by limiting electric bill payments directly to no more than six percent of the eligible
237 participant's annual household income if the household's heating source is anything other than electricity,
238 and to no more than 10 percent of an eligible participant's annual household income on electricity costs
239 if the household's *primary* heating source is electricity, ~~and~~ (ii) reduce the amount of electricity used by
240 the eligible participant's household through participation in weatherization or energy efficiency programs
241 and energy conservation education programs; *and (iii) reduce the amount of electricity energy,*
242 *regardless of primary heating source, used by the eligible participant's household through participation*
243 *in weatherization or energy efficiency programs and energy conservation education programs including*
244 *whole home retrofits or other strategies as determined by the Department of Social Services in*

accordance with this section.

B. The Commission shall determine the reasonable administrative costs for the investor-owned utility to collect the universal service fee and remit such funds to the Percentage of Income Payment Fund established in subsection G, and any other administrative costs the investor-owned utility may incur in complying with the PIPP, and shall determine the proper recovery mechanism for such costs. A Phase I and Phase II Utility shall not be eligible to earn a rate of return on any equity or costs incurred to comply with the program requirements or implementation. *The Commission shall initiate proceedings to provide for an annual true-up of the universal service fee within 60 days of the commencement of the PIPP and on an annual or semiannual basis thereafter. As part of any annual true-up case, each Phase I and Phase II Utility shall report to the Commission any data or forecasting required by the Commission regarding the participation by PIPP participants in utility energy reduction programs.*

C. The Department of Social Services (the Department), in consultation with, as it deems necessary, the Department of Housing and Community Development, shall adopt rules or establish guidelines for the adoption, implementation, and general administration of the PIPP and the Percentage of Income Payment Fund established in subsection G, consistent with this section. Such rules or guidelines shall include exemptions for terms of program participation or energy use reduction as the Department deems appropriate. The PIPP shall commence no later than March 1, 2022. Each Phase I and Phase II Utility shall cooperate with the requests of the Department and the Commission in the implementation and administration of the PIPP. The Commission shall promulgate any rules necessary to ensure that (i) funds collected from each utility's universal service fee are directed to the Percentage of Income Payment Fund and (ii) utilities receive adequate compensation from the Fund, on a timely basis, for all reasonable costs of the PIPP including costs associated with bill payment credits for eligible customers.

D. In carrying out the PIPP's objective of electricity usage reductions, the PIPP may, to the extent reasonably possible, utilize existing energy efficiency or related programs approved by the Commission for a Phase I and Phase II Utility. The Department may determine what deficiencies exist in existing and available federal, state, local, or nonprofit programs to meet the energy reduction obligations of this section. The Department may (i) make recommendations to the Commission or the utilities regarding such deficiency analysis and (ii) develop programs to address such deficiencies in accordance with subsection E.

E. The Department may develop and implement non-utility energy efficiency programs and other programs for the reduction of energy use for eligible participants in the PIPP, which programs shall be funded by the universal service fee, provided that the Department engages in a stakeholder process and undertakes a cost-benefit analysis in the development of any such programs.

1. The Department shall convene a stakeholder working group regarding the implementation of whole home retrofits for eligible participants and shall consider program design and coordination of public and private funding streams to implement such whole home retrofits at no cost to the eligible participants, as well as any additional funding needed from the universal service fee to fund such programs.

2. The Commission shall make adjustments to the universal service fee as necessary to provide adequate funding for such programs of the Department.

F. The Commission shall initiate any proceedings to establish new energy efficiency or low-income programs proposed by a Phase I or Phase II Utility as necessary to provide service to PIPP participants over a timeframe to be determined by the Commission.

G. There is hereby created in the state treasury a special nonreverting fund to be known as the Percentage of Income Payment Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds collected from each Phase I and Phase II Utility's universal service fee shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of implementation and administration of the PIPP and any other programs developed by the Department pursuant to subsection E. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner of the Department of Social Services or by order of the Commission in conjunction with a true-up proceeding.

2. That the State Corporation Commission shall issue an order providing for a non-bypassable universal service fee to be collected from customers of a Phase I or Phase II Utility, as those terms are defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, in accordance with § 56-585.6 of the Code of Virginia, as amended by this act, as soon as practicable following the effective date of this act.