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SENATE BILL NO. 1346

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 28, 2019)

(Patron Prior to Substitute—Senator Newman)

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

Be it enacted by the General Assembly of Virginia:

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

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

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

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

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

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

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

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

6. *A cooperative that is not a current member of a utility aggregation cooperative may at any time petition the Commission for approval of one or more rate adjustment clauses for the timely and current recovery of cost from customers of (i) one or more generation facilities, (ii) one or more major unit modifications of generation facilities, or (iii) one or more pumped hydroelectricity generation and storage facilities. A cooperative seeking a rate adjustment clause pursuant to this subdivision shall have the right, after notice and the opportunity for a hearing, to recover the costs of a facility described in clauses (i), (ii), or (iii) in a rate adjustment clause including construction work in progress and allowance for funds during construction, planning, and development costs of infrastructure associated therewith. The costs of the facility other than projected construction work in progress and allowance for funds used during construction shall not be recovered prior to the date that the facility either (a) begins commercial operation or (b) comes under the ownership of the cooperative. For the purposes of this subdivision, the cooperative's cost of capital shall be recoverable in such a rate adjustment clause and shall be set as either the cooperative's long-term cost of debt or most recent rate of return authorized by the Commission in a rate proceeding. In any proceeding conducted pursuant to this subdivision, the*

60 Commission shall consider that all costs expended and revenues recovered arising out of the
61 procurement of generation resources pursuant to this subdivision will inure to the benefit of the general
62 membership of the cooperative. Nothing in this subdivision shall relieve a cooperative from any
63 requirement to obtain a certificate of public convenience and necessity for purposes of constructing
64 generation in the Commonwealth. The Commission's final order regarding any petition filed pursuant to
65 this subdivision shall be entered not more than nine months after the date of filing of such petition. If
66 such petition is approved, the order shall direct that the applicable rate adjustment clause be applied to
67 customers' bills not more than 60 days after the date of the order. Any petition filed pursuant to this
68 subdivision shall be considered by the Commission on a stand-alone basis without regard to the other
69 costs, revenues, investments, or earnings of the cooperative. Any costs incurred by a cooperative prior
70 to the filing of such petition, or during the consideration thereof by the Commission, that are proposed
71 for recovery in such petition, shall be deferred on the books and records of the cooperative until the
72 Commission's final order in the matter, or until the implementation of any applicable approved rate
73 adjustment clause, whichever is later; and

74 7. A cooperative may adopt any other cooperative's voluntary rate, voluntary program (including a
75 pilot program), or voluntary tariff, and cost recovery therefor, by submitting the same to the
76 Commission for administrative approval. The staff of the Commission shall have the authority to
77 approve such administrative filing notwithstanding any other provision of law.

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

81 C. Nothing in this section shall be deemed to grant to a cooperative any authority to amend or adjust
82 any terms and conditions of service or agreements regarding pole attachments or the use of the
83 cooperative's poles or conduits.