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HOUSE BILL NO. 700

Offered January 11, 2006

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A BILL to amend and reenact §§ 56-249.6 and 56-582 of the Code of Virginia, relating to electricity rates; recovery of fuel costs.

Patrons—Hogan and Abbitt

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-249.6 and 56-582 of the Code of Virginia are amended and reenacted as follows:

§ 56-249.6. Recovery of fuel and purchased power costs.

A. 1. Each electric utility that purchases fuel for the generation of electricity or purchases power and that was not, as of July 1, 1999, bound by a rate case settlement adopted by the Commission that extended in its application beyond January 1, 2002, shall submit to the Commission its estimate of fuel costs, including the cost of purchased power, for the 12-month period beginning on the date prescribed by the Commission. ~~Upon~~ *Prior to July 1, 2006, upon* investigation of such estimates and hearings in accordance with law, the Commission shall direct each company to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for that period, adjusted for any over-recovery or under-recovery of fuel costs previously incurred.

2. The Commission shall continuously review fuel costs and if it finds that any utility described in this subdivision ~~A 1~~ is in an over-recovery position by more than five percent, or likely to be so, it may reduce the fuel cost tariffs to correct the over-recovery.

2. *From July 1, 2006, until the termination of capped rates pursuant to § 56-582, a utility described in subdivision A 1 shall be eligible for an adjustment to its tariff provisions to recover fuel costs, including the cost of purchased power, only pursuant to a comprehensive rate case proceeding pursuant to Article 2 (§ 56-234 et seq.) of this chapter to establish reasonable and just rates for the service of the utility. The Commission shall not permit such a company to place in effect tariff provisions designed to recover its fuel costs other than through the conduct of a comprehensive rate case in which the Commission establishes rates that are reasonable and just based on all of the utility's revenues and expenses. The utility's capped rates shall be adjusted to reflect the rates established pursuant to the rate case as provided in § 56-582.*

B. All fuel costs recovery tariff provisions 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 Commission that extended in its application beyond January 1, 2002, shall remain in effect until the earlier of (i) ~~July 1, 2007~~ *the rates for services of the utility are established pursuant to a comprehensive rate case proceeding pursuant to Article 2 (§ 56-234 et seq.) to establish reasonable and just rates for the service of the utility;* or (ii) the termination of capped rates pursuant to the provisions of subsection C of § 56-582; ~~or (iii) the establishment of tariff provisions under subsection C.~~ *The Commission shall not permit such a company to place in effect tariff provisions designed to recover its fuel costs other than through the conduct of a comprehensive rate case in which the Commission establishes rates that are reasonable and just based on all of the utility's revenues and expenses. The utility's capped rates shall be adjusted to reflect the rates established pursuant to the rate case as provided in § 56-582.* Any such utility shall continue to report to the Commission annually its actual fuel costs, including the cost of purchased power ~~until July 1, 2007.~~

C. ~~Unless capped rates are terminated pursuant to the provisions of subsection C of § 56-582 prior to July 1, 2007, the Commission shall direct each electric utility described in subsection B to submit to the Commission its estimate of fuel costs, including the cost of purchased power, for the 42-month period beginning July 1, 2007, and ending December 31, 2010. Upon investigation of such estimate and hearing in accordance with law, the Commission shall direct each such utility to place in effect tariff provisions designed to recover the fuel costs determined by the Commission to be appropriate for such period, without adjustment for any over-recovery or under-recovery of fuel costs previously incurred. Such tariff provisions shall remain in effect until the capped rates for such utility expire or are terminated pursuant to the provisions of § 56-582.~~

D. ~~1. In proceedings under subsections A and C, the Commission may, to the extent deemed appropriate, offset against fuel costs and purchased power costs to be recovered the revenues attributable to sales of power pursuant to interconnection agreements with neighboring electric utilities.~~

2. In proceedings under subsections A and C, the Commission shall disallow recovery of any fuel

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59 costs that it finds without just cause to be the result of failure of the utility to make every reasonable
60 effort to minimize fuel costs or any decision of the utility resulting in unreasonable fuel costs, giving
61 due regard to reliability of service and the need to maintain reliable sources of supply, economical
62 generation mix, generating experience of comparable facilities, and minimization of the total cost of
63 providing service.

64 3. The Commission is authorized to promulgate, in accordance with the provisions of this section, all
65 rules and regulations necessary to allow the recovery by electric utilities of all of their prudently
66 incurred fuel costs under subsections A and C, including the cost of purchased power, as precisely and
67 promptly as possible, with no over-recovery or under-recovery, except as provided in subsection C, in a
68 manner that will tend to assure public confidence and minimize abrupt changes in charges to consumers.

69 The Commission may, however, dispense with the procedures set forth above for any electric utility
70 if it finds, after notice and hearing, that the electric utility's fuel costs can be reasonably recovered
71 through the rates and charges investigated and established in accordance with other sections of this
72 chapter.

73 § 56-582. Rate caps.

74 A. The Commission shall establish capped rates, effective January 1, 2001, for each service territory
75 of every incumbent utility as follows:

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

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

81 3. The capped rates established under this section shall be the rates in effect for each incumbent
82 utility as of the effective date of this chapter, or rates subsequently placed into effect pursuant to a rate
83 application filed by an incumbent electric utility with the Commission prior to January 1, 2001, and
84 subsequently approved by the Commission, and made by an incumbent electric utility that is not
85 currently bound by a rate case settlement adopted by the Commission that extends in its application
86 beyond January 1, 2002. If such rate application is filed, the rates proposed therein shall go into effect
87 on January 1, 2001, but such rates shall be interim in nature and subject to refund until such time as the
88 Commission has completed its investigation of such application. Any amount of the rates found
89 excessive by the Commission shall be subject to refund with interest, as may be ordered by the
90 Commission. The Commission shall act upon such applications prior to commencement of the period of
91 transition to customer choice. Such rate application and the Commission's approval shall give due
92 consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for
93 a period of time ending as late as July 1, 2007. The capped rates established under this section, which
94 include rates, tariffs, electric service contracts, and rate programs (including experimental rates,
95 regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs
96 of each incumbent electric utility, provided that experimental rates and rate programs may be closed to
97 new customers upon application to the Commission. Such capped rates shall also include rates for new
98 services where, subsequent to January 1, 2001, rate applications for any such rates are filed by
99 incumbent electric utilities with the Commission and are thereafter approved by the Commission. In
100 establishing such rates for new services, the Commission may use any rate method that promotes the
101 public interest and that is fairly compensatory to any utilities requesting such rates.

102 B. The Commission may adjust such capped rates in connection with the following: (i) *prior to July*
103 *1, 2006, to account for utilities' recovery of fuel and purchased power costs, and after July 1, 2006, to*
104 *account for changes to the utilities' rates established pursuant to a comprehensive rate case* pursuant to
105 § 56-249.6, and, if applicable, in accordance with the terms of any Commission order approving the
106 divestiture of generation assets pursuant to § 56-590, (ii) any changes in the taxation by the
107 Commonwealth of incumbent electric utility revenues, (iii) any financial distress of the utility beyond its
108 control, (iv) with respect to cooperatives that were not members of a power supply cooperative on
109 January 1, 1999, and as long as they do not become members, their cost of purchased wholesale power
110 and discounts from capped rates to match the cost of providing distribution services, (v) with respect to
111 cooperatives that were members of a power supply cooperative on January 1, 1999, their recovery of
112 fuel costs, through the wholesale power cost adjustment clauses of their tariffs pursuant to § 56-231.33,
113 and (vi) with respect to incumbent electric utilities that were not, as of the effective date of this chapter,
114 bound by a rate case settlement adopted by the Commission that extended in its application beyond
115 January 1, 2002, the Commission shall adjust such utilities' capped rates, not more than once in any
116 12-month period, for the timely recovery of their incremental costs for transmission or distribution
117 system reliability and compliance with state or federal environmental laws or regulations to the extent
118 such costs are prudently incurred on and after July 1, 2004. Any adjustments pursuant to § 56-249.6 and
119 clause (i) of this subsection by an incumbent electric utility that transferred all of its generation assets to
120 an affiliate with the approval of the Commission pursuant to § 56-590 prior to January 1, 2002, shall be

effective only on and after July 1, 2007. Notwithstanding the provisions of § 56-249.6, the Commission may authorize tariffs that include incentives designed to encourage an incumbent electric utility to reduce its fuel costs by permitting retention of a portion of cost savings resulting from fuel cost reductions or by other methods determined by the Commission to be fair and reasonable to the utility and its customers.

C. A utility may petition the Commission to terminate the capped rates to all customers any time after January 1, 2004, and such capped rates may be terminated upon the Commission finding of an effectively competitive market for generation services within the service territory of that utility. If its capped rates, as established and adjusted from time to time pursuant to subsections A and B, are continued after January 1, 2004, an incumbent electric utility that is not, as of the effective date of this chapter, bound by a rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002, may petition the Commission, during the period January 1, 2004, through June 30, 2007, for approval of a one-time change *changes* in its rates, and if the capped rates are continued after July 1, 2007, such incumbent electric utility may at any time after July 1, 2007, petition the Commission for approval of a one-time change in its rates *as provided in the Commission's rules of practice and procedure*. Any change in rates pursuant to this subsection by an incumbent electric utility that divested its generation assets with approval of the Commission pursuant to § 56-590 prior to January 1, 2002, shall be in accordance with the terms of any Commission order approving such divestiture. Any petition for changes to capped rates filed pursuant to this subsection shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title.

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

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

F. The capped rates established pursuant to this section shall expire on December 31, 2010, unless sooner terminated by the Commission pursuant to the provisions of subsection C.