

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 494

An Act to amend the Code of Virginia by adding a section numbered 56-235.12, relating to public utilities; acquisition of rights-of-way for qualified economic development sites.

[H 2738]

Approved March 18, 2019

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 56-235.12 as follows:

§ 56-235.12. Economic development programs.

A. As used in this section:

"Acquire utility rights-of-way" means the planning, surveying, permitting, and acquisition of land, including options, easements, and other estates in land.

"Costs" includes depreciation, taxes, return on investment, and other land-related costs associated with costs incurred to acquire utility rights-of-way pursuant to a Program.

"Economic Development Program" or "Program" means a program under which a utility is authorized by the Commission under this section to acquire utility rights-of-way for one or more qualified economic development sites.

"Partnership" means the Virginia Economic Development Partnership Authority.

"Qualified economic development site" means an industrial site within the Commonwealth that has been certified by the Partnership pursuant to subsection B.

"Utility" means a public utility providing water, sewer, electric, or natural gas service to retail customers in the Commonwealth.

B. The Partnership is authorized to certify that an industrial site is a qualified economic development site if it finds that:

1. The person with legal authority to develop the site is authorized to contract for the extension of utility service to the site;

2. The development of the site is compliant with applicable zoning requirements and is consistent with the locality's comprehensive plan;

3. Applicable environmental surveys and reviews, including any wetlands survey, geotechnical borings, a topographical survey, a cultural resources review, an Endangered Species review, or a Phase 1 Environmental Assessment, if required, are completed;

4. An estimate of the costs of the development of the site has been prepared and provided to the Partnership; and

5. The acquisition of utility rights-of-way for the site will further the creation of new jobs and capital investment in the Commonwealth by facilitating the location of one or more significant economic development projects in the Commonwealth.

C. A utility proposing an Economic Development Program shall file a proposal with the Commission for review. A proposal for approval of a Program shall include an analysis of how acquiring utility rights-of-way will enhance the Commonwealth's infrastructure and promote the Commonwealth's competitive business environment by improving the readiness of a qualified economic development site.

D. The Commission shall approve, or approve with appropriate modifications, a Program if it finds that:

1. The implementation of the Program will provide material economic development benefits that might not otherwise be attained absent the Commission's approval of the Program;

2. The Program proposes a rate mechanism, including base rates or a rate adjustment clause, that authorizes the utility to recover its costs incurred in implementing the Program until such time as the investment is placed in service;

3. The proposal to acquire utility rights-of-way would not otherwise be immediately supported by expected revenues from new loads served under the Program at the qualified economic development site;

4. The utility's capital investment does not exceed one percent of gross plant investment in the aggregate or \$5 million for any specific qualified economic development site;

5. The associated charges resulting from implementation of the Program will apply only to firm service customers;

6. The Virginia Economic Development Partnership has certified pursuant to subsection B that the site for which the utility proposes to acquire utility rights-of-way under the Program is a qualified economic development site;

7. The Program is designed only to acquire utility rights-of-way to a qualified economic development site and not to provide service to other customers or potential customers;

8. *The utility's assumptions regarding costs to acquire utility rights-of-way under the Program are not unduly speculative; and*

9. *The Program is not otherwise contrary to the public interest.*

E. After Commission review and absent action by the Commission to the contrary, the Program shall take effect 120 days following the date on which the proposal for the Program was filed. Any amendment to a Program following its implementation shall be submitted to the Commission at least 60 days prior to the proposed effective date thereof and, absent action by the Commission to the contrary, the amendment shall become effective on such date.

F. The Commission's approval of a Program shall authorize the utility to:

1. Acquire utility rights-of-way for the ordinary extension of utility facilities in the normal course of business to one or more qualified economic development sites; and

2. Recover costs incurred in implementing the Program, including costs deferred and associated carrying costs, from the time incurred until the time the Commission establishes new rates that include recovery of such deferred costs.

G. A utility, in implementing a Program, shall in good faith coordinate the acquisition of rights-of-way with communications providers and other utilities, including water, sewer, electric, or natural gas utilities, so that any facilities ultimately to be constructed may be collocated to the extent feasible.

H. In calculating the utility's return on the investment with regard to costs incurred in implementing a Program, the Commission shall use the utility's regulatory capital structure, including the cost of equity most recently approved by the Commission. If the utility's cost of capital at the time its Economic Development Program is filed has not been changed by order of the Commission within the preceding five years, the Commission may require the utility to file an updated weighted average cost of capital, and the utility may propose an updated weighted average cost of capital.

I. Nothing in this section shall:

1. Be deemed to prevent one or more utilities from jointly filing a Program under this section, and the Commission may consolidate consideration of Programs filed to serve the same qualified economic development site;

2. Otherwise impair or enlarge the powers granted to public service companies by this title;

3. Permit a Program to include conversion of existing retail propane customers to electric or natural gas; or

4. Prohibit an electric utility from recovering its transmission-related costs incurred in implementing the Program through a rate adjustment clause pursuant to subdivision A 4 of § 56-585.1.

J. A utility may request proprietary treatment of any and all supporting materials provided in support of a Program.