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SENATE BILL NO. 1115

Offered January 9, 2019

Prefiled December 26, 2018

A BILL to amend the Code of Virginia by adding in Title 12.1 a chapter numbered 6, consisting of sections numbered 12.1-44 through 12.1-50, relating to compensation for certain costs incurred by certain retail customers of public service companies as intervenors in proceedings of the State Corporation Commission.

Patron—Petersen

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 12.1 a chapter numbered 6, consisting of sections numbered 12.1-44 through 12.1-50, as follows:

CHAPTER 6.

INTERVENOR COMPENSATION.

§ 12.1-44. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Compensation" means payment for all or part, as determined by the Commission, of reasonable attorney fees, reasonable expert witness fees, and other reasonable out-of-pocket expenses directly incurred by an intervenor that are directly related to the contentions or recommendations made by the intervenor that result in a substantial contribution.

"Intervenor" means a public interest organization or a retail customer, including an entity representing retail customers, of a public service company providing electric, gas, telephone, telegraph, or water service and that is a participant in a proceeding to which such public service company is a party. "Customer" does not include any federal, state, or local government, or any agency thereof.

"Proceeding" means an application, complaint, or investigation, rulemaking, or other formal proceeding before the Commission that is related to the provision by a public service company of electric, gas, telephone, telegraph, or water service.

"Public service company" has the same meaning ascribed to that term in § 56-1.

"Significant financial hardship" exists when an intervenor cannot afford, without undue hardship, to pay the costs, including attorney fees, expert witness fees, and other reasonable costs of participation, of effective participation in a proceeding.

"Substantial contribution" exists when, in the judgment of the Commission, an intervenor's participation in a proceeding has substantially assisted the Commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the intervenor.

§ 12.1-45. Eligibility.

The Commission shall award compensation with respect to a proceeding to any intervenor that complies with § 12.1-46 and satisfies the following requirements:

1. The intervenor's participation in the proceeding made a substantial contribution to the adoption, in whole or in part, of the Commission's order or decision;

2. The intervenor's participation in the proceeding without an award of compensation imposes a significant financial hardship; and

3. The intervenor represents an interest material to the proceeding which but for an award of compensation would not be adequately represented.

§ 12.1-46. Applications for compensation.

A. An intervenor that intends to seek an award under this chapter shall, within 30 days after the first prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation. In proceedings where no prehearing conference is scheduled or where the Commission anticipates that the proceeding will take less than 30 days, the Commission may determine the procedure to be used in filing a notice of intent. In cases where the schedule would not reasonably allow parties to identify issues within such timeframe, or where new issues emerge subsequent to the time set for filing, the Commission may determine an appropriate procedure for accepting new or revised notices of intent.

B. A notice of intent to claim compensation shall include:

1. A statement of the nature and extent of the intervenor's planned participation in the proceeding as far as it is possible to set it out when the notice of intent is filed; and

2. An itemized estimate of the compensation that the intervenor expects to request, given the likely duration of the proceeding as it appears at the time.

C. The notice of intent may also include a showing by the intervenor that participation in the proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included in the request submitted pursuant to subsection G.

D. Within 15 days after service of the notice of intent to claim compensation, the Commission may direct the staff, and may permit any other interested party, to file a statement responding to the notice of intent.

E. If the intervenor's showing of significant financial hardship was included in the notice of intent filed pursuant to subsection B, the Commissioner or its hearing examiner, if applicable, shall issue within 30 days thereafter a preliminary ruling addressing whether the intervenor will be eligible for an award of compensation. The ruling shall address whether a showing of significant financial hardship has been made.

F. If the proceeding is assigned to a hearing examiner, the hearing examiner may issue a ruling addressing issues raised by the notice of intent to claim compensation, which issues may include similarity of parties' positions, areas of potential duplication in showings, unrealistic expectation of compensation, and any other matter that may affect the intervenor's claim for compensation. Failure of such a ruling to point out similar positions or potential duplication or any other potential impact on the ultimate claim for compensation shall not imply approval of any claim for compensation. A finding of significant financial hardship in no way ensures compensation. Similarly, the failure of the intervenor to identify a specific issue in the notice of intent or to precisely estimate potential compensation shall not preclude an award of reasonable compensation if a substantial contribution is made.

G. Following issuance of a final order or decision by the Commission in the proceeding, an intervenor that has been found to be eligible for an award of compensation may file within 60 days a request for an award of compensation. The request shall include at a minimum a detailed description of services and expenditures and a description of the intervenor's substantial contribution to the proceeding. Within 30 days after service of the request, the Commission's staff may file, and any other party may file, a response to the request.

H. Within 75 days after the filing of a request for compensation pursuant to subsection G or within 50 days after the filing of an audit report under § 12.1-47, whichever occurs later, the Commission shall issue a decision that determines whether or not the intervenor has made a substantial contribution to the final order or decision in the proceeding. If the Commission finds that the intervenor has made a substantial contribution, the Commission shall describe this substantial contribution and shall determine the amount of compensation to be paid to the intervenor. Where an intervenor's participation has resulted in a substantial contribution, even if the decision adopts the intervenor's contentions or recommendations only in part, the Commission may award the intervenor compensation for costs incurred by the intervenor in preparing or presenting that contention or recommendation.

§ 12.1-47. Audits.

The Commission may audit the records and books of an intervenor to the extent necessary to verify the basis for the award. The Commission shall preserve the confidentiality of the intervenor's records in making its audit. Within 20 days after completion of the audit, if any, the Commission shall direct that an audit report shall be prepared and filed. Any other party may file a response to the audit report within 20 days after the filing of the report.

§ 12.1-48. Compensable costs.

A. Compensation shall not exceed the actual and reasonable expenses authorized by the Commission and incurred as a result of the intervenor's participation as a party in a proceeding.

B. Compensation paid to the staff of a group or organization shall be limited to the rate of reimbursement normally paid by the applicant for comparable staff services and shall not exceed the rates authorized for employees of the Commission. Compensation of an applicant's contractor may be paid at prevailing market rates for the kind and quality of service. Compensation for travel, subsistence, and miscellaneous expenses shall not exceed the rates authorized for Commission employees.

§ 12.1-49. Compensation constitutes Commission expense.

The Commission's payments of compensation under this chapter shall constitute contingent expenses of its office. Such payments may be made pursuant to authority granted by subsection A of § 12.1-12 and as may be provided by law.

§ 12.1-50. Discretionary authority of Commission.

The awarding of compensation under this chapter is solely at the discretion of the Commission. This chapter does not create any right or cause of action under state law.