State Corporation Commission
2004 Fiscal Impact Statement

1. Bill Number SB651

House of Origin ☐ Introduced ☒ Substitute ☒ Engrossed

Second House ☒ In Committee ☐ Substitute ☐ Enrolled

2. Patron Norment

3. Committee Commerce and Labor

4. Title Electric Utility Restructuring Act; extension of rate caps and fuel factors; electrical generating facility certificates; municipal and state aggregation; minimum stay requirements; wires charges; net metering.

5. Summary/Purpose:

Extends until December 31, 2010, the rate caps currently in place for incumbent electric utilities, unless the rate caps are terminated sooner by the State Corporation Commission upon a finding of an effectively competitive market for generation services in the service territory of an incumbent utility. After January 1, 2004, an incumbent electric utility not, as of July 1, 1999, bound by a rate case settlement adopted by the SCC that extended in its application beyond January 1, 2002, may petition the SCC for approval of a one-time change in its rates. If capped rates are continued after July 1, 2007, such an incumbent electric utility may at any time after July 1, 2007, again petition the SCC for approval of a one-time change in its rates, except such a utility that has not retained ownership of its generation may petition only for a change in the nongeneration components of its capped rates. Such a utility is also entitled to an adjustment in its capped rates for the timely recovery of its prudently-incurred costs for system reliability and compliance with environmental laws. The bill provides for an extension of the fuel costs recovery tariff provisions (fuel factors) in effect on January 1, 2004, for any electric utility that purchases fuel for the generation of electricity and that was, as of July 1, 1999, bound by a rate case settlement adopted by the SCC that extended in its application beyond January 1, 2002. The fuel factors shall remain in effect until the earlier of (i) July 1, 2007; (ii) the termination of capped rates; or (iii) the establishment of tariff provisions as directed by the SCC. The bill extends by two years the expiration date of certain certificates granted by the SCC to construct and operate electrical generating facilities. Only those certificates for which applications were filed with the SCC prior to July 1, 2002, will receive an extension. The bill provides that a municipality or other political subdivision may aggregate the electric energy load of residential, commercial, and industrial retail customers within its boundaries on either an opt-in or opt-out basis, eliminates the requirement that customers must opt in to select such aggregation, and eliminates the requirement that such municipality or other political subdivision may not earn a profit from such aggregation. The bill also authorizes any large industrial or commercial customer that is returning to its incumbent electric utility or default provider after purchasing power from a competitive supplier to elect to accept market-based pricing as an alternative to being bound by the minimum stay period (currently 12 months unless otherwise authorized) prescribed by the SCC. Customers exempted from minimum stay periods will not thereafter be entitled to purchase retail electric energy from their incumbent electric utilities at the capped rates

unless such customers agree to satisfy any minimum stay period then applicable. This bill also authorizes industrial and commercial customers, as well as aggregated customers in all rate classes, to switch to a competitive service provider without paying a wires charge if they agree to pay market-based prices if they ever return to the incumbent electric utility. However, the program is limited for each utility to customers totalling not more than 1,000 or 8 percent of the utility's prior year Virginia adjusted peak load within 18 months after the commencement date of the wires charge exemption program. Customers who make this commitment and obtain power from suppliers without paying wires charges are not entitled to obtain power from their incumbent utility at its capped rates. The bill increases from 25 kilowatts to 500 kilowatts the amount of electric generating capacity a nonresidential customer-generator's facility can produce and still qualify to participate in the net metering program. Finally, the bill authorizes any investor-owned distributor that has been designated a default service provider to petition the SCC to construct a coal-fired generation facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, in order to meet its native load and default service obligations. A distributor that builds such a facility shall have the right to recover the costs of the facility, plus a fair rate of return, through its default service rates. The construction of such a facility is declared to be in the public interest.

6. No fiscal impact on state agencies

7. Budget amendment necessary: No

8. Fiscal implications: None on state agencies

9. Specific agency or political subdivisions affected: State Corporation Commission

10. Technical amendment necessary: None noted

11. Other comments: The Senate Commerce and Labor Committee reported the bill with a substitute 15-0 on January 26, 2004. The bill was passed in the Senate on January 30, 2004 by a vote of 29-10-1.

Other comments or observations: The Public Utility Accounting (PUA) Division of the State Corporation Commission has comments in two areas. The first is in reference to the added language in § 56-582 B and C, lines 222-250. Section B provides for rate increases for system reliability. However, system reliability is not defined and may be construed to include a wide variety of costs. It appears that the increases provided for in § 56-582 B could simply be included as part of those provided for in § 56-592 C, eliminating the need for the added language in § 56-582 B. It is not clear whether the increases provided for in subsection B would be made pursuant to Chapter 10 of Title 56 of the Code of Virginia or via some other procedure that may consider only the incremental portion of certain costs, nor does there appear to be any limit on the frequency of such increases. It appears that the language added to both § 56-582 B and C would apply to all incumbent electric utilities except Dominion Virginia Power and may negate the Memorandums of Understanding the State Corporation Commission adopted for Allegheny Energy (Potomac Edison) and Delmarva Power.

PUA's second concern relates to proposed § 56-585 G. This section may be anti-competitive as the facility it envisions can only be built by an investor-owned distributor designated as a default service provided. It provides for an allowance for funds used during construction, a cost which the State Corporation Commission ceased allowing over 20 years ago. It confuses the determination of rates for default service by having one generation facility based on cost, with remaining components based on market. If the cost of the facility provided for by this section is above cost, then it effectively drives up the stranded costs of the utility that builds the facility. However, at the time the unit would be built the wires charge is unlikely to be in place, as it currently expires July 1, 2007, so it is questionable whether the facility will ever be built.

Date: 02/19/04 Tel

cc: Secretary of Commerce and Trade