

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 56-46.1 of the Code of Virginia, relating to electric utilities; construction of*  
 3 *certain electrical transmission lines; siting requirements.*

4 [H 1491]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 56-46.1 of the Code of Virginia is amended and reenacted as follows:**

8 **§ 56-46.1. Commission to consider environmental, economic, and improvements in service**  
 9 **reliability factors in approving construction of electrical utility facilities; approval required for**  
 10 **construction of certain electrical transmission lines; notice and hearings.**

11 A. Whenever the Commission is required to approve the construction of any electrical utility facility, it  
 12 shall give consideration to the effect of that facility on the environment and establish such conditions as may  
 13 be desirable or necessary to minimize adverse environmental impact. In order to avoid duplication of  
 14 governmental activities, any valid permit or approval required for an electric generating plant and associated  
 15 facilities issued or granted by a federal, state, or local governmental entity charged by law with responsibility  
 16 for issuing permits or approvals regulating environmental impact and mitigation of adverse environmental  
 17 impact or for other specific public interest issues such as building codes, transportation plans, and public  
 18 safety, whether such permit or approval is granted prior to or after the Commission's decision, shall be  
 19 deemed to satisfy the requirements of this section with respect to all matters that (i) are governed by the  
 20 permit or approval or (ii) are within the authority of, and were considered by, the governmental entity in  
 21 issuing such permit or approval, and the Commission shall impose no additional conditions with respect to  
 22 such matters. Nothing in this section shall affect the ability of the Commission to keep the record of a case  
 23 open. Nothing in this section shall affect any right to appeal such permits or approvals in accordance with  
 24 applicable law. In the case of a proposed facility located in a region that was designated as of July 1, 2001, as  
 25 serious nonattainment for the one-hour ozone standard as set forth in the federal Clean Air Act, the  
 26 Commission shall not issue a decision approving such proposed facility that is conditioned upon issuance of  
 27 any environmental permit or approval. In every proceeding under this subsection, the Commission shall  
 28 receive and give consideration to all reports that relate to the proposed facility by state agencies concerned  
 29 with environmental protection; and if requested by any county or municipality in which the facility is  
 30 proposed to be built, to local comprehensive plans that have been adopted pursuant to Article 3 (§ 15.2-2223  
 31 et seq.) of Chapter 22 of Title 15.2. Additionally, the Commission (a) shall consider the effect of the  
 32 proposed facility on economic development within the Commonwealth, including but not limited to  
 33 furtherance of the economic and job creation objectives of the Commonwealth Clean Energy Policy set forth  
 34 in § 45.2-1706.1, and (b) shall consider any improvements in service reliability that may result from the  
 35 construction of such facility.

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

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

57 on the scenic assets, historic resources recorded with the Department of Historic Resources, and environment  
 58 of the area concerned. In making the determinations about need, corridor or route, and method of installation,  
 59 the Commission shall verify the applicant's load flow modeling, contingency analyses, and reliability needs  
 60 presented to justify the new line and its proposed method of installation. If the local comprehensive plan of an  
 61 affected county or municipality designates corridors or routes for electric transmission lines and the line is  
 62 proposed to be constructed outside such corridors or routes, in any hearing the county or municipality may  
 63 provide adequate evidence that the existing planned corridors or routes designated in the plan can adequately  
 64 serve the needs of the company. Additionally, the Commission shall consider, upon the request of the  
 65 governing body of any county or municipality in which the line is proposed to be constructed, (a) the costs  
 66 and economic benefits likely to result from requiring the underground placement of the line and (b) any  
 67 potential impediments to timely construction of the line. *For new overhead transmission lines of 500 kilovolts  
 68 or more constructed by a Phase II Utility, as that term is defined in subdivision A 1 of 56-585.1, the  
 69 Commission shall prioritize approving corridors or routes for construction pursuant to this subsection for  
 70 which the center of such corridor or route is located further than 150 feet from any dwelling house, public or  
 71 private school building, day care, or place of worship building unless no other practicable alternative exists.*

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

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

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

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

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

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

89 "Qualifying facilities" means a cogeneration or small power production facility that meets the criteria of  
 90 18 C.F.R. Part 292.

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

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

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

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

116 F. Approval of a transmission line pursuant to this section shall be deemed to satisfy the requirements of  
 117 § 15.2-2232 and local zoning ordinances with respect to such transmission line.

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

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

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

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

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