

25103476D

SENATE BILL NO. 850

Offered January 8, 2025

Prefiled January 2, 2025

A BILL to amend the Code of Virginia by adding a section numbered 56-235.11:1 and by adding in Title 56 a chapter numbered 31, consisting of sections numbered 56-626 and 56-627, relating to water utilities and wastewater utilities; eligible infrastructure replacement and enhancement; cost recovery.

Patron—Surovell

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 56-235.11:1 and by adding in Title 56 a chapter numbered 31, consisting of sections numbered 56-626 and 56-627, as follows:

§ 56-235.11:1. Recovery of water and wastewater service revenue requirements.

Notwithstanding any other provision of this title, a public utility that provides both water and wastewater services may request, in a general base rate proceeding, that the Commission allocate a portion of the public utility's wastewater service revenue requirement for recovery through water service base rates, allocate a portion of the public utility's water service revenue requirement through wastewater base rates, or combine the public utility's water service and wastewater service revenue requirements. The Commission may allow such an allocation or combination if the Commission determines that such allocation or combination is in the public interest after considering the impacts on the public utility's water and wastewater service customers.

CHAPTER 31.

ELIGIBLE INFRASTRUCTURE REPLACEMENT AND ENHANCEMENT.

§ 56-626. Definitions.

As used in this chapter, unless the context requires a different meaning:

"EIRE" means eligible infrastructure replacement and enhancement.

"EIRE plan" means a plan filed by a utility that identifies proposed eligible infrastructure projects and an EIRE rider.

"EIRE rider" means a recovery mechanism that will allow for recovery of the eligible infrastructure costs, through a separate mechanism from the customer rates established in a rate case using the cost of service methodology pursuant to § 56-235.2.

"Eligible infrastructure" means water utility projects or wastewater utility projects that maintain or enhance safety, reliability, or efficiency or that facilitate compliance with state or federal environmental requirements. Eligible infrastructure does not include (i) the investment in water utility or wastewater utility infrastructure included in the utility's rate base in its most recent rate case or (ii) projects designed primarily to serve new customers and increase revenues.

"Eligible infrastructure costs" includes the following:

1. Return on investment. In calculating the return on investment, the Commission shall use the utility's regulatory capital structure as calculated utilizing the weighted average cost of capital, including the cost of debt and the cost of equity used in determining the utility's base rates in effect during the construction period of the water or wastewater utility project. If the utility's cost of capital has not been changed by order of the Commission within the preceding five years, the Commission may require the utility to file an updated weighted average cost of capital, and the utility may propose an updated weighted average cost of capital. The utility may recover the external costs associated with establishing its updated weighted average cost of capital through the EIRE rider. Such external costs shall include legal costs and consultant costs;

2. A revenue conversion factor, which factor, including income taxes and an allowance for bad debt expense, shall be applied to the required operating income resulting from the eligible infrastructure costs;

3. Depreciation. In calculating depreciation, the Commission shall use the utility's current depreciation rates specific to the applicable asset;

4. Property taxes;

5. Carrying costs on the over- or under-recovery of the eligible infrastructure costs. In calculating the carrying costs, the Commission shall use the utility's regulatory capital structure as determined in subdivision 1 of the definition of eligible infrastructure costs;

6. Unreimbursed costs of relocating facilities due to highway projects; and

7. Operation and maintenance expenses associated with eligible infrastructure that were not included in the revenue requirement of the utility last approved by the Commission.

"Investment" means costs incurred on eligible infrastructure projects including planning, development, removal, and construction costs; costs of infrastructure associated therewith; and an allowance for funds

59 *used during construction. In calculating the allowance for funds used during construction, the Commission*
 60 *shall use the utility's actual regulatory capital structure as determined in subdivision 1 of the definition of*
 61 *eligible infrastructure costs.*

62 *"In-kind replacement" means replacement with new materials or equipment designed, constructed, and*
 63 *sized to meet current industry standards and to comply with federal, state, and local regulation.*

64 *"Utility" means water utility or wastewater utility.*

65 *"Wastewater utility" means an investor-owned public service company engaged in the business of*
 66 *furnishing wastewater service to the public.*

67 *"Wastewater utility project" includes:*

68 *1. Non-growth-related collection main extensions;*

69 *2. Facilities necessary to comply with applicable state and federal laws and regulations;*

70 *3. Improvements necessary to comply with National Pollutant Discharge Elimination System permits, as*
 71 *described in § 45.2-1029;*

72 *4. Unreimbursed costs of relocating facilities due to highway construction or relocation projects; and*

73 *5. In-kind replacement of pumps, motors, blowers, tanks, or mechanical equipment.*

74 *"Water utility" means an investor-owned public service company engaged in the business of furnishing*
 75 *water service to the public.*

76 *"Water utility project" includes:*

77 *1. In-kind replacement of transmission or distribution system mains, valves, utility service lines, including*
 78 *meter boxes and appurtenances, meters, including radio frequency meters, and hydrants;*

79 *2. Non-growth-related main extensions installed to eliminate dead ends that will address primary and*
 80 *secondary drinking water standards as defined by the Department of Environmental Quality, the Department*
 81 *of Health, and the federal Environmental Protection Agency;*

82 *3. Equipment and facilities installed to address primary and secondary drinking water standards as*
 83 *defined by the Department of Environmental Quality, the Department of Health, and the federal*
 84 *Environmental Protection Agency; and*

85 *4. Unreimbursed costs of relocating facilities due to highway projects.*

86 **§ 56-627. Filing of petition with Commission to establish or amend EIRE plan and rider; cost recovery;**
 87 **procedure.**

88 *A. Notwithstanding any provision of law to the contrary, a utility may petition the Commission for the*
 89 *approval of an EIRE plan as provided in this chapter. Such a plan shall (i) provide for a timeline for*
 90 *completion of the proposed eligible infrastructure projects, the estimated costs of the eligible infrastructure*
 91 *projects, and a schedule for recovery of the related eligible infrastructure costs through the EIRE rider and*
 92 *(ii) demonstrate that the EIRE plan is prudent and reasonable. The Commission may approve the initial*
 93 *petition for establishment of an EIRE plan and EIRE rider after such notice and opportunity for hearing as*
 94 *the Commission may prescribe, subject to the provisions of this chapter.*

95 *B. The Commission shall approve or deny, within 180 days after receipt, a utility's initial petition for*
 96 *approval of an EIRE plan. A petition filed pursuant to this section shall not require the filing of rate case*
 97 *schedules. The Commission shall approve or deny, within 120 days after receipt, a utility's application to*
 98 *amend a previously approved plan. If the Commission denies such a plan or amendment, it shall set forth*
 99 *with specificity the reasons for such denial, and the utility shall have the right to refile, without prejudice, an*
 100 *amended plan or amendment within 60 days after such denial. The Commission shall thereafter have 60 days*
 101 *to approve or deny the amended plan or amendment. The time period for Commission review provided for in*
 102 *this subsection shall not apply if the EIRE plan is filed in conjunction with a rate case using the cost of*
 103 *service methodology pursuant to § 56-235.2.*

104 *C. Any EIRE plan and EIRE rider that is submitted to and approved by the Commission shall be allocated*
 105 *and charged in accordance with § 56-235.11 and appropriate cost causation principles to avoid any undue*
 106 *cross subsidization between rate classes not otherwise permitted by statute.*

107 *D. No other revenue requirement or ratemaking issues may be examined in consideration of the*
 108 *application filed pursuant to the provisions of this chapter.*

109 *E. At the end of each 12-month period during which the EIRE rider is in effect, the utility shall reconcile*
 110 *the difference between the recognized eligible infrastructure costs and the amounts recovered under the EIRE*
 111 *rider and shall submit the reconciliation and a proposed EIRE rider adjustment to the Commission to recover*
 112 *or refund the difference, as appropriate, through an adjustment to the EIRE rider. The Commission shall*
 113 *approve or deny, within 90 days after receipt, a utility's proposed EIRE rider adjustment.*

114 *F. A utility that has an approved EIRE petition pursuant to this section shall file revised rate schedules to*
 115 *reset the EIRE rider to zero when new base rates and charges that incorporate eligible infrastructure costs*
 116 *previously reflected in the currently effective EIRE rider become effective.*

117 *G. Costs recovered pursuant to this section shall be in addition to all other costs that the utility is*
 118 *permitted to recover, shall not be considered an offset to other Commission-approved costs of service or*
 119 *revenue requirements, and shall not be included in any earnings test applicable to rates established pursuant*

120 *to Chapter 10. Further, if the Commission approves (i) an updated weighted average cost of capital for use in*
121 *calculating the return on investment, (ii) the carrying costs on the over- or under-recovery of the eligible*
122 *infrastructure costs, (iii) the allowance for funds used during construction, or (iv) any combination thereof,*
123 *such weighted average cost of capital shall be used only for the purpose of the eligible infrastructure costs*
124 *for the EIRE rider and shall not be used for any purpose in any other proceeding.*

INTRODUCED

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