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HOUSE BILL NO. 2665

Offered January 15, 2025

A BILL to amend and reenact § 56-585.8 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 30-205.2, relating to electric utilities; rate caps; Commission on Electric Utility Regulation; utility rate reviews.

Patrons—Morefield, Rasoul, Ballard, Obenshain and Phillips; Senators: Hackworth, Pillion and Stanley

Referred to Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That § 56-585.8 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 30-205.2 as follows:

§ 30-205.2. Utility rate reviews.

A. The Commission shall review and make recommendations regarding any petition filed by a Phase I Utility, as defined in subdivision A 1 of § 56-585.1, with the State Corporation Commission for a biennial rate review under the provisions of § 56-585.8 or for approval of a rate adjustment clause or to amend an existing rate adjustment clause under the provisions of the Virginia Electric Utility Regulation Act (§ 56-576 et seq.). The Commission shall submit its recommendation to the State Corporation Commission no later than 90 days following the date such petition is filed.

B. For each review conducted by the Commission pursuant to subsection A, the Commission shall convene a subcommittee that includes, notwithstanding the provisions of § 30-202, one nonlegislative citizen member from each planning district commission within the Phase I Utility's service territory. Such nonlegislative citizen members shall be appointed by the relevant planning district commissions. No recommendation shall be adopted by the Commission if a majority of the members of the subcommittee vote against the recommendation.

§ 56-585.8. Biennial rate reviews.

A. For the purposes of this section:

"Phase I Utility" has the same meaning as provided in subdivision A 1 of § 56-585.1.

"Utility" means a Phase I Utility.

B. With the first review commencing on March 31, 2024, and biennially thereafter, the Commission shall conduct rate reviews of the rates, terms, and conditions for the provision of generation and distribution services by a Phase I Utility that participated in triennial review proceedings in 2020 and 2023, and such Phase I Utility shall no longer be subject to triennial review proceedings pursuant to § 56-585.1.

C. In each biennial review, the Commission shall conduct a proceeding to review all rates, terms, and conditions for generation and distribution services with such proceeding utilizing the two successive 12-month test periods ending December 31 immediately preceding the year in which such proceeding is conducted. Such biennial review shall be conducted in a single, combined proceeding, except for review of the following costs, which the utility shall continue to recover and the Commission shall continue to review separately, pursuant to the applicable statutory provisions: costs that are recovered pursuant to (i) § 56-249.6, (ii) subdivisions A 4, 5, and 6 of § 56-585.1, and (iii) § 56-585.6.

D. Each biennial rate review proceeding shall commence on or before March 31 of the biennial review year with the filing of a petition by each Phase I Utility subject to the provisions of this section. The Commission, after providing notice and an opportunity for hearing, shall grant a final order on such petition no later than November 20. Any revisions in rates ordered by the Commission pursuant to the rate review shall take effect no later than January 1 of the subsequent year.

E. In each biennial review proceeding, the Commission shall set the fair rate of return on common equity applicable to the generation and distribution services of the utility for the two such services combined and for any rate adjustment clauses approved under subdivision A 5 or 6 of § 56-585.1. The Commission may use any methodology it finds consistent with the public interest to determine the Phase I Utility's fair rate of return on common equity. The Commission may increase or decrease the combined rate of return for generation and distribution services by up to 50 basis points based on factors that may include reliability, generating plant performance, customer service, and operating efficiency of a utility. Any such adjustment to the combined rate of return for generation and distribution services shall include consideration of nationally recognized standards determined by the Commission to be appropriate for such purposes.

F. In any biennial review for a Phase I Utility, if the Commission determines in its sole discretion that the utility's existing rates for generation and distribution services will, on a going-forward basis, either produce (i) revenues in excess of the utility's authorized rate of return or (ii) revenues below the utility's authorized rate of return, then the Commission shall order any reductions or increases, as applicable and necessary, to

59 such rates for generation and distribution services that it deems appropriate to ensure the resulting rates for  
60 generation and distribution services (a) are just and reasonable and (b) provide the utility an opportunity to  
61 recover its costs of providing services over the rate period ending on December 31 of the year of the utility's  
62 succeeding review and earn a fair rate of return authorized pursuant to this section. Such determination shall  
63 be limited to the Phase I Utility's rates for generation and distribution services and shall not consider the costs  
64 or revenues recovered in any rate adjustment clause authorized pursuant to this chapter.

65 G. In any biennial review of rates for generation and distribution services, if the combined rate of return  
66 on common equity earned is no more than 100 basis points above or below the fair combined rate of return,  
67 as determined by the Commission, for the test period under review, then such combined return shall not be  
68 considered either excessive or insufficient, respectively.

69 1. If in any biennial review, the Commission finds that, during the test period under review, considered as  
70 a whole, the utility has earned more than 100 basis points above the authorized fair combined rate of return  
71 on its generation or distribution services, the Commission shall direct that 100 percent of the amount of such  
72 earnings that were more than 100 basis points above such fair combined rate of return for the test period  
73 under review, considered as a whole, be credited to customers' bills. Any such credits shall be applied to  
74 customers' bills, as determined at the discretion of the Commission, following the effective date of the  
75 Commission's order, and shall be allocated among customer classes such that the relationship between the  
76 specific customer class rates of return to the overall target rate of return will have the same relationship as the  
77 last approved allocation of revenues used to design base rates; or

78 2. The Commission shall authorize deferred recovery for reasonable (i) actual costs associated with severe  
79 weather events and (ii) actual costs associated with natural disasters, not currently in rates, and the  
80 Commission shall allow the utility to amortize and recover such deferred costs over future periods as  
81 determined by the Commission. The amount of any such deferral shall not exceed an amount that would,  
82 together with the utility's other costs, revenues, and investments recovered through rates for generation and  
83 distribution services for the test period under review, cause the utility's earned return on its generation and  
84 distribution services to exceed 100 basis points above the fair combined rate of return applicable to the test  
85 period under review. For the purposes of determining any amount of costs that are associated with severe  
86 weather events, the Commission shall consider nationally recognized standards such as those published by  
87 the Institute of Electrical and Electronics Engineers (IEEE).

88 Any amount of a utility's earnings directed by the Commission to be credited to customers' bills pursuant  
89 to this subsection shall not be considered for the purpose of determining the utility's earnings in any  
90 subsequent biennial review.

91 H. In any proceeding under this title, including each biennial review, to determine the prior two years'  
92 excess or deficiency for the purposes of subsection F, the Commission shall use an average rate base using  
93 the actual starting and end-of-test period capital structure of the utility, excluding any debt associated with  
94 any securitized bonds and without regard to the cost of capital, capital structure, or investments of any other  
95 entities with which the utility is affiliated. To determine a revenue requirement in any proceeding under this  
96 title, the Commission shall use the utility's actual end-of-test period capital structure and cost of capital  
97 without regard to the cost of capital, capital structure, or investments of any other entities with which the  
98 utility is affiliated, including debt associated with any securitized bonds, unless the Commission makes a  
99 finding, based on evidence in the record, that the debt to equity ratio of the actual end-of-test period capital  
100 structure of such utility is unreasonable, in which case the Commission may utilize a debt to equity ratio that  
101 it finds to be reasonable.

102 In a rate review for a Phase I Utility that is part of a publicly traded, consolidated group, the Commission  
103 shall determine federal and state income tax costs as follows: (i) the utility's apportioned state income tax  
104 costs shall be calculated according to the applicable statutory rate, as if the utility had not filed a consolidated  
105 return with its affiliates, and (ii) the utility's federal income tax costs shall be calculated according to the  
106 applicable federal income tax rate and shall exclude any consolidated tax liability or benefit adjustments  
107 originating from any taxable income or loss of its affiliates.

108 I. The Commission is authorized to determine during any biennial review the reasonableness or prudence  
109 of any cost subject to the rate review incurred or projected to be incurred by the utility, and a Phase I Utility  
110 shall recover such costs that the Commission finds to be reasonable and prudent.

111 J. In any biennial review conducted pursuant to this section, a Phase I Utility or any other party may  
112 propose changes to its terms and conditions and the Commission may approve, reject, or amend any changes  
113 and may propose any special rates, contracts, or incentives pursuant to § 56-235.2.

114 K. Nothing in this section shall alter a Phase I Utility's obligations pursuant to §§ 56-585.5 and 56-596.2.

115 L. *Notwithstanding the provisions of this section, the Commission shall establish capped rates for each*  
116 *service territory of a Phase I Utility as follows: (i) capped rates shall be established for customers*  
117 *purchasing generation and distribution services from such an electric utility and (ii) such capped rates shall*  
118 *be the rates in effect for each such electric utility as of July 1, 2025. The Commission may adjust such capped*  
119 *rates in connection with such electric utility's recovery of fuel and purchased power costs pursuant to §*

120 56-249.6. *Until the expiration or termination of capped rates as provided in this subsection, the incumbent*  
121 *electric utility shall make electric service available at capped rates established under this subsection to any*  
122 *customer in the incumbent electric utility's service territory. The capped rates established pursuant to this*  
123 *section shall expire on July 1, 2027; however, rates after the expiration of capped rates shall equal capped*  
124 *rates until such rates are changed pursuant to this section or other provisions of this title.*

125 *M. In any biennial review for a Phase I Utility or in any proceeding to consider a petition by a Phase I*  
126 *Utility to approve a new rate adjustment clause or amend an existing rate adjustment clause, the Commission*  
127 *shall consider the recommendation of the Commission on Electric Utility Regulation issued pursuant to § 30-*  
*205.2.*

128 *N. To the extent that the provisions of this section are inconsistent with the provisions of § 56-585.1, the*  
129 *provisions of this section shall control.*

**INTRODUCED**

HB2665