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SENATE BILL NO. 271

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact §§ 56-594 and 56-594.02 of the Code of Virginia, relating to net energy metering; eligible customer-generators and eligible agricultural customer-generators.

Patron—Subramanyam

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-594 and 56-594.02 of the Code of Virginia are amended and reenacted as follows:

§ 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 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*, including any additions or enhancements such as battery storage or a smart inverter,* that (i) has a capacity of not more than 25 kilowatts for residential customers and not more than three megawatts for nonresidential customers; (ii) uses as its total source of fuel renewable energy, as defined in § 56-576; (iii) is located on 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. *No contract, lease, or arrangement by which a third party owns, maintains, or operates an electrical generating facility on an eligible customer-generator's property shall constitute the sale of electricity or cause the customer-generator or the third party to be considered an electric utility by virtue of participating in net energy metering.* In addition to the electrical generating facility size limitations in clause (i), the capacity of any generating facility installed under this section 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~~,~~ *and* (b) perform or pay for additional tests~~, and (c)~~. *No eligible customer-generator or eligible agricultural customer-generator shall be required to provide proof of liability insurance or to* purchase additional liability insurance *as a condition of interconnection*.

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 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, 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 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. *An eligible customer-generator or eligible agricultural customer-generator that operates a battery storage device of capacity commensurate with and equal to or greater than that of the electrical generating facility and in conjunction with the electrical generating facility shall be exempt from standby charges.*

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.

L. Any eligible customer-generator or eligible agricultural customer-generator may participate in demand response, energy efficiency, or peak reduction from dispatch of onsite battery service, provided that the compensation received is in exchange for a distinct service that is not already compensated by net metering credits for electricity exported to the electric distribution system or compensated by any other utility program or tariff. The Commission shall review and use the imposition of standby or other charges on eligible customer-generators or eligible agricultural customer-generators in any net energy metering proceeding conducted pursuant to subsection E.

§ 56-594.02. Solar-powered or wind-powered electricity generation; power purchase agreements; pilot programs.

A. The 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, 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:

1. Notwithstanding subsection G of § 56-580 or any other provision of law, a pilot program shall be conducted within the certificated service territory of each investor-owned electric utility ("Pilot Utility");

2. Except as provided in this subdivision, both jurisdictional and nonjurisdictional customers may participate in such pilot programs on a first-come, first-serve basis. 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 500 megawatts for Virginia jurisdictional customers and 500 megawatts for Virginia nonjurisdictional customers. Such limitation on the aggregated capacity of such facilities shall constitute a portion of the existing limit of 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. Notwithstanding any provision of this section 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 section that incorporate provisions of § 56-594;

3. A solar-powered or wind-powered generation facility with a capacity of no less than 50 kilowatts and no more than three megawatts shall be eligible for a third party power purchase agreement under a pilot program; however, if the customer under such agreement is a low-income utility customer, as defined in § 56-576, or 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 three megawatts shall not affect the limits on the capacity of electrical generating capacities of 25 kilowatts for residential customers and three megawatts for nonresidential customers set forth in subsection B of § 56-594, 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;

4. 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;

5. 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, including the requirement that the customer bear the reasonable costs, as determined by the Commission, of the items described in clauses ~~(i),~~ ~~(ii)~~ *(a)*, and ~~(iii)~~ *(b)* of such subsection;

6. 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 section 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

7. 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.

B. The Commission shall review the pilot program established pursuant to subsection A in 2015 and every two years thereafter during the pilot program. In its review, the Commission shall determine whether the limitations in subdivisions A 2 and 3 should be expanded, reduced, or continued.

C. Any third party power purchase agreement that is not entered into pursuant to the pilot program established pursuant to subsection A is prohibited in the Pilot Utility's service territory, unless such third party power purchase agreement is entered into between a licensed supplier and a retail customer pursuant to § 56-577 where such supplier is responsible for serving 100 percent of the load requirements for each retail customer account it serves.

D. If the Commission approves a tariff proposed for electric power provided 100 percent from renewable energy that serves 100 percent of the load requirements for each retail customer account it serves under such tariff, hereafter referred to as a "green tariff," such a green tariff shall not be available to any party to a third party power purchase agreement for the account being served by such power purchase agreement, and such an agreement shall remain in effect notwithstanding the approval of the green tariff.

E. Nothing in this section shall be construed as (i) rendering any person, by virtue of its selling electric power to an eligible customer-generator under a third party power purchase agreement entered into pursuant to the pilot program established under this section, a public utility or a competitive service provider, (ii) imposing a requirement that such a person meet 100 percent of the load requirements for each retail customer account it serves, or (iii) affecting third party power purchase agreements in effect prior to July 1, 2013.

F. Nothing in this section shall abridge any rights of either party to an agreement between a Pilot Utility and a group purchasing organization acting on behalf of Virginia local governments regarding the purchase of electric service.

G. The Commission shall, by December 1, 2013, establish guidelines concerning (i) information to be provided in notices required under subdivision A 6 and (ii) procedures for aggregating and posting to the Commission's web site information derived from the aforesaid notices, including total capacity utilized by pilot projects for which notice has been received and capacity remaining available for future pilot projects. In addition, the Commission may adopt such rules or establish such guidelines as may be necessary for its general administration of the pilot program established under this section.