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SENATE BILL NO. 267

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact § 56-585.3 of the Code of Virginia, relating to electric cooperatives; rate adjustment clause; broadband.

Patron—Bell

Referred to Committee on Commerce and Labor

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 shall be regulated in accordance with the provisions of Chapters 9.1 (§ 56-231.15 et seq.) and 10 (§ 56-232 et seq.), 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 five percent in such rates in any 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 or demand, or to rebalance among any of the fixed monthly charge, distribution demand, and distribution 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. If a rate class contains a supply demand charge, the cooperative may rebalance its rate for electricity supply service pursuant to this subdivision. 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;

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

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SB267

59 funds used during construction shall not be recovered prior to the date that the facility either (a) begins
60 commercial operation or (b) comes under the ownership of the cooperative. For the purposes of this
61 subdivision, the cooperative's cost of capital shall be recoverable in such a rate adjustment clause and
62 shall be set as either the cooperative's long-term cost of debt or most recent rate of return authorized by
63 the Commission in a rate proceeding. In any proceeding conducted pursuant to this subdivision, the
64 Commission shall consider that all costs expended and revenues recovered arising out of the
65 procurement of generation resources pursuant to this subdivision will inure to the benefit of the general
66 membership of the cooperative. Nothing in this subdivision shall relieve a cooperative from any
67 requirement to obtain a certificate of public convenience and necessity for purposes of constructing
68 generation in the Commonwealth. The Commission's final order regarding any petition filed pursuant to
69 this subdivision shall be entered not more than nine months after the date of filing of such petition. If
70 such petition is approved, the order shall direct that the applicable rate adjustment clause be applied to
71 customers' bills not more than 60 days after the date of the order. Any petition filed pursuant to this
72 subdivision shall be considered by the Commission on a stand-alone basis without regard to the other
73 costs, revenues, investments, or earnings of the cooperative. Any costs incurred by a cooperative prior to
74 the filing of such petition, or during the consideration thereof by the Commission, that are proposed for
75 recovery in such petition, shall be deferred on the books and records of the cooperative until the
76 Commission's final order in the matter, or until the implementation of any applicable approved rate
77 adjustment clause, whichever is later; and

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

82 8. A cooperative may at any time petition the Commission for approval of one or more rate
83 adjustment clauses for the timely and current recovery of costs from customers of one or more projects
84 for the provision of broadband. A cooperative seeking a rate adjustment clause pursuant to this
85 subdivision shall have the right, after notice and the opportunity for a hearing, to recover the costs of
86 such projects in a rate adjustment clause including construction work in progress and allowance for
87 funds used during construction, planning, and development of associated infrastructure. The costs of the
88 projects other than projected construction work in progress and allowance for funds used during
89 construction shall not be recovered prior to the date that the facility either (i) begins commercial
90 operation or (ii) comes under the ownership of the cooperative. For the purposes of this subdivision, the
91 cooperative's cost of capital shall be recoverable in such a rate adjustment clause and shall be set as
92 either the cooperative's long-term cost of debt or most recent rate of return authorized by the
93 Commission in a rate proceeding. In any proceeding conducted pursuant to this subdivision, the
94 Commission shall consider that all costs expended and revenues recovered arising out of the broadband
95 projects pursuant to this subdivision will inure to the benefit of the general membership of the
96 cooperative. The Commission's final order regarding any petition filed pursuant to this subdivision shall
97 be entered not more than nine months after the date of filing such petition. If such petition is approved,
98 the order shall direct that the applicable rate adjustment clause be applied to customers' bills not more
99 than 60 days after the date of the order. Any petition filed pursuant to this subdivision shall be
100 considered by the Commission on a stand-alone basis without regard to the other costs, revenues,
101 investments, or earnings of the cooperative. Any costs incurred by a cooperative prior to the filing of
102 such petition, or during the consideration thereof by the Commission, that are proposed for recovery in
103 such petition, shall be deferred on the books and records of the cooperative until the Commission's final
104 order in the matter, or until the implementation of any applicable approved rate adjustment clause,
105 whichever is later.

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

109 C. For any rate adjustment clause approved pursuant to subdivision A 6 or 8, the rate adjustment
110 clause shall be removed from customers' bills when the project's costs are fully recovered pursuant to
111 any applicable order of the Commission.

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