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HOUSE BILL NO. 1563

Offered January 19, 2018

A BILL to amend and reenact §§ 56-265.1 and 56-585.1:1 of the Code of Virginia, relating to electric utility regulation; rate review proceedings; Transitional Rate Period; energy storage facilities; cost recovery; pilot programs; fuel factor; bill credits; rate adjustment clauses for major unit conversions; rate reductions attributable to changes in federal law.

Patron—Byron

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-265.1 and 56-585.1:1 of the Code of Virginia are amended and reenacted as follows:

§ 56-265.1. Definitions.

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

(a) "Company" means a corporation, a limited liability company, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, 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 a county, unless such municipal corporation or county has obtained a certificate pursuant to § 56-265.4:4.

(b) "Public utility" means any company which owns or operates facilities within the Commonwealth ~~of Virginia~~ for the generation, *storage,* transmission or distribution of electric energy for sale, for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of telephone service, sewerage facilities or water~~; however,~~ *As used in this definition, a facility for the storage of electric energy for sale includes one or more pumped hydroelectricity generation and storage facilities located in the coalfield region of Virginia as described in § 15.2-6002. However,* the term "public utility" shall not include any of the following:

(1) Except as otherwise provided in § 56-265.3:1, any company furnishing sewerage facilities, geothermal resources or water to less than 50 customers. Any company furnishing water or sewer services to 10 or more customers and excluded by this subdivision from the definition of "public utility" for purposes of this chapter nevertheless shall not abandon the water or sewer services unless and until approval is granted by the Commission or all the customers receiving such services agree to accept ownership of the company.

(2) Any company generating and distributing electric energy exclusively for its own consumption.

(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant, and (B) which does not charge separately or by meter for electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within 30 days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ 56-232 et seq.) and 17 (§ 56-509 et seq.) of this title and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.

(4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or delivery service, of natural or manufactured gas to fewer than 35 commercial or industrial customers, which are not themselves "public utilities" as defined in this chapter, or to certain public schools as indicated in this subdivision, for use solely by such purchasing customers at facilities which are not located in a territory for which a certificate to provide gas service has been issued by the Commission under this chapter and which, at the time of the Commission's receipt of the notice provided under § 56-265.4:5, are not located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, provided that such company shall comply with the provisions of § 56-265.4:5. Direct sales or ancillary transmission or delivery services of natural gas to public schools in the following localities may be made without regard to the number of schools involved and shall not count against the "fewer than 35" requirement in this subdivision: the Counties of Dickenson, Wise, Russell, and Buchanan, and the City of Norton.

(5) Any company which is not a public service corporation and which provides compressed natural

gas service at retail for the public.

(6) Any company selling landfill gas from a solid waste management facility permitted by the Department of Environmental Quality to a public utility certificated by the Commission to provide gas distribution service to the public in the area in which the solid waste management facility is located. If such company submits to the public utility a written offer for sale of such gas and the public utility does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

(7) Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or industrial customer from a solid waste management facility permitted by the Department of Environmental Quality and operated by that same authority, if such an authority limits off-premises sale, transmission or delivery service of landfill gas to no more than one purchaser. The authority may contract with other persons for the construction and operation of facilities necessary or convenient to the sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility, the public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover the cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or both, that is derived from a solid waste management facility permitted by the Department of Environmental Quality and sold or delivered from any such facility to not more than three commercial or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as authorized by this section. If a purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility or within an area in which a municipal corporation provides gas distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such company shall submit to such public utility or municipal corporation a written offer for sale of that gas prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility or municipal corporation does not agree within 60 days following the date of the offer to purchase such landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover any cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(9) A company that is not organized as a public service company pursuant to subsection D of § 13.1-620 and that sells and delivers propane air only to one or more public utilities. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and enforcement.

(10) A farm or aggregation of farms that owns and operates facilities within the Commonwealth for the generation of electric energy from waste-to-energy technology. As used in this subdivision, (i) "farm" means any person that obtains at least 51 percent of its annual gross income from agricultural operations and produces the agricultural waste used as feedstock for the waste-to-energy technology, (ii) "agricultural waste" means biomass waste materials capable of decomposition that are produced from the raising of plants and animals during agricultural operations, including animal manures, bedding, plant stalks, hulls, and vegetable matter, and (iii) "waste-to-energy technology" means any technology, including but not limited to a methane digester, that converts agricultural waste into gas, steam, or heat that is used to generate electricity on-site.

(11) A company, other than an entity organized as a public service company, that provides non-utility gas service as provided in § 56-265.4:6.

(12) A company, other than an entity organized as a public service company, that provides storage of electric energy, that is not for sale to the public.

(c) "Commission" means the State Corporation Commission.

(d) "Geothermal resources" means those resources as defined in § 45.1-179.2.

§ 56-585.1:1. Transitional Rate Period: review of rates, terms and conditions for utility generation facilities.

~~Notwithstanding the provisions of §§ 56-249.6 and 56-585.1:~~

A. No biennial reviews of the rates, terms, and conditions for any service of a Phase I Utility, as defined in § 56-585.1, shall be conducted at any time by the State Corporation Commission for the four successive 12-month test periods beginning January 1, 2014, and ending December 31, 2017. No biennial reviews of the rates, terms, and conditions for any service of a Phase II Utility, as defined in § 56-585.1, shall be conducted at any time by the State Corporation Commission for the ~~five~~ *three* successive 12-month test periods beginning January 1, 2015, and ending December 31, ~~2019.~~*2017.* Such test periods beginning January 1, 2014, and ending December 31, 2017, for a Phase I Utility, and beginning January 1, 2015, and ending December 31, ~~2019,~~*2017,* for a Phase II Utility, are collectively referred to herein as the "Transitional Rate Period." Review of recovery of fuel and purchase power costs shall continue during the Transitional Rate Period in accordance with § 56-249.6. Any biennial review of the rates, terms, and conditions for any service of a Phase II Utility occurring in 2015 during the Transitional Rate Period shall be solely a review of the utility's earnings on its rates for generation and distribution services for the two 12-month test periods ending December 31, 2014, and a determination of whether any credits to customers are due for such test periods pursuant to subdivision A 8 b of § 56-585.1. After the conclusion of the Transitional Rate Period, ~~biennial~~ reviews *of the utility's rates for generation and distribution services* shall resume for a Phase I Utility in 2020, with the first such proceeding utilizing the two successive 12-month test periods beginning January 1, 2018, and ending December 31, 2019. After the conclusion of the Transitional Rate Period, ~~biennial~~ reviews *of the utility's rates for generation and distribution services* shall resume for a Phase II Utility~~, as defined in § 56-585.1,~~ in ~~2022~~*2021*, with the first such proceeding utilizing the ~~two~~ *three* successive 12-month test periods beginning January 1, ~~2020,~~*2018,* and ending December 31, ~~2021~~*2020*. Consistent with this provision, (i) no biennial review filings shall be made by an investor-owned incumbent electric utility in the years 2016 through 2019, inclusive, and (ii) no adjustment to an investor-owned incumbent electric utility's existing tariff rates, including any rates adopted pursuant to § 56-235.2, shall be made between the beginning of the Transitional Rate Period and the conclusion of the first ~~biennial~~ review after the conclusion of the Transitional Rate Period, except as may be provided pursuant to § 56-245 or 56-249.6 or subdivisions A 4, 5, or 6 of § 56-585.1.

B. During the Transitional Rate Period, pursuant to § 56-36, the Commission shall have the right at all times to inspect the books, papers and documents of any investor-owned incumbent electric utility and to require from such companies, from time to time, special reports and statements, under oath, concerning their business.

C. 1. Commencing in 2016 and concluding in 2018, the State Corporation Commission, after notice and opportunity for a hearing, shall conduct a proceeding every two years to determine the fair rate of return on common equity to be used by a Phase I Utility as the general rate of return applicable to rate adjustment clauses under subdivisions A 5 or A 6 of § 56-585.1. A Phase I Utility's filing in such proceedings shall be made on or before March 31 of 2016, and 2018.

2. Commencing in 2017 and concluding in 2019, the State Corporation Commission, after notice and opportunity for a hearing, shall conduct a proceeding every two years to determine the fair rate of return on common equity to be used by a Phase II Utility as the general rate of return applicable to rate adjustment clauses under subdivisions A 5 or A 6 of § 56-585.1. A Phase II utility's filing in such proceedings shall be made on or before March 31 of 2017 and 2019.

3. Such fair rate of return shall be calculated pursuant to the methodology set forth in subdivisions A 2 a and b of § 56-585.1 and shall utilize the utility's actual end-of-test-period capital structure and cost of capital, as well as a 12-month test period ending December 31 immediately preceding the year in which the proceeding is conducted. The Commission's final order in such a proceeding shall be entered no later than eight months after the date of filing, with any adjustment to the fair rate of return for applicable rate adjustment clauses under subdivisions A 5 and 6 of § 56-585.1 taking effect on the date of the Commission's final order in the proceeding, utilizing rate adjustment clause true-up protocols as the Commission may in its discretion determine. Such proceeding shall concern only the issue of the determination of such fair rate of return to be used for rate adjustment clauses under subdivisions A 5 and 6 of § 56-585.1, and such determination shall have no effect on rates other than those applicable to such rate adjustment clauses; however, after the final such proceeding for a utility has been concluded, the fair combined rate of return on common equity so determined therein shall also be deemed equal to the fair combined rate of return on common equity to be used in such utility's ~~first biennial~~ review proceeding conducted after the end of the utility's Transitional Rate Period to review such utility's earnings on its rates for generation and distribution services for the historic test periods.

D. In furtherance of rate stability during the Transitional Rate Period, any Phase II Utility carrying a prior period deferred fuel expense recovery balance on its books and records as of December 31, 2014,

shall not recover from customers 50 percent of any such balance outstanding as of December 31, 2014, and the State Corporation Commission shall implement as soon as practicable reductions in the fuel factor rate of any such Phase II Utility to reflect the nonrecovery of any such fuel expense as well as any reduction in the fuel factor associated with the Phase II Utility's current period forecasted fuel expense over recovery for the 2014-2015 fuel year and projected fuel expense for the 2015-2016 fuel year.

E. Except for early retirement plans identified by the utility in an integrated resource plan filed with the State Corporation Commission by September 1, 2014, for utility generation plants, an investor-owned incumbent electric utility shall not permanently retire an electric power generation facility from service during the Transitional Rate Period without first obtaining the approval of the State Corporation Commission, upon petition from such investor-owned incumbent electric utility, and a finding by the State Corporation Commission that the retirement determination is reasonable and prudent. During the Transitional Rate Period, an investor-owned incumbent electric utility shall recover the following costs, as recorded per books by the utility for financial reporting purposes and accrued against income, only through its existing tariff rates for generation or distribution services, except such costs as may be recovered pursuant to § 56-245, § 56-249.6 or subdivisions A 4, A 5, or A 6 of § 56-585.1: (i) costs associated with asset impairments related to early retirement determinations for utility generation facilities resulting from the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the Clean Air Act; (ii) costs associated with severe weather events; and (iii) costs associated with natural disasters.

F. During the Transitional Rate Period:

1. The State Corporation Commission shall submit a report and make recommendations to the Governor and the General Assembly annually on or before December 1 of each year assessing the updated integrated resource plan of any investor-owned incumbent electric utility. The report shall include an analysis of, among other matters, the amount, reliability, and type of generation facilities needed to serve Virginia native load compared to what is then available to serve such load and what may be available to serve such load in the future in view of market conditions and current and pending state and federal environmental regulations. As a part of such report, the State Corporation Commission shall update its estimate of the impact upon electric rates in Virginia of the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The State Corporation Commission shall submit copies of such annual reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation; and

2. The Department of Environmental Quality shall submit a report and make recommendations to the Governor and the General Assembly annually on or before December 1 of each year concerning the implementation of carbon emission guidelines for existing electric power generation facilities that the U.S. Environmental Protection Agency has issued pursuant to § 111(d) of the federal Clean Air Act. The report shall include an analysis of, among other matters, the impact of such federal regulations on the operation of any investor-owned incumbent electric utility's electric power generation facilities and any changes, interdiction, or suspension of such regulations. The Department of Environmental Quality shall submit copies of such annual reports to the Chairmen of the House and Senate Committees on Commerce and Labor and the Chairman of the Commission on Electric Utility Regulation.

G. The construction or purchase by an investor-owned incumbent utility of one or more generation facilities with at least one megawatt of generating capacity, and with an aggregate rated capacity that does not exceed 500 megawatts, that use energy derived from sunlight and are located in the Commonwealth, regardless of whether any of such facilities are located within or without such utility's service territory, is in the public interest, and in determining whether to approve such facility, the Commission shall liberally construe the provisions of this section. Such utility shall utilize goods or services sourced, in whole or in part, from one or more Virginia businesses. The utility may propose a rate adjustment clause based on a market index in lieu of a cost of service model for such facility. An investor-owned incumbent utility may enter into short-term or long-term power purchase contracts for the power derived from sunlight generated by such generation facility prior to purchasing the generation facility.

H. To the extent that the provisions of this section are inconsistent with the provisions of §§ 56-249.6 and 56-585.1, the provisions of this section shall control.

2. That the State Corporation Commission (the Commission) shall conduct pilot programs under which each Phase I Utility and each Phase II Utility, as such terms are defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, shall submit a proposal to deploy electric power storage batteries. A proposal shall provide for the deployment of batteries pursuant to a pilot program that accomplishes at least one of the following: (i) improve reliability of electrical transmission or

distribution systems; (ii) improve integration of different types of renewable resources; (iii) deferred investment in generation, transmission, or distribution of electricity; (d) reduced need for additional generation of electricity during times of peak demand; or (v) connection to the facilities of a customer receiving generation, transmission, and distribution service from the utility. A Phase I Utility may install batteries with up to 10 megawatts of capacity. A Phase II Utility may install batteries with up to 30 megawatts of capacity. Each pilot program shall have a duration of five years. The pilot program provides for the recovery of all reasonable and prudent costs incurred under the pilot program through the electric utility's base rates on a nondiscriminatory basis. Any pilot program proposed by a Phase I Utility or Phase II Utility that satisfies the requirements of this enactment is in the public interest.

3. After the effective date of this act, a Phase I Utility as defined in subdivision A 1 of § 56-585.1 of the Code of Virginia shall not recover from customers $10 million of incurred fuel costs, and the State Corporation Commission shall implement at the time of the Utility's next fuel cost recovery proceeding conducted pursuant to § 56-249.6 of the Code of Virginia reductions in the fuel factor rate of the Phase I Utility to reflect the nonrecovery of such fuel expense as well as any change in the fuel factor associated with the Phase I Utility's fuel recovery balance for the 2017-2018 fuel year and projected fuel expense for the 2018-2019 fuel year. Such nonrecovery shall not be included in any earnings test after the effective date of this act.

4. No later than thirty (30) days following the effective date of this act, a Phase II Utility as defined in subdivision A 1 of § 56-585.1 shall provide to its current customers a one-time, voluntary generation and distribution services bill credit, to be allocated on an historic test period energy usage basis, in an aggregate amount of $133 million. The one-time voluntary generation and distribution services bill credit shall not be included in any earnings test after the effective date of this act.

5. That any Phase II Utility as defined in subdivision A 1 of § 56-585.1 of the Code of Virginia shall (i) no longer recover from customers, as of the effective date of this act, any costs previously approved by the State Corporation Commission associated with major unit modifications to convert existing generation facilities to become operational as generation units utilizing biomass fuel through a rate adjustment clause pursuant to subdivision A 6 of § 56-585.1 of the Code of Virginia and (ii) as of the effective date of this act, instead begin to recover any such remaining costs through the Phase II Utility's rates for generation and distribution services, with no change in such rates for generation and distribution services as a result of the combination of such costs with the other costs, revenues and investments included in its rates for generation and distribution services. Any such costs shall remain combined with the utility's other costs, revenues and investments included in its rates for generation and distribution services until such costs are fully recovered.

6. That the State Corporation Commission shall implement reductions in the rates for generation and distribution services of incumbent electric utilities, as defined in § 56-576 of the Code of Virginia, effective April 1, 2019, to reflect the actual annual reductions in corporate income taxes to be paid by such utilities pursuant to the provisions of the federal Tax Cuts and Jobs Act of 2017 (Public Law 115-97).

7. In advance of the determination of the State Corporation Commission (the Commission) as to rate reductions to reflect reductions in corporate income taxes pursuant to the sixth enactment of this act, (i) any Phase I Utility as defined in subdivision A 1 of § 56-585.1 of the Code of Virginia shall reduce its existing rates for generation and distribution services on an interim basis, within thirty (30) days of the effective date of this act, in an amount sufficient to reduce its annual revenues from such rates by an aggregate amount of $40 million; and (ii) any Phase II Utility as defined in subdivision A 1 of § 56-585.1 of the Code of Virginia shall reduce its existing rates for generation and distribution services on an interim basis, within thirty (30) days of the effective date of this act, in an amount sufficient to reduce its annual revenues from such rates by an aggregate amount of $125 million; provided, however, that such $125 million shall be reduced by the amount of any annual revenue requirement associated with any rate adjustment clause previously authorized pursuant to subdivision A 6 of § 56-585.1 of the Code of Virginia and relating to major unit modifications of generation facilities that utilize biomass fuel which are withdrawn as of the effective date of this act pursuant to the fifth enactment of this act. The net amount of such interim reduction in rates for generation and distribution services shall be attributable to reductions in the corporate income tax obligations of the utility pursuant to the provisions of the Federal Tax Cut and Jobs Act of 2017 (Public Law 115-97). In implementing any further reductions to the rates for generation and distribution services of any such Phase II Utility effective April 1, 2019, pursuant to the sixth enactment of this act, the Commission shall consider this interim revenue requirement reduction, and its actions shall be limited to a true-up

of this interim reduction amount to the actual annual reduction in corporate tax obligations of such utility as of the effective date of this act.

8. That each Phase I and Phase II Utility, as such terms are defined in subdivision A 1 of § 56-585.1 of the Code of Virginia, shall continue, at no less than the existing levels of funding, as of the effective date of this act, the pilot programs established pursuant to Chapter 6 of the Acts of Assembly of 2015 for energy assistance and weatherization for low income, elderly, and disabled individuals in their respective service territories in the Commonwealth. Each such utility shall report on the status of its pilot program, including the number of individuals served thereby, to the Governor, the State Corporation Commission, and the Chairmen of the House and Senate Commerce and Labor Committees on July 1, 2019, and annually thereafter.

9. That the State Corporation Commission shall, by December 1, 2018, adopt such rules or establish such guidelines as may be necessary for the general administration of pilot programs to deploy electric power storage batteries established by the second enactment of this act.