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HOUSE BILL NO. 3153

Offered January 19, 2007

A *BILL to amend and reenact §§ 56-235.2 and 58.1-400.2 of the Code of Virginia, relating to the taxation of the income of certain public utilities.*

Patron—Nixon

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 56-235.2 and 58.1-400.2 of the Code of Virginia are amended and reenacted 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) 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, subject to such normalization for nonrecurring costs and adjustments for known future increases in costs as the Commission may deem reasonable, and a fair return on the public utility's rate base used to serve those jurisdictional customers; (1a) 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; and (2) 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, but shall not consider any adjustments or expenses that are speculative or cannot be predicted with reasonable certainty; *however, any state and federal income tax shall be considered as if the public utility filed an income tax return on a stand-alone basis, without regard to the operation of its affiliates.* 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.

B. Upon application of any public service company furnishing electric service or on the Commission's own motion, the Commission may approve after notice to all affected parties and hearing, an alternative form of regulation. Alternatives may include, but are not limited to, the use of price regulation, ranges of authorized returns, categories of services, price indexing or other alternative forms of regulation.

C. The Commission shall, before approving special rates, contracts, incentives or other alternative regulatory plans under subsections A and B, 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 the continuation of reliable electric service.

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

§ 58.1-400.2. Taxation of electric suppliers, pipeline distribution companies, gas utilities, and gas suppliers.

A. Any electric supplier, pipeline distribution company, gas utility, or gas supplier that is subject to income tax pursuant to the Internal Revenue Code of 1986, as amended, except those organized as cooperatives and exempt from federal taxation under § 501 of the Internal Revenue Code of 1986, as amended, shall be subject to the tax levied pursuant to § 58.1-400.

B. Any electric supplier that operates as a cooperative and is exempt from income tax pursuant to § 501 of the Internal Revenue Code of 1986, shall be subject to tax at the tax rate set forth in § 58.1-400 on all modified net income derived from nonmember sales. Any gas supplier, pipeline distribution company or gas utility which has a taxable year that begins after January 1, 2001, but before January 1, 2002, shall also be subject to the provisions under subsection E.

C. The following words and terms when used in this section shall have the following meanings:

"Electric supplier" means any corporation, cooperative, partnership or other business entity providing

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59 electric service.

60 "Electricity" is deemed tangible personal property for purposes of the corporate income tax pursuant
61 to this article.

62 "Gas supplier" means any person licensed by the State Corporation Commission to engage in the
63 business of selling natural gas.

64 "Gas utility" has the same meaning as provided in § 56-235.8.

65 "Members" means those customers of a cooperative who receive allocations of patronage capital from
66 a cooperative.

67 "Modified net income" means all revenue of a cooperative from the sale of electricity within the
68 Commonwealth with the following subtractions:

69 1. Revenue attributable to sales of electric power to its members.

70 2. Nonmember share of all ordinary and necessary expenses paid or incurred during the taxable year
71 in carrying on the sale of electric power to nonmembers. Such nonmember expenses shall be determined
72 by allocating the amount of such expenses between sales of electricity to members and sales of
73 electricity to nonmembers. Such allocation shall be applicable to all tax credits available to an electric
74 supplier.

75 "Nonmember" means those customers which are not members.

76 "Ordinary and necessary expenses paid or incurred" means ordinary and necessary expenses
77 determined according to generally accepted accounting principles.

78 "Pipeline distribution company" has the same meaning as provided in § 58.1-2600.

79 D. The Department of Taxation shall promulgate all regulations necessary to implement the intent of
80 this section. This section shall apply to taxable years beginning on and after January 1, 2001.

81 E. 1. Any gas supplier, pipeline distribution company or gas utility which has a taxable year that
82 begins after January 1, 2001, but before January 1, 2002, shall be required to file an income tax return
83 as if a short taxable year has occurred covering the period beginning January 1, 2001, and ending on the
84 last day prior to the beginning of the gas supplier's, pipeline distribution company's or gas utility's
85 taxable year pursuant to § 58.1-440 A.

86 2. If a return is required to be made under subdivision 1 of this subsection, federal taxable income
87 will be determined using the methodology prescribed in § 443 of the Internal Revenue Code, as if the
88 gas supplier, pipeline distribution company or gas utility was undergoing a change of annual accounting
89 period, and § 58.1-440 B and the regulations thereunder.

90 *F. In determining the cost of service in rates established pursuant to Title 56, the State Corporation*
91 *Commission shall use the tax rate set forth in § 58.1-400 as if the public utility filed an income tax*
92 *return on a stand-alone basis, without regard to the operation of its affiliates.*

93 **2. That the provisions of this act are declaratory of existing law.**