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HOUSE BILL NO. 3068

Offered January 16, 2007

A BILL to amend and reenact § 56-585 of the Code of Virginia, relating to the Virginia Electric Utility Restructuring Act.

Patron—Hogan

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 56-585 of the Code of Virginia is amended and reenacted as follows:

§ 56-585. Default service.

A. The Commission shall, after notice and opportunity for hearing, (i) determine the components of default service and (ii) establish one or more programs making such services available to retail customers requiring them commencing with the availability throughout the Commonwealth of customer choice for all retail customers as established pursuant to § 56-577. For purposes of this chapter, "default service" means service made available under this section to retail customers who (i) do not affirmatively select a supplier, (ii) are unable to obtain service from an alternative supplier, or (iii) have contracted with an alternative supplier who fails to perform.

B. From time to time, the Commission shall designate one or more providers of default service. In doing so, the Commission:

1. Shall take into account the characteristics and qualifications of prospective providers, including proposed rates, experience, safety, reliability, corporate structure, access to electric energy resources necessary to serve customers requiring such services, and other factors deemed necessary to ensure the reliable provision of such services, to prevent the inefficient use of such services, and to protect the public interest;

2. May periodically, as necessary, conduct competitive bidding processes under procedures established by the Commission and, upon a finding that the public interest will be served, designate one or more willing and suitable providers to provide one or more components of such services, in one or more regions of the Commonwealth, to one or more classes of customers;

3. To the extent that default service is not provided pursuant to a designation under subdivision 2, may require a distributor to provide, in a safe and reliable manner, one or more components of such services, or to form an affiliate to do so, in one or more regions of the Commonwealth, at rates determined pursuant to subsection C and for periods specified by the Commission; however, the Commission may not require a distributor, or affiliate thereof, to provide any such services outside the territory in which such distributor provides service; and

4. Notwithstanding imposition on a distributor by the Commission of the requirement provided in subdivision 3, the Commission may thereafter, upon a finding that the public interest will be served, designate through the competitive bidding process established in subdivision 2 one or more willing and suitable providers to provide one or more components of such services, in one or more regions of the Commonwealth, to one or more classes of customers.

C. If a distributor is required to provide default services pursuant to subdivision B 3, after notice and opportunity for hearing, the Commission shall periodically, for each distributor, determine the rates, terms and conditions for default services, taking into account the characteristics and qualifications set forth in subdivision B 1, as follows:

1. Until the expiration or termination of capped rates, the rates for default service provided by a distributor shall equal the capped rates established pursuant to subdivision A 2 of § 56-582. After the expiration or termination of such capped rates, the rates for default services shall be based upon competitive market prices for electric generation services capacity and energy in competitive regional electricity markets, except as provided in subsection G or as provided in subdivision 4 b when the Commission is unable to identify regional electricity markets where competition is an effective regulator of rates.

2. The Commission shall, after notice and opportunity for hearing, determine the rates, terms and conditions for default service by such distributor on the basis of the provisions of Chapter 10 (§ 56-232 et seq.) of this title, except that the generation-related components of such rates shall be (i) based upon a plan approved by the Commission as set forth in subdivision 3 or (ii) in the absence of an approved plan, based upon prices for generation capacity and energy in competitive regional electricity markets, except as provided in subsection G or as provided in subdivision 4 b when the Commission is unable to identify regional electricity markets where competition is an effective regulator of rates.

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59 3. Prior to a distributor's provision of default service, and upon request of such distributor, the
60 Commission shall review any plan filed by the distributor to procure electric generation services for
61 default service. The Commission shall approve such plan if the Commission determines that the
62 procurement of electric generation capacity and energy under such plan is adequately based upon prices
63 of capacity and energy in competitive regional electricity markets. If the Commission determines that the
64 plan does not adequately meet such criteria, then the Commission shall modify the plan, with the
65 concurrence of the distributor, or reject the plan.

66 4. a. For purposes of this subsection, in determining whether regional electricity markets are
67 competitive ~~and rates for default service~~, the Commission shall consider (i) the liquidity and price
68 transparency of such markets, (ii) whether competition is an effective regulator of prices in such
69 markets, (iii) the wholesale or retail nature of such markets, as appropriate, (iv) the reasonable
70 accessibility of such markets to the regional transmission entity to which the distributor belongs, and (v)
71 such other factors it finds relevant. As used in this subsection, the term "competitive regional electricity
72 market" means a market in which competition, and not statutory or regulatory price constraints,
73 effectively regulates the price of electricity.

74 b. If, in establishing a distributor's default service generation rates, the Commission is unable to
75 identify regional electricity markets where competition is an effective regulator of rates, then the
76 Commission shall establish such distributor's default service generation rates by setting rates that ~~would~~
77 ~~approximate those likely to be produced in a competitive regional electricity market~~ *(i) seek to ensure*
78 *the safe and reliable provision of adequate default service to all classes of customers, (ii) do not*
79 *unreasonably prejudice or disadvantage any class of customers, (iii) provide incentives for improved*
80 *performance by the distributor in the conduct of its provision of default service, (iv) are not excessive,*
81 *(v) are adequate, and (vi) are in the public interest. Such proxy generation rates shall take into account:*
82 *(i) the factors set forth in subdivision C 4 a; and (ii) such additional factors as the Commission deems*
83 *necessary to produce such proxy generation rates. If a distributor asserts that the default service*
84 *generation rates so established by the Commission do not allow it to recover its prudently incurred*
85 *costs and an adequate return, the Commission, after notice and hearing, shall establish such*
86 *distributor's default service generation rates on the basis of the provisions of Chapter 10 (§ 56-232 et*
87 *seq.) of this title.*

88 D. In implementing this section, the Commission shall take into consideration the need of default
89 service customers for rate stability and for protection from unreasonable rate fluctuations.

90 E. On or before July 1, 2004, and annually thereafter, the Commission shall determine, after notice
91 and opportunity for hearing, whether there is a sufficient degree of competition such that the elimination
92 of default service for particular customers, particular classes of customers or particular geographic areas
93 of the Commonwealth will not be contrary to the public interest. The Commission shall report its
94 findings and recommendations concerning modification or termination of default service to the General
95 Assembly and to the Commission on Electric Utility Restructuring, not later than December 1, 2004, and
96 annually thereafter.

97 F. A distribution electric cooperative, or one or more affiliates thereof, shall have the obligation and
98 right to be the supplier of default services in its certificated service territory. A distribution electric
99 cooperative's rates for such default services shall be the capped rate for the duration of the capped rate
100 period and shall be based upon the distribution electric cooperative's prudently incurred cost thereafter.
101 Subsections B and C shall not apply to a distribution electric cooperative or its rates. Such default
102 services, for the purposes of this subsection, shall include the supply of electric energy and all services
103 made competitive pursuant to § 56-581.1. If a distribution electric cooperative, or one or more affiliates
104 thereof, elects or seeks to be a default supplier of another electric utility, then the Commission shall
105 designate the default supplier for that distribution electric cooperative, or any affiliate thereof, pursuant
106 to subsection B.

107 G. To ensure a reliable and adequate supply of electricity, and to promote economic development, an
108 investor-owned distributor that has been designated a default service provider under this section may
109 petition the Commission for approval to construct, or cause to be constructed, a coal-fired generation
110 facility that utilizes Virginia coal and is located in the coalfield region of the Commonwealth, as
111 described in § 15.2-6002, to meet its native load and default service obligations, regardless of whether
112 such facility is located within or without the distributor's service territory. The Commission shall
113 consider any petition filed under this subsection in accordance with its competitive bidding rules
114 promulgated pursuant to § 56-234.3, and in accordance with the provisions of this chapter.
115 Notwithstanding the provisions of subdivision C 3 related to the price of default service, a distributor
116 that constructs, or causes to be constructed, such facility shall have the right to recover the costs of the
117 facility, including allowance for funds used during construction, life-cycle costs, and costs of
118 infrastructure associated therewith, plus a fair rate of return, through its rates for default service. A
119 distributor filing a petition for the construction of a facility under the provisions of this subsection shall
120 file with its application a plan, or a revision to a plan previously filed, as described in subdivision C 3,

121 that proposes default service rates to ensure such cost recovery and fair rate of return. The construction
122 of such facility that utilizes energy resources located within the Commonwealth is in the public interest,
123 and in determining whether to approve such facility, the Commission shall liberally construe the
124 provisions of this title.

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