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DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 59

AN ACT TO AMEND TITLE 26 OF THE DELAWARE CODE RELATING TO PUBLIC UTILITIES AND UTILITY RATES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Subchapter III, Chapter 1, Title 26 of the Delaware Code by making deletions as shown by
2 strike through and insertions as shown by underline as follows:

3 § 302. Determination of rate base.

4 The Commission may, from time to time, ascertain and determine the rate base of any public utility whenever, in
5 the judgment of the Commission, it is necessary so to do for the purpose of carrying out this chapter, and in making such
6 determination the Commission may have access to and use any books, documents, or records in the possession of any
7 department, board, commission or agency of this State or any political subdivision thereof. In ascertaining and determining
8 the rate base, the Commission may determine every fact, matter, or thing which, in its judgment, does or may have any
9 bearing thereon.

10 If a water utility is not, pursuant to § 122(3)c. of Title 16, under review concerning its water system's ability to
11 provide adequate service to its customers under its present certificates of public convenience and necessity or subject to a
12 review by the Commission of the appropriate rates to be charged by the water utility in light of the quality of service being
13 provided to its customers, the Commission will include in the utility's rate base, treat as used and useful utility plant, and,
14 accordingly, allow to be fully recovered in the utility's rates without imputation of revenues, all just and reasonable, and
15 prudent costs which are incurred by the water utility, ~~in the exercise of its good faith business judgment~~, in constructing
16 facilities (including without limitation supply, treatment and transmission facilities) to serve the needs of existing customers
17 or of persons who are reasonably anticipated by the water utility to be its customers within 3 years from the date used by
18 the Commission to recognize rate base in the rate proceeding. The number of customers reasonably anticipated to be added
19 within that 3-year period will consist of customer projections which are relied on by the utility and are generated by
20 professional engineers or planners, governmental or regulatory agencies, officials or authorities, or the water utility itself,

21 and which are not arbitrary and capricious. If the water utility does not, by the end of the 3-year period after the date used
22 by the Commission to recognize rate base in the rate proceeding, reach at least 75% of the total number of customers
23 originally anticipated to be served by the facilities, the Commission may only then require the water utility to impute
24 revenues and then only to the extent of the number of customers it originally anticipated to be served by the facilities but
25 who have not, as of the end of the 3-year period, been added.

26 § 307. Burden of proof; speedy determination.

27 (a) In any proceeding upon the motion of the Commission, or upon complaint, or upon application of a public
28 utility, involving any proposed or existing rate of any public utility, or any proposed change in rates, the burden of proof to
29 show that the rate involved is just and reasonable, and prudent, which requires a showing that the rate involved allows for
30 recovery of only those costs or expenses prudently incurred, is upon the public utility. In making the determination of
31 whether a cost or expense was prudently incurred, the Commission must consider the objective reasonableness of the cost
32 or expense incurred, based on what the public utility knew or reasonably should have known at the time the cost or expense
33 was incurred. The Commission may determine that the cost or expense incurred is only partially prudent, and may adjust
34 the elements of rate base, operating expenses, or fuel costs accordingly to reflect that determination.

35 (b) The public utility shall have the burden of proof in justifying every accounting entry of record questioned by
36 the Commission which may suspend any charge or credit pending submission of satisfactory and sufficient proof in support
37 thereof by the public utility.

38 (c) The Commission shall give preference to the hearing and decision of any rate proceeding over all other
39 proceedings and decide the same as speedily as possible.

40 § 309. Rate change by Commission initiative.

41 (a) The Commission may, after hearing, upon notice, by order in writing, fix just and reasonable individual rates,
42 joint rates, charges or schedules thereof, as well as commutation, mileage and other special rates, which shall be imposed,
43 observed and followed thereafter by any public utility whenever the Commission determines any existing individual rate,
44 joint rate, toll, charge or schedule thereof, or commutation, mileage, or other special rate to be unjust, unreasonable,
45 imprudent, insufficient, or unjustly discriminatory or preferential.

46 (b) No order of the Commission requiring a change in rates shall become operative until at least 30 days after
47 service thereof except upon the written consent of the public utility affected.

48 § 311. Determination of rate by Commission. If, after hearing, the Commission finds any existing or proposed rate
49 unjust, unreasonable, imprudent, or unjustly discriminatory, or in any wise in violation of law, the Commission shall
50 determine the just and reasonable rate to be charged or applied by the utility for the service in question, and shall fix the

51 same by order to be served upon the utility; and such rate shall thereafter be observed until changed, as provided in this
52 chapter. In determining the just and reasonable rate to be charged, the Commission shall consider the revenue needs of the
53 utility, its past and projected rates of return on its rate base, or, when appropriate, its operating ratio.

54 Section 2. Amend § 201(e), Subchapter II, Chapter 1, Title 26 of the Delaware Code by making deletions as
55 shown by strike through and insertions as shown by underline as follows:

56 § 201. General jurisdiction and powers.

57 (e) (1) In the exercise of supervision and regulation over public utilities, the Commission may, upon application or
58 on its own motion, after notice and hearing, alter, in whole or in part, its supervision and regulation over some or all public
59 utility products or services and over some or all public utilities to the extent necessary to promote and sustain adequate
60 service at just and reasonable, and prudent rates, where the Commission determines that alternatives to supervision and
61 regulation including the competitive provision of such products and services are in the public interest. Alternatives include,
62 but are not limited to, incentive regulation, earnings sharing, categorization of services for the purposes of pricing, price
63 caps, price indexing, ranges of authorized returns and different returns for different services. The Commission is
64 specifically authorized to depart from rate base, rate of return regulation when it is in the public interest and when such
65 departure is found to promote just and reasonable, and prudent rates.

66 Section 3. This Act takes effect on January 1, 2026 following its enactment into law.

SYNOPSIS

Public utilities are regulated monopolies. Practically speaking, a public utility has no competition in its service territory and, therefore, does not face the economic risks that a for-profit, non-utility company must face. By law, a public utility is authorized the opportunity to earn a reasonable rate of return on the costs it incurs in operating its business.

Under the current Public Utilities Code, in determining the rates that public utilities may charge customers, the Delaware Public Service Commission must apply the “business judgment rule” standard in deciding which costs may be included in a utility’s rate base. Forty-eight (48) states in the United States apply the “prudence” standard when setting utility rates, not the “business judgement rule” standard that is applied in Delaware. The more costs that are included in rate base, the higher the rates that are charged to utility customers. Under the “business judgment rule” standard, the Public Service Commission may not disallow the inclusion of a cost in rate base, even though the cost was incurred imprudently. For example, a utility may decide to expand the size of its facilities, but overbuilds those facilities at a cost of \$3 million, even though a smaller \$1 million expansion would be adequate to serve its customers and anticipated future growth. Under the business judgment rule, the Public Service Commission is not able to deny recovery of any part of the cost of the expanded facility and it will be included in rate base. Consequently, customer utility bills have been increasing and could continue to increase significantly. Amending the Public Utility Code so that the “prudence” standard applies, would give the Public Service Commission the ability to deny, in whole or in part, certain expenses and costs, which can lead to less frequent and less impactful rate increases.

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