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HOUSE BILL NO. 1237

Offered January 15, 2010

A BILL to amend and reenact § 56-235.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-235.2:1, relating to economic development incentive rates for electric service provided by certain public utilities.

Patrons—Armstrong, Crockett-Stark, Merricks and Phillips; Senator: Reynolds

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-235.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-235.2:1 as follows:

§ 56-235.2. All rates, tolls, etc., to be just and reasonable to jurisdictional customers; findings and conclusions to be set forth; alternative forms of regulation for electric companies.

A. Any rate, toll, charge or schedule of any public utility operating in this Commonwealth shall be considered to be just and reasonable only if: (1) the public utility has demonstrated that such rates, tolls, charges or schedules in the aggregate provide revenues not in excess of the aggregate actual costs incurred by the public utility in serving customers within the jurisdiction of the Commission, including such normalization for nonrecurring costs and annualized adjustments for future costs as the Commission finds reasonably can be predicted to occur during the rate year, and a fair return on the public utility's rate base used to serve those jurisdictional customers, which return shall be calculated in accordance with § 56-585.1 for utilities subject to such section; (1a) the investor-owned public electric utility has demonstrated that no part of such rates, tolls, charges or schedules includes costs for advertisement, except for advertisements either required by law or rule or regulation, or for advertisements which solely promote the public interest, conservation or more efficient use of energy; and (2) the public utility has demonstrated that such rates, tolls, charges or schedules contain reasonable classifications of customers. Notwithstanding § 56-234, the Commission may approve, either in the context of or apart from a rate proceeding after notice to all affected parties and hearing, special rates, contracts or incentives to individual customers or classes of customers where it finds such measures are in the public interest. Such special charges shall not be limited by the provisions of § 56-235.4. In determining costs of service, the Commission may use the test year method of estimating revenue needs. In any Commission order establishing a fair and reasonable rate of return for an investor-owned gas, telephone or electric public utility, the Commission shall set forth the findings of fact and conclusions of law upon which such order is based.

For ratemaking purposes, the Commission shall determine the federal and state income tax costs for investor-owned water, gas, or electric utility that is part of a publicly-traded, consolidated group as follows: (i) such utility's apportioned state income tax costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.

B. The Commission shall, before approving special rates, contracts, incentives or other alternative regulatory plans under subsection A, ensure that such action (i) protects the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the continuation of reliable electric service.

C. After notice and public hearing, the Commission shall issue guidelines for special rates adopted pursuant to subsection A that will ensure that other customers are not caused to bear increased rates as a result of such special rates.

D. The requirements of this section shall not apply to economic development incentive rates approved by the Commission pursuant to § 56-235.2:1.

§ 56-235.2:1. Economic development incentive rates.

As used in this section:

"Economic development incentive rate" means a rate, toll, or charge offered to eligible customers by an eligible utility under a tariff, rider, or schedule that provides eligible customers, beginning with the month in which the customer meets the new load requirements, the option of either of the following:

1. A three-year flat option, under which a monthly credit of \$6 per KW is provided against the entire bill of an eligible customer for the first three years that the eligible customer receives service under the tariff, rider, or schedule; or

INTRODUCED

HB1237

59 2. An eight-year declining option, under which a monthly credit of \$6 per KW is provided against
60 the entire bill of an eligible customer in the first year and the credit per KW is reduced by \$0.75 each
61 of the following seven years that the eligible customer receives service under the tariff, rider, or
62 schedule.

63 "Eligible customer" means a nonresidential customer receiving electric service in the Commonwealth
64 from an eligible utility that (i) has a new load of at least 1,000 KW at one delivery point; (ii) is not
65 classified as retail trade or public administration by the Standard Industrial Classification Manual
66 issued by the U.S. Office of Management and Budget or the North American Industry Classification
67 System Manual issued by the United States Census Bureau; and (iii) satisfies one or more of the
68 following:

69 1. Employs an additional workforce in the eligible utility's service territory, after the date the
70 Commission approves the economic development incentive rate for the eligible utility, of at least 75
71 full-time equivalent employees per 1,000 KW of new load; or

72 2. Makes a capital investment in the eligible utility's service territory, after the date the Commission
73 approves the economic development incentive rate for the eligible utility, of \$400,000 per 1,000 KW of
74 new load.

75 "Eligible utility" means an incumbent electric utility that (i) was not, as of July 1, 1999, bound by a
76 rate case settlement adopted by the Commission that extends in its application beyond January 1, 2002,
77 and (ii) is not described in subsection G of § 56-580.

78 "New load" means a new, permanent load addition at an eligible customer's facility that occurs after
79 the effective date of the regulations adopted by the Commission pursuant to subsection B, due to the
80 expansion of the customer's existing facility or the development of a new facility not previously served
81 by the eligible utility. If the customer's load results from the expansion of an existing facility, the
82 amount of new load is the portion of the load that exceeds the load that existed prior to the customer
83 taking service under the economic development incentive rate and the historical on-peak power supply
84 demand level over the preceding 12 months shall not be eligible for the economic development incentive
85 rate.

86 B. The Commission shall adopt regulations pursuant to its rules of practice and procedure that
87 require each eligible utility to offer electric service to eligible customers at a Commission-approved
88 economic development incentive rate.

89 C. Within 90 days following the effective date of the regulations adopted by the Commission
90 pursuant to subsection B, each eligible utility shall submit a proposed tariff that complies with the
91 regulations and this section. The Commission shall, after notice and the opportunity for hearing,
92 determine whether an eligible utility's proposal complies with the regulations and this section. In
93 addition, the Commission shall ensure that any economic development incentive rate advances the goal
94 of economic development in the Commonwealth and will not jeopardize the continuation of reliable
95 electric service. If an eligible utility's proposed economic development incentive rate is approved by the
96 Commission, the eligible utility shall offer electric service at such rates and upon such terms and
97 conditions to eligible customers. Eligible customers shall have the option to purchase electric service at
98 an economic development incentive rate, but shall not be precluded from receiving electric service under
99 any other approved rate, toll, charge, or schedule.

100 D. An economic development incentive rate shall not be available to:

101 1. A new customer that results from a change in ownership of an existing establishment. However, if
102 a change in ownership occurs after a customer contracts for service under an economic development
103 incentive rate provided under this section, the new customer shall be allowed to continue service as was
104 provided to the establishment's former owner for the balance of the term of the contract;

105 2. A customer renewing service following interruptions attributable to equipment failure, temporary
106 plant shutdown, strike, or economic conditions; or

107 3. A customer for load shifted from one establishment or delivery point on the eligible utility's system
108 to another on the eligible utility's system.

109 E. In addition to any other requirements for receiving service at an economic development incentive
110 rate:

111 1. A customer shall not receive service at an economic development incentive rate unless it submits
112 to the eligible utility an application for service at such rate and the eligible utility approves its
113 application. The application shall include a description of the amount and nature of the new load and
114 the basis on which the customer requests qualification as an eligible customer. In the application, the
115 customer shall affirm that the availability of the economic development incentive rate was a factor in
116 the customer's decision to locate the new load in the eligible utility's service territory;

117 2. An eligible customer shall agree to a minimum contract term of 10 years, with the credits
118 provided under the economic development incentive rate being available for three years to eight years,
119 depending on the option selected by the eligible customer;

120 3. For eligible customers contracting to receive service at an economic development incentive rate

121 *due to expansion of an existing facility, the eligible utility may install metering equipment necessary to*
122 *measure the new load to be billed at the economic development incentive rate separate from the existing*
123 *load billed under the applicable general rate schedule; and*
124 *4. To continue receiving service at an economic development incentive rate, an eligible customer*
125 *shall maintain a monthly average of usage that meets or exceeds a minimum level established by the*
126 *Commission, which level shall not be less than any minimum required to receive service under the large*
127 *general service tariff or schedule.*

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HB1237