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SENATE BILL NO. 1346

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact § 56-585.3 of the Code of Virginia, relating to electric cooperatives; rates.*

Patrons—Newman and Obenshain; Delegate: Kilgore

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-585.3 of the Code of Virginia is amended and reenacted as follows:

§ 56-585.3. Regulation of cooperative rates after rate caps.

A. After the expiration or termination of capped rates, the rates, terms and conditions of distribution electric cooperatives subject to Article 1 (§ 56-231.15 et seq.) of Chapter 9.1 of this title shall be regulated in accordance with the provisions of Chapters 9.1 (§ 56-231.15 et seq.) and 10 (§ 56-232 et seq.) of this title, as modified by the following provisions:

1. Except for energy related cost (fuel cost), the Commission shall not require any cooperative to adjust, modify, or revise its rates, by means of riders or otherwise, to reflect changes in wholesale power cost which occurred during the capped rate period, other than in a general rate proceeding;

2. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, increase or decrease all classes of its rates for ~~distribution~~ services at any time, provided, however, that such adjustments will not effect a cumulative net increase or decrease in excess of ~~5~~ five percent in such rates in any ~~three year~~ three-year period. Such adjustments will not affect or be limited by any existing fuel or wholesale power cost adjustment provisions. The cooperative will promptly file any such revised rates with the Commission for informational purposes;

3. Each cooperative may, without Commission approval, upon an affirmative resolution of its board of directors, make any adjustment to its terms and conditions that does not affect the cooperative's revenues from the distribution or supply of electric energy. In addition, a cooperative may make such adjustments to any pass-through of third-party service charges and fees, and to any fees, charges and deposits set out in Schedule F of such cooperative's Terms and Conditions filed as of January 1, 2007. The cooperative will promptly file any such amended terms and conditions with the Commission for informational purposes;

4. Each cooperative may, without Commission approval or the requirement of any filing other than as provided in this subdivision, upon an affirmative resolution of its board of directors, make any adjustment to its rates reasonably calculated to collect any or all of the fixed costs of owning and operating its electric distribution system, including without limitation, such costs as are identified as customer-related costs in a cost of service study, through a new or modified fixed monthly charge, rather than through volumetric charges associated with the use of electric energy *or demand*; however, such adjustments shall be revenue neutral based on the cooperative's determination of the proper intra-class allocation of the revenues produced by its then current rates. The cooperative may elect, but is not required, to implement such adjustments through incremental changes over the course of up to three years. The cooperative shall file promptly revised tariffs reflecting any such adjustments with the Commission for informational purposes; ~~and~~

5. A cooperative may, at any time after the expiration or termination of capped rates, petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery from customers of the costs described in subdivisions A 5 b and e of § 56-585.1;

6. A cooperative that is not a current member of a utility aggregation cooperative may at any time petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery of cost from customers of (i) one or more generation facilities, (ii) one or more major unit modifications of generation facilities, or (iii) one or more pumped hydroelectricity generation and storage facilities. A cooperative seeking a rate adjustment clause pursuant to this subdivision shall have the right, after notice and the opportunity for a hearing, to recover the costs of a facility described in clauses (i), (ii), or (iii) in a rate adjustment clause including construction work in progress and allowance for funds during construction, planning, and development costs of infrastructure associated therewith. The costs of the facility other than projected construction work in progress and allowance for funds used during construction shall not be recovered prior to the date that the facility either (a) begins commercial operation or (b) comes under the ownership of the cooperative. For the purposes of this

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59 subdivision, the cooperative's cost of capital shall be recoverable in such a rate adjustment clause and
60 shall be set as either the cooperative's long-term cost of debt or most recent rate of return authorized
61 by the Commission in a rate proceeding. In any proceeding conducted pursuant to this subdivision, the
62 Commission shall consider that all costs expended and revenues recovered arising out of the
63 procurement of generation resources pursuant to this subdivision will inure to the benefit of the general
64 membership of the cooperative. Nothing in this subdivision shall relieve a cooperative from any
65 requirement to obtain a certificate of public convenience and necessity for purposes of constructing
66 generation in the Commonwealth. The Commission's final order regarding any petition filed pursuant to
67 this subdivision shall be entered not more than nine months after the date of filing of such petition. If
68 such petition is approved, the order shall direct that the applicable rate adjustment clause be applied to
69 customers' bills not more than 60 days after the date of the order. Any petition filed pursuant to this
70 subdivision shall be considered by the Commission on a stand-alone basis without regard to the other
71 costs, revenues, investments, or earnings of the cooperative. Any costs incurred by a cooperative prior
72 to the filing of such petition, or during the consideration thereof by the Commission, that are proposed
73 for recovery in such petition, shall be deferred on the books and records of the cooperative until the
74 Commission's final order in the matter, or until the implementation of any applicable approved rate
75 adjustment clause, whichever is later;

76 7. A cooperative may, without Commission approval or the requirement of any filing other than as
77 provided in this subdivision, upon an affirmative resolution of its board of directors and upon a finding
78 by the board that such action is not contrary to the interests of the membership, adjust the total system
79 cap described in subsection E of § 56-594 applicable to the maximum available rated generating
80 capacity for net energy metering, agricultural net energy metering, and small agricultural generators to
81 up to five percent of the cooperative's highest total coincident system peak within the past five years
82 listed in Part O, Line 20 of Form 7 filed with the Rural Utilities Service or its equivalent. The
83 cooperative shall promptly file any such system cap adjustment with the Commission for informational
84 purposes; and

85 8. A cooperative may, without Commission approval or the requirement of any filing other than as
86 provided in this subdivision, upon an affirmative resolution of its board of directors and upon a finding
87 by the board that such action will not result in either an intra-class or inter-class change in cost
88 recovery, adopt and adapt for its own use any rate, rate component, program, tariff, or terms or
89 conditions of service that the Commission has previously approved for any other cooperative through a
90 formal proceeding. The cooperative will promptly file any such amendment with the Commission for
91 informational purposes.

92 B. None of the adjustments described in subdivisions A 2 through A 5 will apply to the rates paid
93 by any customer that takes service by means of dedicated distribution facilities and had noncoincident
94 peak demand in excess of 90 megawatts in calendar year 2006.

95 C. Nothing in this section shall be deemed to grant to a cooperative any authority to amend or adjust
96 any terms and conditions of service or agreements regarding pole attachments or the use of the
97 cooperative's poles or conduits.

98 D. Nothing in this section shall be deemed to limit the Commission's authority to investigate the
99 rates of any cooperative.