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HOUSE BILL NO. 2519

Offered January 16, 2009

A BILL to amend and reenact § 56-249.6 of the Code of Virginia, relating to electric utilities; fuel factor increases.

Patrons—Phillips, Carrico and Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-249.6 of the Code of Virginia is 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 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 subdivision A 1 is in an over-recovery position by more than five percent, or likely to be so, it may shall reduce the fuel cost tariffs to correct the over-recovery or require the utility to refund to customers moneys collected from fuel cost tariffs in excess of actual fuel costs.

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 later of (i) July 1, 2007 or (ii) the establishment of tariff provisions under subsection C. Any such utility shall continue to report to the Commission annually its actual fuel costs, including the cost of purchased power.

C. Each electric utility described in subsection B shall submit annually to the Commission its estimate of fuel costs, including the cost of purchased power, for successive 12-month periods beginning on July 1, 2007, and each July 1 thereafter. Upon investigation of such estimates and hearings 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 periods, adjusted for any over-recovery or under-recovery of fuel costs previously incurred; however, (i) no such adjustment for any over-recovery or under-recovery of fuel costs previously incurred shall be made for any period prior to July 1, 2007, and (ii) the Commission shall order that the deferral portion, if any, of the total increase in fuel tariffs for all classes as determined by the Commission to be appropriate for the 12-month period beginning July 1, 2007, above the fuel tariffs previously existing, shall be deferred without interest and recovered from all classes of customers as follows: (i) in the 12-month period beginning July 1, 2008, that part of the deferral portion of the increase in fuel tariffs that the Commission determines would increase the total rates of the residential class of customers of the utility by four percent over the level of such total rates in existence on June 30, 2008, shall be recovered; (ii) in the 12-month period beginning July 1, 2009, that part of the balance of the deferral portion of the increase in fuel tariffs, if any, that the Commission determines would increase the total rates of the residential class of customers of the utility by four percent over the level of such total rates in existence on June 30, 2009, shall be recovered; and (iii) in the 12-month period beginning July 1, 2010, the entire balance of the deferral portion of the increase in fuel tariffs, if any, shall be recovered. The "deferral portion of the increase in fuel tariffs" means the portion of such increase in fuel tariffs that exceeds the amount of such increase in fuel tariffs that the Commission determines would increase the total rates of the residential class of customers of the utility by more than four percent over the level of such total rates in existence on June 30, 2007. *The Commission shall continuously review fuel costs and if it finds that any utility described in subdivision B is in an over-recovery position, or likely to be so, it shall reduce the fuel cost tariffs to correct the over-recovery or require the utility to refund to customers moneys collected from fuel cost tariffs in excess of actual fuel costs.*

D. In proceedings under subsections A and C:

1. Energy revenues associated with off-system sales of power shall be credited against fuel factor expenses in an amount equal to the total incremental fuel factor costs incurred in the production and

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59 delivery of such sales. In addition, 75 percent of the total annual margins from off-system sales shall be
60 credited against fuel factor expenses; however, the Commission, upon application and after notice and
61 opportunity for hearing, may require that a smaller percentage of such margins be so credited if it finds
62 by clear and convincing evidence that such requirement is in the public interest. The remaining margins
63 from off-system sales shall not be considered in the biennial reviews of electric utilities conducted
64 pursuant to § 56-585.1. In the event such margins result in a net loss to the electric utility, (i) no
65 charges shall be applied to fuel factor expenses and (ii) any such net losses shall not be considered in
66 the biennial reviews of electric utilities conducted pursuant to § 56-585.1. For purposes of this
67 subsection, "margins from off-system sales" shall mean the total revenues received from off-system sales
68 transactions less the total incremental costs incurred; and

69 2. The Commission shall disallow recovery of any fuel costs that it finds without just cause to be the
70 result of failure of the utility to make every reasonable effort to minimize fuel costs or any decision of
71 the utility resulting in unreasonable fuel costs, giving due regard to reliability of service and the need to
72 maintain reliable sources of supply, economical generation mix, generating experience of comparable
73 facilities, and minimization of the total cost of providing service.

74 E. The Commission is authorized to promulgate, in accordance with the provisions of this section, all
75 rules and regulations (i) necessary to allow the recovery by electric utilities of all of their prudently
76 incurred fuel costs under subsections A and C, including the cost of purchased power, as precisely and
77 promptly as possible, with no over-recovery or under-recovery, except as provided in subsection C, in a
78 manner that will tend to assure public confidence and minimize abrupt changes in charges to consumers
79 and (ii) that establish procedures for any requirement that electric utilities refund to customers moneys
80 collected from fuel cost tariffs in excess of actual fuel costs.