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HOUSE BILL NO. 2386
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Labor and Commerce
on _____)
(Patron Prior to Substitute—Delegate Higgins)

A BILL to amend and reenact § 56-46.1 of the Code of Virginia, relating to State Corporation Commission approval of certain electrical transmission lines.

Be it enacted by the General Assembly of Virginia:

1. That § 56-46.1 of the Code of Virginia is amended and reenacted as follows:

§ 56-46.1. Commission to consider environmental, economic, and improvements in service reliability factors in approving construction of electrical utility facilities; approval required for construction of certain electrical transmission lines; notice and hearings.

A. Whenever the Commission is required to approve the construction of any electrical utility facility, it shall give consideration to the effect of that facility on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact. 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 granted 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) are governed by the permit or approval or (ii) 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. In every proceeding under this subsection, the Commission shall receive and give consideration to all reports that relate to the proposed facility by state agencies concerned

31 with environmental protection; and if requested by any county or municipality in which the facility is
32 proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223
33 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (a) shall consider the effect of the
34 proposed facility on economic development within the Commonwealth, including but not limited to
35 furtherance of the economic and job creation objectives of the Commonwealth Clean Energy Policy set forth
36 in § 45.2-1706.1, and (b) shall consider any improvements in service reliability that may result from the
37 construction of such facility.

38 B. Subject to the provisions of subsection J, no electrical transmission line of 138 kilovolts or more shall
39 be constructed unless the State Corporation Commission shall, after at least 30 days' advance notice by (i)
40 publication in a newspaper or newspapers of general circulation in the counties and municipalities through
41 which the line is proposed to be built, (ii) written notice to the governing body of each such county and
42 municipality, and (iii) causing to be sent a copy of the notice by first class mail to all owners of property
43 within the route of the proposed line, as indicated on the map or sketch of the route filed with the
44 Commission, which requirement shall be satisfied by mailing the notice to such persons at such addresses as
45 are indicated in the land books maintained by the commissioner of revenue, director of finance or treasurer of
46 the county or municipality, approve such line. Such notices shall include a written description of the proposed
47 route the line is to follow, as well as a map or sketch of the route including a digital geographic information
48 system (GIS) map provided by the public utility showing the location of the proposed route. The Commission
49 shall make GIS maps provided under this subsection available to the public on the Commission's website.
50 Such notices shall be in addition to the advance notice to the chief administrative officer of the county or
51 municipality required pursuant to § 15.2-2202.

52 As a condition to approval the Commission shall determine that the line is needed and that the corridor or
53 route chosen for the line will avoid or reasonably minimize adverse impact to the greatest extent reasonably
54 practicable on the scenic assets, historic and cultural resources recorded with the Department of Historic
55 Resources, cultural resources identified by federally recognized Tribal Nations in the Commonwealth, and
56 environment of the area concerned. To assist the Commission in this determination, as part of the application
57 for Commission approval of the line, the applicant shall summarize its efforts to *use existing rights-of-way*
58 *where practical and to* avoid or reasonably minimize adverse impact to the greatest extent reasonably
59 practicable on the scenic assets, historic resources recorded with the Department of Historic Resources, and

60 environment of the area concerned. In making the determinations about need, corridor or route, and method
61 of installation, the Commission shall verify the applicant's load flow modeling, contingency analyses, and
62 reliability needs presented to justify the new line and its proposed method of installation, *and the Commission*
63 *shall verify the type of conductors used and evaluate the prudence of using advanced conductor technology.*
64 If the local comprehensive plan of an affected county or municipality designates corridors or routes for
65 electric transmission lines and the line is proposed to be constructed outside such corridors or routes, in any
66 hearing the county or municipality may provide adequate evidence that the existing planned corridors or
67 routes designated in the plan can adequately serve the needs of the company. Additionally, the Commission
68 shall consider, upon the request of the governing body of any county or municipality in which the line is
69 proposed to be constructed, (a) the costs and economic benefits likely to result from requiring the
70 underground placement of the line and (b) any potential impediments to timely construction of the line.

71 C. If, prior to such approval, any interested party shall request a public hearing, the Commission shall, as
72 soon as reasonably practicable after such request, hold such hearing or hearings at such place as may be
73 designated by the Commission. In any hearing, the public service company shall provide adequate evidence
74 that existing rights-of-way cannot adequately serve the needs of the company.

75 If, prior to such approval, written requests therefor are received from the governing body of any county or
76 municipality through which the line is proposed to be built or from 20 or more interested parties, the
77 Commission shall hold at least one hearing in the area that would be affected by construction of the line, for
78 the purpose of receiving public comment on the proposal. If any hearing is to be held in the area affected, the
79 Commission shall direct that a copy of the transcripts of any previous hearings held in the case be made
80 available for public inspection at a convenient location in the area for a reasonable time before such local
81 hearing.

82 D. As used in this section, unless the context requires a different meaning:

83 "Environment" or "environmental" shall be deemed to include in meaning "historic," as well as a
84 consideration of the probable effects of the line on the health and safety of the persons in the area concerned.

85 "Interested parties" includes the governing bodies of any counties or municipalities through which the line
86 is proposed to be built and persons residing or owning property in each such county or municipality.

87 "Public utility" means a public utility as defined in § 56-265.1.

88 "Qualifying facilities" means a cogeneration or small power production facility that meets the criteria of

89 18 C.F.R. Part 292.

90 "Reasonably accommodate requests to wheel or transmit power" means:

91 1. That the applicant will make available to new electric generation facilities constructed after January 9,
92 1991, qualifying facilities and other nonutilities, a minimum of one-fourth of the total megawatts of the
93 additional transmission capacity created by the proposed line, for the purpose of wheeling to public utility
94 purchasers the power generated by such qualifying facilities and other nonutility facilities which are awarded
95 a power purchase contract by a public utility purchaser in compliance with applicable state law or regulations
96 governing bidding or capacity acquisition programs for the purchase of electric capacity from nonutility
97 sources, provided that the obligation of the applicant will extend only to those requests for wheeling service
98 made within the 12 months following certification by the State Corporation Commission of the transmission
99 line and with effective dates for commencement of such service within the 12 months following completion
100 of the transmission line; and

101 2. That the wheeling service offered by the applicant, pursuant to subdivision 1, will reasonably further
102 the purposes of the Public Utilities Regulatory Policies Act of 1978 (P. L. 95-617), as demonstrated by
103 submitting to the Commission, with its application for approval of the line, the cost methodologies, terms,
104 conditions, and dispatch and interconnection requirements the applicant intends, subject to any applicable
105 requirements of the Federal Energy Regulatory Commission, to include in its agreements for such wheeling
106 service.

107 E. In the event that, at any time after the giving of the notice required in subsection B, it appears to the
108 Commission that consideration of a route or routes significantly different from the route described in the
109 notice is desirable, the Commission shall cause notice of the new route or routes to be published and mailed
110 in accordance with subsection B. The Commission shall thereafter comply with the provisions of this section
111 with respect to the new route or routes to the full extent necessary to give affected localities, federally
112 recognized Tribal Nations in the Commonwealth, and interested parties in the newly affected areas the same
113 protection afforded to affected localities and interested parties affected by the route described in the original
114 notice.

115 F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of §
116 15.2-2232 and local zoning ordinances with respect to such transmission line.

117 G. The Commission shall enter into a memorandum of agreement with the Department of Environmental

118 Quality regarding the coordination of their reviews of the environmental impact of electric generating plants
119 and associated facilities. If the proposed plants or associated facilities are in a locality identified by the
120 Ombudsman for Tribal Consultation pursuant to subdivision B 2 of § 2.2-401.01, such consultation
121 information shall be included in the memorandum of agreement.

122 H. An applicant that is required to obtain (i) a certificate of public convenience and necessity from the
123 Commission for any electric generating facility, electric transmission line, natural or manufactured gas
124 transmission line as defined in 49 C.F.R. § 192.3, or natural or manufactured gas storage facility (hereafter,
125 an energy facility) and (ii) an environmental permit for the energy facility that is subject to issuance by any
126 agency or board within the Secretariat of Natural and Historic Resources, may request a pre-application
127 planning and review process. In any such request to the Commission or the Secretariat of Natural and
128 Historic Resources, the applicant shall identify the proposed energy facility for which it requests the pre-
129 application planning and review process. The Commission, the Department of Environmental Quality, the
130 Marine Resources Commission, the Department of Wildlife Resources, the Department of Historic
131 Resources, the Department of Conservation and Recreation, and other appropriate agencies of the
132 Commonwealth shall participate in the pre-application planning and review process. Participation in such
133 process shall not limit the authority otherwise provided by law to the Commission or other agencies or boards
134 of the Commonwealth. The Commission and other participating agencies and boards of the Commonwealth
135 may invite federal and local governmental entities charged by law with responsibility for issuing permits or
136 approvals and potentially impacted federally recognized Tribal Nations in the Commonwealth to participate
137 in the pre-application planning and review process. Through the pre-application planning and review process,
138 the applicant, the Commission, participating agencies and boards of the Commonwealth, and potentially
139 impacted federally recognized Tribal Nations in the Commonwealth shall identify the potential impacts and
140 approvals that may be required and shall develop a plan that will provide for an efficient and coordinated
141 review of the proposed energy facility. The plan shall include (a) a list of the permits or other approvals likely
142 to be required based on the information available, (b) a specific plan and preliminary schedule for the
143 different reviews, (c) a plan for coordinating those reviews and the related public comment process, and (d)
144 designation of points of contact, either within each agency or for the Commonwealth as a whole, to facilitate
145 this coordination. The plan shall be made readily available to the public and shall be maintained on a
146 dedicated website to provide current information on the status of each component of the plan and each

147 approval process including opportunities for public comment.

148 I. The provisions of this section shall not apply to the construction and operation of a small renewable
149 energy project, as defined in § 10.1-1197.5, by a utility regulated pursuant to this title for which the
150 Department of Environmental Quality has issued a permit by rule pursuant to Article 5 (§ 10.1-1197.5 et seq.)
151 of Chapter 11.1 of Title 10.1.

152 J. Approval under this section shall not be required for any transmission line for which a certificate of
153 public convenience and necessity is not required pursuant to subdivision A of § 56-265.2.