

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

SENATE BILL NO. 761
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on _____)
(Patron Prior to Substitute—Senator Jones)

A BILL to amend and reenact § 56-235.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-235.2:1, relating to electric and gas utilities; rates and charges for service; political influence activity; promotional advertising; annual report.

Be it enacted by the General Assembly of Virginia:

1. That § 56-235.2 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-235.2:1 as follows:

§ 56-235.2. All rates, tolls, etc., to be just and reasonable to jurisdictional customers; findings and conclusions to be set forth; alternative forms of regulation for electric companies.

A. Any rate, toll, charge or schedule of any public utility operating in this Commonwealth shall be considered to be just and reasonable only if: (1) the public utility has demonstrated that such rates, tolls, charges or schedules in the aggregate provide revenues not in excess of the aggregate actual costs incurred by the public utility in serving customers within the jurisdiction of the Commission, including such normalization for nonrecurring costs and annualized adjustments for future costs as the Commission finds reasonably can be predicted to occur during the rate year, and a fair return on the public utility's rate base used to serve those jurisdictional customers, which return shall be calculated in accordance with § 56-585.1 for utilities subject to such section; ~~(1a)~~ (2) the investor-owned public electric utility has demonstrated that no part of such rates, tolls, charges or schedules includes costs for advertisement, except for advertisements either required by law or rule of regulation, or for advertisements which solely promote the public interest, conservation or more efficient use of energy promotional advertising or political influence activities, as those terms are defined in § 56-235.2:1; and ~~(2)~~ (3) the public utility has demonstrated that such rates, tolls, charges or schedules contain reasonable classifications of customers. Notwithstanding § 56-234, the Commission may approve, either in the context of or apart from a rate proceeding after notice to all affected parties and hearing, special rates, contracts or incentives to individual customers or classes of customers where it finds such measures are in the public interest. Such special charges shall not be limited by the provisions of § 56-235.4. In determining costs of service, the Commission may use the test year method of estimating revenue needs. In any Commission order establishing a fair and reasonable rate of return for an investor-owned gas, telephone or electric public utility, the Commission shall set forth the findings of fact

33 and conclusions of law upon which such order is based.

34 For ratemaking purposes, the Commission shall determine the federal and state income tax costs for
35 investor-owned water, gas, or electric utility that is part of a publicly-traded, consolidated group as follows:
36 (i) such utility's apportioned state income tax costs shall be calculated according to the applicable statutory
37 rate, as if the utility had not filed a consolidated return with its affiliates, and (ii) such utility's federal income
38 tax costs shall be calculated according to the applicable federal income tax rate and shall exclude any
39 consolidated tax liability or benefit adjustments originating from any taxable income or loss of its affiliates.

40 In any ratemaking proceeding for an investor-owned utility authorized to furnish water or water and sewer
41 service initiated after January 1, 2022, the Commission shall evaluate such utility on a stand-alone basis and,
42 for purposes of establishing any revenue requirement and rates, utilize such utility's actual end-of-test period
43 capital structure and cost of capital without regard to the cost of capital, capital structure, or investments of
44 any other entities with which such utility may be affiliated, unless the Commission finds based on evidence in
45 the record that the debt to equity ratio of the actual end-of-test period capital structure of such utility is
46 unreasonable, in which case the Commission may utilize a debt to equity ratio that it finds to be reasonable.
47 In all proceedings initiated after January 1, 2022, in which the Commission reviews the rates and associated
48 earnings of an investor-owned utility authorized to furnish water or water and sewer service, the Commission
49 shall conduct such review utilizing the same cost of capital and capital structure adopted in the utility's most
50 recent rate case in which such rates were set, without regard to any later changes in the cost of capital or
51 capital structure.

52 B. The Commission shall, before approving special rates, contracts, incentives or other alternative
53 regulatory plans under subsection A, ensure that such action (i) protects the public interest, (ii) will not
54 unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the
55 continuation of reliable electric service.

56 C. After notice and public hearing, the Commission shall issue guidelines for special rates adopted
57 pursuant to subsection A that will ensure that other customers are not caused to bear increased rates as a
58 result of such special rates.

59 ***§ 56-235.2:1. Promotional advertising and political influence activity; annual reporting required.***

60 *A. As used in this section:*

61 *"Political influence activity" means:*

62 1. An activity for the purpose of directly or indirectly influencing any of the following: (i) lobbying, as that
63 term is defined in § 2.2-419; (ii) the election, recall, appointment, or removal of a public official or the
64 adoption of initiatives or referenda; (iii) public opinion with respect to legislation, regulations, ordinances,
65 elections, referenda, or rate setting mechanisms of an electric or gas utility; or (iv) decisions of federal, state,
66 regional, or local public officials; or

67 2. Research, preparation, or any other activity undertaken for the purpose of supporting any activities
68 specified in subdivision 1.

69 "Political influence activity" does not include:

70 1. An activity that is directly and necessarily related to appearances before regulatory or other
71 governmental bodies in connection with the utility's existing or proposed operations of the utility's regulated
72 system;

73 2. An activity that is directly related to a Commission-approved energy efficiency program or other
74 Commission-approved public purpose program in which the utility participates;

75 3. An activity that responds to a request by a legislative committee, the Commission, or a government
76 agency for technical information from the utility; or

77 4. An activity required by applicable federal or state statute, or by order of regulatory authority, and
78 undertaken for the purpose of satisfying that statutory or regulatory requirement.

79 "Promotional advertising" means written, online, video, or audio communications that primarily build the
80 public image of a utility and that is not required by the Commission, including communications about actions
81 that a utility may take in the future. "Promotional advertising" does not include (i) public messages that the
82 utility is directed to publish by law or regulations; (ii) public messages that provide information on safety
83 measures, emergency conditions, the conservation of energy, rates, utility programs and services approved
84 by the Commission, or service interruptions, and that do not primarily build the public image of the utility; or
85 (iii) public messages providing necessary information to customers about specific actions the customers can
86 take for their safety.

87 B. No investor-owned electric or gas utility under the jurisdiction of the Commission for the approval of
88 rates and charges shall recover through its retail rates and charges for service any direct or indirect costs
89 associated with the following, except as otherwise permitted by law:

90 1. Membership dues, sponsorship fees, or monetary contributions paid to a business or industry trade
91 group or association if such business, trade group, or association engages in political influence activities or
92 promotional advertising on behalf of its utility members;

- 93 2. Charitable contributions;
- 94 3. Political influence activities;
- 95 4. Promotional advertising;
- 96 5. Entertainment or gifts;
- 97 6. Compensation paid to an employee for any portion of the employee's time in a given year that was
98 spent on lobbying, legislative action, or other political influence activities;
- 99 7. Any expenses related to products, services, or programs not regulated by the Commission, including
100 any marketing, administrative, or customer service-related expenses; or
- 101 8. Penalties or fines issued against the utility, except as otherwise permitted by law.
- 102 C. No later than April 1, 2027, and annually thereafter, each electric and gas utility subject to the
103 requirements of this section shall file with the Commission, in a form and manner prescribed by the
104 Commission, an annual report that includes the following information concerning each activity or expense
105 described in subsection B:
- 106 1. The total costs to the utility, separately delineated for each expense or activity described in subsection
107 B;
- 108 2. An itemized list of the amounts billed or allocated to the utility by third-party vendors for any expenses
109 or activities described in subsection B, including billing dates, payees, and explanations of each
110 expenditure's purpose;
- 111 3. The job title and salary of any employee of the utility who performed work associated with political
112 influence activities, along with the number of hours attributable to such work by the employee; and
- 113 4. A list of all divisions, departments, or other organizational groups within the utility that performed
114 political influence activities.
- 115 D. The Commission may impose a fine on a utility subject to the requirements of this section in an amount
116 equivalent to the amount of costs the utility attempts to recover improperly in violation of subsection B. Any
117 such fines collected by the Commission shall be directed toward low-income payment assistance programs
118 for such utility.
- 119 E. The Commission shall make the annual reports provided by utilities under subsection C publicly
120 available online, provided that the Commission may redact or exclude any information as necessary to
121 comply with relevant law or protect the physical security of the grid or the personal safety of utility
122 employees.