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HOUSE BILL NO. 1186

Offered January 18, 2012

A *BILL to amend and reenact §§ 56-466.1 and 56-585.3 of the Code of Virginia, relating to pole attachments; electric cooperatives.*

Patrons—May, Merricks, Comstock, Cosgrove and Purkey; Senators: Black, Carrico, Martin, Norment and Wagner

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-466.1 and 56-585.3 of the Code of Virginia are amended and reenacted as follows:

§ 56-466.1. Pole attachments; cable television systems and telecommunications service providers.

A. As used in this section:

"Cable television system" means any system licensed, franchised or certificated pursuant to Article 1.2 (§ 15.2-2108.19 et seq.) of Chapter 21 of Title 15.2 that transmits television signals, for distribution to subscribers of its services for a fee, by means of wires or cables connecting its distribution facilities with its subscriber's television receiver or other equipment connecting to the subscriber's television receiver, and not by transmission of television signals through the air.

"Electric cooperative" means any cooperative as defined in § 56-231.15.

"Pole attachment" means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, right-of-way or similar facility owned or controlled by a ~~public utility~~ *an electric cooperative*.

~~"Public utility" has the same meaning ascribed thereto in § 56-232.~~

"Rearrangement" means work performed at the request of a telecommunications service provider or cable television system to, on, or in an existing pole, duct, conduit, right-of-way, or similar facility owned or controlled by a ~~public utility~~ *an electric cooperative* that is necessary to make such pole, duct, conduit, right-of-way, or similar facility usable for a pole attachment. "Rearrangement" shall include replacement, at the request of a telecommunications service provider or cable television system, of the existing pole, duct, conduit, right-of-way, or similar facility if the existing pole, duct, conduit, right-of-way, or similar facility does not contain adequate surplus space or excess capacity and cannot be rearranged so as to create the adequate surplus space or excess capacity required for a pole attachment.

"Telecommunications service provider" means any public service corporation or public service company that holds a certificate of public convenience and necessity to furnish local exchange telephone service or interexchange telephone service.

B. Upon request by a telecommunications service provider or cable television system to a ~~public utility~~ *an electric cooperative*, both the ~~public utility~~ *electric cooperative* and the telecommunications service provider or cable television system shall negotiate in good faith to arrive at a mutually agreeable contract for attachments to the ~~public utility's~~ *electric cooperative's* poles by the telecommunications service provider or cable television system.

C. ~~After entering into a contract for attachments to its poles by any telecommunications service provider or cable television system, a public utility shall permit, upon reasonable terms and conditions and the payment of reasonable annual charges and the cost of any required rearrangement The Commission is authorized to determine just and reasonable rates, terms, conditions, and costs for attachments to electric cooperative poles by a telecommunications service provider or cable television system, if the parties cannot reach agreement, or if either party asserts that the rates, terms, conditions, or costs applicable to an agreement are not just and reasonable. Any party that seeks pole attachments or has existing pole attachments on electric cooperative poles, or any electric cooperative owning a pole occupied by pole attachments of a telecommunications service provider or a cable television system, may seek a determination from the Commission as to just and reasonable rates, terms, conditions, and costs. The terms, conditions, and costs to be determined by the Commission shall include, without limitation, rearrangement and make-ready costs, pole replacement costs, and all other costs incidental to pole attachments and maintenance, replacement, and inspection of poles or pole attachments, together with time deadlines for any pole attachment to ensure rapid deployment of broadband and other communications services and all other terms and conditions associated with pole attachment requests. A rate is just and reasonable if it assures an electric cooperative the opportunity to recover not less than the additional, or marginal, cost of providing pole space nor more than the fully allocated cost of providing the attachment as determined by multiplying (i) the percentage of the total useable space that~~

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HB1186

58 *is occupied by the pole attachment by (ii) the sum of the operating expenses and the actual costs of the*
59 *electric cooperative attributable to the entire pole. Upon compliance with such just and reasonable*
60 *rates, terms, conditions, and costs, whether established by agreement or by the Commission, an electric*
61 *cooperative shall permit the attachment of any wire, cable, facility, or apparatus to its poles or pedestals,*
62 *or the placement of any wire, cable, facility, or apparatus in conduit or duct space owned or controlled*
63 *by it, by such telecommunications service provider or cable television system that is authorized by law,*
64 *to construct and maintain the attachment, provided that the attachment does not interfere, obstruct, or*
65 *delay the service and operation of the public utility an electric cooperative or create a safety hazard.*

66 D. Notwithstanding the provisions of subsection C, a ~~public utility~~ *an electric cooperative* providing
67 electric utility service may deny access by a telecommunications service provider or cable television
68 system to any pole, duct, conduit, right-of-way, or similar facility owned or controlled, in whole or in
69 part, by such ~~public utility~~ *electric cooperative*, provided such denial is made on a nondiscriminatory
70 basis on grounds of insufficient capacity or reasons of safety, reliability, or generally applicable
71 engineering principles.

72 E. This section shall not apply to any pole attachments regulated pursuant to 47 U.S.C. § 224.

73 § 56-585.3. Regulation of cooperative rates after rate caps.

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

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

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

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

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

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

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

112 C. Nothing in this section shall be deemed to grant to a cooperative any authority to amend or adjust
113 any terms and conditions of service or agreements regarding pole attachments or the use of the
114 cooperative's poles or conduits. *All such amendments or adjustments shall be governed by § 56-466.1,*
115 *and any revenue impact of such amendments or adjustments shall only be reflected in a cooperative's*
116 *rates for distribution services pursuant to a cost of service study approved by the Commission that is*
117 *used to design such distribution service rates based on all relevant revenue sources.*