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SENATE BILL NO. 85

Offered January 13, 2016

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A *BILL to amend and reenact §§ 12.1-19, 12.1-30.1, 56-234, 56-235.2, 56-235.3, 56-237.1, and 56-247.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 12.1-30.2, 56-235.2:1, and 56-265.6:1 relating to public utilities; regulation of rates and service; procedures of the State Corporation Commission.*

Patron—Garrett

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 12.1-19, 12.1-30.1, 56-234, 56-235.2, 56-235.3, 56-237.1, and 56-247.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 12.1-30.2, 56-235.2:1, and 56-265.6:1 as follows:

§ 12.1-19. Duties of clerk; records; copies; personal identifiable information; records related to the administrative activities of the Commission; unauthorized filings.

A. The clerk of the Commission shall:

1. Keep a record of all the proceedings, orders, findings, and judgments of the public sessions of the Commission, and the minutes of the proceedings of each day's public session shall be read and approved by the Commission and signed by its chairman, or acting chairman;

2. Subject to the supervision and control of the Commission, have custody of and preserve all of the records, documents, papers, and files of the Commission, or which may be filed before it in any complaint, proceeding, contest, or controversy, and such records, documents, papers, and files shall be open to public examination in the office of the clerk to the same extent as the records and files of the courts of this Commonwealth;

3. When requested, make and certify copies from any record, document, paper, or file in the clerk's office, and if required, affix the seal of the Commission (or a facsimile thereof) thereto, and otherwise furnish and certify information from the Commission records by any means the Commission may deem suitable; and, except when made at the instance of the Commission or on behalf of the Commonwealth, a political subdivision of the Commonwealth, or the government of the United States, the clerk shall charge and collect the fees fixed by §§ 12.1-21.1 and 12.1-21.2; and any such copy or information, so certified, shall have the same faith, credit, and legal effect as copies made and certified by the clerks of the courts of this Commonwealth from the records and files thereof;

4. Certify all allowances made by the Commission to be paid out of the public treasury for witness fees, service of process, or other expenses;

5. Issue all notices, writs, processes, or orders awarded by the Commission, or authorized by law, or by the rules of the Commission;

6. Receive all fines and penalties imposed by the Commission, all moneys collected on judgments, all registration fees required by law to be paid by corporations, limited liability companies, and other types of business entities, including delinquencies thereof, and all other fees collected by the Commission, and shall keep an accurate account of the same and the disposition of such receipts and shall, at least once in every 30 days during the clerk's term of office, render a statement of all such receipts and collections to the Comptroller, and pay the same into the treasury of the Commonwealth, and shall keep all such other accounts of such collections and disbursements, and shall make all such other reports thereof as may be required by law or by the regulations prescribed by the Comptroller; and

7. Generally have the powers, discharge the functions, and perform the duties of a clerk of a court of record in all matters within the jurisdiction of the Commission. The Commission may designate one or more deputies or assistants of the clerk who may discharge any of the clerk's official duties during the clerk's continuance in office.

B. A person who prepares or submits to the office of the clerk of the Commission a document or any information for filing with the Commission pursuant to Title 8.9A, Title 13.1, or Title 50 is responsible for ensuring that the document or information does not contain any personal identifiable information, unless such information is otherwise publicly available or is required or authorized by law to be included in the document or information provided. For purposes of this subsection, "personal identifiable information" means (i) a social security number or any other numbers appearing on driver's licenses; (ii) information on credit cards, debit cards, bank accounts, or other electronic billing and payment systems; (iii) a date of birth identified with a particular individual; (iv) the maiden name of an

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59 individual's parent; or (v) any financial account number. Any person who prepares or submits to the
60 office of the clerk a document for filing that contains personal identifiable information shall be deemed
61 to have authorized the clerk or any member of the clerk's staff to remove, delete, or obliterate, without
62 prior notice, such information prior or subsequent to recording or filing the document in the office of
63 the clerk. Nothing in this subsection shall be deemed to require the clerk to alter any document
64 submitted for filing. The clerk may refuse to accept for filing any document that includes personal
65 identifiable information and return it for modification or explanation. The Commission, its members, the
66 clerk of the Commission, and any member of the clerk's staff are immune from liability in any
67 proceeding arising from any acts or omissions in the implementation of this subsection. This subsection
68 shall not be construed to limit, withdraw, or overturn any defense or immunity that exists under
69 statutory or common law.

70 C.1. The Commission shall make available for public inspection records related to the administrative
71 activities of the Commission. *The provisions of this subsection shall not limit the obligation of the*
72 *Commission to make available for public inspection records or information that the Commission is*
73 *required to make available pursuant to § 12.1-30.2.*

74 2. Disclosure of such records shall not be required, however, if (i) such records are otherwise
75 covered by applicable legal privileges, (ii) disclosure of such records could threaten the safety or
76 security of the Commission's employees, physical plant, or information technology assets or data, or (iii)
77 such records are not publicly available from other public entities under the laws of the Commonwealth,
78 including §§ 2.2-3705.1 and 2.2-4342.

79 3. Records held by the clerk of the Commission related to business entities shall be made public or
80 held confidential in accordance with laws and regulations applicable specifically to such records.

81 4. The Commission shall respond within five business days of receiving requests for administrative
82 records. If it is impracticable to provide the records requested within such time period, the Commission
83 shall notify the requester that an additional seven business days will be required, unless due to the scope
84 of the records requested or length of search necessary to locate them the Commission requires additional
85 time, which shall not be unreasonable in length. When any such requested records are not provided, the
86 Commission shall notify the requester of the basis of the denial.

87 5. As used in this subsection, "administrative activities" means matters related to the Commission's
88 operational responsibilities and operational functions, including its revenues, expenditures, financial
89 management and budgetary practices, personnel policies and practices, and procurement policies and
90 practices. "Administrative activities" shall not include the Commission's formal or informal regulatory or
91 legal proceedings or activities, records related to which shall be governed, inter alia, by laws and
92 regulations applicable specifically to such regulatory and legal proceedings or activities, or in accordance
93 with applicable legal privileges.

94 D. Notwithstanding any other provision of law, the clerk may review the circumstances surrounding
95 the execution or delivery of any document associated with any business entity of record in the office of
96 the clerk that was submitted for filing under a business entity statute administered by the Commission
97 pursuant to Title 13.1 or Title 50. If the clerk determines that the person who executed or delivered the
98 document was without authority to act on behalf of the business entity, the clerk is authorized (i) to
99 refuse to accept the document for filing or (ii) if the document has been filed, to summarily remove the
100 document and any documents and data related to the filing from the records in the office of the clerk,
101 correct such records, and provide notice to any business entity affected by the filing. The Commission,
102 its members, the clerk of the Commission, and any member of the clerk's staff are immune from
103 liability in any proceeding arising from any acts or omissions in the implementation of this subsection.
104 This subsection shall not be construed to limit, withdraw, or overturn any defense or immunity that
105 exists under statutory or common law.

106 **§ 12.1-30.1. Meetings and communications between commissioners and parties or staff.**

107 The Commission shall after public hearing, promulgate rules of practice and procedure pursuant to
108 § 12.1-25 controlling meetings and communications between commissioners and any party, or between
109 commissioners and staff concerning any fact or issue arising out of a proceeding involving the
110 regulation of rates, charges, services, or facilities of railroad, telephone, gas or electric, water, or sewer
111 companies. The rules shall provide, among other provisions, that no commissioner shall consult with any
112 party or any person acting on behalf of any party with respect to such proceeding without giving
113 adequate notice and opportunity for all parties to participate.

114 **§ 12.1-30.2. Access to information regarding executive salaries and payments to parent**
115 **corporations; communications with public utility; redacted information.**

116 A. The Commission shall make the following types of information open to inspection and copying by
117 any citizen of the Commonwealth upon request during the regular office hours of the Commission:

118 1. Salaries and other remuneration paid by a public utility to its executive officers. As used in this
119 subdivision, "executive officer" means an officer of a public utility who participates or has authority to
120 participate in the major policy-making functions of the public utility;

2. *Payments or transfers made by a public utility to a parent corporation of the public utility. As used in this subdivision, "parent corporation" means a corporation that directly or indirectly owns, controls, or holds, with power to vote, more than 50 percent of the outstanding voting securities of a public utility; and*

3. *The content of communications between any employee of the Commission and representative of a public utility.*

B. *If the Commission, prior to making any material or document open to inspection and copying by any citizen of the Commonwealth, redacts any portion of any material or document on grounds that such redacted portion is confidential, the Commission shall identify the general nature of the redacted portion of the material or document.*

§ 56-234. Duty to furnish adequate service at reasonable and uniform rates.

A. It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same. Notwithstanding any other provision of law:

1. A telephone company shall not have the duty to extend or expand its facilities to furnish service and facilities when the person, firm or corporation has service available from one or more alternative providers of wireline or terrestrial wireless communications services at prevailing market rates; and

2. A telephone company may meet its duty to furnish reasonably adequate service and facilities through the use of any and all available wireline and terrestrial wireless technologies; however, a telephone company, when restoring service to an existing wireline customer, shall offer the option to furnish service using wireline facilities.

For purposes of subdivisions 1 and 2, the Commission shall have the authority upon request of an individual, corporation, or other entity, or a telephone company, to determine whether the wireline or terrestrial wireless communications service available to the party requesting service is a reasonably adequate alternative to local exchange telephone service.

The use by a telephone company of wireline and terrestrial wireless technologies shall not be construed to grant any additional jurisdiction or authority to the Commission over such technologies.

For purposes of subdivision 1, "prevailing market rates" means rates similar to those generally available to consumers in competitive areas for the same services.

B. It shall be the duty of every public utility to charge uniformly therefor all persons, corporations, or municipal corporations using such service under like conditions. *Use of water or sewer systems under like conditions means use by a group of customers in a contiguous geographic area, which group is served by common facilities such as filtration, pumping, distribution, or wastewater treatment infrastructure. Rates for such a group shall be set on the basis of the costs of serving that group alone, without reference to the costs of serving any other group of customers.* However, no provision of law shall be deemed to preclude voluntary rate or rate design tests or experiments, or other experiments involving the use of special rates, where such experiments have been approved by order of the Commission after notice and hearing and a finding that such experiments are necessary in order to acquire information which is or may be in furtherance of the public interest. The charge for such service shall be at the lowest rate applicable for such service in accordance with schedules filed with the Commission pursuant to § 56-236. But, subject to the provisions of § 56-232.1, nothing contained herein or in § 56-481.1 shall apply to (i) schedules of rates for any telecommunications service provided to the public by virtue of any contract with, (ii) for any service provided under or relating to a contract for telecommunications services with, or (iii) contracts for service rendered by any telephone company to, the state government or any agency thereof, or by any other public utility to any municipal corporation or to the state or federal government. The provisions hereof shall not apply to or in any way affect any proceeding pending in the State Corporation Commission on or before July 1, 1950, and shall not confer on the Commission any jurisdiction not now vested in it with respect to any such proceeding.

C. The Commission may conclude that competition can effectively ensure reasonably adequate retail services in competitive exchanges and may carry out its duty to ensure that a public utility is furnishing reasonably adequate retail service in its competitive exchanges by monitoring individual customer complaints and requiring appropriate responses to such complaints.

§ 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 public utilities.

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

182 with § 56-585.1 for utilities subject to such section; (1a) the investor-owned public electric utility has
183 demonstrated that no part of such rates, tolls, charges or schedules includes costs for advertisement,
184 except for advertisements either required by law or rule or regulation, or for advertisements which solely
185 promote the public interest, conservation or more efficient use of energy; and (2) the public utility has
186 demonstrated that such rates, tolls, charges or schedules contain reasonable classifications of customers.
187 Notwithstanding § 56-234, the Commission may approve, either in the context of or apart from a rate
188 proceeding after notice to all affected parties and hearing, special rates, contracts or incentives to
189 individual customers or classes of customers where it finds such measures are in the public interest.
190 Such special charges shall not be limited by the provisions of § 56-235.4. In determining costs of
191 service, the Commission may use the test year method of estimating revenue needs. In any Commission
192 order establishing a fair and reasonable rate of return for an investor-owned gas, telephone or electric
193 public utility, the Commission shall set forth the findings of fact and conclusions of law upon which
194 such order is based.

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

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

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

209 **§ 56-235.2:1. Rates; procedure for fixing and changing.**

210 A. Notwithstanding any other provision of this chapter, a public utility operating in the
211 Commonwealth may only charge rates and charges that have been approved by the Commission.

212 B. The Commission shall, before approving any rates under this chapter, ensure that such action (i)
213 protects the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class
214 of customers, and (iii) will not jeopardize the continuation of reliable public utility service.

215 C. The Commission shall, either upon request or upon its own motion, fix rates that are just,
216 reasonable, compensatory, and not unfairly discriminatory. In every such proceeding, the Commission
217 shall consider the value and quality of the service and the cost of providing the service, which shall
218 include debt interest; the requirements of the public utility for working capital; maintenance,
219 depreciation, tax, and operating expenses incurred in the operation of all property used and useful in
220 the public service; and a fair return on the investment of the utility in property used and useful in the
221 public service. However:

222 1. The Commission shall not allow the inclusion of contributions in aid of construction in the rate
223 base of any public utility during a rate proceeding;

224 2. The Commission shall not impute prospective future contributions in aid of construction against
225 the utility's investment in property used and useful in the public service; and

226 3. Accumulated depreciation on such contributions in aid of construction shall not be used to reduce
227 the rate base, nor shall depreciation on such contributed assets be considered a cost of providing utility
228 service.

229 D. For purposes of such proceedings, the Commission shall consider utility property, including land
230 acquired or facilities constructed or to be constructed within a reasonable time in the future, not to
231 exceed 24 months after the end of the historic base year used to set final rates unless a longer period is
232 approved by the Commission, to be used and useful in the public service, if such property is needed:

233 1. To serve current customers;

234 2. To serve customers five years after the end of the test year used in the Commission's final order
235 on a rate request at a growth rate for equivalent residential connections not to exceed five percent per
236 year; or

237 3. To serve customers more than five full years after the end of the test year used in the
238 Commission's final order on a rate request only to the extent that the utility presents clear and
239 convincing evidence to justify such consideration.

240 **§ 56-235.3. Procedures for investigation of rate applications.**

241 A. At any hearing on the application of a public utility for a change in a rate, toll, charge or
242 schedule, the burden of proof to show that the proposed change is just and reasonable, shall be upon the
243 public utility. The Commission shall be authorized to prescribe all necessary rules and regulations for

the conduct of such hearings which shall provide for full and fair participation in such hearings by any interested person subject to such guidelines as the Commission may deem appropriate.

B. Upon the conclusion of such hearings, the Commission shall issue an order and such opinion as is necessary to set forth fully the Commission's findings of fact and conclusions of law.

C. *The Commission shall include in its order and opinion in any proceeding held to establish a fair rate of return and changes in rates, tolls, and charges of a public utility providing water and wastewater treatment services a written explanation of its conclusions that:*

1. *The rate or rates approved are based only on costs of operational expenditures that are prudent and used and useful in providing water and wastewater treatment services to the jurisdictional customers that the public utility serves;*

2. *The rate or rates approved are based only on costs of obtaining capital that are prudent and used and useful in providing water and wastewater treatment services to the jurisdictional customers that the utility serves;*

3. *The rate or rates approved accommodate the economic concerns of the public utility's jurisdictional customers;*

4. *The rate of return reflected in the rate or rates approved does not exceed rates of return generally obtained by enterprises facing comparable risks, including other water and wastewater treatment utilities serving customers in the Commonwealth; and*

5. *The information provided by public the utility in support of its application for a rate increase is complete and accurate.*

D. Copies of the transcripts of public hearings held to establish a fair rate of return and changes in rates, tolls, and charges for investor-owned public utilities involving significant public interest shall be placed in no less than one location nor more than three locations in the geographic area served by the utility. The Commission shall determine which proceedings are of sufficient interest to require the placing of such transcripts and the location or locations to be used; provided, however, that proceedings involving investor-owned utilities serving 25,000 or more customers shall be deemed to be of sufficient public interest.

§ 56-237.1. Notification of intent to seek rate change in schedules required to be filed under § 56-236.

A. Every public utility which indicates upon existing required schedules, or upon new schedules required to be filed in lieu thereof, changes in rates, tolls, charges, rules and regulations, shall cause to have published, once a week for four successive weeks, in one or more newspapers in circulation in its franchise area and approved by the Commission, a notice of its intention to change its rates, tolls, charges, rules and regulations. The last such publication shall appear no less than 30 days prior to the time any changed rates, tolls, charges, rules and regulations shall take effect. This notice shall be in such form and contain such information as prescribed by the Commission.

B. Every public utility which that indicates upon existing required schedules, or upon new schedules required to be filed in lieu thereof, changes in rates, tolls, charges, rules, and regulations, shall mail send to each of its customers, along with its periodic invoice, bill, or other statement, either by mail or electronically as selected by the customer as provided in subdivision A 8 of § 56-247.1, advising the customer of its charges, a notice of its intention to change its rates, tolls, charges, rules, and regulations. This notice shall be mailed sent no less than 30 days prior to the time any such changed rate, toll, charge, rule, and regulation shall take effect. This notice shall be in such form and contain such information as prescribed by the Commission.

C. B. The Commission may dispense with either or both of the requirements contained in subsections A and B if either or both such requirements are not shall increase the 30-day period prescribed by subsection A if necessary to provide adequate notice to all of the public utilities' customers in sufficient time to provide customers with a reasonable opportunity to participate in Commission proceedings relating to the public utility's intention to change its rates, tolls, charges, rules, and regulations. The Commission may prescribe additional requirements for notification to a public utility's customers of its intention to change its rates, tolls, charges, rules, and regulations.

§ 56-247.1. Commission to require public utilities to follow certain procedures.

A. The Commission shall require that public utilities adhere to the following procedures for services not found to be competitive:

1. Every public utility shall provide its residential customers one full billing period to pay for one month's local or basic services, before initiating any proceeding against a residential customer for nonpayment of local service.

2. Pay the residential customer a fair rate of interest as determined by the Commission on money deposited and return the deposit with the interest after not more than one year of satisfactory credit has been established.

3. Every public utility shall establish customer complaint procedures which will insure prompt and

305 effective handling of all customer inquiries, service requests and complaints. Such procedure shall be
306 approved by the Commission before its implementation and it shall be distributed to its residential
307 customers.

308 4. No electric or gas utility shall terminate a customer's service without 10 days' notice by mail to
309 the customer.

310 5. No public utility shall terminate the residential service of a customer for such customer's
311 nonpayment of basic nonresidential services as defined by its terms and conditions on file with the
312 Virginia State Corporation Commission.

313 6. A public utility providing water service shall not terminate service for nonpayment until it first
314 sends the customer written notice by mail 10 days in advance of making the termination but, in no
315 event, shall it terminate the customer's service until 20 days after the customer's bill has become due.
316 Any such notice shall also include contact information for the customer's use in contacting the public
317 utility regarding the notice.

318 7. Any electric utility formed under or subject to Chapter 9.1 (§ 56-231.15 et seq.) may install and
319 operate, upon a customer's request and pursuant to an appropriate tariff for any type or classification of
320 service, a prepaid metering equipment and system that is configured to terminate electric service
321 immediately and automatically when the customer has incurred charges for electric service equal to the
322 customer's prepayments for such service. Subdivisions 1, 2, 4, and 5 shall not apply to services provided
323 pursuant to electric service provided on a prepaid basis by a prepaid metering equipment and system
324 pursuant to this subsection. Such tariffs shall be filed with the Commission for its review and
325 determination that the tariff is not contrary to the public interest.

326 8. *A public utility may bill its customers for service either by first class mail or electronically, as
327 selected by the customer in accordance with a procedure to be approved by the Commission.*

328 B. Any and all Commission rules and regulations concerning the denial of telephone service for
329 nonpayment of such service shall not apply to services found to be competitive.

330 **§ 56-265.6:1. Petition of revocation of certificate of public convenience and necessity to provide**
331 **water service.**

332 A. *As used in this section, "customer" means an individual whose property is serviced by a single
333 water meter or a person whose name appears on the bill for a master meter for water service.*

334 B. *A public utility's certificate of public convenience and necessity to provide water service may be
335 revoked if, after its customers file a petition with the Commission, the Commission finds that the
336 revocation is in the best interest of the customers in accordance with this section.*

337 C. *If the Commission receives a letter from the customers of a public utility that states the intent of
338 the customers with water service to file a petition pursuant to this section, Commission staff, within 10
339 days after receipt of the letter, shall notify the utility of the customers' intent to file a petition. In such
340 event, Commission staff shall send the customers instructions regarding the information required on the
341 petition and the subsequent process the Commission will follow. Commission staff shall review the
342 petition and notify the customers within 10 days after the receipt of the petition whether the petition is
343 sufficient for the Commission to act or that additional information is necessary. If the customers fail to
344 provide a copy of the petition to the public utility or fail to refile a cured petition within 30 days after
345 receipt of the notice to cure, the Commission shall dismiss the petition with prejudice and the customers
346 may not file another petition for one year after the dismissal.*

347 D. *A petition shall:*

348 1. *State with specificity each issue that the customers have with the quality of water service, each
349 time the issue was reported to the public utility, and how long each issue has existed; and*

350 2. *Be signed by at least 20 percent of the customers of the service area covered under the certificate.*
351 *A person whose name appears on the bill for a master meter may sign a petition if at least 20 percent*
352 *of the customers, tenants, or unit owners serviced by the master meter support the petition, in which*
353 *case documentation of such support shall be included with the petition.*

354 E. *If the petition is in compliance with the requirements of subsections C and D and the issues
355 identified within the petition support a reasonable likelihood that the public utility is failing to provide
356 quality of water service, the utility shall thereafter be prohibited from filing a rate case until the public
357 utility uses the following criteria in preparing a response to the Commission, addressing the issues
358 identified within the petition, and defending the quality of its water service:*

359 1. *Federal and Virginia primary water quality standards or secondary water quality standards; and*

360 2. *The relationship between the public utility and its customers, including each complaint received
361 regarding the quality of water service, the length of time each customer has been complaining about the
362 service, the resolution of each complaint, and the time it has taken to address such complaints.*

363 F. *If the public utility fails to address the issues identified within the petition and the Commission or
364 other state agency finds the water unsafe for general use after 90 days following the filing of the
365 petition and notice thereof to the public utility, the Commission shall revoke the certificate of public
366 convenience and necessity for the public utility within the jurisdictional area.*