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HOUSE BILL NO. 949

Offered January 8, 2014

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A BILL to amend and reenact §§ 56-77, 56-235.9, 56-265.2:1, and 56-265.4 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 27 of Title 56 a section numbered 56-609, relating to natural gas utility regulation; upstream supply infrastructure projects.

Patrons—Hugo and Miller

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 56-77, 56-235.9, 56-265.2:1, and 56-265.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 27 of Title 56 a section numbered 56-609 as follows:

§ 56-77. Certain contracts must be approved by the Commission.

A. No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property, right or thing, other than those above enumerated, or for the purchase or sale of treasury bonds or treasury capital stock made or entered into between a public service company and any affiliated interest shall be valid or effective unless and until it shall have been filed with and approved by the Commission. The Commission shall, after the filing of such a contract or arrangement, approve or disapprove the contract or arrangement within ~~sixty~~ 60 days. The sixty-day period may be extended by Commission order for an additional period not to exceed thirty days. The contract or arrangement shall be deemed approved if the Commission fails to act within sixty days or any extended period ordered by the Commission. It shall be the duty of every public service company to file with the Commission a verified copy of any such contract or arrangement, regardless of the amount involved, and the general rule herein referred to shall remain in full force and effect as to all other public service companies. *Any open season capacity acquisitions or releases between a public service company and an affiliated interest shall not be subject to approval under this section.*

B. The Commission may, in its discretion and upon petition of the public service company or upon the Commission's own action, choose to exempt a public service company from all or any part of the requirements imposed by subsection A if the Commission determines that such an exemption is in the public interest. In addition to exemptions for individual public service companies, the Commission may adopt rules implementing exemptions from all or any part of the requirements imposed by subsection A. The Commission may revoke any exemptions granted under this subsection if it finds that such action is in the public interest.

C. Notwithstanding the provisions of § 56-481.2, the Commission, after giving notice and an opportunity for a hearing, may, in its discretion, require any company certificated to provide, and engaged in the provision of, local exchange telephone service to meet the requirements of subsection A.

§ 56-235.9. Recovery of funds used for capital projects prior to a rate case for strategic natural gas facilities.

A. As used in this section:

"Capitalized carrying cost" includes the return on the investment, depreciation, and tax.

"Natural gas transmission company" means any investor-owned public service company engaged in the business of transporting natural gas to more than one electric utility, natural gas utility, or non-jurisdictional customer.

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

"Strategic natural gas facility" includes, without limitation, a natural gas distribution or transmission pipeline, storage facility, compressor station, liquefied natural gas facility, peaking facility or other appurtenant facility, used to furnish natural gas service in the Commonwealth that, for a natural gas utility with fewer than 150,000 customers, adds stand-alone design day deliverability or designed send-out of at least 10,000 dekaTherms per day or two or more such facilities, regardless of size, that add design day deliverability or designed send out of at least 75,000 dekaTherms per day in the aggregate, and for a natural gas utility with 150,000 or more customers, adds stand-alone design day deliverability or designed send out of at least 20,000 dekaTherms per day or two or more such facilities, regardless of size, that add design day deliverability or designed send out of at least 100,000 dekaTherms per day in the aggregate, and for a natural gas transmission company, adds design day

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59 *deliverability or designed send out of at least 100,000 dekaTherms per day in the aggregate.*

60 B. Any natural gas utility or natural gas transmission company that places a strategic natural gas
61 facility into service on or after July 1, 2008, to serve its customers shall have the right to recover
62 through its rates charged to those customers the entire prudently incurred costs of the facility including:
63 planning, development and construction costs; costs of infrastructure associated therewith; an allowance
64 for funds used during construction; and the capitalized carrying cost from the time construction is
65 completed and the asset is placed into service until the time that the Commission establishes new rates
66 that include recovery of all costs as defined herein. Such recovery shall be permitted by allowing such
67 costs to be recorded in the utility's plant accounts and included in rate base for purposes of cost
68 recovery (i) in new rate schedules for service not offered under existing rate schedules or new rate
69 schedules for expansion of existing services as permitted by § 56-235.4, (ii) in a rate case using the cost
70 of service methodology set forth in § 56-235.2, or (iii) in a performance-based regulation plan authorized
71 by § 56-235.6, subject to Commission determination that such costs were prudently incurred. The
72 allowance for funds used during construction and the return on investment shall be calculated utilizing
73 the weighted average cost of capital, including the cost of debt and cost of equity used in determining
74 the natural gas utility's base rates in effect during the construction period of the strategic natural gas
75 facility.

76 C. Nothing in this section shall be construed to prohibit the Commission from granting similar
77 treatment to other natural gas facilities when the Commission deems such treatment to be in the public
78 interest.

79 **§ 56-265.2:1. Approval by Commission required for construction of certain gas pipelines and**
80 **related facilities; notice and hearing.**

81 A. Whenever a certificate is required pursuant to § 56-265.2 for the construction of a pipeline for the
82 transmission or distribution of manufactured or natural gas, the Commission shall consider the effect of
83 the pipeline on the environment, public safety, and economic development in the Commonwealth, and
84 may establish such reasonably practical conditions as may be necessary to minimize any adverse
85 environmental or public safety impact. In such proceedings, the Commission shall receive and consider
86 all reports by state agencies concerned with environmental protection; and, if requested by any county or
87 municipality in which the pipeline is proposed to be constructed, local comprehensive plans that have
88 been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2.

89 B. The Commission shall not approve construction of any such pipeline unless the public utility has
90 provided ~~thirty~~ 30 days' advance public notice of the proposed pipeline by (i) publishing a notice in a
91 newspaper or newspapers of general circulation in each of the counties and municipalities through which
92 the pipeline is proposed to be constructed, (ii) providing written notice to the governing body of each
93 such county and municipality, (iii) causing to be sent a copy of the notice by first class mail to all
94 owners of property within the route of the proposed pipeline, as indicated on the map or sketch of the
95 route filed with the Commission, which requirement shall be satisfied by mailing the notice to such
96 persons at such addresses as are indicated in the land books maintained by the commissioner of revenue,
97 director of finance or treasurer of the county or municipality, and (iv) filing a copy of any plans,
98 specifications, or maps of the proposed pipeline with the Commission, which plans, specifications, or
99 maps shall be made available for public inspection at the Commission's business office, during normal
100 business hours. Any notice required by this subsection shall include a written description of the
101 proposed route the line is to follow, a map or sketch of the route, and information regarding the time
102 period during which persons may request a public hearing under subsection C of this section.

103 C. If, within ~~forty-five~~ 45 days after publication and mailing of the notices required in subsection B
104 of this section, any interested party requests a public hearing, the Commission shall, as soon as
105 reasonably practicable after such request, hold such hearing or hearings at such place as may be
106 designated by the Commission. If written requests therefor are received from twenty or more interested
107 parties, the Commission shall hold at least one hearing in the area that would be affected by
108 construction of the pipeline, for the purpose of receiving public comment on the proposal. If any hearing
109 is to be held in the area affected, the Commission shall direct that a copy of the transcripts of any
110 previous hearings held in the case be made available for public inspection at a convenient location in the
111 area for a reasonable time before such local hearing.

112 D. For the purposes of this section, "interested parties" means the governing bodies of any counties
113 or municipalities through which the pipeline is to be constructed, and persons residing or owning
114 property within one-half mile of such pipeline. For the purposes of this section, "environment" or
115 "environmental" shall be deemed to include in meaning "historic."

116 E. If a significantly different route is determined more desirable after the giving of the notice
117 required in subsection B of this section, the Commission shall cause notice of the new route or routes to
118 be published and mailed in accordance with subsection B of this section. The Commission shall
119 thereafter comply with the provisions of this section to the full extent necessary to give interested parties
120 in the newly affected areas the same protection afforded interested parties affected by the route

described in the original notice.

F. Approval of a pipeline pursuant to this section shall be deemed to satisfy and supersede the requirements of § 15.2-2232 and local zoning ordinances with respect to such pipeline and related facilities; however, the Commission shall not approve the construction of a natural gas compressor station in an area zoned *exclusively* for residential use unless the public utility provides certification from the local governing body that the natural gas compressor station is consistent with the zoning ordinance. The certification required by this subsection shall be deemed to have been waived unless the local governing body informs the Commission and the public utility of the natural gas compressor station's compliance or noncompliance within ~~forty-five~~ 45 days of the public utility's written request.

§ 56-265.4. Certificate to operate in territory of another certificate holder.

Except as provided in § 56-265.4:4, no certificate shall be granted to an applicant proposing to operate in the territory of any holder of a certificate unless and until it shall be proved to the satisfaction of the Commission that the service rendered by such certificate holder in such territory is inadequate to the requirements of the public necessity and convenience; and if the Commission shall be of opinion that the service rendered by such certificate holder in such territory is in any respect inadequate to the requirements of the public necessity and convenience, such certificate holder shall be given reasonable time and opportunity to remedy such inadequacy before any certificate shall be granted to an applicant proposing to operate in such territory. *For the purposes of this section, the transportation of natural gas by pipeline, without providing service to end users within the territory, shall not be considered operating in the territory of another certificate holder.*

§ 56-609. Upstream natural gas supply infrastructure projects.

A. As used in this section, unless the context requires a different meaning:

"Eligible natural gas supply infrastructure costs" includes the investment in eligible natural gas supply infrastructure projects and the following:

1. Return on the investment. In calculating the return on investment, the Commission shall use the natural gas utility's weighted average cost of capital, including the cost of debt and equity, based on its regulatory capital structure used in determining the natural gas utility's base rates in effect during the construction period of the eligible natural gas supply infrastructure project. The investment will be multiplied by the weighted average cost of capital to determine the return on investment;

2. A revenue conversion factor. Such factor, including income taxes, shall be applied to the required operating income resulting from the eligible natural gas supply infrastructure costs;

3. Operating and maintenance expense, which includes the amount of operating and maintenance expense utilized in production wells, processing the gas produced, and gathering, transmission, and distribution lines delivering the gas to a pipeline or distribution system;

4. Depreciation. In calculating depreciation, the Commission shall use the natural gas utility's current depreciation rates for investments in distribution infrastructure. The utility shall propose a basis for recovering for the depreciation or depletion of investments in other asset classes in the natural gas supply investment plan, including investments in natural gas reserves that will deplete based on their useful life;

5. Property tax, severance tax, and any other taxes or government fees associated with production and transmission of natural gas; and

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

"Eligible natural gas supply infrastructure projects" means capital investments in natural gas reserves and upstream pipelines and facilities that, alone or in combination with other projects or strategies, offer reasonably anticipated benefits to customers and markets, which benefits mean (i) savings in the delivered cost of gas versus long-term forward market projections available to the natural gas utility at the time of the capital investment or other alternatives, (ii) a reduction in the utility's overall portfolio price volatility, (iii) reduction in the utility's overall supply risk, or (iv) any combination of the savings or reductions described in clauses (i), (ii), and (iii). "Eligible natural gas supply infrastructure projects" may provide up to 25 percent of the utility's reasonable projected annual throughput. Any such customer benefit benchmarks shall be outlined in the natural gas utility's filings with the Commission pursuant to this section.

"Investment" means actual costs incurred on eligible natural gas supply infrastructure projects, including planning, development, and construction costs; actual 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 subdivision 1 of the definition of eligible natural gas supply infrastructure costs.

"Natural gas reserves and upstream pipelines and facilities" means investments in natural gas

182 production facilities, including equipment required to prepare the natural gas for use; gathering,
183 transmission, and distribution pipelines; and above-ground and below-ground storage used in the
184 delivery of gas to existing natural gas transmission pipelines or distribution systems.

185 "Natural gas supply investment plan" means a plan filed by a natural gas utility that identifies
186 proposed eligible natural gas supply infrastructure projects and its development of those projects with
187 or without a third party.

188 B. A natural gas utility shall have the right to recover eligible natural gas supply infrastructure costs
189 on an ongoing basis through the gas cost component of the utility's rate structure or other recovery
190 mechanism approved by the Commission, provided that any such mechanism shall properly allocate
191 costs. Natural gas utilities using the cost of service methodology set forth in § 56-235.2 or a
192 performance-based regulation plan authorized by § 56-235.6 shall be eligible to file a plan. The plan
193 shall include a timeline for the investment and completion of the proposed eligible natural gas supply
194 infrastructure projects; provide for an estimated schedule for recovery of the related eligible natural gas
195 supply infrastructure costs through the gas cost component of the utility's rate structure or other
196 mechanism, including proposed depreciation rates for investments in non-distribution asset classes and
197 how any revenue gains from the use of the pipelines by third parties will be used to offset eligible
198 natural gas supply infrastructure costs; and demonstrate the plan meets the prudence requirement of
199 providing delivered supply to the utility's system at prices at or below the long-term projections as
200 available and defined in the natural gas utility's filing, or reduction in the utility's overall supply risk,
201 or reduction in the utility's overall portfolio price volatility, and that such volumes are equal to or less
202 than 25 percent of the natural gas utility's reasonably forecasted annual throughput. The Commission
203 shall approve such a plan upon a finding that it is in the public interest after such notice and an
204 opportunity for hearing in accordance with the provisions of this chapter.

205 C. In addition to the items included in the plan as specified in subsection B, the plan may provide
206 the utility with an option to receive the gas or sell the gas at market prices. A utility proposing this
207 option as part of its plan shall propose how any revenue gains from the sale of the gas will be used to
208 reduce the cost of gas to its customers. The Commission shall approve or deny, within 180 days, a
209 natural gas utility's initial application for a natural gas supply infrastructure plan. A plan filed pursuant
210 to this section shall not require the filing of rate case schedules. The Commission shall approve or deny,
211 within 120 days, a natural gas utility's application to amend a previously approved plan. If the
212 Commission denies such a plan or amendment, it shall set forth with specificity the reasons for such
213 denial, and the utility shall have the right to refile, without prejudice, an amended plan or amendment
214 within 60 days, and the Commission shall thereafter have 60 days to approve or deny the amended plan
215 or amendment. If the plan is filed as part of a general rate case using the cost of service methodology
216 set forth in § 56-235.2 or a performance-based regulation plan authorized by § 56-235.6, then the
217 Commission shall approve or deny the plan concurrent with or as part of the general rate case decision.

218 D. No other revenue requirement or ratemaking issues shall be examined in consideration of the plan
219 filed pursuant to the provisions of this section.

220 E. A gas utility with an approved natural gas supply infrastructure plan shall annually file a report
221 of the eligible natural gas supply infrastructure investment made, the eligible natural gas supply
222 infrastructure costs incurred and the amount of such costs recovered, the volume of gas delivered to
223 customers or sold to third parties during the 12-month reporting period, and an analysis of the price of
224 gas delivered to the natural gas utility customers and the market cost of gas during the 12-month
225 period. However, such analysis shall not affect a gas utility's right to recover all eligible natural gas
226 supply infrastructure costs as set forth in subsection B. The report shall also identify the balance of
227 over-recovery or under-recovery of the eligible natural gas supply infrastructure costs at the end of the
228 reporting period and the projected investment to be made, the projected infrastructure costs to be
229 incurred, and the projected costs to be recovered during the next 12-month reporting period.

230 F. Costs recovered pursuant to this section shall be in addition to all other costs that the natural gas
231 utility is permitted to recover and shall not be considered an offset to other Commission-approved costs
232 of service or revenue requirements. Further, if the utility requests and the Commission approves (i) an
233 updated weighted average cost of capital for use in calculating the return on investment, (ii) the
234 carrying costs on the over-recovery or under-recovery of the eligible natural gas supply infrastructure
235 costs, (iii) the allowance for funds used during construction, or (iv) any combination thereof, such
236 weighted average cost of capital shall be used only for the purpose of the eligible natural gas supply
237 infrastructure costs and shall not be used for any purpose in any other proceeding.

238 G. No open season capacity acquisitions or releases between a public service company and an
239 affiliated interest shall not subject to approval under § 56-77.