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SENATE BILL NO. 808

Offered January 11, 2018

A BILL to amend and reenact § 56-585.1:1 of the Code of Virginia, relating to electric utilities; Transitional Rate Period; coal combustion residuals landfills.

Patrons—Surovell and Chase; Delegates: Carroll Foy and Kory

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-585.1:1 of the Code of Virginia is amended and reenacted as follows:

§ 56-585.1:1. Transitional Rate Period: review of rates, terms and conditions for utility generation facilities.

Notwithstanding the provisions of §§ 56-249.6 and 56-585.1:

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

B. *During the first biennial review after the conclusion of the Transitional Rate Period, the Commission shall determine whether the utility would have owed customers a refund during any test period in the Transitional Rate Period pursuant to subdivision A 8 b of § 56-585.1. If the Commission determines the utility would have owed customers a credit under subdivision A 8 b of § 56-585.1 during the Transitional Rate Period, the utility may elect to expense up to 80 percent of costs associated with closure by removal of coal combustion residuals landfill or surface impoundments against such overearnings. For these purposes, closure by removal of coal ash impoundments includes only those costs associated with the removal of coal combustion residuals that are deposited in permitted, lined landfills that meet the design requirements set forth in subdivision J 1 a of 9VAC20-81-130 or 40 C.F.R. § 257.72, or those costs for encapsulated use in concrete and cement. This credit may not be used for closure by removal of the Bottom Ash Pond at the Chesapeake Energy Center. The Commission shall order the utility to credit customers any remaining overearnings in accordance with the amortization and customer class allocation procedures of subdivision A 8 b of § 56-585.1.*

C. No later than 30 days following each biennial review by the Commission, the owner or operator of any coal combustion residuals unit shall transmit a report to the Chairmen of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources and to the Departments of Environmental Quality and Conservation and Recreation. The report shall describe the costs associated with removal of coal combustion residuals landfill or surface impounds, including reuse and recycling; describe the removal *efforts and the beneficial reuse and recycling of any coal ash that has taken place over the previous two years; and describe the projected plan for the following two years to the best of its ability. The report shall also include any groundwater or surface level test results indicating that coal combustion residuals constituent concentrations are detected above U.S. Environmental Protection Agency's Maximum Contaminant Levels, above background levels in groundwater monitoring wells, and above the Virginia Surface Water Quality Standards (aquatic and human health).*

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

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

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

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

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

~~E.~~ *G.* Except for early retirement plans identified by the utility in an integrated resource plan filed with the State Corporation Commission by September 1, 2014, for utility generation plants, an investor-owned incumbent electric utility shall not permanently retire an electric power generation facility from service during the Transitional Rate Period without first obtaining the approval of the State Corporation Commission, upon petition from such investor-owned incumbent electric utility, and a finding by the State Corporation Commission that the retirement determination is reasonable and prudent. During the Transitional Rate Period, an investor-owned incumbent electric utility shall recover the following costs, as recorded per books by the utility for financial reporting purposes and accrued against income, only through its existing tariff rates for generation or distribution services, except such costs as may be recovered pursuant to § 56-245, § 56-249.6 or subdivisions A 4, A 5, or A 6 of § 56-585.1: (i) costs associated with asset impairments related to early retirement determinations for utility generation facilities resulting from the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the Clean Air Act; (ii) costs associated with severe weather events; and (iii) costs associated with natural disasters.

~~F.~~ *H.* During the Transitional Rate Period:

1. The State Corporation Commission shall submit a report and make recommendations to the Governor and the General Assembly annually on or before December 1 of each year assessing the updated integrated resource plan of any investor-owned incumbent electric utility. The report shall

include an analysis of, among other matters, the amount, reliability, and type of generation facilities needed to serve Virginia native load compared to what is then available to serve such load and what may be available to serve such load in the future in view of market conditions and current and pending state and federal environmental regulations. As a part of such report, the State Corporation Commission shall update its estimate of the impact upon electric rates in Virginia of the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The State Corporation Commission shall submit copies of such annual reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation; and

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

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