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HOUSE BILL NO. 2371

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on February 5, 2009)

(Patron Prior to Substitute—Delegate Nutter)

A BILL to direct the State Corporation Commission to conduct a proceeding relating to rates for certain sales of electric power to certain customers, including dynamic rates, standby rates, interruptible rates, and rates for purchases of electricity generated from certain renewable sources.

Be it enacted by the General Assembly of Virginia:

1. § 1. That the State Corporation Commission (the "Commission") shall conduct a formal public proceeding for the purpose of implementing the provisions of this act and the adoption, by December 1, 2009, of any regulations necessary or appropriate for its implementation, to the extent that the Commission's authority is not preempted by federal law. Except as provided in § 3 of this act, every investor-owned public service corporation that serves electric load at retail and has rates subject to regulation by the Commission (a "participating utility") shall be a party to the proceeding. In the proceeding, the Commission shall establish requirements relating to the implementation by participating utilities of each of the following four rate initiatives:

1. Dynamic rates and terms and conditions of service for the sale of power to retail nonresidential customers whose peak demand during the most recent calendar year exceeded 500 kilowatts and who use the output from an on-site electric generation facility or from an off-site electric generation facility that derives electricity of not more than five megawatts from falling water and is located within six miles of the nonresidential customer, connected on the customer's side of the meter, that has a rated capacity of not less than 150 kilowatts nor more than 20 megawatts and generates renewable energy, as defined in § 56-576 of the Code of Virginia. In implementing this rate initiative, the Commission may consider the following:

a. The Commission shall endeavor to balance the requirements set forth in subdivisions 2 and 3 of § 2 of this act with the encouragement of the optimal production of renewable energy;

b. Each participating utility shall submit to the Commission, for its approval, a plan for dynamic pricing rates and terms and conditions of service. When designing such plan, the participating utility may address the following considerations:

(1) Alignment of these dynamic rates with the participating utility's direct marginal generation costs of providing service, as such direct marginal costs vary over time. If the participating utility is a member of an independent system operator as defined in § 56-576 of the Code of Virginia, the independent system operator's market clearing prices for energy and capacity may serve as a proxy for the participating utility's direct marginal generation costs;

(2) Provision of tiered pricing under which the same or similar dynamic rates are charged during periods when the participating utility's direct marginal generation costs are relatively constant and substantially higher rates are charged during periods when its direct marginal generation costs are at their highest levels, provided that the tiered pricing reasonably reflects the participating utility's variance in cost; and

(3) Provision of advanced pricing signals to participating customers of up to one day ahead, but in no event less than one hour ahead, as such signals are or may be reasonably available from each participating utility; and

c. Upon approval by the Commission of an application by a participating utility, the participating utility (i) shall offer service to eligible customers at dynamic pricing rates on a voluntary basis and (ii) may offer service to other nonresidential customers at the same or similar dynamic pricing rates on a voluntary basis;

2. Standby rates and terms and conditions of service for the sale of power to retail nonresidential customers who use the output of an on-site electric generation facility, located on the customer's side of the meter, that generates renewable energy for the primary purpose of supplying the customer's electric load when the facility is generating at normal capacity. In implementing this rate initiative, the Commission may consider the following:

a. The participating utility's tariff may include a provision under which an eligible customer may contract for back-up or standby service that ensures that the customer's electric load is capable of being served from the electrical grid when the customer's generation facility is off-line or is not generating at normal capacity;

b. Each participating utility shall submit to the Commission, for its approval, rates for back-up or standby service that provide the opportunity for the participating utility to recover all of the reasonable costs identified by the electric utility and determined by the Commission to be related to the provision of

60 stand-by service, including but not limited to the costs of transformers and other equipment required to
61 provide stand-by service and the costs of capacity and generation, including but not limited to fuel
62 costs; and

63 c. In addition to recovery of costs as provided in subdivision 2 b, the participating utility's tariff may
64 be designed in a manner that authorizes the utility to charge a participating customer for maintenance,
65 supplemental and other related back-up services, at rates available to other customers with similar load
66 profiles;

67 3. Rates and terms and conditions of service under a demand response tariff or program that
68 provides that a participating utility or third party will pay participating customers approved rates for
69 increments of the customer's reduction or curtailment of its load or consumption of electricity. In
70 implementing this rate initiative, the Commission may consider the following:

71 a. Participation shall be limited to load reductions or curtailments that are dispatchable by the
72 participating utility as a means for the utility to meet its capacity needs;

73 b. Service under these rates shall be available only to non-residential customers whose demand
74 during the most recent calendar year exceeded 500 kilowatts;

75 c. A demand response tariff or program under which interruptible service rates are available may be
76 one of the following, to the extent that the Commission determines such programs are in the public
77 interest and are cost effective in achieving the intended demand response:

78 (1) A demand response program provided by PJM Interconnection LLC through a third-party
79 curtailment service provider;

80 (2) A demand response program provided by PJM Interconnection LLC through the participating
81 utility acting as a curtailment service provider; or

82 (3) A demand response program or tariff developed by a participating utility and approved by the
83 Commission that provides for curtailable or interruptible service under which a participating customer
84 will be paid for the amount of the customer's load or consumption of electricity that it reduces or
85 curtails when called upon by the utility to do so;

86 d. A demand response program or tariff shall provide that a participating customer shall be
87 compensated for reducing or curtailing load or consumption when called upon by the utility to do so in
88 a manner that consists of both (i) the value of the electricity that a participating customer did not
89 consume as a result of the curtailment or reduction and (ii) an additional amount that shall be paid to
90 the participating customer in excess of the savings described in clause (i), which additional amount
91 shall be determined in accordance with subdivision 3 e; and

92 e. The Commission shall determine that the interruptible service rates at which a participating
93 customer will be compensated under a demand response tariff or program are commensurate with the
94 participating utility's costs that are avoided as a result of the participating customers' reduction or
95 curtailment of load or consumption when called upon by the utility to do so; and

96 4. Rates and terms and conditions of service at which participating utilities shall be obligated to
97 purchase electricity that is generated at any electric generation facility that generates renewable energy,
98 as defined in § 56-576 of the Code of Virginia, to generate electricity, has a rated capacity that does
99 not exceed 20 megawatts, and that is owned and operated by a non-utility generator ("merchant
100 renewable facility") and is offered for sale to the utility. In implementing this rate initiative, the
101 Commission may consider the following:

102 a. The rates, terms, and conditions at which a participating utility shall be obligated to purchase
103 electricity that is generated at a merchant renewable facility shall be based upon the participating
104 utility's avoided cost, the transaction costs related and arising from such sale, and the applicable market
105 price; or such price that may be negotiated between the parties. If the participating utility is a member
106 of an independent system operator as defined in § 56-576 of the Code of Virginia, the participating
107 utility's avoided cost may be based upon the independent system operator's applicable hourly market
108 clearing prices for energy and annual capacity auctions;

109 b. Prior to the commercial operation of the merchant renewable facility, the generator shall notify
110 the participating utility of its intent to sell to the participating utility the renewable attributes associated
111 with the renewable energy. Upon such notice, the generator shall be obligated to sell to the
112 participating utility the renewable attributes associated with such electricity at the average market value
113 of such attributes as determined by the Commission; and

114 c. If a participating utility has obtained Commission approval of a plan to satisfy the goals of the
115 renewable portfolio standard (RPS) program as provided in § 56-585.2 of the Code of Virginia, the
116 utility may count any RECs transferred by the generator to the participating utility as provided in
117 subdivision 4 b towards meeting the utility's RPS goals. If it does elect to so count the RECs, then the
118 average market value for the renewable attributes associated with such electricity that was paid by the
119 utility as provided in subdivision 4 b shall be recoverable as a cost of the utility's participation in the
120 RPS program pursuant to subdivision A 5 c of § 56-585.1 of the Code of Virginia. If a participating
121 utility has not obtained Commission approval of a plan to satisfy the goals of the RPS program, then

the average market value for the renewable attributes associated with such electricity that was paid by the utility as provided in subdivision 4 b, net of any revenue obtained from reselling the RECs, shall be recoverable pursuant to § 56-249.6 of the Code of Virginia as a purchased power expense.

§ 2. That in the proceeding conducted pursuant to § 1, the Commission shall:

1. Require participating utilities to propose rates or tariffs designed to implement the four rate initiatives as part of a limited pilot program or programs of limited duration or for a limited number of customers, projects, or load. The Commission shall approve such rates or tariffs on a pilot basis if it finds that they are in accordance with the provisions of § 1, including any regulations adopted by the Commission, and that the scope of the pilot programs ensures a meaningful level of participation. In establishing the scope of a pilot program, the Commission shall consider the limitations of existing metering technology, the status of deployment of smart meter technologies, and other relevant factors affecting the timing of the implementation of the pilot programs. The foregoing requirements regarding the implementation of the four rate initiatives as part of limited pilot program or programs shall not preclude a participating utility from implementing one or more of the four rate initiatives permanently or on an unlimited basis, if approved by the Commission;

2. Ensure that the rates established under each of the four rate initiatives (i) are consistent with § 56-235.2 and other applicable provisions of Title 56, (ii) are in the public interest; (iii) will not unreasonably prejudice or disadvantage any customer or class of customers; (iv) will not jeopardize the continuation of reliable electric service; and

3. Ensure that any reasonable cost increases resulting from the implementation of the rate initiatives are recoverable by the participating utility pursuant to the provisions of Title 56.

§ 3. That a participating utility shall be excused from the proceeding conducted pursuant to § 1 of this act, and shall not be subject to any order issued or regulation adopted pursuant to such proceeding, following the date that the Commission finds, following its receipt of the utility's election to withdraw, that the utility, in the proceeding that is initiated pursuant to subsection A of § 56-585.1 of the Code of Virginia during the first six months of 2009, has proposed measures that address each of the four rate initiatives described in § 1 or, if the participating utility has proposed measures implementing any of the four rate initiatives in such rate proceeding, the participating utility shall be exempt from the corresponding portions of the proceeding conducted pursuant to § 1 of this act.

§ 4. That each utility consumer services cooperative ("cooperative") organized or operated pursuant to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1 of Title 56 of the Code of Virginia shall, on or before October 31, 2009, file with the Commission a report assessing the statutory, regulatory, organizational, physical, contractual, financial, and market impediments to cooperative implementation of initiatives relating to dynamic rates, standby rates, interruptible rates, and rates for purchases of electricity generated from renewable sources. Each cooperative shall conduct its assessment and submit its report individually, collectively with one or more other cooperatives, or collectively through an association of cooperatives. The Commission shall review each report to evaluate its accuracy and completeness. On or before December 1, 2009, the Commission shall forward each report to the Governor and the General Assembly along with the Commission's evaluation of the accuracy and completeness of each report.