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**HOUSE BILL NO. 792**

Offered January 10, 2024

Prefiled January 9, 2024

*A BILL to amend and reenact § 56-235.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-581.2, relating to electric utilities; regulation of rates; prohibited recovery.*

Patrons—Henson, Clark, Martinez and Rasoul

Referred to Committee on Labor and Commerce

**Be it enacted by the General Assembly of Virginia:**

**1. That § 56-235.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-581.2 as follows:**

**§ 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 electric companies.**

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)~~ (i) 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 with § 56-585.1 for utilities subject to such section; ~~(1a)~~ (ii) the investor-owned public electric utility has demonstrated that no part of such rates, tolls, charges or schedules includes costs for advertisement, except for advertisements either required by law or rule or regulation, or for advertisements which solely promote the public interest, conservation or more efficient use of energy; (iii) *the investor-owned public electric utility has demonstrated that no part of such rates, tolls, charges, or schedules includes costs for activities described in subsection A of § 56-581.2;* and ~~(2)~~ (iv) the public utility has demonstrated that such rates, tolls, charges or schedules contain reasonable classifications of customers. Notwithstanding § 56-234, the Commission may approve, either in the context of or apart from a rate proceeding after notice to all affected parties and hearing, special rates, contracts or incentives to individual customers or classes of customers where it finds such measures are in the public interest. Such special charges shall not be limited by the provisions of § 56-235.4. In determining costs of service, the Commission may use the test year method of estimating revenue needs. In any Commission order establishing a fair and reasonable rate of return for an investor-owned gas, telephone or electric public utility, the Commission shall set forth the findings of fact and conclusions of law upon which such order is based.

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

In any ratemaking proceeding for an investor-owned utility authorized to furnish water or water and sewer service initiated after January 1, 2022, the Commission shall evaluate such utility on a stand-alone basis and, for purposes of establishing any revenue requirement and rates, utilize such utility's actual end-of-test period capital structure and cost of capital without regard to the cost of capital, capital structure, or investments of any other entities with which such utility may be affiliated, unless the Commission finds based on evidence in the record that the debt to equity ratio of the actual end-of-test period capital structure of such utility is unreasonable, in which case the Commission may utilize a debt to equity ratio that it finds to be reasonable. In all proceedings initiated after January 1, 2022, in which the Commission reviews the rates and associated earnings of an investor-owned utility authorized to furnish water or water and sewer service, the Commission shall conduct such review utilizing the same cost of capital and capital structure adopted in the utility's most recent rate case in which such rates were set, without regard to any later changes in the cost of capital or capital structure.

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

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59 the continuation of reliable electric service.

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

63 **§ 56-581.2. Regulation of rates; prohibited recovery; report.**

64 A. Notwithstanding any provision of § 56-581 or 56-585.1, the Commission shall prohibit any Phase  
65 I or Phase II Utility, as those terms are defined in subdivision A 1 of § 56-585.1, from recovering  
66 through rates for generation and distribution services any direct or indirect costs associated with the  
67 following:

68 1. Membership, dues, sponsorship, or contributions to a business or industry trade association,  
69 group, or tax-exempt related entity;

70 2. Lobbying, legislative action, or other political influence activities, including research, analysis,  
71 preparation, planning, or other activities undertaken in support of lobbying or legislative action;

72 3. Advertising, marketing, or communications seeking to influence public opinion;

73 4. Travel, lodging, or food and beverage expenses for the utility's board of directors or officers, or  
74 for the parent company of a utility's board of directors or officers;

75 5. Entertainment or gifts;

76 6. Leasing, owning, or chartering an aircraft for the utility's board of directors or officers, or for the  
77 parent company of a utility's board of directors or officers;

78 7. Charitable giving, including contributions to organizations qualified under § 501(c)(3) or 501(c)(4)  
79 of the Internal Revenue Code of 1986, as amended, and any expenses related to charitable giving;

80 8. Compensation for any employee, if any portion of that employee's time in a given year is spent on  
81 lobbying, legislative action, political influence activities, or advertising, marketing, or communications  
82 seeking to influence public opinion;

83 9. Litigation regarding existing or proposed federal, state, or local regulations, legislation, or  
84 ordinances;

85 10. Any costs, including marketing, administration, customer service, or other costs, related to  
86 products or services not regulated by the Commission;

87 11. Travel, lodging, or food and beverage expenses for any member of the board of directors,  
88 officers, or the board of directors or officers of a utility affiliate; or

89 12. Investor relations.

90 B. No later than July 1, 2025, and annually thereafter, each Phase I and Phase II Utility shall file  
91 an annual report with the Commission that includes the following information:

92 1. An itemized list of the costs associated with each activity described in subsection A;

93 2. Any costs to the utility or the utility's parent company that are directly billed or allocated to the  
94 Phase I or Phase II Utility;

95 3. The title, job description, and salary of any employees of the Phase I or Phase II Utility who  
96 perform work associated with the activities described in subsection A for the utility and the amount of  
97 hours attributable to such work;

98 4. The title, job description, and salary of any employees of a Phase I or Phase II Utility's parent  
99 company or affiliate who perform work associated with the activities described in subsection A and the  
100 amount of hours attributable to such work;

101 5. An itemized list of the Phase I or Phase II Utility's costs with all third-party vendors for any  
102 expenses associated with the activities described in subsection A, including unredacted billing amounts,  
103 billing dates, payees, and explanations of each expenditure in sufficient detail to describe the cost's  
104 purpose;

105 6. A list of all divisions, departments, or other organizational employee groups within a Phase I or  
106 Phase II Utility that perform activities described in subsection A. For each organizational employee  
107 group, the utility shall include a list of employees who work in that group. For each employee, the  
108 utility shall include the employee's job title, a job description sufficient to describe the employee's  
109 responsibilities, each activity described in subsection A in which the employee engages, and a  
110 description sufficient to describe the nature of any such activity, the total annual compensation for the  
111 employee, the percentage of annual compensation paid for work associated with the activities described  
112 in subsection A, the percentage of annual compensation recoverable from ratepayers, and all Uniform  
113 System of Account codes to which compensation was recorded for the employee; and

114 7. Any other information that the Commission deems relevant.

115 C. The Commission shall impose a non-recoverable fee on any Phase I or Phase II Utility acting in  
116 violation of the provisions of this section in an amount equal to the amount improperly recovered by the  
117 utility through any prohibited recovery activity described in subsection A.