

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act 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.

[H 1062]

Approved

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

57 history if 12 months of billing history is not available. In addition to the electrical generating facility
58 size limitation in clause (i), in the certificated service territory of a Phase I Utility, the capacity of any
59 generating facility installed under this section after July 1, 2020, shall not exceed 100 percent of the
60 expected annual energy consumption based on the previous 12 months of billing history or an
61 annualized calculation of billing history if 12 months of billing history is not available, and in the
62 certificated service territory of a Phase II Utility, the capacity of any generating facility installed under
63 this section after July 1, 2020, shall not exceed 150 percent of the expected annual energy consumption
64 based on the previous 12 months of billing history or an annualized calculation of billing history if 12
65 months of billing history is not available.

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

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

73 "Small agricultural generator" has the same meaning that is ascribed to that term in § 56-594.2.

74 C. The Commission's regulations shall ensure that (i) the metering equipment installed for net
75 metering shall be capable of measuring the flow of electricity in two directions and (ii) any eligible
76 customer-generator seeking to participate in net energy metering shall notify its supplier and receive
77 approval to interconnect prior to installation of an electrical generating facility. The electric distribution
78 company shall have 30 days from the date of notification for residential facilities, and 60 days from the
79 date of notification for nonresidential facilities, to determine whether the interconnection requirements
80 have been met. Such regulations shall allocate fairly the cost of such equipment and any necessary
81 interconnection. An eligible customer-generator's electrical generating system, and each electrical
82 generating system of an eligible agricultural customer-generator, shall meet all applicable safety and
83 performance standards established by the National Electrical Code, the Institute of Electrical and
84 Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the
85 requirements set forth in this section and to ensure public safety, power quality, and reliability of the
86 supplier's electric distribution system, an eligible customer-generator or eligible agricultural
87 customer-generator whose electrical generating system meets those standards and rules shall bear all
88 reasonable costs of equipment required for the interconnection to the supplier's electric distribution
89 system, including costs, if any, to (a) install additional controls, and (b) perform or pay for additional
90 tests, and (c). *No eligible customer-generator or eligible agricultural customer-generator shall be*
91 *required to provide proof of liability insurance or to purchase additional liability insurance as a*
92 *condition of interconnection.*

93 D. The Commission shall establish minimum requirements for contracts to be entered into by the
94 parties to net metering arrangements. Such requirements shall protect the eligible customer-generator or
95 eligible agricultural customer-generator against discrimination by virtue of its status as an eligible
96 customer-generator or eligible agricultural customer-generator, and permit customers that are served on
97 time-of-use tariffs that have electricity supply demand charges contained within the electricity supply
98 portion of the time-of-use tariffs to participate as an eligible customer-generator or eligible agricultural
99 customer-generator. Notwithstanding the cost allocation provisions of subsection C, eligible
100 customer-generators or eligible agricultural customer-generators served on demand charge-based
101 time-of-use tariffs shall bear the incremental metering costs required to net meter such customers.

102 E. If electricity generated by an eligible customer-generator or eligible agricultural customer-generator
103 over the net metering period exceeds the electricity consumed by the eligible customer-generator or
104 eligible agricultural customer-generator, the customer-generator or eligible agricultural
105 customer-generator shall be compensated for the excess electricity if the entity contracting to receive
106 such electric energy and the eligible customer-generator or eligible agricultural customer-generator enter
107 into a power purchase agreement for such excess electricity. Upon the written request of the eligible
108 customer-generator or eligible agricultural customer-generator, the supplier that serves the eligible
109 customer-generator or eligible agricultural customer-generator shall enter into a power purchase
110 agreement with the requesting eligible customer-generator or eligible agricultural customer-generator that
111 is consistent with the minimum requirements for contracts established by the Commission pursuant to
112 subsection D. The power purchase agreement shall obligate the supplier to purchase such excess
113 electricity at the rate that is provided for such purchases in a net metering standard contract or tariff
114 approved by the Commission, unless the parties agree to a higher rate. The eligible customer-generator
115 or eligible agricultural customer-generator owns any renewable energy certificates associated with its
116 electrical generating facility; however, at the time that the eligible customer-generator or eligible
117 agricultural customer-generator enters into a power purchase agreement with its supplier, the eligible

118 customer-generator or eligible agricultural customer-generator shall have a one-time option to sell the
 119 renewable energy certificates associated with such electrical generating facility to its supplier and be
 120 compensated at an amount that is established by the Commission to reflect the value of such renewable
 121 energy certificates. Nothing in this section shall prevent the eligible customer-generator or eligible
 122 agricultural customer-generator and the supplier from voluntarily entering into an agreement for the sale
 123 and purchase of excess electricity or renewable energy certificates at mutually-agreed upon prices if the
 124 eligible customer-generator or eligible agricultural customer-generator does not exercise its option to sell
 125 its renewable energy certificates to its supplier at Commission-approved prices at the time that the
 126 eligible customer-generator or eligible agricultural customer-generator enters into a power purchase
 127 agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and
 128 renewable energy certificates from eligible customer-generators or eligible agricultural
 129 customer-generators shall be recoverable through its Renewable Energy Portfolio Standard (RPS) rate
 130 adjustment clause, if the supplier has a Commission-approved RPS plan. If not, then all costs shall be
 131 recoverable through the supplier's fuel adjustment clause. For purposes of this section, "all costs" shall
 132 be defined as the rates paid to the eligible customer-generator or eligible agricultural customer-generator
 133 for the purchase of excess electricity and renewable energy certificates and any administrative costs
 134 incurred to manage the eligible customer-generator's or eligible agricultural customer-generator's power
 135 purchase arrangements. The net metering standard contract or tariff shall be available to eligible
 136 customer-generators or eligible agricultural customer-generators on a first-come, first-served basis in
 137 each electric distribution company's Virginia service area until the rated generating capacity owned and
 138 operated by eligible customer-generators, eligible agricultural customer-generators, and small agricultural
 139 generators in the Commonwealth reaches six percent, in the aggregate, five percent of which is available
 140 to all customers and one percent of which is available only to low-income utility customers of each
 141 electric distribution company's adjusted Virginia peak-load forecast for the previous year, and shall
 142 require the supplier to pay the eligible customer-generator or eligible agricultural customer-generator for
 143 such excess electricity in a timely manner at a rate to be established by the Commission.

144 On and after the earlier of (i) 2024 for a Phase I Utility or 2025 for a Phase II Utility or (ii) when
 145 the aggregate rated generating capacity owned and operated by eligible customer-generators, eligible
 146 agricultural customer-generators, and small agricultural generators in the Commonwealth reaches three
 147 percent of a Phase I or Phase II Utility's adjusted Virginia peak-load forecast for the previous year, the
 148 Commission shall conduct a net energy metering proceeding.

149 In any net energy metering proceeding, the Commission shall, after notice and opportunity for
 150 hearing, evaluate and establish (a) an amount customers shall pay on their utility bills each month for
 151 the costs of using the utility's infrastructure; (b) an amount the utility shall pay to appropriately
 152 compensate the customer, as determined by the Commission, for the total benefits such facilities
 153 provide; (c) the direct and indirect economic impact of net metering to the Commonwealth; and (d) any
 154 other information the Commission deems relevant. The Commission shall establish an appropriate rate
 155 structure related thereto, which shall govern compensation related to all eligible customer-generators,
 156 eligible agricultural customer-generators, and small agricultural generators, except low-income utility
 157 customers, that interconnect after the effective date established in the Commission's final order. Nothing
 158 in the Commission's final order shall affect any eligible customer-generators, eligible agricultural
 159 customer-generators, and small agricultural generators who interconnect before the effective date of such
 160 final order. As part of the net energy metering proceeding, the Commission shall evaluate the six
 161 percent aggregate net metering cap and may, if appropriate, raise or remove such cap. The Commission
 162 shall enter its final order in such a proceeding no later than 12 months after it commences such
 163 proceeding, and such final order shall establish a date by which the new terms and conditions shall
 164 apply for interconnection and shall also provide that, if the terms and conditions of compensation in the
 165 final order differ from the terms and conditions available to customers before the proceeding,
 166 low-income utility customers may interconnect under whichever terms are most favorable to them.

167 F. Any residential eligible customer-generator or eligible agricultural customer-generator, in the
 168 service territory of a Phase II Utility who owns and operates, or contracts with other persons to own,
 169 operate, or both, an electrical generating facility with a capacity that exceeds 15 kilowatts shall pay to
 170 its supplier, in addition to any other charges authorized by law, a monthly standby charge. The amount
 171 of the standby charge and the terms and conditions under which it is assessed shall be in accordance
 172 with a methodology developed by the supplier and approved by the Commission. The Commission shall
 173 approve a supplier's proposed standby charge methodology if it finds that the standby charges collected
 174 from all such eligible customer-generators and eligible agricultural customer-generators allow the
 175 supplier to recover only the portion of the supplier's infrastructure costs that are properly associated with
 176 serving such eligible customer-generators or eligible agricultural customer-generators. Such an eligible
 177 customer-generator or eligible agricultural customer-generator shall not be liable for a standby charge
 178 until the date specified in an order of the Commission approving its supplier's methodology. For

179 customers of all other investor-owned utilities, on and after July 1, 2020, standby charges are prohibited
 180 for any residential eligible customer-generator or agricultural customer-generator. *An eligible*
 181 *customer-generator or eligible agricultural customer-generator that operates a battery storage device of*
 182 *capacity commensurate with and equal to or greater than that of the electrical generating facility and in*
 183 *conjunction with the electrical generating facility shall be exempt from standby charges.*

184 G. On and after the later of July 1, 2019, or the effective date of regulations that the Commission is
 185 required to adopt pursuant to § 56-594.01, (i) net energy metering in the service territory of each electric
 186 cooperative shall be conducted as provided in a program implemented pursuant to § 56-594.01 and (ii)
 187 the provisions of this section shall not apply to net energy metering in the service territory of an electric
 188 cooperative except as provided in § 56-594.01.

189 H. The Commission may adopt such rules or establish such guidelines as may be necessary for its
 190 general administration of this section.

191 I. When the Commission conducts a net energy metering proceeding, it shall:

192 1. Investigate and determine the costs and benefits of the current net energy metering program;

193 2. Establish an appropriate netting measurement interval for a successor tariff that is just and
 194 reasonable in light of the costs and benefits of the net metering program in aggregate, and applicable to
 195 new requests for net energy metering service; ~~and~~

196 3. Determine a specific avoided cost for customer-generators, the different type of customer-generator
 197 technologies where the Commission deems it appropriate, and establish the methodology for determining
 198 the compensation rate for any net excess generation determined according to the applicable net
 199 measurement interval for any new tariff; *and*

200 4. *Make all reasonable efforts to ensure that the net energy metering program does not result in*
 201 *unreasonable cost-shifting to nonparticipating electric utility customers.*

202 J. In evaluating the costs and benefits of the net energy metering program, the Commission shall
 203 consider:

204 1. The aggregate impact of customer-generators on the electric utility's long-run marginal costs of
 205 generation, distribution, and transmission;

206 2. The cost of service implications of customer-generators on other customers within the same class,
 207 including an evaluation of whether customer-generators provide an adequate rate of return to the
 208 electrical utility compared to the otherwise applicable rate class when, for analytical purposes only,
 209 examined as a separate class within a cost of service study;

210 3. The direct and indirect economic impact of the net energy metering program to the
 211 Commonwealth; and

212 4. Any other information it deems relevant, including environmental and resilience benefits of
 213 customer-generator facilities.

214 K. Notwithstanding the provisions of this section, § 56-585.1:8, or any other provision of law to the
 215 contrary, any locality that is a nonjurisdictional customer of a Phase II Utility, as defined in
 216 § 56-585.1:3, and is in Planning District Eight with a population greater than 1 million may (i) install
 217 solar-powered or wind-powered electric generation facilities with a rated capacity not exceeding five
 218 megawatts, whether the facilities are owned by the locality or owned and operated by a third party
 219 pursuant to a contract with the locality, on any locality-owned site within the locality and (ii) credit the
 220 electricity generated at any such facility as directed by the governing body of the locality to any one or
 221 more of the metered accounts of buildings or other facilities of the locality or the locality's public school
 222 division that are located within the locality, without regard to whether the buildings and facilities are
 223 located at the same site where the electric generation facility is located or at a site contiguous thereto.
 224 The amount of the credit for such electricity to the metered accounts of the locality or its public school
 225 division shall be identical, with respect to the rate structure, all retail rate components, and monthly
 226 charges, to the amount the locality or public school division would otherwise be charged for such
 227 amount of electricity under its contract with the public utility, without the assessment by the public
 228 utility of any distribution charges, service charges, or fees in connection with or arising out of such
 229 crediting.

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

237 **§ 56-594.02. Solar-powered or wind-powered electricity generation; power purchase agreements;**
 238 **pilot programs.**

239 A. The Commission shall conduct pilot programs under which a person that owns or operates a

240 solar-powered or wind-powered electricity generation facility located on premises owned or leased by an
 241 eligible customer-generator, as defined in § 56-594, shall be permitted to sell the electricity generated
 242 from such facility exclusively to such eligible customer-generator under a power purchase agreement
 243 used to provide third party financing of the costs of such a renewable generation facility (third party
 244 power purchase agreement), subject to the following terms, conditions, and restrictions:

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

247 2. Except as provided in this subdivision, both jurisdictional and nonjurisdictional customers may
 248 participate in such pilot programs on a first-come, first-serve basis. The aggregated capacity of all
 249 generation facilities that are subject to such third party power purchase agreements at any time during
 250 the pilot program shall not exceed 500 megawatts for Virginia jurisdictional customers and 500
 251 megawatts for Virginia nonjurisdictional customers. Such limitation on the aggregated capacity of such
 252 facilities shall constitute a portion of the existing limit of six percent of each Pilot Utility's adjusted
 253 Virginia peak-load forecast for the previous year that is available to eligible customer-generators
 254 pursuant to subsection E of § 56-594. Notwithstanding any provision of this section that incorporates
 255 provisions of § 56-594, the seller and the customer shall elect either to (i) enter into their third party
 256 power purchase agreement subject to the conditions and provisions of the Pilot Utility's net energy
 257 metering program under § 56-594 or (ii) provide that electricity generated from the generation facilities
 258 subject to the third party power purchase agreement will not be net metered under § 56-594, provided
 259 that an election not to net meter under § 56-594 shall not exempt the third party power purchase
 260 agreement and the parties thereto from the requirements of this section that incorporate provisions of
 261 § 56-594;

262 3. A solar-powered or wind-powered generation facility with a capacity of no less than 50 kilowatts
 263 and no more than three megawatts shall be eligible for a third party power purchase agreement under a
 264 pilot program; however, if the customer under such agreement is a low-income utility customer, as
 265 defined in § 56-576, or is an entity with tax-exempt status in accordance with § 501(c) of the Internal
 266 Revenue Code of 1954, as amended, then such facility is eligible for the pilot program even if it does
 267 not meet the 50 kilowatts minimum size requirement. The maximum generation capacity of three
 268 megawatts shall not affect the limits on the capacity of electrical generating capacities of 25 kilowatts
 269 for residential customers and three megawatts for nonresidential customers set forth in subsection B of
 270 § 56-594, which limitations shall continue to apply to net energy metering generation facilities regardless
 271 of whether they are the subject of a third party power purchase agreement under the pilot program;

272 4. A generation facility that is the subject of a third party power purchase agreement under the pilot
 273 program shall serve only one customer, and a third party power purchase agreement shall not serve
 274 multiple customers;

275 5. The customer under a third party power purchase agreement under the pilot program shall be
 276 subject to the interconnection and other requirements imposed on eligible customer-generators pursuant
 277 to subsection C of § 56-594, including the requirement that the customer bear the reasonable costs, as
 278 determined by the Commission, of the items described in clauses ~~(i)~~, ~~(ii)~~, (a) and ~~(iii)~~ (b) of such
 279 subsection;

280 6. A third party power purchase agreement under the pilot program shall not be valid unless it
 281 conforms in all respects to the requirements of the pilot program conducted under the provisions of this
 282 section and unless the Commission and the Pilot Utility are provided written notice of the parties' intent
 283 to enter into a third party power purchase agreement not less than 30 days prior to the agreement's
 284 proposed effective date; and

285 7. An affiliate of the Pilot Utility shall be permitted to offer and enter into third party power
 286 purchase arrangements on the same basis as may any other person that satisfies the requirements of
 287 being a seller under a third party power purchase agreement under the pilot program.

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

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

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

301 green tariff.

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

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

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