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HOUSE BILL NO. 265

Offered January 14, 2004

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A BILL to amend and reenact §§ 30-205, 56-582, 56-583, and 56-584 of the Code of Virginia, relating to the Virginia Electric Utility Restructuring Act; stranded costs.

Patron—Morgan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 30-205, 56-582, 56-583, and 56-584 of the Code of Virginia are amended and reenacted as follows:

§ 30-205. (Expires July 1, 2008) Powers and duties of the Commission.

The Commission shall have the following powers and duties:

1. Monitor the work of the State Corporation Commission in implementing Chapter 23 (§ 56-576 et seq.) of Title 56, receiving such reports as the Commission may be required to make pursuant thereto, including reviews, analyses, and impact on consumers of electric utility restructuring programs in other states;

2. Determine whether, and on what basis, incumbent electric utilities should be permitted to discount capped generation rates established pursuant to § 56-582;

3. Monitor, ~~after the commencement of customer choice and with the assistance of the implementation by the State Corporation Commission and the Office of Attorney General, the incumbent electric utilities, suppliers, and retail customers, whether the recovery of stranded costs, as provided in of the provisions of § 56-584, has resulted or is likely to result in regarding the overrecovery or underrecovery~~ determination of the amount of each incumbent electric utility's just and reasonable net stranded costs and such utility's recovery of such costs through capped rates as provided in § 56-582 and wires charges as provided in § 56-583;

4. Examine (i) utility worker protection during the transition to retail competition, (ii) generation, transmission and distribution systems reliability concerns, and (iii) energy assistance programs for low-income households;

5. Establish one or more subcommittees of its membership, to meet at the direction of the chairman of the Commission, for any purpose within the scope of the duties prescribed to the Commission by this section; and

6. Report annually to the General Assembly and the Governor on the progress of each stage of the phase-in of retail competition and offer such recommendations as may be appropriate for legislative and administrative consideration in order to maintain the Commonwealth's position as a low-cost electricity market and ensure that residential customers and small business customers benefit from competition.

§ 56-582. Rate caps.

A. The Commission shall establish capped rates, effective January 1, 2001, and expiring on July 1, 2007, for each service territory of every incumbent utility as follows:

1. Capped rates shall be established for customers purchasing bundled electric transmission, distribution and generation services from an incumbent electric utility.

2. Capped rates for electric generation services, only, shall also be established for the purpose of effecting customer choice for those retail customers authorized under this chapter to purchase generation services from a supplier other than the incumbent utility during this period.

3. The capped rates established under this section shall be the rates in effect for each incumbent utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a rate application filed by an incumbent electric utility with the Commission prior to January 1, 2001, and subsequently approved by the Commission, and made by an incumbent electric utility that is not currently bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002. If such rate application is filed, the rates proposed therein shall go into effect on January 1, 2001, but such rates shall be interim in nature and subject to refund until such time as the Commission has completed its investigation of such application. Any amount of the rates found excessive by the Commission shall be subject to refund with interest, as may be ordered by the Commission. The Commission shall act upon such applications prior to commencement of the period of transition to customer choice. Such rate application and the Commission's approval shall give due consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for a period of time ending as late as July 1, 2007. The capped rates established under this section, which

59 include rates, tariffs, electric service contracts, and rate programs (including experimental rates,
60 regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs
61 of each incumbent electric utility, provided that experimental rates and rate programs may be closed to
62 new customers upon application to the Commission. Such capped rates shall also include rates for new
63 services where, subsequent to January 1, 2001, rate applications for any such rates are filed by
64 incumbent electric utilities with the Commission and are thereafter approved by the Commission. In
65 establishing such rates for new services, the Commission may use any rate method that promotes the
66 public interest and that is fairly compensatory to any utilities requesting such rates.

67 B. The Commission may adjust such capped rates in connection with the following: (i) utilities'
68 recovery of fuel costs pursuant to § 56-249.6, (ii) any changes in the taxation by the Commonwealth of
69 incumbent electric utility revenues, (iii) any financial distress of the utility beyond its control, (iv) with
70 respect to cooperatives that were not members of a power supply cooperative on January 1, 1999, and as
71 long as they do not become members, their cost of purchased wholesale power and discounts from
72 capped rates to match the cost of providing distribution services, ~~and~~ (v) with respect to cooperatives
73 that were members of a power supply cooperative on January 1, 1999, their recovery of fuel costs,
74 through the wholesale power cost adjustment clauses of their tariffs pursuant to § 56-231.33, *and* (vi)
75 *any rate adjustments authorized pursuant to § 56-584 with respect to any incumbent electric utility that*
76 *has collected its just and reasonable net stranded costs.* Notwithstanding the provisions of § 56-249.6,
77 the Commission may authorize tariffs that include incentives designed to encourage an incumbent
78 electric utility to reduce its fuel costs by permitting retention of a portion of cost savings resulting from
79 fuel cost reductions or by other methods determined by the Commission to be fair and reasonable to the
80 utility and its customers.

81 C. A utility may petition the Commission to terminate the capped rates to all customers any time
82 after January 1, 2004, and such capped rates may be terminated upon the Commission finding of an
83 effectively competitive market for generation services within the service territory of that utility. If the
84 capped rates are continued after January 1, 2004, an incumbent electric utility which is not, as of the
85 effective date of this chapter, bound by a rate case settlement adopted by the Commission that extends
86 in its application beyond January 1, 2002, may petition the Commission for approval of a one-time
87 change in the nongeneration components of such rates.

88 D. Until the expiration or termination of capped rates as provided in this section, the incumbent
89 electric utility, consistent with the functional separation plan implemented under § 56-590, shall make
90 electric service available at capped rates established under this section to any customer in the incumbent
91 electric utility's service territory, including any customer that, until the expiration or termination of
92 capped rates, requests such service after a period of utilizing service from another supplier.

93 E. During the period when capped rates are in effect for an incumbent electric utility, such utility
94 may file with the Commission a plan describing the method used by such utility to assure full funding
95 of its nuclear decommissioning obligation and specifying the amount of the revenues collected under
96 either the capped rates, as provided in this section, or the wires charges, as provided in § 56-583, that
97 are dedicated to funding such nuclear decommissioning obligation under the plan. The Commission shall
98 approve the plan upon a finding that the plan is not contrary to the public interest.

99 § 56-583. Wires charges.

100 A. To provide the opportunity for competition and consistent with § 56-584, the Commission shall
101 calculate wires charges for each incumbent electric utility, effective upon the commencement of
102 customer choice, which shall be the excess, if any, of the incumbent electric utility's capped unbundled
103 rates for generation over the projected market prices for generation, as determined by the Commission;
104 however, where there is such excess, the sum of such wires charges, the unbundled charge for
105 transmission and ancillary services, the applicable distribution rates established by the Commission and
106 the above projected market prices for generation shall not exceed the capped rates established under
107 § 56-582 A 1 applicable to such incumbent electric utility. The Commission shall adjust such wires
108 charges not more frequently than annually and shall seek to coordinate adjustments of wires charges
109 with any adjustments of capped rates pursuant to § 56-582. No wires charge shall be less than zero. The
110 projected market prices for generation, when determined under this subsection, shall be adjusted for any
111 projected cost of transmission, transmission line losses, and ancillary services subject to the jurisdiction
112 of the Federal Energy Regulatory Commission which the incumbent electric utility (i) must incur to sell
113 its generation and (ii) cannot otherwise recover in rates subject to state or federal jurisdiction.

114 B. Customers that choose suppliers of electric energy, other than the incumbent electric utility, or are
115 subject to and receiving default service, prior to the expiration of the period for capped rates, as
116 provided for in § 56-582, shall pay a wires charge determined pursuant to subsection A based upon
117 actual usage of electricity distributed by the incumbent electric utility to the customer (i) during the
118 period from the time the customer chooses a supplier of electric energy other than the incumbent electric
119 utility or (ii) during the period from the time the customer is subject to and receives default service until
120 capped rates expire or are terminated, as provided in § 56-582, *or are eliminated as provided in*

§ 56-584.

C. The Commission shall permit any customer, at its option, to pay the wires charges owed to an incumbent electric utility on an accelerated or deferred basis upon a finding that such method is not (i) prejudicial to the incumbent electric utility or its ratepayers or (ii) inconsistent with the development of effective competition, provided that all deferred wires charges shall be paid in full by July 1, 2007.

D. A supplier of retail electric energy may pay any or all of the wires charge owed by any customer to an incumbent electric utility. The supplier may not only pay such wires charge on behalf of any customer, but also contract with any customer to finance such payments. Further, on request of a supplier, the incumbent electric utility shall enter into a contract allowing such supplier to pay such wires charge on an accelerated or deferred basis. Such contract shall contain terms and conditions, specified in rules and regulations promulgated by the Commission to implement the provisions of this subsection, that fully compensate the incumbent electric utility for such wires charge, including reasonable compensation for the time value of money.

§ 56-584. Stranded costs.

A. Just and reasonable net stranded costs, to the extent that they exceed zero value in total for the incumbent electric utility, shall be recoverable by each incumbent electric utility provided each incumbent electric utility shall only recover its just and reasonable net stranded costs through either capped rates as provided in § 56-582 or wires charges as provided in § 56-583.

B. The Commission shall calculate the amount of each incumbent electric utility's just and reasonable net stranded costs as follows:

1. An incumbent electric utility's just and reasonable net stranded costs means the net loss in the economic value of the utility that is attributable to prudently incurred, verifiable and nonmitigable electric generation-related assets that become unrecoverable due to restructuring and retail competition.

2. The Commission, after notice and opportunity for hearing, shall conduct proceedings in which it shall calculate the amount of each incumbent electric utility's just and reasonable net stranded costs as of January 1, 2002. Such calculation shall be made based on actual information available on such date as such information shall be updated to reflect actual changes to such information and changes that may be reasonably anticipated.

3. In proceedings under this subsection, the Commission shall calculate the amount of each incumbent electric utility's just and reasonable net stranded costs by determining the amount, if any, by which (i) the booked value of all of the utility's generation-related assets, including but not limited to company-owned, operated, or leased generation assets, the value of Commission authorized regulatory assets, and the value of purchased power contracts, exceeds (ii) the value of the utility's generation-related assets, including but not limited to company-owned, operated, or leased generation assets, the value of Commission authorized regulatory assets, and the value of purchased power contracts, over the life of the assets, based on the net present value cash flows that reasonably would be expected to be generated from such assets in a competitive market, using reasonable estimates of market prices for the applicable future periods, and adjusted for anticipated operations and maintenance costs.

4. If the Commission determines that the amount calculated under clause (ii) of subdivision 3 exceeds the amount calculated under clause (i) of subdivision 3 for an incumbent electric utility, then such utility shall be deemed to have no just and reasonable net stranded costs.

C. The Commission, in a proceeding under subsection B or in a separate proceeding after notice and an opportunity for a hearing, shall conduct proceedings to calculate the amount that each incumbent electric utility has collected for the recovery of just and reasonable net stranded costs through capped rates as provided in § 56-582 and wires charges as provided in § 56-583. Such proceedings shall be conducted annually, or less frequently if the Commission deems it appropriate, prior to the expiration of the capped rate period pursuant to § 56-582. In such proceedings, the Commission shall determine the amount that an incumbent electric utility has collected through capped rates for the recovery of just and reasonable net stranded costs by subtracting (i) the actual cost to the utility of providing service, which shall include mitigation costs, plus a fair return, from (ii) the utility's actual revenues from the provision of capped rate service. The Commission shall determine the utility's fair return on its prudently incurred investment by application of the principles of Chapter 10 (§ 56-232 et seq.) of this title and applicable regulations. The utility's actual cost of providing service shall be determined based upon earnings test information filed by the utility under the Commission's applicable rate case regulations and annual informational filing requirements.

D. In connection with any proceeding under subsection C, the Commission shall compare the amount that the incumbent electric utility has collected for the recovery of just and reasonable net stranded costs to the amount of the utility's just and reasonable net stranded costs.

E. If the Commission determines that an incumbent electric utility has no just and reasonable net stranded costs, or that the amount the incumbent electric utility has collected or is reasonably expected to collect, for the recovery of just and reasonable net stranded costs through capped rates and wires

182 *charges exceeds the utility's just and reasonable net stranded costs, then the Commission is authorized,*
183 *in connection with a proceeding under subsection C or in a separate proceeding after notice and an*
184 *opportunity for a hearing, to (i) eliminate the utility's authority to collect wires charges and (ii) reduce*
185 *the utility's capped rates to an amount that reflects the utility's actual cost of providing service plus a*
186 *fair return on its prudently incurred investment. In establishing the utility's capped rates for the balance*
187 *of the capped rate period, the Commission shall conduct a proceeding pursuant to Chapter 10 (§ 56-232*
188 *et seq.) of this title and applicable regulations. In lieu of reducing a utility's capped rates, the*
189 *Commission may allow the capped rates to remain in effect at then-current levels, subject to refund,*
190 *until the Commission may determine that the capped rates should be reduced and a refund be made.*

191 *F. If an incumbent electric utility determines that its collections through capped rates as provided in*
192 *§ 56-582 and wires charges as provided in § 56-583 will not permit it to recover its just and reasonable*
193 *net stranded costs during the balance of the capped rate period, the utility may request the Commission*
194 *to approve an increase in its capped rates, as part of a proceeding under subsection C. Consideration*
195 *of a request for such an increase in capped rates shall be conducted pursuant to Chapter 10 (§ 56-232*
196 *et seq.) of this title and the Commission's then-current rate case rules.*

197 *G. By December 1 of each year, the Commission shall report to the Commission on Electric Utility*
198 *Restructuring on the amount of each incumbent electric utility's just and reasonable net stranded costs*
199 *and the amount of such costs that have been recovered through capped rates and wires charges. This*
200 *report shall include a summary of actions taken by the Commission pursuant to this section and any*
201 *recommendations for action to be taken by the General Assembly regarding the recovery of just and*
202 *reasonable net stranded costs.*

203 *H. To the extent not preempted by federal law, the establishment by the Commission of wires*
204 *charges for any distribution cooperative shall be conditioned upon such cooperative entering into binding*
205 *commitments by which it will pay to any power supply cooperative of which such distribution*
206 *cooperative is or was a member, as compensation for such power supply cooperative's stranded costs, all*
207 *or part of the proceeds of such wires charges, as determined by the Commission.*