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HOUSE BILL NO. 1834

Offered January 13, 2021

Prefiled January 6, 2021

A BILL to amend and reenact § 56-580 of the Code of Virginia, relating to electric utilities; closure of carbon-emitting generating units.

Patrons—Subramanyam, Hurst, Lopez and Simonds

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:**1. That § 56-580 of the Code of Virginia is amended and reenacted as follows:****§ 56-580. Transmission and distribution of electric energy.**

A. Subject to the provisions of § 56-585.1, the Commission shall continue to regulate pursuant to this title the distribution of retail electric energy to retail customers in the Commonwealth and, to the extent not prohibited by federal law, the transmission of electric energy in the Commonwealth.

B. The Commission shall continue to regulate, to the extent not prohibited by federal law, the reliability, quality and maintenance by transmitters and distributors of their transmission and retail distribution systems.

C. The Commission shall develop codes of conduct governing the conduct of incumbent electric utilities and affiliates thereof when any such affiliates provide, or control any entity that provides, generation, distribution, or transmission services, to the extent necessary to prevent impairment of competition. Nothing in this chapter shall prevent an incumbent electric utility from offering metering options to its customers.

D. The Commission shall permit the construction and operation of electrical generating facilities in Virginia upon a finding that such generating facility and associated facilities (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility, (ii) are required by the public convenience and necessity, if a petition for such permit is filed after July 1, 2007, and if they are to be constructed and operated by any regulated utility whose rates are regulated pursuant to § 56-585.1, and (iii) are not otherwise contrary to the public interest. In review of a petition for a certificate to construct and operate a generating facility described in this subsection, the Commission shall give consideration to the effect of the facility and associated facilities on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1, unless exempt as a small renewable energy project for which the Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.) of Chapter 11.1 of Title 10.1. In order to avoid duplication of governmental activities, any valid permit or approval required for an electric generating plant and associated facilities issued or granted by a federal, state or local governmental entity charged by law with responsibility for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental impact or for other specific public interest issues such as building codes, transportation plans, and public safety, whether such permit or approval is prior to or after the Commission's decision, shall be deemed to satisfy the requirements of this section with respect to all matters that (i) (a) are governed by the permit or approval or (ii) (b) are within the authority of, and were considered by, the governmental entity in issuing such permit or approval, and the Commission shall impose no additional conditions with respect to such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of any environmental permit or approval. The Commission shall complete any proceeding under this section, or under any provision of the Utility Facilities Act (§ 56-265.1 et seq.), involving an application for a certificate, permit, or approval required for the construction or operation by a public utility of a small renewable energy project as defined in § 10.1-1197.5, within nine months following the utility's submission of a complete application therefore. Small renewable energy projects as defined in § 10.1-1197.5 are in the public interest and in determining whether to approve such project, the Commission shall liberally construe the provisions of this title.

E. Nothing in this section shall impair the distribution service territorial rights of incumbent electric utilities, and incumbent electric utilities shall continue to provide distribution services within their exclusive service territories as established by the Commission. Subject to the provisions of § 56-585.1,

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59 the Commission shall continue to exercise its existing authority over the provision of electric distribution
60 services to retail customers in the Commonwealth including, but not limited to, the authority contained
61 in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

62 F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or
63 operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt
64 from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any
65 such electric utility unless (i) that municipality or that authority created by a governmental unit exempt
66 from the referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii)
67 that utility, directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail
68 customer eligible to purchase electric energy from any supplier in accordance with § 56-577 if that retail
69 customer is outside the geographic area that was served by such municipality as of July 1, 1999, except
70 (a) any area within the municipality that was served by an incumbent public utility as of that date but
71 was thereafter served by an electric utility owned or operated by a municipality or by an authority
72 created by a governmental unit exempt from the referendum requirement of § 15.2-5403 pursuant to the
73 terms of a franchise agreement between the municipality and the incumbent public utility, or (b) where
74 the geographic area served by an electric utility owned or operated by a municipality is changed
75 pursuant to mutual agreement between the municipality and the affected incumbent public utility in
76 accordance with § 56-265.4:1. If an electric utility owned or operated by a municipality as of July 1,
77 1999, or by an authority created by a governmental unit exempt from the referendum requirement of
78 § 15.2-5403 is made subject to the provisions of this chapter pursuant to clause (i) or (ii) of this
79 subsection, then in such event the provisions of this chapter applicable to incumbent electric utilities
80 shall also apply to any such utility, mutatis mutandis.

81 G. The applicability of all provisions of this chapter except § 56-594 to any investor-owned
82 incumbent electric utility supplying electric service to retail customers on January 1, 2003, whose
83 service territory assigned to it by the Commission is located entirely within Dickenson, Lee, Russell,
84 Scott, and Wise Counties shall be suspended effective July 1, 2003, so long as such utility does not
85 provide retail electric services in any other service territory in any jurisdiction to customers who have
86 the right to receive retail electric energy from another supplier. During any such suspension period, the
87 utility's rates shall be (i) its capped rates established pursuant to § 56-582 for the duration of the capped
88 rate period established thereunder, and (ii) determined thereafter by the Commission on the basis of such
89 utility's prudently incurred costs pursuant to Chapter 10 (§ 56-232 et seq.) of this title.

90 H. The expiration date of any certificates granted by the Commission pursuant to subsection D, for
91 which applications were filed with the Commission prior to July 1, 2002, shall be extended for an
92 additional two years from the expiration date that otherwise would apply.

93 *I. Effective July 1, 2021, the owner of any electrical generating facility located in Virginia that emits*
94 *carbon dioxide as a by-product of combusting fuel and has received a certificate granted by the*
95 *Commission pursuant to subsection D shall perform a facility retirement study at least every 18 months*
96 *and report the results of the study to the Commission; the Department of Environmental Quality; the*
97 *Department of Mines, Minerals and Energy; the Department of Housing and Community Development;*
98 *the Virginia Employment Commission; the Virginia Council on Environmental Justice; and the*
99 *appropriate planning district commission, county board of supervisors, city council, or mayor. The*
100 *results of any such facility retirement study submitted by an owner of an electrical generating facility*
101 *shall be made publicly available. Whenever the owner of an electrical generating facility decides to*
102 *retire such facility before the end of its expected useful life, such owner shall notify, within 14 days of*
103 *the decision, the Commission; the Department of Environmental Quality; the Department of Mines,*
104 *Minerals and Energy; the Department of Housing and Community Development; the Virginia*
105 *Employment Commission; the Virginia Council on Environmental Justice; and the appropriate planning*
106 *district commission, county board of supervisors, city council, or mayor.*