

VIRGINIA ACTS OF ASSEMBLY -- 2009 RECONVENED SESSION

CHAPTER 794

An Act to amend and reenact § 56-265.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 56-265.4:6, relating to the delivery of propane service by an underground distribution system.

[H 1970]

Approved April 8, 2009

Be it enacted by the General Assembly of Virginia:

1. That § 56-265.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 56-265.4:6 as follows:

§ 56-265.1. Definitions.

In this chapter the following terms shall have the following meanings:

(a) "Company" means a corporation, a limited liability company, an individual, a partnership, an association, a joint-stock company, a business trust, a cooperative, or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or a county, unless such municipal corporation or county has obtained a certificate pursuant to § 56-265.4:4.

(b) "Public utility" means any company which owns or operates facilities within the Commonwealth of Virginia for the generation, transmission or distribution of electric energy for sale, for the production, storage, transmission, or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas or geothermal resources for sale for heat, light or power, or for the furnishing of telephone service, sewerage facilities or water; however, the term "public utility" shall not include any of the following:

(1) Except as otherwise provided in § 56-265.3:1, any company furnishing sewerage facilities, geothermal resources or water to less than 50 customers. Any company furnishing water or sewer services to 10 or more customers and excluded by this subdivision from the definition of "public utility" for purposes of this chapter nevertheless shall not abandon the water or sewer services unless and until approval is granted by the Commission or all the customers receiving such services agree to accept ownership of the company.

(2) Any company generating and distributing electric energy exclusively for its own consumption.

(3) Any company (A) which furnishes electric service together with heating and cooling services, generated at a central plant installed on the premises to be served, to the tenants of a building or buildings located on a single tract of land undivided by any publicly maintained highway, street or road at the time of installation of the central plant, and (B) which does not charge separately or by meter for electric energy used by any tenant except as part of a rental charge. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall, within 30 days following the issuance of a building permit, notify the State Corporation Commission in writing of the ownership, capacity and location of such central plant, and it shall be subject, with regard to the quality of electric service furnished, to the provisions of Chapters 10 (§ 56-232 et seq.) and 17 (§ 56-509 et seq.) of this title and regulations thereunder and be deemed a public utility for such purposes, if such company furnishes such service to 100 or more lessees.

(4) Any company, or affiliate thereof, making a first or direct sale, or ancillary transmission or delivery service, of natural or manufactured gas to fewer than 35 commercial or industrial customers, which are not themselves "public utilities" as defined in this chapter, or to certain public schools as indicated in this subdivision, for use solely by such purchasing customers at facilities which are not located in a territory for which a certificate to provide gas service has been issued by the Commission under this chapter and which, at the time of the Commission's receipt of the notice provided under § 56-265.4:5, are not located within any area, territory, or jurisdiction served by a municipal corporation that provided gas distribution service as of January 1, 1992, provided that such company shall comply with the provisions of § 56-265.4:5. Direct sales or ancillary transmission or delivery services of natural gas to public schools in the following localities may be made without regard to the number of schools involved and shall not count against the "fewer than 35" requirement in this subdivision: the Counties of Dickenson, Wise, Russell, and Buchanan, and the City of Norton.

(5) Any company which is not a public service corporation and which provides compressed natural gas service at retail for the public.

(6) Any company selling landfill gas from a solid waste management facility permitted by the Department of Environmental Quality to a public utility certificated by the Commission to provide gas distribution service to the public in the area in which the solid waste management facility is located. If such company submits to the public utility a written offer for sale of such gas and the public utility

does not agree within 60 days to purchase such gas on mutually satisfactory terms, then the company may sell such gas to (i) any facility owned and operated by the Commonwealth which is located within three miles of the solid waste management facility or (ii) any purchaser after such landfill gas has been liquefied. The provisions of this subdivision shall not apply to the City of Lynchburg or Fairfax County.

(7) Any authority created pursuant to the Virginia Water and Waste Authorities Act (§ 15.2-5100 et seq.) making a sale or ancillary transmission or delivery service of landfill gas to a commercial or industrial customer from a solid waste management facility permitted by the Department of Environmental Quality and operated by that same authority, if such an authority limits off-premises sale, transmission or delivery service of landfill gas to no more than one purchaser. The authority may contract with other persons for the construction and operation of facilities necessary or convenient to the sale, transmission or delivery of landfill gas, and no such person shall be deemed a public utility solely by reason of its construction or operation of such facilities. If the purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility, the public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the use of landfill gas. No such tariff shall impose on the purchaser of the landfill gas terms less favorable than similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover the cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(8) A company selling or delivering only landfill gas, electricity generated from only landfill gas, or both, that is derived from a solid waste management facility permitted by the Department of Environmental Quality and sold or delivered from any such facility to not more than three commercial or industrial purchasers or to a natural gas or electric public utility, municipal corporation or county as authorized by this section. If a purchaser of the landfill gas is located within the certificated service territory of a natural gas public utility or within an area in which a municipal corporation provides gas distribution service and the landfill gas is to be used in facilities constructed after January 1, 2000, such company shall submit to such public utility or municipal corporation a written offer for sale of that gas prior to offering the gas for sale or delivery to a commercial or industrial purchaser. If the public utility or municipal corporation does not agree within 60 days following the date of the offer to purchase such landfill gas on mutually satisfactory terms, then the company shall be authorized to sell such landfill gas, electricity, or both, to the commercial or industrial purchaser, utility, municipal corporation, or county. Such public utility may file for Commission approval a proposed tariff to reflect any anticipated or known changes in service to the purchaser as a result of the purchaser's use of the landfill gas. No such tariff shall impose on such purchaser of the landfill gas terms less favorable than those imposed on similarly situated customers with alternative fuel capabilities; provided, however, that such tariff may impose such requirements as are reasonably calculated to recover any cost of such service and to protect and ensure the safety and integrity of the public utility's facilities.

(9) A company that is not organized as a public service company pursuant to subsection D of § 13.1-620 and that sells and delivers propane air only to one or more public utilities. Any company excluded by this subdivision from the definition of "public utility" for the purposes of this chapter nevertheless shall be subject to the Commission's jurisdiction relating to gas pipeline safety and enforcement.

(10) *A company, other than an entity organized as a public service company, that provides non-utility gas service as provided in § 56-265.4:6.*

(c) "Commission" means the State Corporation Commission.

(d) "Geothermal resources" means those resources as defined in § 45.1-179.2.

§ 56-265.4:6. *Furnishing non-utility gas service.*

A. In this section the following terms shall have the following meanings:

"Affiliated interest" shall have the same meaning as set forth in § 56-76 and shall be applied in this statute to non-utility gas service providers.

"Commercial customer" means any person that purchases non-utility gas service for its own consumption at one or more metering points or nonmetered points of delivery located in the Commonwealth and who if served by a natural gas utility would be classified as a nonresidential customer under the applicable natural gas utility's tariff.

"Municipally-owned gas service" means the sale and distribution of natural gas by a municipal corporation that has the authority to provide natural gas distribution service through the provisions of its charter.

"Natural gas line" means a distribution or transmission pipeline owned and operated by the natural gas utility and subject to the jurisdiction of the Commission but excluding such lines that serve only a single residence or retail establishment.

"Natural gas utility" or "utility" means an investor-owned public service company engaged in the business of furnishing natural gas service to the public and which is regulated as to rates and service pursuant to this title.

"Non-utility gas service" means the sale and distribution of propane, propane-air mixtures, or other

natural or manufactured gas to two or more customers by way of underground or aboveground distribution lines by a person other than a natural gas utility or an affiliated interest of a natural gas utility, master meter operator, or any person operating in compliance with § 56-1.2.

"Non-utility gas service provider" means a person, other than a natural gas utility, providing non-utility gas service.

"Person" means any individual, corporation, partnership, association, company, business trust, joint venture or other private legal entity.

"Pipeline safety standards" means all gas pipeline safety requirements established pursuant to § 56-257.2.

"Residential customer" means any person that purchases non-utility gas service for its own consumption at one or more metering points or nonmetered points of delivery located in the Commonwealth and who if served by a natural gas utility would be classified as a residential customer under the applicable natural gas utility's tariff.

B. A person, individually or together with its affiliated interests, other than the natural gas utility that holds the certificate to provide natural gas service in a particular territory or one of its affiliated interests, shall apply to the Commission for and obtain approval prior to providing non-utility gas service to:

1. Two or more residential or commercial customers located one-half mile or less from any existing underground natural gas line operated by a utility under the jurisdiction of the Commission;

2. More than 10 residential or two commercial customers located more than one-half mile but within one mile or less from any existing underground natural gas line operated by a utility under the jurisdiction of the Commission;

3. More than 20 residential or five commercial customers located more than one mile but within three miles or less from any existing underground natural gas line operated by a utility under the jurisdiction of the Commission; or

4. More than 50 residential or 10 commercial customers located more than three miles but no more than five miles from an existing underground natural gas line operated by a utility under the jurisdiction of the Commission.

Approval of any application to provide non-utility gas service pursuant to this section shall be granted by the Commission only after opportunity for a hearing and after due notice to the natural gas utility that holds the certificate to provide service in the defined geographic area proposed to be served. The Commission shall approve an application to provide non-utility gas service upon finding that: (i) the natural gas utility that holds the certificate to provide natural gas service in the defined geographic area proposed to be served is not currently offering service to the area desired for non-utility gas service and is unable to extend natural gas utility service to the requested area within a reasonable period of time; and (ii) the provision of non-utility gas service in the defined geographic area proposed to be served, and to the estimated number of customers defined in the application, is in the public interest.

Any order approving an application to provide non-utility gas service pursuant to this section shall define the geographic area to be covered and the maximum number of customers to whom the non-utility gas service provider can provide service before having to apply to the Commission for a revised order. The order approving an application to provide non-utility gas service shall also provide for compliance with all pipeline safety standards; however, nothing in the order shall authorize the Commission to exercise jurisdiction over the rates, charges, or services being offered in conjunction with non-utility gas service by a non-utility gas service provider. Further, except as provided in this section, approval of an application to provide non-utility gas service shall not infringe upon or diminish the rights of the natural gas utility that holds the certificate to provide natural gas service in the specified area.

C. A non-utility gas service provider shall comply with the provisions of subsection B if any proposed new customers (i) are located in or are adjacent to a residential subdivision, commercial or mixed-use development, currently being provided non-utility gas service by that non-utility gas service provider and (ii) the number of such new customers, when added to the number of then existing customers of such non-utility gas service provider, individually or together with its affiliated interests, located in the adjacent residential subdivision, commercial or mixed-use development, would exceed the threshold number of customers for any of the geographical areas described in subsection B.

D. In any instance in which customers proposed to be served by a non-utility gas service provider, individually or together with its affiliated interests, are in the same residential subdivision, commercial or mixed-use development, or any phase thereof, and that residential subdivision, commercial or mixed-use development, including all parts and phases thereof, straddles any of the distance thresholds set forth in subsection B, then all of the customers in all parts and phases of such residential subdivision, commercial or mixed-use development shall be deemed to be within the distance from the underground natural gas line operated by a utility under the jurisdiction of the Commission applicable to the customer located in such residential subdivision, commercial or mixed-use development that is located closest to such underground natural gas line operated by a utility under the jurisdiction of the

Commission.

E. The distance threshold set forth in subsection B shall be measured in a linear manner and shall be based upon the underground natural gas lines operated by a utility under the jurisdiction of the Commission that are in existence at the time the non-utility gas service provider applies for Commission approval pursuant to subsection B, if applicable, or at the time the non-utility gas service provider applies for the initial local government approval necessary to construct its distribution lines required to serve the proposed new customers, whichever is earlier.

F. All non-utility gas service providers shall provide notice to the Commission of any and all non-utility gas service that is subject to pipeline safety standards and is being provided to two or more customers in the Commonwealth and shall provide notice of the construction of new non-utility gas service to the Commission no later than 30 days prior to commencing construction of such system. Any non-utility gas service provider that is required to provide such notice shall be subject to the jurisdiction of the Commission for the purpose of ensuring compliance with the pipeline safety standards and subject to any penalties that may be applicable under § 56-257.2. Upon request of the Commission, the non-utility gas service provider shall provide, within 30 days of such request, documentation to show compliance with the requirements of the pipeline safety standards.

G. Any municipal corporation that provides municipally-owned gas service to residential or commercial customers located within an area where a natural gas utility holds a certificate to provide service, must have written authorization from that certificate holder to provide such service which authorization shall not be unreasonably withheld. The written authorization shall define the geographic area to be served by the municipally-owned gas service provider. If authorization is withheld, the natural gas utility shall provide a written justification for the decision to the municipally-owned gas service provider. Any decision to withhold authorization shall be subject to review by the Commission upon petition by a customer seeking natural gas service. Any natural gas utility that provides written permission to a municipal corporation to provide municipally-owned gas service within a territory where it holds a certificate shall provide a written copy of the authorization to the Commission.

Notwithstanding the foregoing, a municipally-owned gas service provider shall not be required to obtain consent to i) provide natural gas service to facilities or property owned in whole or in part by the municipal corporation, or ii) install lines that serve only a single residential customer.

A municipally-owned gas service provider which fails to comply with this subsection shall be subject to relief in a court having competent jurisdiction. Nothing herein shall authorize the Commission to impose penalties or fines on any municipal corporation.

H. The Commission is authorized to promulgate any rules consistent with and necessary to implement this section other than subsection G.

I. The provision of non-utility gas service without complying with subsection B shall be punishable by a penalty of up to \$500 per day to be imposed and collected by the Commission, in addition to any injunctive or other non-monetary penalties provided by law.

2. That notwithstanding the provisions of subsection F of § 56-265.4:6 of the Code of Virginia, any person that owns or operates an existing system which is subject to pipeline safety standards and is providing non-utility gas service as of the effective date of this act, wherever located in the Commonwealth, shall notify the State Corporation Commission, by July 1, 2010, as to the location of all facilities within the Commonwealth for the aboveground or underground storage, transmission, or distribution, otherwise than in enclosed portable containers, of propane, propane-air mixtures, or other natural or manufactured gas by way of underground distribution lines forming a part of such system including a description of the capacity, size, construction materials and any modifications necessary to bring the facilities into compliance with pipeline safety standards for all components of such systems.

3. That any fully constructed and operational non-utility gas service system as of the effective date of this act shall be exempt from the requirements of subsection B of § 56-265.4:6 of the Code of Virginia.

4. That any fully constructed and operational municipally-owned gas service system in place as of the effective date of this act shall be exempt from the requirements of subsection G of § 56-265.4:6 of the Code of Virginia.

5. That all industrial parks located within the corporate limits of a city whose 2000 population is greater than 45,000 but less than 50,000 and any facility, as that term is defined in § 15.2-6400 of the Code of Virginia, consisting of an industrial park owned or developed prior to the enactment of this legislation by a Regional Industrial Facility Authority organized and existing under § 15.2-6400, et seq., of the Code of Virginia, the members of which are such city and a county contiguous to such city, shall be exempt from the requirements of subsection G of § 56-265.4:6 of the Code of Virginia.

6. That for purposes of subsection C of § 56-265.4:6 of the Code of Virginia, all customers of the non-utility gas service provider existing as of the effective date of this act shall be included in determining the total number of customers served.

7. That an emergency exists and this act is in force from its passage.