

SENATE BILL NO. 505

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Lewis)

A BILL to amend and reenact §§ 56-585.3 and 56-594.01 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-594.01:1, relating to electric cooperatives; net energy metering; power purchase agreements; local facilities usage charges.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 56-585.3 and 56-594.01 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-594.01:1 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;

27           3. Each cooperative may, without Commission approval, upon an affirmative resolution of its  
28 board of directors, make any adjustment to its terms and conditions that does not affect the cooperative's  
29 revenues from the distribution or supply of electric energy. In addition, a cooperative may make such  
30 adjustments to any pass-through of third-party service charges and fees, and to any fees, charges and  
31 deposits set out in Schedule F of such cooperative's Terms and Conditions filed as of January 1, 2007. The  
32 cooperative will promptly file any such amended terms and conditions with the Commission for  
33 informational purposes;

34           4. Each cooperative may, without Commission approval or the requirement of any filing other than  
35 as provided in this subdivision, upon an affirmative resolution of its board of directors, make any  
36 adjustment to its rates reasonably calculated to collect any or all of the fixed costs of owning and operating  
37 its electric distribution system, including without limitation, such costs as are identified as customer-  
38 related costs in a cost of service study, through a new or modified fixed monthly charge, rather than  
39 through volumetric charges associated with the use of electric energy or demand, or to rebalance among  
40 any of the fixed monthly charge, distribution demand, and distribution energy; however, such adjustments  
41 shall be revenue neutral based on the cooperative's determination of the proper intra-class allocation of  
42 the revenues produced by its then current rates. If a rate class contains a supply demand charge, the  
43 cooperative may rebalance its rate for electricity supply service pursuant to this subdivision. The  
44 cooperative may elect, but is not required, to implement such adjustments through incremental changes  
45 over the course of up to three years. The cooperative shall file promptly revised tariffs reflecting any such  
46 adjustments with the Commission for informational purposes;

47           5. A cooperative may, at any time after the expiration or termination of capped rates, petition the  
48 Commission for approval of one or more rate adjustment clauses for the timely and current recovery from  
49 customers of the costs described in subdivisions A 5 b and e of § 56-585.1;

50           6. A cooperative that is not a current member of a utility aggregation cooperative may at any time  
51 petition the Commission for approval of one or more rate adjustment clauses for the timely and current  
52 recovery of cost from customers of (i) one or more generation facilities, (ii) one or more major unit  
53 modifications of generation facilities, or (iii) one or more pumped hydroelectricity generation and storage

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

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

81 8. A cooperative may, without approval of the Commission or the requirement of any filing other  
82 than as provided in this subsection, upon an affirmative resolution of its board of directors, approve any  
83 voluntary tariff, and cost recovery therefor, and shall promptly file any such tariff with the Commission  
84 for informational purposes.

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

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

91 **§ 56-594.01. Net energy metering provisions for electric cooperative service territories.**

92 A. The Commission shall establish by regulation a program that affords eligible customer-  
93 generators the opportunity to participate in net energy metering in the service territory of each electric  
94 cooperative, which program shall commence on the later of July 1, 2019, or the effective date of such  
95 regulations. Such regulations shall be similar to existing regulations promulgated pursuant to § 56-594. In  
96 lieu of adopting new regulations, the Commission may amend such existing regulations to apply to electric  
97 cooperatives with such revisions as are required to comply with the provisions of this section. The  
98 regulations may include requirements applicable to (i) retail sellers, (ii) owners or operators of distribution  
99 or transmission facilities, (iii) providers of default service, (iv) eligible customer-generators, or (v) any  
100 combination of the foregoing, as the Commission determines will facilitate the provision of net energy  
101 metering, provided that the Commission determines that such requirements do not adversely affect the  
102 public interest.

103 B. As used in this section:

104 "Eligible customer-generator" means a customer that owns and operates, or contracts with other  
105 persons to own, operate, or both, an electrical generating facility that (i) has a capacity of not more than  
106 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers on  
107 an electrical generating facility placed in service after July 1, 2015; (ii) uses as its total source of fuel

108 renewable energy as defined in § 56-576; (iii) is located on the customer's premises and is connected to  
109 the customer's wiring on the customer's side of its interconnection with the distributor; (iv) is  
110 interconnected and operated in parallel with an electric company's transmission and distribution facilities;  
111 and (v) is intended primarily to offset all or part of the customer's own electricity requirements. In addition  
112 to the electrical generating facility size limitations in clause (i), the capacity of any generating facility  
113 installed under this section after July 1, 2015, shall not exceed the expected annual energy consumption  
114 based on the previous 12 months of billing history or an annualized calculation of billing history if 12  
115 months of billing history is not available.

116 "Net energy metering" means measuring the difference, over the net metering period, between (i)  
117 electricity supplied to an eligible customer-generator from the electric grid and (ii) the electricity generated  
118 and fed back to the electric grid by the eligible customer-generator.

119 "Net metering period" means the 12-month period following the date of final interconnection of  
120 the eligible customer-generator's system with an electric service provider, and each 12-month period  
121 thereafter.

122 C. The Commission's regulations shall ensure that (i) the metering equipment installed for net  
123 metering shall be capable of measuring the flow of electricity in two directions and (ii) any eligible  
124 customer-generator seeking to participate in net energy metering shall notify its supplier and receive  
125 approval to interconnect prior to installation of an electrical generating facility. The Commission shall  
126 publish a form for such prior notice and such notice shall be processed promptly by the supplier prior to  
127 any construction activity taking place. After construction, inspection and documentation thereof shall be  
128 required prior to interconnection. The electric distribution company shall have 30 days from the date of  
129 each notification for residential facilities, and 60 days from the date of each notification for nonresidential  
130 facilities, to determine whether the interconnection requirements have been met. Such regulations shall  
131 allocate fairly the cost of such equipment and any necessary interconnection. An eligible customer-  
132 generator's electrical generating system shall meet all applicable safety and performance standards  
133 established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and  
134 accredited testing laboratories such as Underwriters Laboratories. In addition to the requirements set forth

135 in this section and to ensure public safety, power quality, and reliability of the supplier's electric  
136 distribution system, an eligible customer-generator whose electrical generating system meets those  
137 standards and rules shall bear all reasonable costs of equipment required for the interconnection to the  
138 supplier's electric distribution system, including costs, if any, to (a) install additional controls, (b) perform  
139 or pay for additional tests, and (c) purchase additional liability insurance. An electric cooperative may  
140 publish and use its own forms, including an electronic form, for purposes of implementing the regulations  
141 described herein so long as the information collected on the Commission's form is also collected by the  
142 cooperative and submitted to the Commission.

143 D. The Commission shall establish minimum requirements for contracts to be entered into by the  
144 parties to net metering arrangements. Such requirements shall protect the eligible customer-generator  
145 against discrimination by virtue of its status as an eligible customer-generator and permit customers that  
146 are served on time-of-use tariffs that have electricity supply demand charges contained within the  
147 electricity supply portion of the time-of-use tariffs to participate as an eligible customer-generator.  
148 Notwithstanding the cost allocation provisions of subsection C, eligible customer-generators served on  
149 demand charge-based time-of-use tariffs shall bear the incremental metering costs required to net meter  
150 such customers.

151 E. If electricity generated by an eligible customer-generator over the net metering period exceeds  
152 the electricity consumed by the eligible customer-generator, the customer-generator shall be compensated  
153 for the excess electricity if the entity contracting to receive such electric energy and the eligible customer-  
154 generator enter into a power purchase agreement for such excess electricity. Upon the written request of  
155 the eligible customer-generator, the supplier that serves the eligible customer-generator shall enter into a  
156 power purchase agreement with the requesting eligible customer-generator that is consistent with the  
157 minimum requirements for contracts established by the Commission pursuant to subsection D. The power  
158 purchase agreement shall obligate the supplier to purchase such excess electricity at the rate that is  
159 provided for such purchases in a net metering standard contract or tariff approved by the Commission,  
160 unless the parties agree to a higher rate. The eligible customer-generator owns any renewable energy  
161 certificates associated with its electrical generating facility; however, at the time that the eligible customer-

162 generator enters into a power purchase agreement with its supplier, the eligible customer-generator shall  
163 have a one-time option to sell the renewable energy certificates associated with such electrical generating  
164 facility to its supplier and be compensated at an amount that is established by the Commission to reflect  
165 the value of such renewable energy certificates. Nothing in this section shall prevent the eligible customer-  
166 generator and the supplier from voluntarily entering into an agreement for the sale and purchase of excess  
167 electricity or renewable energy certificates at mutually agreed upon prices if the eligible customer-  
168 generator does not exercise its option to sell its renewable energy certificates to its supplier at  
169 Commission-approved prices at the time that the eligible customer-generator enters into a power purchase  
170 agreement with its supplier. All costs incurred by the supplier to purchase excess electricity and renewable  
171 energy certificates from eligible customer-generators shall be recoverable through its fuel adjustment  
172 clause. For purposes of this section, "all costs" shall be defined as the rates paid to the eligible customer-  
173 generator for the purchase of excess electricity and renewable energy certificates and any administrative  
174 costs incurred to manage the eligible customer-generator's power purchase arrangements. The net  
175 metering standard contract or tariff shall be available to eligible customer-generators on a first-come, first-  
176 served basis, subject to the provisions of subsection F, and shall require the supplier to pay the eligible  
177 customer-generator for such excess electricity in a timely manner at a rate to be established by the  
178 Commission.

179 F. Net energy metering shall be open to customers on a first-come, first-served basis until such  
180 time as the total capacity of the generation facilities, expressed in alternating current nameplate, reaches  
181 two percent of system peak for residential customers, two percent of system peak for not-for-profit and  
182 nonjurisdictional customers, and one percent of system peak for other nonresidential customers, which are  
183 herein referred to as the electric cooperative's caps. As used in this subsection, "percent of system peak"  
184 refers to a percentage of the electric cooperative's highest total system peak, based on the noncoincident  
185 peak of the electric cooperative or the coincident peak of all of the electric cooperative's customers, within  
186 the past three years as listed in Part O, Line 20 of Form 7 filed with the Rural Utilities Service or its  
187 equivalent, less any portion of the cooperative's total load that is served by a competitive service provider  
188 or by a market-based rate. Such caps shall not decrease but may increase if the system peak in any year

189 exceeds the previous year's system peak. Nothing in this subsection shall amend or confer new rights upon  
190 any existing nonjurisdictional contract or arrangement or work to submit any nonjurisdictional customer,  
191 contract, or arrangement to the jurisdiction of the Commission. For purposes of calculating the caps  
192 established in this subsection, all net energy metering shall be counted, whenever interconnected, and shall  
193 include net energy metering interconnected pursuant to § 56-594, agricultural net energy metering, and  
194 any net energy metering entered into with a third-party provider registered pursuant to subsection K. Net  
195 energy metering with nonjurisdictional customers entered into prior to July 1, 2019, may be counted  
196 toward the caps, in the discretion of the cooperative, as net energy metering if the nonjurisdictional  
197 customer takes service pursuant to a cooperative's net energy metering rider. Net energy metering with  
198 nonjurisdictional customers entered into on or after July 1, 2019, shall be counted toward the caps by  
199 default unless the cooperative has reason to exclude such net energy metering as subject to a separate  
200 contract or arrangement. Each electric cooperative governed by this section shall publish information  
201 regarding the calculation and status of its caps pursuant to this subsection, or the electric cooperative's  
202 systemwide cap established in § 56-585.4 if applicable, on the electric cooperative's website.

203 G. An electric cooperative may, without Commission approval or the requirement of any filing  
204 other than as provided in this subsection, upon the adoption by its board of directors of a resolution so  
205 providing, raise the caps established in subsection F ~~up to a cumulative total of seven percent of system~~  
206 ~~peak, calculated according to the methodology described in subsection F,~~ with any increase allocated  
207 among residential, not-for-profit and nonjurisdictional, and other nonresidential customers as the board of  
208 directors may find to be in the interests of the electric cooperative's membership. The electric cooperative  
209 shall promptly file a revised net energy metering compliance filing with the Commission for informational  
210 purposes.

211 H. Any residential eligible customer-generator who owns and operates, or contracts with other  
212 persons to own, operate, or both, an electrical generating facility with a capacity that exceeds 10 kilowatts  
213 shall pay to its supplier, in addition to any other charges authorized by law, a monthly standby charge.  
214 The amount of the standby charge and the terms and conditions under which it is assessed shall be in  
215 accordance with a methodology developed by the supplier and approved by the Commission. The



216 Commission shall approve a supplier's proposed standby charge methodology if it finds that the standby  
217 charges collected from all such eligible customer-generators allow the supplier to recover only the portion  
218 of the supplier's infrastructure costs that are properly associated with serving such eligible customer-  
219 generators. Such an eligible customer-generator shall not be liable for a standby charge until the date  
220 specified in an order of the Commission approving its supplier's methodology.

221 I. Any eligible agricultural customer-generator interconnected in an electric cooperative service  
222 territory prior to July 1, 2019, shall continue to be governed by § 56-594 and the regulations adopted  
223 pursuant thereto throughout the grandfathering period described in subsection A of § 56-594.

224 J. Any eligible customer-generator served by a competitive service provider pursuant to the  
225 provisions of § 56-577 shall engage in net energy metering only with such supplier and pursuant only to  
226 tariffs filed by such supplier. Such an eligible customer-generator shall pay the full portion of its  
227 distribution charges, without offset or netting, to its electric cooperative.

228 K. After the conclusion of the Commission's rulemaking proceeding pursuant to subsection L,  
229 third-party partial requirements power purchase agreements, the purpose of which is to finance the  
230 purchase of renewable generation facilities by eligible customer-generators through the sale of electricity,  
231 shall be permitted pursuant to the provisions of this section only for those retail customers and  
232 nonjurisdictional customers of the electric cooperative that are exempt from federal income taxation,  
233 unless otherwise permitted by § 56-585.4 or subsection M. No person shall offer a third-party partial  
234 requirements power purchase agreement in the service territory of an electric cooperative without fulfilling  
235 the registration requirements set forth in this section and complying with applicable Commission rules,  
236 including those adopted pursuant to subdivision L 2.

237 L. After August 1, 2019, but before January 1, 2020, the Commission shall initiate a rulemaking  
238 proceeding to promulgate the regulations necessary to implement this section as follows:

239 1. In conducting such a proceeding, the Commission may require notice to be given to current  
240 eligible customer-generators and eligible agricultural customer-generators but shall not require general  
241 publication of the notice. An opportunity to request a hearing shall be afforded, but a hearing is not

242 required. In the rulemaking proceeding, the electric cooperatives governed by this section shall be required  
243 to submit compliance filings, but no other individual proceedings shall be required or conducted.

244 2. In promulgating regulations to govern third-party power purchase agreement providers as retail  
245 sellers, the Commission shall:

246 a. Direct the staff to administer a registration system for such providers;

247 b. Enumerate in its regulations the jurisdiction of the Commission over providers, generally limited  
248 in scope to the behavior of providers, customer complaints, and their compliance with the registration  
249 requirements and stating clearly that civil contract disputes and claims for damages against providers shall  
250 not be subject to the jurisdiction of the Commission;

251 c. ~~Establish enumerate~~ Enumerate in its regulations the maximum extent of its authority over the  
252 providers, to be limited to any or all of:

253 (1) Monetary penalties against registered providers not to exceed \$30,000 per provider registration;

254 (2) Orders for providers to cease or desist from a certain practice, act, or omission;

255 (3) Debarment of registered providers;

256 (4) The issuance of orders to show cause; and

257 (5) Authority incident to subdivisions (1) through (4);

258 d. Delineate in its regulations two classes of providers, one for residential customers and one for  
259 nonresidential customers;

260 e. Direct the staff to set up a self-certification system as described in this subdivision;

261 f. Establish business practice and consumer protection standards from a national renewable energy  
262 association whose business is germane to the businesses of the providers;

263 g. Require providers to comply with other applicable Commission regulations governing  
264 interconnection and safety, including utility procedures governing the same;

265 h. Require minimum capitalization or other bond or surety that, in the judgment of the  
266 Commission, is necessary for adequate consumer protection and in the public interest;

267 i. Require the payment of a fee of \$250 for residential and nonresidential provider registration; and

268 j. Provide that no registered provider, by virtue of that status alone, shall be considered a public  
269 utility or competitive service provider for purposes of this title.

270 3. The self-certification system described in this subdivision shall require a provider to affirm to  
271 the staff, under the penalty of revocation of registration, (i) that it is licensed to do business in Virginia;  
272 (ii) the names of the responsible officers of the provider entity; (iii) that its named officers have no felony  
273 convictions or convictions for crimes of moral turpitude; (iv) that it will abide by all applicable  
274 Commission regulations promulgated under this section or for purposes of interconnections and safety;  
275 (v) that it will appoint an officer to be a primary liaison to the staff; (vi) that it will appoint an employee  
276 to be a primary contact for customer complaints; (vii) that it will have and disclose to customers a dispute  
277 resolution procedure; (viii) that it has specified in its registration materials in which territories it intends  
278 to offer power purchase agreements; (ix) that it, and each of its named officers, agree to submit themselves  
279 to the jurisdiction of the Commission as described in this subdivision; and (x) that, once registered, the  
280 provider shall report any material changes in its registration materials to the staff, as a continuing  
281 obligation of registration. The staff shall send a copy of the registration materials to each cooperative in  
282 whose territory the provider intends to offer power purchase agreements. The staff, once satisfied that the  
283 certifications required pursuant to this subdivision are complete, and not more than 30 days following the  
284 initial and complete submittal of the registration materials, shall enter the provider onto the official register  
285 of providers. No formal Commission proceeding is required for registration but may be initiated if the  
286 staff (a) has reason to doubt the veracity of the certifications of the provider or (b) in any other case, if, in  
287 the judgment of the staff, extenuating or extraordinary circumstances exist that warrant a proceeding. The  
288 staff shall not investigate the corporate structure, financing, bookkeeping, accounting practices,  
289 contracting practices, prices, or terms and conditions in a third-party partial requirements power purchase  
290 agreement. Nothing in this section shall abridge the right of any person, including the Office of Attorney  
291 General, from proceeding in a cause of action under the Virginia Consumer Protection Act, § 59.1-196 et  
292 seq.

293 4. The Commission shall complete such rulemaking procedure within 12 months of its initiation.

294 M. An electric cooperative may, without approval of the Commission or the requirement of any  
295 filing other than as provided in this subsection, and upon the adoption by its board of directors of a  
296 resolution so providing, permit the use of any third-party partial requirements power purchase agreement,  
297 the purpose of which agreement is to finance the purchase of renewable generation facilities by eligible  
298 customer-generators through the sale of electricity for residential retail customers, nonresidential retail  
299 customers, or both. The electric cooperative shall promptly file a revised net energy metering compliance  
300 filing with the Commission for informational purposes.

301 **§ 56-594.01:1. Local facilities usage charges; electric cooperatives.**

302 A. For the purpose of this section:

303 "Electric cooperative" or "cooperative" means a utility formed under or subject to Chapter 9.1 (§  
304 56-231.15 et seq.) and subject to regulation as to rates and service by the Commission.

305 "Customer" means a customer interconnected to facilities of an electric cooperative pursuant to  
306 20VAC5-314, generating or interconnected for export, which customer is neither selling power to the  
307 cooperative nor interconnected pursuant to § 56-594.01 or 56-594.2.

308 B. Any customer may enter into an agreement for local facilities usage charges, which may be  
309 denominated as an operations and maintenance agreement or facilities agreement or otherwise. Such  
310 agreement shall be deemed just and reasonable by operation of law without separate approval by the  
311 Commission.

312 C. In the absence of an agreement between the parties, an electric cooperative may apply at any  
313 time to the Commission for a tariff for local facilities usage charges for the use of cooperative system  
314 facilities. Local facilities usage charges shall be designed by the cooperative, either on the basis of line-  
315 miles of utility facilities used or the capacity of the interconnecting facility, or on the basis of a  
316 combination of these factors. The Commission shall approve a just and reasonable rate. In approving such  
317 rate, the Commission shall consider (i) the ongoing costs of operating and maintaining all local utility  
318 facilities used by interconnecting customers to access a contract path to PJM Interconnection, LLC, market  
319 delivery points, including a reasonable margin and all costs of any associated regulatory proceeding, and  
320 (ii) standard utility practices. The Commission is not required to conduct a hearing on any application

321 pursuant to this subsection, but the Commission shall order notice to each affected customer and an  
322 opportunity to comment. Any party to the proceeding shall have the right to request a hearing on the  
323 application. Any proceeding conducted pursuant to this subsection shall be completed within 12 months  
324 of its commencement. Once the Commission approves a tariff for charges as described in this subsection,  
325 any interconnected customer shall be subject to the tariff thereafter. However, any agreements entered  
326 into pursuant to subsection B shall continue to have force and effect according to their terms and shall not  
327 be subject to the tariff unless the customer desires to transition to tariffed services.

328 D. In the absence of an agreement executed pursuant to subsection B or a specific tariff approved  
329 for local facilities usage charges pursuant to subsection C, any electric cooperative with a previously  
330 approved tariff for excess facilities charges may use such tariff to recover local facilities usage charges  
331 without seeking separate approval from the Commission. Any customer impacted by any action of a  
332 cooperative pursuant to this subsection shall have the right to petition the Commission for redress and  
333 review of the charges as applied to the customer by initiating a petition proceeding pursuant to subsection  
334 C of 5VAC5-20-100. The petitioner shall bear the burden of proof in such proceeding. If a cooperative's  
335 acts are found to be unjust or unreasonable, such a proceeding shall include the establishment of a tariff  
336 pursuant to subsection C. If such a proceeding includes the establishment of a tariff pursuant to subsection  
337 C, the cooperative shall bear the burden of proof. The results of any such proceeding shall not, in any case,  
338 invalidate an excess facilities tariff or charges as to any person other than the customer initiating the  
339 proceeding.

340 E. The provisions of this section shall be applied notwithstanding any other provision of law.

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