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## SENATE BILL NO. 955

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the Senate Committee on Commerce and Labor  
on February 5, 2018)

(Patron Prior to Substitute—Senator Petersen)

A BILL to amend and reenact § 56-585.1:1 of the Code of Virginia, relating to electric utility regulation; suspension of reviews of earnings; conclusion of Transitional Rate Period; notice to utility customers.

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, as defined in § 56-585.1, shall be conducted at any time by the State Corporation Commission for during the four successive 12-month test periods beginning January 1, 2014 2015, 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 during the five successive 12-month test periods beginning January 1, 2015 2016, and ending December 31, 2019 2018. Such test 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 2018, 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 in 2020, with the first such proceeding utilizing the two successive 12-month test periods beginning January 1, 2018, and ending December 31, 2019 2018. A Phase I Utility's filing in such proceeding shall be made on or before September 30, 2018. 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 2019. 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 2017 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 subdivision A 4, 5, or 6 of § 56-585.1. Following the first biennial reviews after the conclusion of the Transitional Rate Period, subsequent biennial review proceedings shall utilize the two successive 12-month test periods ending December 31 immediately preceding the year in which such biennial proceeding is conducted. During the first biennial reviews after the conclusion of the Transitional Rate Period, the Commission shall review the earnings during the Transitional Rate Period of a Phase I Utility or a Phase II Utility, as applicable, and if warranted by the Commission's determination of the utility's earnings during such period, shall order credits to customers based on such earnings during such period and, further, if warranted by such determination of earnings, shall order adjustments to rates pursuant to the provisions of subdivisions A 8 a, b, and c of § 56-585.1.

B. 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. 1. Commencing in 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 subdivision A 5 or A 6 of § 56-585.1. A Phase I Utility's filing in such proceedings proceeding shall be made on or before March 31 of 2016, and 2018.

2. Commencing in 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

60 return on common equity to be used by a Phase II Utility as the general rate of return applicable to rate  
61 adjustment clauses under ~~subdivisions~~ *subdivision* A 5 or A 6 of § 56-585.1. A Phase II utility's filing in  
62 such ~~proceedings~~ *proceeding* shall be made on or before March 31 of 2017 ~~and 2019~~.

63 3. Such fair rate of return shall be calculated pursuant to the methodology set forth in subdivisions A  
64 2 a and b of § 56-585.1 and shall utilize the utility's actual end-of-test-period capital structure and cost  
65 of capital, as well as a 12-month test period ending December 31 immediately preceding the year in  
66 which the proceeding is conducted. The Commission's final order in such a proceeding shall be entered  
67 no later than eight months after the date of filing, with any adjustment to the fair rate of return for  
68 applicable rate adjustment clauses under subdivisions A 5 and 6 of § 56-585.1 taking effect on the date  
69 of the Commission's final order in the proceeding, utilizing rate adjustment clause true-up protocols as  
70 the Commission may in its discretion determine. Such proceeding shall concern only the issue of the  
71 determination of such fair rate of return to be used for rate adjustment clauses under subdivisions A 5  
72 and 6 of § 56-585.1, and such determination shall have no effect on rates other than those applicable to  
73 such rate adjustment clauses; however, after ~~the final~~ such proceeding for a utility has been concluded,  
74 the fair combined rate of return on common equity so determined therein shall also be deemed equal to  
75 the fair combined rate of return on common equity to be used in such utility's first biennial review  
76 proceeding conducted after the end of the utility's Transitional Rate Period to review such utility's  
77 earnings on its rates for generation and distribution services for the historic test periods.

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

86 E. Except for early retirement plans identified by the utility in an integrated resource plan filed with  
87 the ~~State Corporation~~ Commission by September 1, 2014, for utility generation plants, an investor-owned  
88 incumbent electric utility shall not permanently retire an electric power generation facility from service  
89 during the Transitional Rate Period without first obtaining the approval of the ~~State Corporation~~  
90 Commission, upon petition from such investor-owned incumbent electric utility, and a finding by the  
91 ~~State Corporation~~ Commission that the retirement determination is reasonable and prudent. During the  
92 Transitional Rate Period, an investor-owned incumbent electric utility shall recover the following costs,  
93 as recorded per books by the utility for financial reporting purposes and accrued against income, only  
94 through its existing tariff rates for generation or distribution services, except such costs as may be  
95 recovered pursuant to § 56-245; § ~~or~~ 56-249.6 or ~~subdivisions~~ *subdivision* A 4, A 5, or A 6 of  
96 § 56-585.1: (i) costs associated with asset impairments related to early retirement determinations for  
97 utility generation facilities resulting from the implementation of carbon emission guidelines for existing  
98 electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to  
99 § 111(d) of the Clean Air Act; (ii) costs associated with severe weather events; and (iii) costs associated  
100 with natural disasters.

101 F. During the Transitional Rate Period:

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

115 2. The Department of Environmental Quality shall submit a report and make recommendations to the  
116 Governor and the General Assembly annually on or before December 1 of each year concerning the  
117 implementation of carbon emission guidelines for existing electric power generation facilities that the  
118 U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The  
119 report shall include an analysis of, among other matters, the impact of such federal regulations on the  
120 operation of any investor-owned incumbent electric utility's electric power generation facilities and any  
121 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. 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.

*H. To the extent the provisions of this section are inconsistent with the provisions of §§ 56-249.6 and 56-585.1, the provisions of this section shall control.*

**2. That the State Corporation Commission (the Commission) shall be authorized to notify every customer of an investor-owned electric utility to which § 56-585.1:1 of the Code of Virginia, as amended by this act, applies that (i) the General Assembly has authorized the Commission to conduct biennial reviews of the rates, terms, and conditions for any service of the utility during 2018 or 2019, as applicable, and (ii) pursuant to a biennial review proceeding, the customer may be entitled to a credit on the customer's bill if the Commission finds that such a credit is required pursuant to the provisions of subdivision A 8 b of § 56-585.1 of the Code of Virginia. The Commission may direct that the notice be provided through a utility billing insert approved by the Commission.**

**3. That the State Corporation Commission shall (i) direct that any credits ordered to customers pursuant to subsection A of § 56-585.1:1 of the Code of Virginia as amended by this act be credited to customers' bills immediately and (ii) shall not divert any portion of the amount of such credits to any alternative use or program.**