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SENATE BILL NO. 778

Offered January 18, 2008

A BILL to amend and reenact §§ 56-88 and 56-542 of the Code of Virginia, relating to the powers of the State Corporation Commission under the Virginia Highway Corporation Act of 1988.

Patron—Herring

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-88 and 56-542 of the Code of Virginia are amended and reenacted as follows:

§ 56-88. Definitions.

In this chapter the following terms shall have the following meanings:

"Acquire" or "acquisition" includes any purchase or other acquisition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Company" means a corporation, a partnership, an association, a joint-stock company, a business trust or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or county.

"Dispose of" or "disposition" includes any sale or other disposition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Public utility" means any company which owns or operates facilities within the Commonwealth for the generation, transmission or distribution of electric energy for sale; for the production, transmission or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas for sale for heat, light or power, but excluding any company described in subdivision (b) (8) of § 56-265.1; or for the furnishing of sewerage facilities or water. "Public utility" shall also include an operator that has been issued a certificate of authority pursuant to Chapter 20 (§ 56-535 et seq.).

"Utility assets" means the facilities in place of any public utility or municipality for the production, transmission or distribution of electric energy or natural or manufactured gas, or for the furnishing of sewerage facilities or water. "Utility assets" also includes the roadway, as defined in § 56-536, constructed or operated by an operator that has been issued a certificate of authority pursuant to Chapter 20 (§ 56-535 et seq.).

"Utility security" means any note, draft, debenture, bond, share of stock, certificate, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, receiver's or trustee's certificate or any other instrument or interest commonly known as a security which is issued, assumed or guaranteed by any public utility or any company which would be a public utility if the facilities owned or operated by it were within the Commonwealth, or any company substantially engaged in the ownership of any of the aforesaid securities or in supplying management or advice to any of the aforesaid companies; or any certificate of deposit for, voting trust certificate for, certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase or acquire, any of the aforesaid securities.

§ 56-542. Powers of the Commission.

A. The Commission shall have the power to regulate the operator under this title as a public service corporation. The Commission shall also have the power, and be charged with the duties of reviewing and approving or denying the application, of supervising and controlling the operator in the performance of its duties under this chapter and title, and of correcting any abuse in the performance of the operator's public duties.

B. Pursuant to § 56-36, the Commission shall require from the operator a verified report describing the nature of its contractual and other relationships with individuals or entities contracting with the operator for the provision of significant financial, construction, or maintenance services. The Commission shall review the report and such other materials as it shall deem necessary for the purpose of determining improper or excessive costs, and shall exclude from the operator's costs any amounts which it finds are improper or excessive. The costs of the operator's debt obligations shall be deemed to be improper or excessive to the extent that any proceeds from the issuance of securities, as defined in subsection A of § 56-57 and § 56-65.1, are distributed to any affiliated interest, as defined in § 56-76. The operator's non-cash account that (i) reflects accumulated retained earnings and (ii) pursuant to an order of the Commission authorizing the operator's establishment of such account may be used to determine tolls or rates at a future date, shall be deemed to be improper or excessive to the extent that any gains from a sale of the operator, or control thereof, are distributed to the operator or any

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59 *affiliated interest, as defined in § 56-76, without being applied to reduce the balance of such non-cash*  
60 *account.*

61 C. The Commission also shall have the duty and authority to approve or revise the toll rates charged  
62 by the operator. Initial rates shall be approved if they appear reasonable to the user in relation to the  
63 benefit obtained, not likely to materially discourage use of the roadway and provide the operator no  
64 more than a reasonable rate of return as determined by the Commission. Thereafter, the Commission,  
65 upon application, complaint or its own initiative, and after investigation, may order substituted for any  
66 toll being charged by the operator, a toll which is set at a level ~~which is that:~~

67 1. *Is reasonable to the user in relation to the benefit obtained and which will;*

68 2. *Will not materially discourage use of the roadway by the public; and which will*

69 3. *Will provide the operator the opportunity to earn no more than a reasonable return as determined*  
70 *by the Commission.*

71 D. *If (i) a change in the ownership of the facility or change in control of an operator occurs,*  
72 *whether or not accompanied by the issuance of securities as defined in subsection A of § 56-57 and*  
73 *§ 56-65.1, or (ii) the operator issues securities as defined in subsection A of § 56-57 and § 56-65.1, the*  
74 *Commission, in any subsequent proceeding to set the level of a toll charged by the operator, shall*  
75 *ensure that the price paid in connection with the change in ownership or control, and any costs,*  
76 *changes in debt and capital structure, and other factors attributable to or resulting from the change in*  
77 *ownership or control, the issuance of securities, or both, if they would contribute to an increase in the*  
78 *level of the toll, are excluded from the Commission's determination of the operator's reasonable return,*  
79 *in order to ensure that a change in ownership or control, or the issuance of securities, does not*  
80 *increase the level of the toll above that level that would otherwise have been required under subsection*  
81 *C if the change in ownership or control, or the issuance of securities, had not occurred. As used in this*  
82 *subsection, "control" has the same meaning as provided in § 56-88.1.*

83 E. *Pursuant to § 56-36, the Commission shall require an operator to provide copies of annual*  
84 *audited financial statements for the operator and any affiliated interest, as defined in § 56-76, together*  
85 *with a statement of the operator's ownership. The operator shall file such statement within four months*  
86 *from the end of the operator's fiscal year.*

87 F. *In addition to its powers under subsection B, the Commission shall have the power, in any*  
88 *proceeding involving the toll rates charged by an operator, to exclude in whole or in part from the*  
89 *accounts of the operator any payment or compensation to an affiliated interest for any services rendered*  
90 *or property or service furnished under contracts or arrangements with such affiliated interest, if it shall*  
91 *appear and be established upon investigation that such payment or compensation or such contract or*  
92 *arrangement is not consistent with the public interest. In such proceeding any payment or compensation*  
93 *may be disapproved or disallowed by the Commission, in whole or in part, unless satisfactory proof is*  
94 *submitted to the Commission of the cost to the affiliated interest rendering the service or furnishing the*  
95 *property or service above described.*

96 G. *The Commission may charge a reasonable annual fee to cover the costs of supervision and*  
97 *controlling the operator in the performance of its duties under this chapter and pursuant to this section.*