

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 350

*An Act to amend the Code of Virginia by adding a section numbered 56-235.6, relating to optional performance-based regulation of gas utilities.*

[H 497]

Approved March 22, 1996

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 56-235.6 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.*

*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, 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) 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.*

*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; (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 Chapter 10 of Title 56 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.*