

070192832

SENATE BILL NO. 1150

Offered January 10, 2007

Prefiled January 10, 2007

A BILL to amend and reenact § 56-582 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-249.8, relating to the recovery of fines assessed by the Federal Energy Regulatory Commission upon certain electric utilities.

Patron—Wagner

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-582 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 56-249.8 as follows:

§ 56-249.8. Recovery of fines, penalties, and charges assessed by the Federal Energy Regulatory Commission.

A. Each electric utility that pays any fines, penalties, or similar charges that are assessed by the Federal Energy Regulatory Commission against the electric utility as a result of its failure to construct and maintain sufficient electrical transmission capacity to serve the load of its customers, which failure is found by the Federal Energy Regulatory Commission to be the proximate cause of curtailed service, brownouts or blackouts within the utility's service territory within the Commonwealth, shall be entitled to recover such fines, penalties, or similar charges as provided in this section.

B. An electric utility, upon paying fines, penalties, or charges to the Federal Energy Regulatory Commission as described in subsection A, shall submit to the Commission a report, in such form as the Commission may reasonably require, detailing the basis for and the amounts of the fines, penalties, or similar charges. If the Commission finds, upon investigation and hearings in accordance with law, that the Federal Energy Regulatory Commission's assessment of the fines, penalties, or charges against the electric utility was due to the utility's inability to complete the construction and energizing of proposed electric transmission lines and ancillary facilities in a timely manner as the result of opposition to the electric transmission line and facilities from the utility's customers within the area where the utility had announced plans to locate the electric transmission line and facilities, then the Commission shall direct the utility to place in effect tariff provisions designed to recover the fines, penalties, and charges that are determined by the Commission to be appropriate, over a period of time not to exceed 24 months; however, any such tariff shall be applicable only to those customers of the utility who receive service within the planning district or districts where the construction of the proposed electric transmission lines and ancillary facilities was delayed or thwarted as the result of opposition thereto by the utility's customers. Such tariff for the recovery of fines, penalties, and charges shall be included as a separate item on the monthly billing statement of the customers who are determined to be subject thereto, based upon the customer's monthly consumption of electricity.

C. In proceedings under this section, the Commission shall disallow recovery of any fines, penalties, and charges that it finds without just cause to be the result of failure of the utility to make every reasonable effort to contest their assessment.

D. The Commission is authorized to promulgate, in accordance with the provisions of this section, all rules and regulations necessary to allow the recovery by electric utilities of assessments as provided by this section.

§ 56-582. Rate caps.

A. The Commission shall establish capped rates, effective January 1, 2001, 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

INTRODUCED

SB1150

59 on January 1, 2001, but such rates shall be interim in nature and subject to refund until such time as the
60 Commission has completed its investigation of such application. Any amount of the rates found
61 excessive by the Commission shall be subject to refund with interest, as may be ordered by the
62 Commission. The Commission shall act upon such applications prior to commencement of the period of
63 transition to customer choice. Such rate application and the Commission's approval shall give due
64 consideration, on a forward-looking basis, to the justness and reasonableness of rates to be effective for
65 a period of time ending as late as July 1, 2007. The capped rates established under this section, which
66 include rates, tariffs, electric service contracts, and rate programs (including experimental rates,
67 regardless of whether they otherwise would expire), shall be such rates, tariffs, contracts, and programs
68 of each incumbent electric utility, provided that experimental rates and rate programs may be closed to
69 new customers upon application to the Commission. Such capped rates shall also include rates for new
70 services where, subsequent to January 1, 2001, rate applications for any such rates are filed by
71 incumbent electric utilities with the Commission and are thereafter approved by the Commission. In
72 establishing such rates for new services, the Commission may use any rate method that promotes the
73 public interest and that is fairly compensatory to any utilities requesting such rates.

74 B. The Commission may adjust such capped rates in connection with the following: (i) utilities'
75 recovery of fuel and purchased power costs pursuant to § 56-249.6, and, if applicable, in accordance
76 with the terms of any Commission order approving the divestiture of generation assets pursuant to
77 § 56-590, (ii) any changes in the taxation by the Commonwealth of incumbent electric utility revenues,
78 (iii) any financial distress of the utility beyond its control, (iv) with respect to cooperatives that were not
79 members of a power supply cooperative on January 1, 1999, and as long as they do not become
80 members, their cost of purchased wholesale power and discounts from capped rates to match the cost of
81 providing distribution services, (v) with respect to cooperatives that were members of a power supply
82 cooperative on January 1, 1999, their recovery of fuel costs, through the wholesale power cost
83 adjustment clauses of their tariffs pursuant to § 56-231.33, and (vi) with respect to incumbent electric
84 utilities that were not, as of the effective date of this chapter, bound by a rate case settlement adopted
85 by the Commission that extended in its application beyond January 1, 2002, the Commission shall adjust
86 such utilities' capped rates, not more than once in any 12-month period, for the timely recovery of their
87 incremental costs for transmission or distribution system reliability and compliance with state or federal
88 environmental laws or regulations to the extent such costs are prudently incurred on and after July 1,
89 2004, and (vii) *utilities' recovery of fines, penalties and similar assessed by the Federal Energy*
90 *Regulatory Commission pursuant to § 56-249.8.* Any adjustments pursuant to § 56-249.6 and clause (i)
91 of this subsection by an incumbent electric utility that transferred all of its generation assets to an
92 affiliate with the approval of the Commission pursuant to § 56-590 prior to January 1, 2002, shall be
93 effective only on and after July 1, 2007. Notwithstanding the provisions of § 56-249.6, the Commission
94 may authorize tariffs that include incentives designed to encourage an incumbent electric utility to
95 reduce its fuel costs by permitting retention of a portion of cost savings resulting from fuel cost
96 reductions or by other methods determined by the Commission to be fair and reasonable to the utility
97 and its customers.

98 C. A utility may petition the Commission to terminate the capped rates to all customers any time
99 after January 1, 2004, and such capped rates may be terminated upon the Commission finding of an
100 effectively competitive market for generation services within the service territory of that utility. If its
101 capped rates, as established and adjusted from time to time pursuant to subsections A and B, are
102 continued after January 1, 2004, an incumbent electric utility that is not, as of the effective date of this
103 chapter, bound by a rate case settlement adopted by the Commission that extends in its application
104 beyond January 1, 2002, may petition the Commission, during the period January 1, 2004, through June
105 30, 2007, for approval of a one-time change in its rates, and if the capped rates are continued after July
106 1, 2007, such incumbent electric utility may at any time after July 1, 2007, petition the Commission for
107 approval of a one-time change in its rates. Any change in rates pursuant to this subsection by an
108 incumbent electric utility that divested its generation assets with approval of the Commission pursuant to
109 § 56-590 prior to January 1, 2002, shall be in accordance with the terms of any Commission order
110 approving such divestiture. Any petition for changes to capped rates filed pursuant to this subsection
111 shall be governed by the provisions of Chapter 10 (§ 56-232 et seq.) of this title.

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

117 E. During the period when capped rates are in effect for an incumbent electric utility, such utility
118 may file with the Commission a plan describing the method used by such utility to assure full funding
119 of its nuclear decommissioning obligation and specifying the amount of the revenues collected under
120 either the capped rates, as provided in this section, or the wires charges, as provided in § 56-583, that

121 are dedicated to funding such nuclear decommissioning obligation under the plan. The Commission shall
122 approve the plan upon a finding that the plan is not contrary to the public interest.
123 F. The capped rates established pursuant to this section shall expire on December 31, 2010, unless
124 sooner terminated by the Commission pursuant to the provisions of subsection C.

INTRODUCED

SB1150