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HOUSE BILL NO. 266

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 56-585.3 and 56-594.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-594.01:1, relating to electric cooperatives; net energy metering; power purchase agreements; local facilities usage charges.

Patron—Head

Referred to Committee on Commerce and Energy

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-585.3 and 56-594.01 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-594.01:1 as follows:

§ 56-585.3. Regulation of cooperative rates after rate caps.

A. After the expiration or termination of capped rates, the rates, terms and conditions of distribution electric cooperatives subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1 shall be regulated in accordance with the provisions of Chapters 9.1 (§ 56-231.15 et seq.) and 10 (§ 56-232 et seq.), as modified by the following provisions:

1. Except for energy related cost (fuel cost), the Commission shall not require any cooperative to adjust, modify, or revise its rates, by means of riders or otherwise, to reflect changes in wholesale power cost which occurred during the capped rate period, other than in a general rate proceeding;

2. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, increase or decrease all classes of its rates for distribution services at any time, provided, however, that such adjustments will not effect a cumulative net increase or decrease in excess of five percent in such rates in any three-year period. Such adjustments will not affect or be limited by any existing fuel or wholesale power cost adjustment provisions. The cooperative will promptly file any such revised rates with the Commission for informational purposes;

3. Each cooperative may, without Commission approval, upon an affirmative resolution of its board of directors, make any adjustment to its terms and conditions that does not affect the cooperative's revenues from the distribution or supply of electric energy. In addition, a cooperative may make such adjustments to any pass-through of third-party service charges and fees, and to any fees, charges and deposits set out in Schedule F of such cooperative's Terms and Conditions filed as of January 1, 2007. The cooperative will promptly file any such amended terms and conditions with the Commission for informational purposes;

4. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, make any adjustment to its rates reasonably calculated to collect any or all of the fixed costs of owning and operating its electric distribution system, including without limitation, such costs as are identified as customer-related costs in a cost of service study, through a new or modified fixed monthly charge, rather than through volumetric charges associated with the use of electric energy or demand, or to rebalance among any of the fixed monthly charge, distribution demand, and distribution energy; however, such adjustments shall be revenue neutral based on the cooperative's determination of the proper intra-class allocation of the revenues produced by its then current rates. If a rate class contains a supply demand charge, the cooperative may rebalance its rate for electricity supply service pursuant to this subdivision. The cooperative may elect, but is not required, to implement such adjustments through incremental changes over the course of up to three years. The cooperative shall file promptly revised tariffs reflecting any such adjustments with the Commission for informational purposes;

5. A cooperative may, at any time after the expiration or termination of capped rates, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the costs described in subdivisions A 5 b and e of § 56-585.1;

6. A cooperative that is not a current member of a utility aggregation cooperative may at any time petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery of cost from customers of (i) one or more generation facilities, (ii) one or more major unit modifications of generation facilities, or (iii) one or more pumped hydroelectricity generation and storage facilities. A cooperative seeking a rate adjustment clause pursuant to this subdivision shall have the right, after notice and the opportunity for a hearing, to recover the costs of a facility described in clauses (i), (ii), or (iii) in a rate adjustment clause including construction work in progress and

allowance for funds during construction, planning, and development costs of infrastructure associated therewith. The costs of the facility other than projected construction work in progress and allowance for funds used during construction shall not be recovered prior to the date that the facility either (a) begins commercial operation or (b) comes under the ownership of the cooperative. For the purposes of this subdivision, the cooperative's cost of capital shall be recoverable in such a rate adjustment clause and shall be set as either the cooperative's long-term cost of debt or most recent rate of return authorized by the Commission in a rate proceeding. In any proceeding conducted pursuant to this subdivision, the Commission shall consider that all costs expended and revenues recovered arising out of the procurement of generation resources pursuant to this subdivision will inure to the benefit of the general membership of the cooperative. Nothing in this subdivision shall relieve a cooperative from any requirement to obtain a certificate of public convenience and necessity for purposes of constructing generation in the Commonwealth. The Commission's final order regarding any petition filed pursuant to this subdivision shall be entered not more than nine months after the date of filing of such petition. If such petition is approved, the order shall direct that the applicable rate adjustment clause be applied to customers' bills not more than 60 days after the date of the order. Any petition filed pursuant to this subdivision shall be considered by the Commission on a stand-alone basis without regard to the other costs, revenues, investments, or earnings of the cooperative. Any costs incurred by a cooperative prior to the filing of such petition, or during the consideration thereof by the Commission, that are proposed for recovery in such petition, shall be deferred on the books and records of the cooperative until the Commission's final order in the matter, or until the implementation of any applicable approved rate adjustment clause, whichever is later; ~~and~~

7. A cooperative may adopt any other cooperative's voluntary rate, voluntary program (including a pilot program), or voluntary tariff, and cost recovery therefor, by submitting the same to the Commission for administrative approval. The staff of the Commission shall have the authority to approve such administrative filing notwithstanding any other provision of law*;*

8. A cooperative may, without approval of the Commission or the requirement of any filing other than as provided in this subsection, upon an affirmative resolution of its board of directors, approve any voluntary tariff, and cost recovery therefor, and shall promptly file any such tariff with the Commission for informational purposes; and

9. The Commission may, in its discretion, and without notice or a hearing; administratively approve any rate, tariff, or term or condition of service, or any change to an existing rate, tariff, or term or condition of service of a cooperative.

B. None of the adjustments described in subdivisions A 2 through A 5 will apply to the rates paid by any customer that takes service by means of dedicated distribution facilities and had noncoincident peak demand in excess of 90 megawatts in calendar year 2006.

C. Nothing in this section shall be deemed to grant to a cooperative any authority to amend or adjust any terms and conditions of service or agreements regarding pole attachments or the use of the cooperative's poles or conduits.

§ 56-594.01. Net energy metering provisions for electric cooperative service territories.

A. The Commission shall establish by regulation a program that affords eligible customer-generators the opportunity to participate in net energy metering in the service territory of each electric cooperative, which program shall commence on the later of July 1, 2019, or the effective date of such regulations. Such regulations shall be similar to existing regulations promulgated pursuant to § 56-594. In lieu of adopting new regulations, the Commission may amend such existing regulations to apply to electric cooperatives with such revisions as are required to comply with the provisions of this section. The regulations may include requirements applicable to (i) retail sellers, (ii) owners or operators of distribution or transmission facilities, (iii) providers of default service, (iv) eligible customer-generators, or (v) 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.

B. As used in this section:

"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 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, 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.

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

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

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 Commission shall publish a form for such prior notice and such notice shall be processed promptly by the supplier prior to any construction activity taking place. After construction, inspection and documentation thereof shall be required prior to interconnection. The electric distribution company shall have 30 days from the date of each notification for residential facilities, and 60 days from the date of each 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 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. In addition to 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 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. An electric cooperative may publish and use its own forms, including an electronic form, for purposes of implementing the regulations described herein so long as the information collected on the Commission's form is also collected by the cooperative and submitted to the Commission.

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 against discrimination by virtue of its status as an eligible 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. Notwithstanding the cost allocation provisions of subsection C, eligible 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 over the net metering period exceeds the electricity consumed by the eligible customer-generator, the customer-generator shall be compensated for the excess electricity if the entity contracting to receive such electric energy and the eligible customer-generator enter into a power purchase agreement for such excess electricity. Upon the written request of the eligible customer-generator, the supplier that serves the eligible customer-generator shall enter into a power purchase agreement with the requesting eligible 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 owns any renewable energy certificates associated with its electrical generating facility; however, at the time that the eligible customer-generator enters into a power purchase agreement with its supplier, the eligible 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 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 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 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 shall be recoverable through its fuel adjustment clause. For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-generator for the purchase of excess electricity and renewable energy certificates and any administrative costs incurred to manage the eligible customer-generator's power purchase arrangements. The net metering standard contract or tariff shall be available to eligible

customer-generators on a first-come, first-served basis, subject to the provisions of subsection F, and shall require the supplier to pay the eligible customer-generator for such excess electricity in a timely manner at a rate to be established by the Commission.

F. Net energy metering shall be open to customers on a first-come, first-served basis until such time as the total capacity of the generation facilities, expressed in alternating current nameplate, reaches two percent of system peak for residential customers, two percent of system peak for not-for-profit and nonjurisdictional customers, and one percent of system peak for other nonresidential customers, which are herein referred to as the electric cooperative's caps. As used in this subsection, "percent of system peak" refers to a percentage of the electric cooperative's highest total system peak, based on the noncoincident peak of the electric cooperative or the coincident peak of all of the electric cooperative's customers, within the past three years as listed in Part O, Line 20 of Form 7 filed with the Rural Utilities Service or its equivalent, less any portion of the cooperative's total load that is served by a competitive service provider or by a market-based rate. Such caps shall not decrease but may increase if the system peak in any year exceeds the previous year's system peak. Nothing in this subsection shall amend or confer new rights upon any existing nonjurisdictional contract or arrangement or work to submit any nonjurisdictional customer, contract, or arrangement to the jurisdiction of the Commission. For purposes of calculating the caps established in this subsection, all net energy metering shall be counted, whenever interconnected, and shall include net energy metering interconnected pursuant to § 56-594, agricultural net energy metering, and any net energy metering entered into with a third-party provider registered pursuant to subsection K. Net energy metering with nonjurisdictional customers entered into prior to July 1, 2019, may be counted toward the caps, in the discretion of the cooperative, as net energy metering if the nonjurisdictional customer takes service pursuant to a cooperative's net energy metering rider. Net energy metering with nonjurisdictional customers entered into on or after July 1, 2019, shall be counted toward the caps by default unless the cooperative has reason to exclude such net energy metering as subject to a separate contract or arrangement. Each electric cooperative governed by this section shall publish information regarding the calculation and status of its caps pursuant to this subsection, or the electric cooperative's systemwide cap established in § 56-585.4 if applicable, on the electric cooperative's website.

G. An electric cooperative may, without Commission approval or the requirement of any filing other than as provided in this subsection, upon the adoption by its board of directors of a resolution so providing, raise the caps established in subsection F ~~up to a cumulative total of seven percent of system peak, calculated according to the methodology described in subsection F~~, with any increase allocated among residential, not-for-profit and nonjurisdictional, and other nonresidential customers as the board of directors may find to be in the interests of the electric cooperative's membership. The electric cooperative shall promptly file a revised net energy metering compliance filing with the Commission for informational purposes.

H. Any residential eligible 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 allow the supplier to recover only the portion of the supplier's infrastructure costs that are properly associated with serving such eligible customer-generators. Such an eligible 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.

I. Any eligible agricultural customer-generator interconnected in an electric cooperative service territory prior to July 1, 2019, shall continue to be governed by § 56-594 and the regulations adopted pursuant thereto throughout the grandfathering period described in subsection A of § 56-594.

J. Any eligible customer-generator served by a competitive service provider pursuant to the provisions of § 56-577 shall engage in net energy metering only with such supplier and pursuant only to tariffs filed by such supplier. Such an eligible customer-generator shall pay the full portion of its distribution charges, without offset or netting, to its electric cooperative.

K. After the conclusion of the Commission's rulemaking proceeding pursuant to subsection L, third-party partial requirements power purchase agreements, the purpose of which is to finance the purchase of renewable generation facilities by eligible customer-generators through the sale of electricity, shall be permitted pursuant to the provisions of this section only for those retail customers and nonjurisdictional customers of the electric cooperative that are exempt from federal income taxation, unless otherwise permitted by § 56-585.4 *or subsection M*. No person shall offer a third-party partial requirements power purchase agreement in the service territory of an electric cooperative without fulfilling the registration requirements set forth in this section and complying with applicable Commission rules, including those adopted pursuant to subdivision L 2.

L. After August 1, 2019, but before January 1, 2020, the Commission shall initiate a rulemaking proceeding to promulgate the regulations necessary to implement this section as follows:

1. In conducting such a proceeding, the Commission may require notice to be given to current eligible customer-generators and eligible agricultural customer-generators but shall not require general publication of the notice. An opportunity to request a hearing shall be afforded, but a hearing is not required. In the rulemaking proceeding, the electric cooperatives governed by this section shall be required to submit compliance filings, but no other individual proceedings shall be required or conducted.

2. In promulgating regulations to govern third-party power purchase agreement providers as retail sellers, the Commission shall:

a. Direct the staff to administer a registration system for such providers;

b. Enumerate in its regulations the jurisdiction of the Commission over providers, generally limited in scope to the behavior of providers, customer complaints, and their compliance with the registration requirements and stating clearly that civil contract disputes and claims for damages against providers shall not be subject to the jurisdiction of the Commission;

c. ~~Establish~~ ~~enumerate~~ *Enumerate* in its regulations the maximum extent of its authority over the providers, to be limited to any or all of:

(1) Monetary penalties against registered providers not to exceed $30,000 per provider registration;

(2) Orders for providers to cease or desist from a certain practice, act, or omission;

(3) Debarment of registered providers;

(4) The issuance of orders to show cause; and

(5) Authority incident to subdivisions (1) through (4);

d. Delineate in its regulations two classes of providers, one for residential customers and one for nonresidential customers;

e. Direct the staff to set up a self-certification system as described in this subdivision;

f. Establish business practice and consumer protection standards from a national renewable energy association whose business is germane to the businesses of the providers;

g. Require providers to comply with other applicable Commission regulations governing interconnection and safety, including utility procedures governing the same;

h. Require minimum capitalization or other bond or surety that, in the judgment of the Commission, is necessary for adequate consumer protection and in the public interest;

i. Require the payment of a fee of $250 for residential and nonresidential provider registration; and

j. Provide that no registered provider, by virtue of that status alone, shall be considered a public utility or competitive service provider for purposes of this title.

3. The self-certification system described in this subdivision shall require a provider to affirm to the staff, under the penalty of revocation of registration, (i) that it is licensed to do business in Virginia; (ii) the names of the responsible officers of the provider entity; (iii) that its named officers have no felony convictions or convictions for crimes of moral turpitude; (iv) that it will abide by all applicable Commission regulations promulgated under this section or for purposes of interconnections and safety; (v) that it will appoint an officer to be a primary liaison to the staff; (vi) that it will appoint an employee to be a primary contact for customer complaints; (vii) that it will have and disclose to customers a dispute resolution procedure; (viii) that it has specified in its registration materials in which territories it intends to offer power purchase agreements; (ix) that it, and each of its named officers, agree to submit themselves to the jurisdiction of the Commission as described in this subdivision; and (x) that, once registered, the provider shall report any material changes in its registration materials to the staff, as a continuing obligation of registration. The staff shall send a copy of the registration materials to each cooperative in whose territory the provider intends to offer power purchase agreements. The staff, once satisfied that the certifications required pursuant to this subdivision are complete, and not more than 30 days following the initial and complete submittal of the registration materials, shall enter the provider onto the official register of providers. No formal Commission proceeding is required for registration but may be initiated if the staff (a) has reason to doubt the veracity of the certifications of the provider or (b) in any other case, if, in the judgment of the staff, extenuating or extraordinary circumstances exist that warrant a proceeding. The staff shall not investigate the corporate structure, financing, bookkeeping, accounting practices, contracting practices, prices, or terms and conditions in a third-party partial requirements power purchase agreement. Nothing in this section shall abridge the right of any person, including the Office of Attorney General, from proceeding in a cause of action under the Virginia Consumer Protection Act, § 59.1-196 et seq.

4. The Commission shall complete such rulemaking procedure within 12 months of its initiation.

M. An electric cooperative may, without approval of the Commission or the requirement of any filing other than as provided in this subsection, and upon the adoption by its board of directors of a resolution so providing, permit the use of any third-party partial requirements power purchase

agreement, the purpose of which agreement is to finance the purchase of renewable generation facilities by eligible customer-generators through the sale of electricity for residential retail customers, nonresidential retail customers, or both. The electric cooperative shall promptly file a revised net energy metering compliance filing with the Commission for informational purposes.

§ 56-594.01:1. Local facilities usage charges; electric cooperatives.

A. For the purpose of this section:

"Electric cooperative" or "cooperative" means a utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.) and subject to regulation as to rates and service by the Commission.

"Customer" means a customer interconnected to facilities of an electric cooperative pursuant to 20VAC5-314, generating or interconnected for export, which customer is neither selling power to the cooperative nor interconnected pursuant to § 56-594.01 or 56-594.2.

B. Any customer may enter into an agreement for local facilities usage charges, which may be denominated as an operations and maintenance agreement or facilities agreement or otherwise. Such agreement shall be deemed just and reasonable by operation of law without separate approval by the Commission.

C. In the absence of an agreement between the parties, an electric cooperative may apply at any time to the Commission for a tariff for local facilities usage charges for the use of cooperative system facilities. Local facilities usage charges shall be designed by the cooperative, either on the basis of line-miles of utility facilities used or the capacity of the interconnecting facility, or on the basis of a combination of these factors. The cooperative shall recover the ongoing costs of operating and maintaining all local utility facilities used by interconnecting customers, including a reasonable margin and all costs of any associated regulatory proceeding. The Commission is not required to conduct a hearing on any application pursuant to this subsection, but the Commission shall order notice to each affected customer and an opportunity to comment. Any proceeding conducted pursuant to this subsection shall be completed within 12 months of its commencement. Once the Commission approves a tariff for charges as described in this subsection, any interconnected customer shall be subject to the tariff thereafter. However, any agreements entered into pursuant to subsection B shall continue to have force and effect according to their terms and shall not be subject to the tariff unless the customer desires to transition to tariffed services.

D. In the absence of an agreement executed pursuant to subsection B or a specific tariff approved for distribution service charges pursuant to subsection C, any electric cooperative with a previously approved tariff for excess facilities charges may use such tariff to recover local facilities usage charges without seeking separate approval from the Commission.

E. The provisions of this section shall be applied notwithstanding any other provision of law.