



Senate

General Assembly

File No. 213

January Session, 2005

Substitute Senate Bill No. 995

Senate, April 7, 2005

The Committee on Energy and Technology reported through SEN. FONFARA of the 1st 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. Section 16-19kk of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2005*):

3 (a) The General Assembly finds that if the earnings of electric, gas,
4 telephone and water public service companies, as defined in section
5 16-1, are adversely affected by such companies' conservation and load
6 management programs or other programs promoting the state's
7 economic development, energy and other policy, those companies will
8 have a disincentive to implement such programs. The General
9 Assembly further finds that in order to further the implementation of
10 such programs the earnings of electric, gas, telephone and water
11 companies should be consistent with the principles and guidelines set
12 forth in sections 16-19e, 16-19aa and 16-19kk to 16-19oo, inclusive, as

13 amended by this act, and 16a-49 notwithstanding participation in
14 conservation and load management programs and other programs
15 authorized by the Department of Public Utility Control, promoting the
16 state's economic development, energy and other policy.

17 (b) The department shall complete, on or before December 31, 1991,
18 an investigation into the relationship between a company's volume of
19 sales and its earnings. The department shall, on or before July 1, 1993,
20 implement rate-making and other procedures and practices in order to
21 encourage the implementation of conservation and load management
22 programs and other programs authorized by the department
23 promoting the state's economic development, energy and other policy.
24 Such procedures to implement a modification or elimination of any
25 direct relationship between the volume of sales and the earnings of
26 electric, gas, telephone and water companies may include the adoption
27 of a sales adjustment clause pursuant to subsection (i) of section 16-
28 19b, or other adjustment clause similar thereto. The department's
29 investigation shall include a review of its regulations and policies to
30 identify any existing disincentives to the development and
31 implementation of cost effective conservation and load management
32 programs and other programs promoting the state's economic
33 development, energy and other policy.

34 (c) Notwithstanding the provisions of subdivision (4) of subsection
35 (a) of section 16-19e, in a proceeding under subsection (a) of section 16-
36 19 the department shall consider for an electric, gas, telephone or
37 water public service company, as defined in section 16-1, in
38 establishing the company's authorized return within the range of
39 reasonable rates of return: Quality, reliability and cost of service
40 provided by the company, the reduced or shifted demand for
41 electricity, gas or water resulting from the company's conservation and
42 load management programs approved by the department, the
43 company's successful implementation of programs supporting
44 economic development of the state and the company's success in
45 decreasing or constraining dependence on the use of petroleum or any
46 other criteria consistent with the state energy or other policy. [The

47 department may also establish other performance-based incentives
48 both related and unrelated to the company's rate of return designed to
49 implement the purposes of said sections 16-19e, 16-19aa, 16-19kk to 16-
50 19oo, inclusive, and 16a-49.]

51 (d) In any proceeding before the department in which a company
52 seeks beneficial rate treatment pursuant to this section, the Office of
53 Consumer Counsel may retain independent experts to provide
54 analysis, evaluation and testimony to address the issue of the
55 appropriateness of such beneficial treatment under consideration in
56 the proceeding, and all reasonable and proper expenses, to provide
57 such analysis, evaluation and testimony, to a maximum of fifty
58 thousand dollars per proceeding, shall be paid by the company and
59 shall be proper rate-making expenses.

60 (e) The Department of Public Utility Control may adopt regulations,
61 in accordance with the provisions of chapter 54, to carry out the
62 purposes of this section.

63 Sec. 2. Section 16-19a of the general statutes is repealed and the
64 following is substituted in lieu thereof (*Effective October 1, 2005*):

65 (a) [(1)] The Department of Public Utility Control shall, at intervals
66 of not more than four years from the last previous general rate hearing
67 of each gas, electric and electric distribution company having more
68 than seventy-five thousand customers, conduct a complete review and
69 investigation of the financial and operating records of each such
70 company and hold a public hearing to determine whether the rates of
71 each such company are unreasonably discriminatory or more or less
72 than just, reasonable and adequate, or that the service furnished by
73 such company is inadequate to or in excess of public necessity and
74 convenience or that the rates do not conform to the principles and
75 guidelines set forth in section 16-19e. In making such determination,
76 the department shall consider the gross and net earnings of such
77 company since its last previous general rate hearing, its retained
78 earnings, its actual and proposed capital expenditures, its advertising
79 expenses, the dividends paid to its stockholders, the rate of return paid

80 on its preferred stock, bonds, debentures and other obligations, its
81 credit rating, and such other financial and operating information as the
82 department may deem pertinent.

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

87 [(b) In the proceeding required under subdivision (1) of subsection
88 (a) of this section, the department may approve performance-based
89 incentives to encourage a gas or electric company to operate efficiently
90 and provide high quality service at fair and reasonable prices.
91 Notwithstanding subsection (a) of this section, if the department
92 approves such performance-based incentives for a particular company,
93 the department shall include in such approval a framework for
94 periodic monitoring and review of the company's performance in
95 regard to criteria specified by the department, which shall include, but
96 not be limited to, the company's return on equity, reliability and
97 quality of service. The department's periodic monitoring and review
98 shall be used in lieu of the periodic review and investigation
99 proceedings required under subdivision (1) of subsection (a) of this
100 section. If the department determines in the periodic monitoring and
101 review that a more extensive review of company performance is
102 necessary, the department may institute a further proceeding in
103 accordance with the purposes of this chapter, including a complete
104 review and investigation described in subdivision (1) of subsection (a)
105 of this section.]

106 Sec. 3. Section 16-19j of the general statutes is repealed and the
107 following is substituted in lieu thereof (*Effective October 1, 2005*):

108 (a) The Public Utilities Control Authority may require a portion of
109 the staff of the department to be made a party to any proceeding.

110 (b) Notwithstanding subsection (a) of this section, the authority
111 shall require a portion of the staff to be made a party to proceedings

112 relating to (1) a rate amendment proposed pursuant to section 16-19 by
113 a public service company having more than seventy-five thousand
114 customers, (2) the approval of performance-based [incentives] form of
115 regulation pursuant to [subsection (b) of section 16-19a] section 4 of
116 this act, or (3) the approval of any alternative form of regulation
117 pursuant to section 16-247k, provided the authority shall not require a
118 portion of the staff to be made a party to any proceeding described in
119 this subsection if the authority issues a notice of its intent not to do so
120 in writing. The notice shall include the reasons for not requiring a
121 portion of the staff to be made a party. Upon petition of any party so
122 noticed, the authority shall require a portion of the staff to be made a
123 party.

124 (c) The provisions of section 4-181 shall apply to any proceeding in
125 which a portion of department staff is made a party.

126 (d) The department staff assigned to participate as a party to any
127 rate proceedings described in subdivision (1) of subsection (b) of this
128 section shall review the proposed rate amendment filed by the
129 company and shall file with the commissioners of the department
130 proposed modifications of the rate amendment. Such modifications
131 shall carry out the purposes of subsection (a) of section 16-19e and
132 section 16a-35k. Such staff shall appear and participate in the
133 proceedings in support of its proposed modifications and may employ
134 outside consultants knowledgeable in the utility regulation field.

135 Sec. 4. (NEW) (*Effective October 1, 2005*) (a) For purposes of this
136 section, (1) "performance-based form of regulation" means any form of
137 regulation other than the traditional cost of service regulation
138 including, but not limited to, any rate determination or rate plan that
139 includes a mechanism under which the earnings of the public service
140 company are shared between the company and its ratepayers in any
141 manner, and (2) "direct financial benefits" means benefits that include,
142 but are not limited to, bill reductions and the accelerated payment of
143 any deferred costs approved in a previous rate case.

144 (b) The department may implement a performance-based form of

145 regulation for an electric distribution company or a gas company in
146 accordance with this section either during a general rate hearing for an
147 electric distribution company or a gas company conducted pursuant to
148 section 16-19 of the general statutes or subsection (b) of section 16-19a
149 of the general statutes, as amended by this act, provided no rate
150 determination or rate plan for such companies implemented by the
151 department before the effective date of this section shall be subject to
152 this section.

153 (c) The department shall not implement a performance-based form
154 of regulation for any electric distribution or gas company unless (1) the
155 earnings sharing mechanism of the performance-based form of
156 regulation, if any, provides that ratepayers receive direct financial
157 benefits from not less than one-half of all company earnings above the
158 return on equity allowed by the department, (2) such rate
159 determination or rate plan includes objective performance
160 measurements based on reliability, safety, operational efficiency or
161 optimal customer rates, as well as periodic review and monitoring of
162 such measurements by the department and penalties for failing to
163 maintain those measurements, which penalties may include
164 modification, suspension or termination of such rate determination or
165 rate plan or monetary fines, (3) such rate plan includes a provision that
166 if a company has, for six consecutive months, earned a return on
167 equity greater than two hundred fifty basis points above the
168 authorized return on equity, the department shall reexamine such rate
169 determination or rate plan to determine whether it should remain in
170 place for the duration of its term. The department may, as it deems
171 necessary, adjust or terminate such rate plan. Such rate plan has a
172 maximum term of not greater than five years.

173 (d) During the term of a performance-based rate form of regulation
174 pursuant to this section, subsection (d) of section 16-19 of the general
175 statutes or subsection (g) of section 16-19 of the general statutes shall
176 not apply to the subject company.

177 Sec. 5. (NEW) (*Effective from passage*) The Department of Public

178 Utility Control, in consultation with the Office of Consumer Counsel,
 179 shall, within available appropriations, develop a process to enable and
 180 encourage ratepayers and community-based organizations to
 181 participate in regulatory proceedings before the department. The
 182 department shall implement such process on or before October 1, 2005,
 183 and shall notify the joint standing committee of the General Assembly
 184 having cognizance of matters relating to public utilities of such
 185 implementation.

186 Sec. 6. (NEW) (*Effective October 1, 2005*) The department shall, in
 187 implementing the provisions of subsection (c) of section 16-244c of the
 188 general statutes, provide economic incentives to implement cost-
 189 effective conservation and load management programs.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	16-19kk
Sec. 2	<i>October 1, 2005</i>	16-19a
Sec. 3	<i>October 1, 2005</i>	16-19j
Sec. 4	<i>October 1, 2005</i>	New section
Sec. 5	<i>from passage</i>	New section

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-Effect	FY 06 \$	FY 07 \$
Public Utility Control, Dept.; Consumer Counsel	CC&PUCF - None	None	None
Various	Various - Cost/Savings	Potential Indeterminate	Potential Indeterminate

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

Municipal Impact:

Municipalities	Effect	FY 06 \$	FY 07 \$
Various Municipalities	Cost/Savings	Potential Indeterminate	Potential Indeterminate

Explanation

The bill allows the Department of Public Utility Control (DPUC) to implement performance based regulation (PBR) for electric and gas companies during a rate case or four-year review. Under the bill, PBR can include any approach other than traditional cost of service regulation, including any rate determination or rate plan that has a mechanism that shares the earnings of a company between its ratepayers and shareholders. It is uncertain whether rates would increase or decrease as a result of PBR and how much they would change due to the flexibility that the bill affords DPUC in rate determination. To the extent that rates would change, this could result in a potential cost or savings for the state and various municipalities as ratepayers.

OLR Bill Analysis

sSB 995

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

This bill requires the Department of Public Utility Control (DPUC) to base rates for electric and gas utilities on their performance, rather than their costs. It limits DPUC's options regarding performance-based ratemaking (PBR) for telephone and water utilities.

By law, electric utilities must serve customers who do not choose a competitive supplier. The bill requires DPUC to provide economic incentives to implement cost-effective conservation and load management programs in implementing these provisions.

The bill requires DPUC, in consultation with the Office of Consumer Counsel, to develop a process, within available appropriations, to encourage ratepayers and community organizations to participate in DPUC regulatory procedures. DPUC must implement the procedures by October 1, 2005, and notify the Energy and Technology Committee upon implementation.

EFFECTIVE DATE: October 1, 2005, except for the provision on encouraging participation in DPUC proceedings, which is effective upon passage.

PERFORMANCE-BASED REGULATION

Under traditional rate regulation, a utility's rates are based on the costs it incurs. A utility is allowed to earn a rate of return on its capital investments, e.g., electric or gas distribution lines. There may be separately allowed rates of return on company equity and debt that is used to finance the investments. The company may recover its on-going expenses, e.g., for staff, but does not earn a return on these costs.

Under current law, DPUC must consider, as an alternative to traditional ratemaking for electric, gas, telephone, and water utilities,

basing the company's authorized rate of return on various performance factors. These include the quality and reliability of the company's service, the effectiveness of its conservation and economic development programs, and other policy-related factors.

The bill eliminates provisions that allow DPUC to establish:

1. other performance-based incentives in the context of a rate case, whether associated with the utility's rate of return or not, to promote state policies; and
2. performance incentives for electric and gas utilities, subject monitoring and review requirements, in the context of the review that DPUC must conduct within four years of a rate case.

Instead, the bill allows DPUC to implement PBR for electric and gas companies during a rate case or four-year review. This form of regulation can include any approach other than traditional cost of service regulation, including any rate determination or rate plan that has a mechanism that shares a company's earnings between its ratepayers and shareholders. The bill does not affect any rate determination or rate plan adopted before its effective date (October 1, 2005).

DPUC cannot implement this form of regulation unless the earning sharing mechanism, if any, provides that ratepayers receive direct financial benefits from at least half of the company's earnings above its authorized return on equity. These benefits can include such things as bill reductions and accelerated payment of any deferred costs that DPUC approved in a previous rate case.

In addition, the rate determination or plan must include:

1. objective performance measurements of reliability, safety, operational efficiency, or optimal rates;
2. periodic monitoring of these measurements by DPUC;
3. penalties for failing to maintain these measurements, which can include the modification, suspension, or termination of the rate determination or plan or fines.

Rate plans subject to this form of regulation can be in effect for up to run for no more than five years. If the company earns a return on equity that is more than 2.5% above its authorized rate for six consecutive months, DPUC must reexamine the plan it to determine whether it should remain in place for the rest of its term. (It appears that the provision also applies to rate determinations.) DPUC can, as it considers necessary, adjust or terminate a rate plan.

During the term of performance-based regulation, the company is not subject provisions of current law dealing with interim rate increases and decreases.

By law, DPUC must make part of its staff a party to certain proceedings. The staff often become involved in developing settlements, which are subject to the approval of the DPUC commissioners. The bill imposes this requirement in all PBR proceedings rather than just in those conducted in conjunction with the rate review that DPUC must hold within four years following a rate case.

COMMITTEE ACTION

Energy and Technology Committee

Joint Favorable Substitute

Yea 14 Nay 2