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SENATE BILL NO. 1349

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 2, 2015)

(Patron Prior to Substitute—Senator Wagner)

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 September 1 of each year. 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." 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 and distribution services for the two 12-month test periods ending December 31, 2014, and a determination of whether any credits to customers are due for such test periods pursuant to subdivision A 8 b of § 56-585.1. After the conclusion of

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

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

77 2. Commencing in 2017 and concluding in 2019, the State Corporation Commission, after notice
78 and opportunity for a hearing, shall conduct a proceeding every two years to determine the fair
79 rate of return on common equity to be used by a Phase II Utility as the general rate of return
80 applicable to rate adjustment clauses under subdivisions A 5 or A 6 of § 56-585.1 of the Code of
81 Virginia. A Phase II utility's filing in such proceedings shall be made on or before March 31 of
82 2017 and 2019.

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

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

107 D. Except for early retirement determinations made by the utility prior to December 1, 2014,
108 for utility generation plants, an investor-owned incumbent electric utility shall not permanently
109 retire an electric power generation facility from service during the Transitional Rate Period
110 without first obtaining the approval of the State Corporation Commission, upon petition from such
111 investor-owned incumbent electric utility, and a finding by the State Corporation Commission that
112 the retirement determination is reasonable and not contrary to the public interest. During the
113 Transitional Rate Period, an investor-owned incumbent electric utility shall recover the following
114 costs, as recorded per books by the utility for financial reporting purposes and accrued against
115 income, only through its existing tariff rates for generation or distribution services, except such
116 costs as may be recovered pursuant to § 56-245, § 56-249.6 or subdivisions A 4, A 5, or A 6 of
117 § 56-585.1: (i) costs associated with asset impairments related to early retirement determinations
118 for utility generation facilities resulting from the implementation of carbon emission guidelines for
119 existing electric power generation facilities that the U.S. Environmental Protection Agency has
120 issued pursuant to § 111 (d) of the Clean Air Act; (ii) costs associated with severe weather events;
121 and (iii) costs associated with natural disasters.

122 E. During the Transitional Rate Period:

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

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

146 3. That the General Assembly finds that (i) competitive electric utility rates, reliable electric
147 service, and energy independence are important public policy priorities; (ii) long-term stability of
148 electric utility rates is a competitive advantage for the Commonwealth's economic development;
149 (iii) the Commonwealth's current regime of electric utility regulation, enacted by the 2007 Session
150 of the General Assembly, did not contemplate federal environmental regulations that threaten the
151 continued operation of significant components of the Commonwealth's electric power generation
152 resources; (iv) existing electric power generation facilities that provide for reliable electric utility
153 service in the Commonwealth should remain in operation whenever practicable; (v) the General
154 Assembly should be regularly informed of utility generation resource plans in light of the
155 challenges to existing electric power generation facilities posed by pending federal environmental
156 regulations; and (vi) the enactments herein are intended to promote balanced environmental
157 management and rate stability, to protect the Commonwealth's economy and its consumers of
158 electric energy, including those energy-intensive customers who are most vulnerable and rate
159 sensitive, and to avoid threats to service reliability or the Commonwealth's energy independence.

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