SPONSOR: Sen. McDowell & Sen. Poore & Rep. Paradee & Rep. Longhurst & Sen. Henry
Sens. Cloutier, Hocker; Reps. Carson, Heffernan, Hudson, Q. Johnson, Smyk

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 80

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

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

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

~~§ 315 Utility facility relocation charge.~~

~~(a) The following definitions shall apply in this section:~~

~~(1) "Eligible utility facility relocations" means new, used and useful utility plant or facilities of an electric or natural gas utility that:~~

~~a. Do not include that portion of any plant or facilities used to increase capacity of or connect to the transmission or distribution system to serve new or additional load;~~

~~b. Are in service; and~~

~~c. Were not included in the utility's rate base in its most recent general rate case; and which~~

~~d. Relocate, as required or necessitated by Department of Transportation or other government agency projects, without reimbursement existing facilities, including but not limited to, mains, lines and services, whether underground or aerial. For purposes of this subparagraph (1)d. of this section, "existing facilities" and "relocate" include the physical relocation of existing facilities and also include removal, abandonment or retirement of existing facilities and the construction of new facilities in a relocated location.~~

~~(2) "Pretax return" means the revenues necessary to:~~

~~a. Produce net operating income equal to the electric or natural gas utility's weighted cost of capital as established in the most recent general rate proceeding for that utility multiplied by the net original cost of eligible utility facility relocations. At any time the Commission by its own motion, or by motion of the electric or natural gas utility, Commission staff or the Public Advocate, may determine to revisit and, after hearing~~

~~without the necessity of a general rate filing reset the UFRC rate to reflect the affected utility's current cost of capital. The UFRC rate shall be adjusted back to the date of the motion to reflect any change in the cost of capital determined by the Commission through this process;~~

~~b. Provide for the tax deductibility of the debt interest component of the cost of capital; and~~

~~c. Pay state and federal income taxes applicable to such income.~~

~~(3) "UFRC costs" means depreciation expenses and pretax return associated with eligible utility facility relocations.~~

~~(4) "UFRC rate" refers to utility facility relocation charge.~~

~~(5) "UFRC revenues" means revenues produced through a UFRC exclusive of revenues from all other rates and charges.~~

~~(b) Notwithstanding other sections of this subchapter, electric and natural gas utilities subject to the regulation of the Public Service Commission under this title may file with the Commission rate schedules establishing a UFRC rate that will allow for the automatic adjustment of the electric or natural gas utility's basic rates and charges to provide recovery of UFRC costs on an annual basis.~~

~~(c) Any electric or natural gas utility that files under subsection (b) of this section will be subject to the same statutory requirements of a public water utility seeking to implement or change a DSIC rate found under § 314(b)(1) et seq. of this title, except that such statutory requirements will apply to the UFRC rate and that the level of increase permitted under § 314(b)(7) of this title is limited to the portion of the customer's charge related to the delivery or distribution of natural gas or electricity.~~

~~(d) The UFRC rate shall not be available for application to the electric rates of Delmarva Power & Light Company or its successors until July 1, 2006, and shall also not be available for application to the electric rates of Delaware Electric Cooperative or its successors until July 1, 2005.~~

~~(e) This section applies only to regulated natural gas and electric utilities that file general rate cases with the Public Service Commission. With respect to a telecommunications service provider electing to be governed under subchapter VII-A of this chapter, upon application by such service provider, utility facility relocation costs not otherwise reimbursed under § 143 of Title 17 shall be considered by the Commission under § 707(c)(6) of this title.~~

~~(f) The Commission may adopt rules and regulations, not inconsistent with this title, that the Commission finds reasonable or necessary to administer a UFRC.~~

§ 315 Electric and Natural Gas Utility Distribution System Improvement Charge.

(a) The following definitions shall apply in this section:

(1) As used in this section, "DSIC rate" refers to a distribution system improvement charge.

(2) As used in this section, "DSIC costs" means depreciation expenses, and pretax return associated with eligible distribution system improvements.

(3) As used in this section, "DSIC revenues" means revenues produced through a DSIC exclusive of revenues from all other rates and charges.

(4) As used in this section, "eligible distribution system improvements" means new, used and useful electric or natural gas utility plant projects that:

a. Do not increase revenues by connecting the distribution system to new customers; and

b. Are in service; and

c. Were not included in the public utility's rate base in its most recent general rate case; and which

d. Replace or renew electric and natural gas distribution facilities serving existing customers that have reached their useful service life, are worn out, are in deteriorated condition, or which negatively impact the quality and reliability of service to the customer if not replaced or renewed; or

e. Extend or modify distribution facilities to eliminate conditions which negatively impact the quality and reliability of service to the customer; or

f. Relocate existing distribution facilities as a result of governmental actions that are not reimbursed, including but not limited to relocations of mains, lines and services, located in highway rights of way as required by the Department of Transportation; or

g. Place in service new or additional distribution facilities, plant or equipment required to meet changes in state or federal service quality standards, rules or regulations.

(5) As used in this section, "pretax return" means the revenues necessary to:

a. Produce net operating income equal to the public utility's weighted cost of capital as established in the most recent general rate proceeding for the public utility multiplied by the net original cost of eligible distribution system improvements. At any time the Commission, by its own motion, or by motion of the utility, Commission staff or the Public Advocate, may determine to revisit and, after hearing without the necessity of a general rate filing, reset a utility's cost of capital to reflect its current cost of capital. The DSIC rate shall be adjusted back to the date of the motion to reflect any change in the cost of capital determined by the Commission through this process;

b. Provide for the tax deductibility of the debt interest component of the weighted cost of capital; and

c. Pay state and federal income taxes applicable to such income.

(b) Notwithstanding other sections of this subchapter, a public utility providing electric and/or natural gas service may file with the Commission rate schedules establishing a DSIC rate that will allow for the automatic adjustment of the public utility's basic rates and charges to provide recovery of DSIC costs on a semiannual basis.

(1) The public utility shall serve the Division of the Public Advocate's office a copy of its filing at the time of its filing with the Commission. Customers of the public utility shall be notified of changes in the DSIC rate by including appropriate information with the first bill they receive following any change in the rate.

(2) Publication of notice of the filing is not required.

(3) The effective date of changes in the DSIC rate shall be January 1 and July 1 every year.

(4) The public utility shall file any request for a change in the DSIC rate and supporting data with the Commission at least 30 days prior to its effective date.

(5) The DSIC rate shall be adjusted semiannually for eligible distribution system improvements placed in service during the 6-month period ending 2 months prior to the effective date of changes in the DSIC rate.

(6) The DSIC rate shall be expressed as a percentage carried to 2 decimal places and applied to the total distribution base rate amount billed to each customer under the public utility's otherwise applicable rates and charges.

(7) The DSIC rate applied between base rate filings shall be capped at 7.5% of the distribution base rate amount billed to customers under otherwise applicable rates and charges, but the DSIC rate increase applied shall not exceed 5% within any 12-month period.

(8) The DSIC Rate shall be subject to audit at intervals determined by the Commission. It will also be subject to annual reconciliation based on a period consisting of the 12 months ending December 31 of each year. The revenue received under the DSIC Rate for the reconciliation period shall be compared to the public utility's eligible costs for that period with the difference between revenue received and eligible costs for the period recouped or refunded, as appropriate, over a 1-year period commencing July 1 of each year. If the DSIC Revenues exceeded the DSIC eligible costs, such over-collections shall be refunded with interest.

(9) The DSIC Rate shall be reset to zero as of the effective date of new base rates that provide for the prospective recovery of the annual costs theretofore recovered under the DSIC rate.

(10) The DSIC Rate shall also be reset to zero if, in any quarter, data filed with the Commission by the public utility show that the public utility will earn a rate of return that exceeds the rate of return established in its last general rate filing or by Commission order pursuant to paragraph (a)(5)a. of this section, if such was determined subsequent to the final order in the utility's last general rate filing. Further, the DSIC rate shall be reinstated when such data show that the established rate of return is not exceeded and will not be exceeded if the DSIC rate is reinstated and reset.

(11) Any public utility filing for interim rate relief under this section must comply with all reasonable information requests related to its filing, or any other audits or proceedings conducted pursuant to this section and must do so on an expedited basis.

(c) The provisions of this section shall not be available to a public utility subject to a finding of the Commission that the public utility is unable or unwilling to provide safe, adequate and reliable service to its existing customers.

(d) The Commission may adopt rules and regulations, not inconsistent with this title, that the Commission finds reasonable or necessary to administer a DSIC**.** In the event an electric and/or natural gas utility applies for a DSIC before DSIC regulations specific to the particular utility are in place, then existing water DSIC regulations shall be applied to implement the utility's DSIC without delay.

SYNOPSIS

This Act replicates and extends to electric and natural gas utilities the same authority that has previously been granted to water utilities. This authority allows for the implementation of an interim rate mechanism already in existence for water utilities in an effort to reduce volatility and the costs to electric and natural gas customers.

By way of background, the General Assembly enacted § 314 of Title 26 of the Delaware Code in 2001 to provide an efficient interim rate mechanism to foster investments in needed infrastructure improvements for water utilities, including those mandated by government agencies. With this Act, the same provisions are now extended to public utilities providing electric and/or natural gas services. Doing so will help address concerns with the frequency and volatility of electricity and natural gas distribution rates, as well as the cost to customers of general rate proceedings. The Act requires annual audits and annual reconciliations and empowers Staff for the Public Service Commission and the Delaware Public Advocate to review such expenditures and raise concerns with the Commission should they exist.

Author: Senator McDowell