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SENATE BILL NO. 748

Offered January 22, 2016

A BILL to amend the Code of Virginia by adding a section numbered 56-235.11, relating to the Economic Development Infrastructure Act of 2016; voluntary program authorizing public utilities to offer special rates and services to support economic development in the Commonwealth.

Patron—Wagner

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-235.11 as follows:

§ 56-235.11. Economic development infrastructure program.

A. As used in this section:

"Contract" means an agreement between a customer and the utility entered into pursuant to this section and approved by the Commission that details the rates, charges, terms, and other conditions of service.

"Customer" means an entity that (i) intends to create new jobs in the Commonwealth; (ii) receives or will receive utility service from the utility; (iii) will provide material economic development benefits that might not be attained absent service from the utility under a supplemental rate schedule approved under this section; and (iv) (a) qualifies for grants under the Virginia Investment Performance Grant program, the Major Eligible Employer Grant program, or the Virginia Economic Development Incentive Grant program; (b) qualifies for a major business facility job tax credit under § 58.1-439; or (c) is identified as a prospect by the Virginia Economic Development Partnership or applicable local economic development entity.

"Utility" means a public utility providing electric, natural gas, water, or sewer services to retail customers in the Commonwealth.

B. The Commission shall establish a program under which any utility shall be authorized to offer special rates and services to customers under a supplemental rate schedule in order encourage the location of significant economic development projects in the Commonwealth and allow the utility to fully recover from the customer over the duration of the contract its capital investment, fees, expenses, costs, and other charges. The program shall:

1. Limit the amount of a utility's capital investment in facilities to $10 million in the aggregate and to $1 million for any specific contract;

2. Authorize the utility to use its own funds to finance the extension of transmission lines, distribution lines, or service laterals and related facilities to economic development sites in the Commonwealth at no upfront cost to the customer; and

3. Authorize the utility to charge the customer for service at standard tariff provisions applicable to the customer, which shall be treated as jurisdictional revenue of the utility, and to charge the customer a separate charge that is levied for the purpose of allowing the utility to recover the utility's investment, return, and costs of the project financed by the utility, which shall be treated separately and accounted for as nonjurisdictional revenue of the utility.

C. The customer and the utility shall enter into a contract that establishes the length of its initial term and any renewal options; a specified term for the recovery of the utility's capital investment in facilities and all related costs, charges and expenses; the operational terms and conditions; the rates and charges applicable to service under the contract; and other provisions to fully define the obligations and rights of the parties. Where terms or conditions of service under a contract developed pursuant to this rate schedule modify any existing rule or practice of the Commission, such rules or practices shall be deemed superseded during the performance of the contract following approval by the Commission.

D. The customer may request trade secret treatment of the contract together with any and all supporting materials. At the conclusion of the specified term of the contract, any utility-owned jurisdictional facilities placed in service pursuant to the contract shall be added to the utility's rate base at the net book value of the facilities, and any continuing service to the customer shall be under the terms and conditions of the then applicable tariff rate schedule for similarly situated customers.

E. Recovery of the utility's costs including, but not limited to, the capital investment in facilities, fees, expenses, costs, and other charges shall be billed under a separately stated charge on the customer's bill, which shall be determined for each customer and specified in the contract.

F. Under the program established by this section, a utility shall file the contract with the Commission for review, together with an analysis of how service under the contract provides significant *economic development benefits. After review and absent action by the Commission to the contrary, the contract shall take effect 60 days following the date on which the contract was filed. Any subsequent amendment following implementation of the contract that modifies the duration of the specified term of the contract or alters the rates and services provided therein shall be submitted to the Commission within 60 days of the effective date of such amendment and, absent action by Commission to the contrary, the amendment shall be effective.*

G. A utility may originate projects, or execute binding contracts between the utility and a customer for projects to be placed into service subsequently, for a period of five years. Contracts executed subsequent to the filing date of a utility's rate schedule pursuant to this section but prior to approval of the rate schedule shall be deemed part of the program. Contracts entered into pursuant to this program may have a term that extends beyond the conclusion of the program and shall not become invalid or otherwise inoperable due to the termination of the program.

H. If a utility increases staffing levels or creates functions dedicated solely to a program authorized by this section, such dedicated costs shall be tracked separately and shall not be included in the utility's jurisdictional operating income or rate base.

I. A utility that enters into a contract under this section shall bear all of the risk of loss resulting from its investment in any project financed under the program.