

## SENATE BILL NO. 310

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on \_\_\_\_\_)

(Patron Prior to Substitute—Senator Hackworth)

*A BILL to amend and reenact § 56-580 of the Code of Virginia, relating to State Corporation Commission; time frame for completion of certain proceedings.*

**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 *or a facility subject to the requirements of subsection B of § 56-46.1*, within nine months following the utility's submission of a complete application ~~therefor~~ *therefor. For facilities subject to the requirements of subsection B of § 56-46.1, the Commission may enlarge such period for up to 120 days to ensure sufficient review, public participation, and other considerations in the public interest.* 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, the Commission shall continue to exercise its existing authority over the provision of electric distribution services to retail customers in the Commonwealth including, but not limited to, the authority contained in Chapters 10 (§ 56-232 et seq.) and 10.1 (§ 56-265.1 et seq.) of this title.

F. Nothing in this chapter shall impair the exclusive territorial rights of an electric utility owned or operated by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the referendum requirement of § 15.2-5403. Nor shall any provision of this chapter apply to any such electric

63 utility unless (i) that municipality or that authority created by a governmental unit exempt from the  
64 referendum requirement of § 15.2-5403 elects to have this chapter apply to that utility or (ii) that utility,  
65 directly or indirectly, sells, offers to sell or seeks to sell electric energy to any retail customer eligible to  
66 purchase electric energy from any supplier in accordance with § 56-577 if that retail customer is outside the  
67 geographic area that was served by such municipality as of July 1, 1999, except (a) any area within the  
68 municipality that was served by an incumbent public utility as of that date but was thereafter served by an  
69 electric utility owned or operated by a municipality or by an authority created by a governmental unit exempt  
70 from the referendum requirement of § 15.2-5403 pursuant to the terms of a franchise agreement between the  
71 municipality and the incumbent public utility, or (b) where the geographic area served by an electric utility  
72 owned or operated by a municipality is changed pursuant to mutual agreement between the municipality and  
73 the affected incumbent public utility in accordance with § 56-265.4:1. If an electric utility owned or operated  
74 by a municipality as of July 1, 1999, or by an authority created by a governmental unit exempt from the  
75 referendum requirement of § 15.2-5403 is made subject to the provisions of this chapter pursuant to clause (i)  
76 or (ii) of this subsection, then in such event the provisions of this chapter applicable to incumbent electric  
77 utilities shall also apply to any such utility, mutatis mutandis.

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

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