

2015 SESSION

LEGISLATION NOT PREPARED BY DLS  
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SENATE BILL NO. 1349  
FLOOR AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by Senator Wagner)

(Patron Prior to Substitute—Senator Wagner)

Senate Amendments in [ ] — February 6, 2015

A BILL to amend and reenact § 56-599 of the Code of Virginia, relating to electric utility regulation; suspension of regulatory reviews of utility earnings; integrated resource plan schedule.

Be it enacted by the General Assembly of Virginia:

1. That § 56-599 of the Code of Virginia is amended and reenacted as follows:

§ 56-599. Integrated resource plan required.

A. Not later than December 31, 2008, the Commission shall order each electric utility to develop an integrated resource plan. The order may establish guidelines for developing an IRP.

B. By September 1, 2009, each electric utility shall file an initial integrated resource plan with the Commission, which plan shall comply with the provisions of the order of the Commission issued pursuant to subsection A.

C. Each electric utility shall file an updated integrated resource plan at least every two years thereafter, which plan by July 1, 2015. Thereafter, each electric utility shall file an updated integrated resource plan annually by May 1. A copy of each integrated resource plan shall be provided to the Chairmen of the House and Senate Committees on Commerce and Labor and to the Chairman of the Commission on Electric Utility Regulation. All updated integrated resource plans shall comply with the provisions of any relevant order of the Commission establishing guidelines for the format and contents of updated and revised integrated resource plans. Each integrated resource plan shall consider options for maintaining and enhancing rate stability, energy independence, economic development including retention and expansion of energy-intensive industries, and service reliability.

D. B. In preparing an integrated resource plan, each electric utility shall systematically evaluate, and may propose:

1. Entering into short-term and long-term electric power purchase contracts;

2. Owning and operating electric power generation facilities;

3. Building new generation facilities;

4. Relying on purchases from the short term or spot markets;

5. Making investments in demand-side resources, including energy efficiency and demand-side management services;

6. Taking such other actions, as the Commission may approve, to diversify its generation supply portfolio and ensure that the electric utility is able to implement an approved plan; and

7. The methods by which the electric utility proposes to acquire the supply and demand resources identified in its proposed integrated resource plan;

8. The effect of current and pending state and federal environmental regulations upon the continued operation of existing electric generation facilities or options for construction of new electric generation facilities; and

9. The most cost effective means of complying with current and pending state and federal environmental regulations, including compliance options to minimize effects on customer rates of such regulations.

E. C. The Commission shall analyze and review an integrated resource plan and, after giving notice and opportunity to be heard, the Commission shall make a determination as to whether an IRP is reasonable and is in the public interest.

2. That, notwithstanding the provisions of §§ 56-249.6 and 56-585.1 of the Code of Virginia:

A. No biennial reviews of the rates, terms, and conditions for any service of a Phase I Utility, as defined in § 56-585.1 of the Code of Virginia, shall be conducted at any time by the State Corporation Commission for the four successive 12-month test periods beginning January 1, 2014, and ending December 31, 2017. No biennial reviews of the rates, terms, and conditions for any service of a Phase II Utility, as defined in § 56-585.1 of the Code of Virginia, shall be conducted at any time by the State Corporation Commission for the five successive 12-month test periods beginning January 1, 2015, and ending December 31, 2019. Such test periods beginning January 1, 2014 and ending December 31, 2017 for a Phase I Utility, and beginning January 1, 2015 and ending December 31, 2019, for a Phase II Utility, are collectively referred to herein as the "Transitional Rate Period." [ Review of recovery of fuel and purchase power costs shall continue during the Transitional Rate Period in accordance with § 56-249.6. ] Any biennial review of the rates, terms, and conditions for any service of a Phase II Utility occurring in 2015 during the Transitional Rate Period shall be solely a review of the utility's earnings on its rates for generation

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60 and distribution services for the two 12-month test periods ending December 31, 2014, and a  
61 determination of whether any credits to customers are due for such test periods pursuant to  
62 subdivision A 8 b of § 56-585.1. After the conclusion of the Transitional Rate Period, biennial  
63 reviews shall resume for a Phase I Utility in 2020, with the first such proceeding utilizing the two  
64 successive 12-month test periods beginning January 1, 2018, and ending December 31, 2019. After  
65 the conclusion of the Transitional Rate Period, biennial reviews shall resume for a Phase II Utility,  
66 as defined in § 56-585.1, in 2022, with the first such proceeding utilizing the two successive  
67 12-month test periods beginning January 1, 2020, and ending December 31, 2021. Consistent with  
68 this provision, (i) no biennial review filings shall be made by an investor-owned incumbent electric  
69 utility in the years 2016 through 2019, inclusive, and (ii) no adjustment to an investor-owned  
70 incumbent electric utility's existing tariff rates, including any rates adopted pursuant to § 56-235.2,  
71 shall be made between the beginning of the Transitional Rate Period and the conclusion of the  
72 first biennial review after the conclusion of the Transitional Rate Period, except as may be  
73 provided pursuant to § 56-245 or 56-249.6 or subdivisions A 4, 5, or 6 of § 56-585.1.

74 B. During the Transitional Rate Period, pursuant to § 56-36, the Commission shall have the  
75 right at all times to inspect the books, papers and documents of any investor-owned incumbent  
76 electric utility and to require from such companies, from time to time, special reports and  
77 statements, under oath, concerning their business.

78 C. 1. Commencing in 2016 and concluding in 2018, the State Corporation Commission, after  
79 notice and opportunity for a hearing, shall conduct a proceeding every two years to determine the  
80 fair rate of return on common equity to be used by a Phase I Utility as the general rate of return  
81 applicable to rate adjustment clauses under subdivisions A 5 or A 6 of § 56-585.1. A Phase I  
82 Utility's filing in such proceedings shall be made on or before March 31 of 2016, and 2018.

83 2. Commencing in 2017 and concluding in 2019, the State Corporation Commission, after notice  
84 and opportunity for a hearing, shall conduct a proceeding every two years to determine the fair  
85 rate of return on common equity to be used by a Phase II Utility as the general rate of return  
86 applicable to rate adjustment clauses under subdivisions A 5 or A 6 of § 56-585.1 of the Code of  
87 Virginia. A Phase II utility's filing in such proceedings shall be made on or before March 31 of  
88 2017 and 2019.

89 3. Such fair rate of return shall be calculated pursuant to the methodology set forth in  
90 subdivisions A 2 a and b of § 56-585.1 and shall utilize the utility's actual end-of-test-period capital  
91 structure and cost of capital, as well as a 12-month test period ending December 31 immediately  
92 preceding the year in which the proceeding is conducted. The Commission's final order in such a  
93 proceeding shall be entered no later than eight months after the date of filing, with any  
94 adjustment to the fair rate of return for applicable rate adjustment clauses under subdivisions A 5  
95 and 6 of § 56-585.1 taking effect on the date of the Commission's final order in the proceeding,  
96 utilizing rate adjustment clause true-up protocols as the Commission may in its discretion  
97 determine. Such proceeding shall concern only the issue of the determination of such fair rate of  
98 return to be used for rate adjustment clauses under subdivisions A 5 and 6 of § 56-585.1, and such  
99 determination shall have no effect on rates other than those applicable to such rate adjustment  
100 clauses; however, after the final such proceeding for a utility has been concluded, the fair  
101 combined rate of return on common equity so determined therein shall also be deemed equal to  
102 the fair combined rate of return on common equity to be used in such utility's first biennial  
103 review proceeding conducted after the end of the utility's Transitional Rate Period to review such  
104 utility's earnings on its rates for generation and distribution services for the historic test periods.

105 D. In furtherance of rate stability during the Transitional Rate Period, any Phase II Utility  
106 carrying a prior period deferred fuel expense recovery balance on its books and records as of  
107 December 31, 2014, shall not recover from customers 50 percent of any such balance outstanding  
108 as of December 31, 2014, and the State Corporation Commission shall implement as soon as  
109 practicable reductions in the fuel factor rate of any such Phase II Utility to reflect the nonrecovery  
110 of any such fuel expense as well as any reduction in the fuel factor associated with the Phase II  
111 Utility's current period forecasted fuel expense over recovery for the 2014-2015 fuel year and  
112 projected fuel expense for the 2015-2016 fuel year.

113 E. Except for early retirement [ determinations made by the utility prior to December 1, 2014  
114 plans identified by the utility in an integrated resource plan filed with the State Corporation  
115 Commission by September 1, 2014 ] , for utility generation plants, an investor-owned incumbent  
116 electric utility shall not permanently retire an electric power generation facility from service  
117 during the Transitional Rate Period without first obtaining the approval of the State Corporation  
118 Commission, upon petition from such investor-owned incumbent electric utility, and a finding by  
119 the State Corporation Commission that the retirement determination is reasonable and [ not  
120 contrary to the public interest prudent ] . During the Transitional Rate Period, an investor-owned  
121 incumbent electric utility shall recover the following costs, as recorded per books by the utility for

122 financial reporting purposes and accrued against income, only through its existing tariff rates for  
123 generation or distribution services, except such costs as may be recovered pursuant to § 56-245,  
124 § 56-249.6 or subdivisions A 4, A 5, or A 6 of § 56-585.1: (i) costs associated with asset  
125 impairments related to early retirement determinations for utility generation facilities resulting  
126 from the implementation of carbon emission guidelines for existing electric power generation  
127 facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111 (d) of the  
128 Clean Air Act; (ii) costs associated with severe weather events; and (iii) costs associated with  
129 natural disasters.

130 F. During the Transitional Rate Period:

131 1. The State Corporation Commission shall submit a report and make recommendations to the  
132 Governor and the General Assembly annually on or before December 1 of each year assessing the  
133 updated integrated resource plan of any investor-owned incumbent electric utility. The report shall  
134 include an analysis of, among other matters, the amount, reliability, and type of generation  
135 facilities needed to serve Virginia native load compared to what is then available to serve such  
136 load and what may be available to serve such load in the future in view of market conditions and  
137 current and pending state and federal environmental regulations. As a part of such report, the  
138 State Corporation Commission shall update its estimate of the impact upon electric rates in  
139 Virginia of the implementation of carbon emission guidelines for existing electric power generation  
140 facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the  
141 federal Clean Air Act. The State Corporation Commission shall submit copies of such annual  
142 reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the  
143 Chairman of the Commission on Electric Utility Regulation; and

144 2. The Department of Environmental Quality shall submit a report and make recommendations  
145 to the Governor and the General Assembly annually on or before December 1 of each year  
146 concerning the implementation of carbon emission guidelines for existing electric power generation  
147 facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the  
148 federal Clean Air Act. The report shall include an analysis of, among other matters, the impact of  
149 such federal regulations on the operation of any investor-owned incumbent electric utility's electric  
150 power generation facilities and any changes, interdiction, or suspension of such regulations. The  
151 Department of Environmental Quality shall submit copies of such annual reports to the Chairmen  
152 of the House and Senate Committees on Commerce and Labor and the Chairman of the  
153 Commission on Electric Utility Regulation.

154 [ G. The construction or purchase by an investor-owned incumbent utility of one or more  
155 generation facilities with at least one megawatt of generating capacity, and with an aggregate  
156 rated capacity that does not exceed 500 megawatts, that use energy derived from sunlight and are  
157 located in the Commonwealth, regardless of whether any of such facilities are located within or  
158 without such utility's service territory, is in the public interest, and in determining whether to  
159 approve such facility, the Commission shall liberally construe the provisions of this Act. Such  
160 utility shall utilize goods or services sourced, in whole or in part, from one or more Virginia  
161 businesses. The utility may propose a rate adjustment clause based on a market index in lieu of a  
162 cost of service model for such facility. An investor-owned incumbent utility may enter into  
163 short-term or long-term power purchase contracts for the power derived from sunlight generated  
164 by such generation facility prior to purchasing the generation facility. ]

165 [ H. Each Phase I and II Utility shall conduct a pilot program for energy assistance and  
166 weatherization for low income, elderly, and disabled individuals in their respective service  
167 territories in the Commonwealth. Each pilot program shall be funded by the utility and shall  
168 commence September 1, 2015. Each such utility shall report on the status of its pilot program,  
169 including the number of individuals served thereby, to the Governor, the State Corporation  
170 Commission, and the Chairmen of the House and Senate Commerce and Labor Committees by  
171 July 1, 2016, and each year thereafter. ]

172 3. That the General Assembly finds that (i) competitive electric utility rates, reliable electric  
173 service, and energy independence are important public policy priorities; (ii) long-term stability of  
174 electric utility rates is a competitive advantage for the Commonwealth's economic development;  
175 (iii) [ during the transition period, ] existing electric power generation facilities that provide for  
176 reliable electric utility service in the Commonwealth should remain in operation [ whenever  
177 practicable when prudent ] ; (iv) the General Assembly should be regularly informed of utility  
178 generation resource plans in light of the challenges to existing electric power generation facilities;  
179 and (v) the enactments herein are intended to promote balanced environmental management and  
180 rate stability, to protect the Commonwealth's economy and its consumers of electric energy,  
181 including those energy-intensive customers who are most vulnerable and rate sensitive, and to  
182 avoid threats to service reliability or the Commonwealth's energy independence.

**183 4. That pursuant to § 1-243, the provisions of this act are severable.**