

VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

CHAPTER 507

An Act to amend and reenact §§ 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.

[H 949]

Approved April 3, 2014

Be it enacted by the General Assembly of Virginia:

1. That §§ 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:

§ 56-235.9. 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 deliverability or designed send out of at least 100,000 dekaTherms per day in the aggregate.

B. Any natural gas utility that places a strategic natural gas facility into service on or after July 1, 2008, or natural gas transmission company that places a strategic natural gas facility into service on or after July 1, 2014, to serve its customers shall have the right to recover through its rates charged to those customers the entire prudently incurred costs of the facility including: planning, development and construction costs; costs of infrastructure associated therewith; an allowance for funds used during construction; and the capitalized carrying cost from the time construction is completed and the asset is placed into service until the time that the Commission establishes new rates that include recovery of all costs as defined herein. Such recovery shall be permitted by allowing such costs to be recorded in the utility's plant accounts and included in rate base for purposes of cost recovery (i) in new rate schedules for service not offered under existing rate schedules or new rate schedules for expansion of existing services as permitted by § 56-235.4, (ii) in a rate case using the cost of service methodology set forth in § 56-235.2, or (iii) in a performance-based regulation plan authorized by § 56-235.6, subject to Commission determination that such costs were prudently incurred. The allowance for funds used during construction and the return on investment shall be calculated utilizing the weighted average cost of capital, including the cost of debt and cost of equity used in determining the natural gas utility's base rates in effect during the construction period of the strategic natural gas facility.

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

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

A. Whenever a certificate is required pursuant to § 56-265.2 for the construction of a pipeline for the transmission or distribution of manufactured or natural gas, the Commission shall consider the effect of the pipeline on the environment, public safety, and economic development in the Commonwealth, and may establish such reasonably practical conditions as may be necessary to minimize any adverse environmental or public safety impact. In such proceedings, the Commission shall receive and consider all reports by state agencies concerned with environmental protection; and, if requested by any county or municipality in which the pipeline is proposed to be constructed, local comprehensive plans that have

been adopted pursuant to Article 3 (§ 15.2-2223 et seq.) of Chapter 22 of Title 15.2.

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

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

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

E. If a significantly different route is determined more desirable after the giving of the notice required in subsection B of this section, the Commission shall cause notice of the new route or routes to be published and mailed in accordance with subsection B of this section. The Commission shall thereafter comply with the provisions of this section to the full extent necessary to give interested parties 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 then in effect 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. 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, as set out by appropriate asset class. 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 or of associated facilities that may be retired upon depletion of natural gas reserves;

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). 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 reserves, production facilities (including equipment required to prepare the natural gas for use), gathering, transmission, and, within the natural gas utility's certificated service territory, any distribution pipelines necessary to deliver the reserves, and above-ground and below-ground storage used in the delivery of gas to existing natural gas transmission pipelines or distribution systems.

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

B. A natural gas utility shall have the right to recover eligible natural gas supply infrastructure costs on an ongoing basis through the gas cost component of the utility's rate structure or other recovery mechanism approved by the Commission, provided that any such mechanism shall properly allocate costs. Natural gas utilities using the cost of service methodology set forth in § 56-235.2 or a performance-based regulation plan authorized by § 56-235.6 shall be eligible to file a plan. The plan shall include a timeline for the investment and completion of the proposed eligible natural gas supply infrastructure projects; provide for an estimated schedule for recovery of the related eligible natural gas supply infrastructure costs through the gas cost component of the utility's rate structure or other mechanism, including proposed depreciation rates for investments in non-distribution asset classes and how any revenue gains from the use of the pipelines by third parties will be used to offset eligible natural gas supply infrastructure costs; and demonstrate that the plan is in the public interest with due consideration to providing a portion of the utility's delivered supply at prices at or below the long-term projections as available and defined in the natural gas utility's filing, or reduction in the utility's overall supply risk, or reduction in the utility's overall portfolio price volatility, or a combination thereof. No project may provide an annual volume of natural gas that exceeds 12.5 percent of the natural gas utility's annual firm sales demand, and no combination of projects may provide an annual volume of natural gas that exceeds 25 percent of the natural gas utility's annual firm sales demand. The natural gas utility's weather-normalized firm sales demand for the calendar year preceding the application shall be deemed to establish the annual firm sales demand for the purposes of calculating the volume and volumetric limits of projects. In no case shall any investment in reserves exceed 20 years. The Commission shall approve such a plan upon a finding that it is in the public interest after notice and an opportunity for hearing in accordance with the provisions of this chapter.

C. In addition to the items included in the plan as specified in subsection B, the plan may provide the utility with an option to receive the gas or sell the gas at market prices. A utility proposing this option as part of its plan shall propose how any revenue gains from the sale of the gas will be used to reduce the cost of gas to its customers. The Commission shall approve or deny, within 180 days, a natural gas utility's initial application for a natural gas supply infrastructure 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. If the plan is filed as part of a general 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, then the Commission shall approve or deny the plan concurrent with or as part of the general rate case decision.

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

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

F. Costs recovered pursuant to this section shall be in addition to all other costs that the natural gas utility is permitted to recover and shall not be considered an offset to other Commission-approved costs of service or revenue requirements.