



Senate

General Assembly

File No. 150

January Session, 2003

Substitute Senate Bill No. 864

Senate, April 2, 2003

The Committee on Energy and Technology reported through SEN. PETERS of the 20th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING PERFORMANCE-BASED REGULATION OF ELECTRIC DISTRIBUTION COMPANIES AND GAS COMPANIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (c) of section 16-19kk of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2003*):

4 (c) Notwithstanding the provisions of subdivision (4) of subsection
5 (a) of section 16-19e, in a proceeding under subsection (a) of section 16-
6 19 the department shall consider for an electric, gas, telephone or
7 water public service company, as defined in section 16-1, in
8 establishing the company's authorized return within the range of
9 reasonable rates of return: Quality, reliability and cost of service
10 provided by the company, the reduced or shifted demand for
11 electricity, gas or water resulting from the company's conservation and
12 load management programs approved by the department, the
13 company's successful implementation of programs supporting

14 economic development of the state and the company's success in
15 decreasing or constraining dependence on the use of petroleum or any
16 other criteria consistent with the state energy or other policy. [The
17 department may also establish other performance-based incentives
18 both related and unrelated to the company's rate of return designed to
19 implement the purposes of said sections 16-19e, 16-19aa, 16-19kk to 16-
20 19oo, inclusive, and 16a-49.]

21 Sec. 2. Section 16-19a of the general statutes is repealed and the
22 following is substituted in lieu thereof (*Effective October 1, 2003*):

23 (a) [(1)] The Department of Public Utility Control shall, at intervals
24 of not more than four years from the last previous general rate hearing
25 of each gas, electric and electric distribution company having more
26 than seventy-five thousand customers, conduct a complete review and
27 investigation of the financial and operating records of each such
28 company and hold a public hearing to determine whether the rates of
29 each such company are unreasonably discriminatory or more or less
30 than just, reasonable and adequate, or that the service furnished by
31 such company is inadequate to or in excess of public necessity and
32 convenience or that the rates do not conform to the principles and
33 guidelines set forth in section 16-19e. In making such determination,
34 the department shall consider the gross and net earnings of such
35 company since its last previous general rate hearing, its retained
36 earnings, its actual and proposed capital expenditures, its advertising
37 expenses, the dividends paid to its stockholders, the rate of return paid
38 on its preferred stock, bonds, debentures and other obligations, its
39 credit rating, and such other financial and operating information as the
40 department may deem pertinent.

41 [(2)] (b) The department may conduct a general rate hearing in
42 accordance with subsection (a) of section 16-19, in lieu of the periodic
43 review and investigation proceedings required under [subdivision (1)
44 of this] subsection (a) of this section.

45 [(b) In the proceeding required under subdivision (1) of subsection
46 (a) of this section, the department may approve performance-based

47 incentives to encourage a gas or electric company to operate efficiently
48 and provide high quality service at fair and reasonable prices.
49 Notwithstanding subsection (a) of this section, if the department
50 approves such performance-based incentives for a particular company,
51 the department shall include in such approval a framework for
52 periodic monitoring and review of the company's performance in
53 regard to criteria specified by the department, which shall include, but
54 not be limited to, the company's return on equity, reliability and
55 quality of service. The department's periodic monitoring and review
56 shall be used in lieu of the periodic review and investigation
57 proceedings required under subdivision (1) of subsection (a) of this
58 section. If the department determines in the periodic monitoring and
59 review that a more extensive review of company performance is
60 necessary, the department may institute a further proceeding in
61 accordance with the purposes of this chapter, including a complete
62 review and investigation described in subdivision (1) of subsection (a)
63 of this section.]

64 Sec. 3. Subsection (b) of section 16-19j of the general statutes is
65 repealed and the following is substituted in lieu thereof (*Effective*
66 *October 1, 2003*):

67 (b) Notwithstanding subsection (a) of this section, the authority
68 shall require a portion of the staff to be made a party to proceedings
69 relating to (1) a rate amendment proposed pursuant to section 16-19 by
70 a public service company having more than seventy-five thousand
71 customers, (2) the approval of a performance-based [incentives] form
72 of regulation pursuant to [subsection (b) of section 16-19a] section 4 of
73 this act, or (3) the approval of any alternative form of regulation
74 pursuant to section 16-247k, provided the authority shall not require a
75 portion of the staff to be made a party to any proceeding described in
76 this subsection if the authority issues a notice of its intent not to do so
77 in writing. The notice shall include the reasons for not requiring a
78 portion of the staff to be made a party. Upon petition of any party so
79 noticed, the authority shall require a portion of the staff to be made a
80 party.

81 Sec. 4. (NEW) (*Effective October 1, 2003*) (a) For purposes of this
82 section, (1) "performance-based form of regulation" means any form of
83 regulation other than the traditional cost of service regulation
84 including, but not limited to, any rate determination or rate plan that
85 includes a mechanism under which the earnings of the public service
86 company are shared between the company and its ratepayers in any
87 manner, and (2) "direct financial benefits" means benefits that include,
88 but are not limited to, bill reductions and the accelerated payment of
89 any deferred costs approved in a previous rate case.

90 (b) The Department of Public Utility Control, either (1) on its own
91 initiative during a general rate hearing for an electric distribution
92 company or a gas company conducted pursuant to section 16-19 of the
93 general statutes or subsection (b) of section 16-19a of the general
94 statutes, as amended by this act, provided no rate determination or
95 rate plan for such companies implemented by the department prior to
96 the effective date of this section shall be subject to this section, or (2)
97 upon application by an electric distribution company or a gas
98 company, may implement a performance-based form of regulation for
99 such company in accordance with this section.

100 (c) If, during the term of its performance-based rate determination
101 or rate plan, a public service company is involved in a merger, the
102 department shall reexamine such rate determination or rate plan to
103 determine whether it should remain in place for the duration of its
104 term. The department may, as it deems necessary, adjust or terminate
105 the rate determination or rate plan. Such adjustment may include, but
106 not be limited to, an adjustment in the earnings sharing mechanism, if
107 any, of the rate determination or rate plan.

108 (d) The department shall not implement a performance-based form
109 of regulation for any electric distribution or gas company unless (1) the
110 earnings sharing mechanism of the performance-based rate
111 determination or rate plan, if any, provides that ratepayers receive
112 direct financial benefits accurately reflecting not less than one-half of
113 all company earnings above the return on equity allowed by the

114 department at each level of such earnings, (2) such rate determination
115 or rate plan includes objective quality and reliability of service
116 requirements consistent with industry standards, as well as periodic
117 review and monitoring of such requirements by the department and
118 penalties for failing to maintain those requirements, which penalties
119 may include modification, suspension or termination of such rate
120 determination or rate plan or monetary fines, (3) such rate
121 determination or rate plan includes a maximum return on equity not
122 greater than fifty per cent above the authorized return on equity, and
123 (4) such rate determination or rate plan has a maximum term of not
124 greater than four years. The maximum return on equity calculated
125 pursuant to this section shall include all company revenues, including,
126 but not limited to, those directed to ratepayers under any earnings
127 sharing mechanism.

128 (e) If, during the term of its performance-based rate determination
129 or rate plan, a company has, for six consecutive months, earned a
130 return on equity that exceeds the maximum return determined under
131 subdivision (3) of subsection (d) of this section, the department shall
132 reexamine such rate determination or rate plan to determine whether it
133 should remain in place for the duration of its term. The department
134 may, as it deems necessary, adjust or terminate such rate
135 determination or rate plan.

136 (f) During the term of a performance-based rate determination or
137 rate plan pursuant to this section, neither subsection (d) of section 16-
138 19 of the general statutes nor subsection (g) of section 16-19 of the
139 general statutes shall apply to the subject company.

140 Sec. 5. (*Effective from passage*) The Department of Public Utility
141 Control, in consultation with the Office of Consumer Counsel, shall,
142 within available appropriations, develop a process to enable and
143 encourage ratepayers and community-based organizations to
144 participate in regulatory proceedings before the department. The
145 department shall implement such process not later than October 1,
146 2003, and shall notify the joint standing committee of the General

147 Assembly having cognizance of matters relating to public utilities of
148 such implementation.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>from passage</i>

ET *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Consumer Counsel; Public Utility Control, Dept.	CC&PUCF - None	None	None

Note: CC&PUCF=Consumer Counsel and Public Utility Control Fund

Municipal Impact: None

Explanation

The bill requires the Department of Public Utility Control to modify its approval process for performance based utility rates and improve participation in its regulatory proceedings. Passage of the bill would not result in the need for an additional appropriation.

OLR Bill Analysis

sSB 864

AN ACT CONCERNING PERFORMANCE-BASED REGULATION OF ELECTRIC DISTRIBUTION COMPANIES AND GAS COMPANIES**SUMMARY:**

This bill modifies when and how the Department of Public Utility Control (DPUC) can approve performance-based rates for certain utilities. Under traditional regulation, rates are based on a utility's capital and operating costs. Under performance-based ratemaking (PBR), they reflect such variables as the utility's reliability and quality of service. The bill's provisions do not affect PBR plans that DPUC implements before October 1, 2003.

The bill also requires DPUC, in consultation with the Office of Consumer Counsel and within available appropriations, to develop a process to enable and encourage ratepayers and community groups to participate in DPUC regulatory proceedings. DPUC must develop the process by October 1, 2003 and notify the Energy and Technology Committee of its implementation.

EFFECTIVE DATE: October 1, 2003 for the PBR provisions and upon passage for DPUC's development of the community involvement process.

PERFORMANCE-BASED RATEMAKING***Water and Telephone Companies***

Under traditional regulation, DPUC sets rates to recover a utility's investment in facilities, the DPUC-authorized return on this investment, and the utility's operating expenses. By law, in a rate case DPUC must consider a wide range of performance factors, including quality and reliability of service, in setting the return allowed on the utility's investment within the range of reasonable rates of return. For example, if DPUC determined the range for a company was 10% to 12%, it could authorize a 12% return if the company's service is particularly good or 10% if it is mediocre. This provision applies to gas, water, and telephone, companies. Read literally, it no longer

applies to electric companies due to a change of nomenclature arising from the 1998 electric restructuring law.

The bill eliminates DPUC's authority, with regard to water and telephone companies, to establish other performance-based incentives designed to promote the state's energy and utility regulation goals, whether related to the rate of return or not. Another provision of the law, unaffected by the bill, allows DPUC to approve alternative forms of regulation for telephone company services that are not fully competitive. These alternative forms of regulation, such as rate caps, are not necessarily based on the company's costs or performance.

Electric and Gas Companies

By law, DPUC must review the rates of electric and gas companies with more than 75,000 customers (all of the state's companies meet this threshold) no later than four years after the company's last rate case.

Under current law, DPUC can approve PBR incentives for a gas company as part of this review (technically, it can no longer do so for electric companies). If DPUC approves such incentives, it must monitor the reliability and quality of the company's service and the company's return on equity (ROE). (The company finances its capital investments with a mix of equity and debt.) This monitoring takes the place of the mandated review.

The bill allows DPUC to implement PBR for electric companies as part of a rate case or the rate review for electric and gas companies. It allows DPUC to implement PBR for electric and gas companies at any time at the company's request. Under the bill, PBR is any non-traditional form of regulation. It can include a rate plan that includes a mechanism for sharing earnings between the company and its ratepayers.

The bill establishes the conditions under which DPUC can approve a PBR plan. It bars DPUC from approving PBR for an electric or gas company unless:

1. the earnings sharing mechanism, if any, requires that ratepayers receive direct financial benefits of at least half of the company's earnings above its authorized ROE (these benefits include bill reductions and accelerated payment of previously approved deferred costs);

2. the PBR plan includes objective quality and reliability requirements consistent with industry practices, periodic monitoring of these requirements by DPUC, and specified penalties for failing to maintain these requirements;
3. the plan caps the maximum ROE from all company revenues at 50% above the authorized ROE; and
4. the plan runs for no more than four years.

If a company earns more than 50% above its authorized ROE for six consecutive months, DPUC must review its plan. DPUC can adjust or terminate the plan under these circumstances.

While the plan is in effect, DPUC cannot approve interim rate increases as authorized by current law. DPUC is also not required to conduct the investigation required by current law on the need for an interim rate decrease if (1) the company has exceeded its authorized ROE by 1% or more for at least six consecutive months, (2) changes in tax law have significantly increased its actual ROE, or (3) DPUC finds that the company may be earning rates that are more than just, reasonable, and adequate. In the latter proceedings, under current law, the burden of proof is on the company.

If the company is involved in a merger while the PBR plan is in effect, DPUC must reexamine the plan to determine whether it should continue to the end of its term. DPUC can terminate the plan or adjust it, for example by adjusting the earnings sharing mechanism.

Under current law, DPUC must assign part of its staff to act as a party in certain proceedings (this allows the staff to put on its own witnesses and cross-examine the other parties' witnesses.) The bill extends this requirement to include the PBR proceedings it authorizes.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute

Yea 15 Nay 0

