

VIRGINIA ACTS OF ASSEMBLY -- 2006 SESSION

CHAPTER 574

An Act to amend and reenact § 56-235.6 of the Code of Virginia, relating to performance-based regulation of gas utilities.

[S 380]

Approved April 5, 2006

Be it enacted by the General Assembly of Virginia:

1. That § 56-235.6 of the Code of Virginia is amended and reenacted as follows:

§ 56-235.6. Optional performance-based regulation of gas utilities.

A. Notwithstanding any provision of law to the contrary, the Commission may ~~authorize, upon application or its own motion, any public utility engaged in the business of furnishing gas service (for the purposes of this section a "gas utility"); and after such notice and opportunity for hearing as the Commission may prescribe, to implement an optional form of rate regulation under which the cost-of-service ratemaking methodology set forth in § 56-235.2 may be replaced with a performance-based ratemaking methodology.~~ *approve a performance-based ratemaking methodology for any public utility engaged in the business of furnishing gas service (for the purposes of this section a "gas utility"), either upon application of the gas utility or upon its own motion, and after such notice and opportunity for hearing as the Commission may prescribe. For the purposes of this section, "performance-based ratemaking methodology" shall mean a method of establishing rates and charges that are in the public interest, and that departs in whole or in part from the cost-of-service methodology set forth in § 56-235.2.*

B. The Commission shall approve such performance-based ratemaking methodology if it finds that it: (i) preserves adequate service to all classes of customers, including transportation-only customers; (ii) does not unreasonably prejudice or disadvantage any class of gas utility customers; (iii) provides incentives for improved performance by the gas utility in the conduct of its public duties; (iv) results in rates that are not excessive; and (v) is in the public interest. Performance-based forms of regulation may include, but not be limited to, *fixed or capped base rates*, the use of revenue indexing, price indexing, ranges of authorized return, gas cost indexing and innovative utilization of utility-related assets and activities (such as off-system sales of excess gas supplies, release of upstream pipeline capacity ~~and~~, performance of billing services for other gas suppliers, *and reduction or elimination of regulatory requirements*) in ways that benefit both the gas utility and its customers and may include a mechanism for automatic annual adjustments to revenues or prices to reflect changes in any index adopted for the implementation of such performance-based form of regulation. *In making the findings required by this subsection, the Commission shall include, but not be limited to, in its considerations: (i) any proposed measures, including investments in infrastructure, that are reasonably estimated to preserve or improve system reliability, safety, supply diversity, and transportation options; and (ii) other customer benefits that are reasonably estimated to accrue from the gas utility's proposal.*

C. Each gas utility shall have the option to apply for implementation of a performance-based form of regulation. If the Commission approves the application with modifications, the gas utility may, at its option, withdraw its application and continue to be regulated under the form of regulation that existed immediately prior to the filing of the application. The Commission may, after notice and opportunity for hearing, alter, amend or revoke, or authorize a gas utility to discontinue, a performance-based form of regulation previously implemented under this section if it finds that (i) gas service to one or more classes of customers has deteriorated, or will deteriorate, to the point that the public interest will not be served by continuation of the performance-based form of regulation; (ii) any class of gas utility customer is being unreasonably prejudiced or disadvantaged by the performance-based form of regulation; (iii) the performance-based form of regulation does not, or will not, provide reasonable incentives for improved performance by a gas utility in the conduct of its public duties (which determination may include, but not be limited to, consideration of whether rates are inadequate to recover gas utility cost of service); (iv) the performance-based form of regulation is resulting in rates that are excessive compared to a gas utility's cost of service *and any benefits that accrue from the performance-based plan*; (v) the terms ordered by the Commission in connection with approval of a gas utility's implementation of a performance-based form of regulation have been violated; or (vi) the performance-based form of regulation is no longer in the public interest. Any request by a gas utility to discontinue its implementation of a performance-based form of regulation may include application pursuant to this chapter for approval of new rates under the standards of § 56-235.2.

D. The Commission shall use the annual review process established in § 56-234.2 to monitor each performance-based form of regulation approved under this section and to make any annual prospective adjustments to revenues or prices necessary to reflect increases or decreases in any index adopted for the

implementation of such performance-based form of regulation.

2. That the provisions of this act shall not apply to any plan for performance-based regulation pending with the State Corporation Commission on January 1, 2006.