

VIRGINIA ACTS OF ASSEMBLY -- 2012 SESSION

CHAPTER 51

An Act to amend the Code of Virginia by adding in Title 56 a chapter numbered 27, consisting of sections numbered 56-605 through 56-608, relating to natural gas utilities; qualifying projects.

[H 559]

Approved March 1, 2012

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 27, consisting of sections numbered 56-605 through 56-608, as follows:

CHAPTER 27.

QUALIFIED PROJECTS OF NATURAL GAS UTILITIES.

§ 56-605. Definitions.

As used in this chapter:

"Eligible infrastructure" means storage, compressed natural gas, liquefied natural gas, transmission and distribution facilities to be used in the delivery of natural gas, or supplemental or substitute forms of gas sources by a natural gas utility.

"Eligible infrastructure development costs" or "EIDC" for a qualifying project shall be comprised of the investment in eligible infrastructure 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 infrastructure development 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 and an allowance for bad debt expense, shall be applied to the required operating income resulting from the eligible infrastructure development costs;

3. Operating and maintenance expense. The amount of operating and maintenance expense utilized in the utility's calculations of justifiable new business plant investment shall be consistent with the natural gas utility's standard line extension tariff provisions;

4. Depreciation. In calculating depreciation, the Commission shall use the natural gas utility's currently approved depreciation rates applicable to each general plant account; and

5. Property taxes.

The foregoing shall be reduced by a base non-gas revenue credit comprised of the non-gas revenue received by the natural gas utility from providing sales or transportation service, or both, to (i) the customer occupying the qualifying project and (ii) any other customer of the natural gas utility served directly from the subject eligible infrastructure that initiates natural gas service before the Commission issues an order establishing or confirming 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 which rates include recovery of costs deferred under this chapter.

"Investment" means costs incurred to deploy eligible infrastructure including planning, development, and construction costs and, if applicable, 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 regulatory capital structure as determined in subdivision 1 of the definition of "eligible infrastructure development costs."

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

"Person" means natural persons, firms, associations, cooperatives, corporations, limited liability companies, business trusts, partnerships, and limited liability partnerships.

"Qualifying project" means an economic development project requiring natural gas service as to which the natural gas utility has made a good faith determination that the following criteria are satisfied:

1. The location of the proposed project is in an area where adequate natural gas infrastructure is not available;

2. The eligible infrastructure will provide opportunities for increased natural gas usage and economic development benefits in the area to be directly served by the subject eligible infrastructure in addition to those provided by the subject project;

3. Either (i) the person proposing to develop the project or the person that will occupy the proposed project shall provide, prior to the initiation of service, a binding commitment, in the form of a service agreement, precedent agreement, memorandum of understanding, or otherwise, to the natural gas utility

regarding capacity needed for a period of at least five years from the date gas is made available, provided that such commitment covers a level of service no less than 50 percent of the capacity of the facilities proposed to be constructed by the natural gas utility to serve such project or (ii) the natural gas utility receives a financial guaranty from the Commonwealth or an agency or subdivision thereof, the governing body of the locality in which the project is located or an agency or subdivision thereof, or from a developer or any other person other than the proposed occupant of the project, in the amount of at least 50 percent of the estimated investment to be made by the natural gas utility in the proposed project, and otherwise in form and substance satisfactory to the natural gas utility. Without limiting the generality of the foregoing, such financial guaranty may be in the form of a letter of credit issued by a bank or other lending institution licensed to do business in the Commonwealth. Any financial guaranty provided to the natural gas utility shall be released upon the receipt by the natural gas utility of a binding commitment meeting the requirements of clause (i) from a person proposing to develop the project or a person that will occupy the project;

4. The natural gas utility has reasonably and in good faith negotiated with the developer of the project or the person that will occupy the proposed project in an attempt to reach agreement on a commitment for the entire aid to construction otherwise required to cover the cost of the necessary eligible infrastructure; and

5. The projected non-gas revenues from the proposed project will not be sufficient to cover the cost of service associated with the necessary eligible infrastructure after accounting for any aid to construction contributed by the developer of the project or the person that will occupy the proposed project.

A qualifying project may consist of multiple persons proposed to be served through common eligible infrastructure, provided those persons each satisfy the requirement of a service commitment for at least five years from the date gas is made available and collectively they satisfy the capacity commitment of at least 50 percent. For purposes of this chapter and notwithstanding the foregoing, a qualifying project shall not include an economic development project applicable to customers to be served under a special rate or contract approved by the Commission pursuant to the provisions of § 56-235.6 or industrial customers to be provided service pursuant to a negotiated rate permitted by a tariff approved by the Commission.

§ 56-606. Infrastructure development.

Notwithstanding any provision of law to the contrary when the requirements set forth in the definition of qualifying project have been satisfied:

1. The natural gas utility certificated to serve the subject service territory may construct the necessary facilities subject to the provisions of this chapter; and

2. The natural gas utility constructing eligible infrastructure pursuant to subdivision 1 shall be permitted to recover the EIDC necessary to develop the eligible infrastructure for the designated qualifying project or projects in future rates as provided in §§ 56-607 and 56-608. The utility shall maintain the burden of demonstrating that the criteria set forth in this chapter have been satisfied.

§ 56-607. Application and administration.

A. A natural gas utility shall account for the actual monthly EIDC incurred on the cumulative investment in eligible infrastructure in excess of any aid to construction contributed by the developer of the project or the person that will occupy the proposed project as a deferred cost until new base rates and charges that incorporate EIDC become effective for the natural gas utility, following a Commission order establishing or confirming 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. Such deferred cost shall be accounted for as a regulatory asset and shall not be subject to write-off or write-down by the Commission in an earnings test filing made pursuant to Commission rules governing utility rate increases and annual informational filings.

B. The investment for all qualifying projects of a natural gas utility in any year shall not exceed one percent of the natural gas utility's net plant investment that was utilized in establishing base rates in the natural gas utility's most recent rate case.

C. Deferral of costs recovered pursuant to this chapter shall have no effect on the recovery of any other cost by the natural gas utility and shall not be included in any computation relative to a performance-based regulation plan revenue-sharing mechanism.

§ 56-608. Certain contracts deemed prudent and reasonable.

The transportation and storage quantities of the contracts entered into by a natural gas utility for the acquisition of upstream pipeline capacity to meet the reasonably anticipated service requirements of the qualifying projects and other service requirements to be served through the eligible infrastructure shall be deemed prudent and reasonable.