VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 142

An Act to amend the Code of Virginia by adding in Title 56 a chapter numbered 26, consisting of sections numbered 56-603 and 56-604, relating to natural gas utilities; cost recovery for certain infrastructure improvement costs.

[S 112]

Approved March 11, 2010

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 56 a chapter numbered 26, consisting of sections numbered 56-603 and 56-604, as follows:

CHAPTER 26.

STEPS TO ADVANCE VIRGINIA'S ENERGY PLAN (SAVE) ACT.

§ 56-603. Definitions.

As used in this chapter:

"Commission" means the State Corporation Commission.

"Eligible infrastructure replacement" means natural gas utility facility replacement projects that: (i) enhance safety or reliability by reducing system integrity risks associated with customer outages, corrosion, equipment failures, material failures, or natural forces; (ii) do not increase revenues by directly connecting the infrastructure replacement to new customers; (iii) reduce or have the potential to reduce greenhouse gas emissions; (iv) are commenced on or after January 1, 2010; and (v) are not included in the natural gas utility's rate base in its most recent rate case using the cost of service methodology set forth in § 56-235.2, or the natural gas utility's rate base included in the rate base schedules filed with a performance-based regulation plan authorized by § 56-235.6, if the plan did not include the rate base.

"Eligible infrastructure replacement costs" includes the following:

1. Return on the investment. In calculating the return on the investment, the Commission shall use the natural gas utility's regulatory capital structure as calculated utilizing the weighted average cost of capital, including the cost of debt and the cost of equity used in determining the natural gas utility's base rates in effect during the construction period of the eligible infrastructure replacement project. If the natural gas utility's cost of capital underlying the base rates in effect at the time its proposed SAVE plan is filed has not been changed by order of the Commission within the preceding five years, the Commission may require the natural gas utility to file an updated weighted average cost of capital, and the natural gas utility may propose an updated weighted average cost of capital. The natural gas utility may recover the external costs associated with establishing its updated weighted average cost of capital through the SAVE rider. Such external costs shall include legal costs and consultant costs;

2. A revenue conversion factor, including income taxes and an allowance for bad debt expense, shall be applied to the required operating income resulting from the eligible infrastructure replacement costs;

3. Depreciation. In calculating depreciation, the Commission shall use the natural gas utility's current depreciation rates;

4. Property taxes; and

5. Carrying costs on the over- or under-recovery of the eligible infrastructure replacement costs. In calculating the carrying costs, the Commission shall use the natural gas utility's regulatory capital structure as determined in subsection 1 of the definition of eligible infrastructure replacement costs.

"Investment" means costs incurred on eligible infrastructure replacement projects including planning, development, and construction costs; costs of infrastructure associated therewith; and an allowance for funds used during construction. In calculating the allowance for funds used during construction, the Commission shall use the natural gas utility's actual regulatory capital structure as determined in subsection 1 of the definition of eligible infrastructure replacement costs.

"Natural gas utility" means any investor-owned public service company engaged in the business of furnishing natural gas service to the public.

"Natural gas utility facility replacement project" means the replacement of storage, peak shaving, transmission or distribution facilities used in the delivery of natural gas, or supplemental or substitute forms of gas sources by a natural gas utility.

"SAVE" means Steps to Advance Virginia's Energy Plan.

"SAVE plan" means a plan filed by a natural gas utility that identifies proposed eligible infrastructure replacement projects and a SAVE rider.

"SAVE rider" means a recovery mechanism that will allow for recovery of the eligible infrastructure replacement costs, through a separate mechanism from the customer rates established in a rate case using the cost of service methodology set forth in § 56-235.2, or a performance-based regulation plan

authorized by § 56-235.6.

§ 56-604. Filing of petition with Commission to establish or amend a SAVE plan; recovery of certain costs; procedure.

A. Notwithstanding any provisions of law to the contrary, a natural gas utility may file a SAVE plan as provided in this chapter. Such a plan shall provide for a timeline for completion of the proposed eligible infrastructure replacement projects, the estimated costs of the proposed eligible infrastructure projects, and a schedule for recovery of the related eligible infrastructure replacement costs through the SAVE rider, and demonstrate that the plan is prudent and reasonable. The Commission may approve such a plan after such notice and opportunity for hearing as the Commission may prescribe, subject to the provisions of this chapter.

B. The Commission shall approve or deny, within 180 days, a natural gas utility's initial application for a SAVE plan. A plan filed pursuant to this section shall not require the filing of rate case schedules. The Commission shall approve or deny, within 120 days, a natural gas utility's application to amend a previously approved plan. If the Commission denies such a plan or amendment, it shall set forth with specificity the reasons for such denial, and the utility shall have the right to refile, without prejudice, an amended plan or amendment within 60 days, and the Commission shall thereafter have 60 days to approve or deny the amended plan or amendment. The time period for Commission review provided for in this subsection shall not apply if the SAVE plan is filed in conjunction with a rate case using the cost of service methodology set forth in § 56-235.2, or a performance-based regulation plan authorized by § 56-235.6.

C. Any SAVE plan and any SAVE rider that is submitted to and approved by the Commission shall be allocated and charged in accordance with appropriate cost causation principles in order to avoid any undue cross-subsidization between rate classes.

D. No other revenue requirement or ratemaking issues may be examined in consideration of the application filed pursuant to the provisions of this chapter.

E. At the end of each 12-month period the SAVE rider is in effect, the natural gas utility shall reconcile the difference between the recognized eligible infrastructure replacement costs and the amounts recovered under the SAVE rider, and shall submit the reconciliation and a proposed SAVE rider adjustment to the Commission to recover or refund the difference, as appropriate, through an adjustment to the SAVE rider. The Commission shall approve or deny, within 90 days, a natural gas utility's proposed SAVE rider adjustment.

F. A natural gas utility that has implemented a SAVE rider pursuant to this chapter shall file revised rate schedules to reset the SAVE rider to zero, when new base rates and charges that incorporate eligible infrastructure replacement costs previously reflected in the currently effective SAVE rider become effective for the natural gas utility, following a Commission order establishing customer rates in a rate case using the cost of service methodology set forth in § 56-235.2, or a performance-based regulation plan authorized by § 56-235.6.

G. Costs recovered pursuant to this chapter shall be in addition to all other costs that the natural gas utility is permitted to recover, shall not be considered an offset to other Commission-approved costs of service or revenue requirements, and shall not be included in any computation relative to a performance-based regulation plan revenue-sharing mechanism. Further, if the Commission approves (i) an updated weighted average cost of capital for use in calculating the return on investment, (ii) the carrying costs on the over- or under-recovery of the eligible infrastructure replacement costs, (iii) the allowance for funds used during construction, (iv) or any combination thereof, such weighted average cost of capital shall be used only for the purpose of the eligible infrastructure replacement costs for the SAVE rider and shall not be used for any purpose in any other proceeding.