

H. B. 2809

(By Delegates Fleischauer, Manypenny,
Doyle and Marshall)

[Introduced January 24, 2011; referred to the
Committee on Energy, Industry and Labor, Economic
Development and Small Business then the Judiciary.]

A BILL to amend and reenact §24-2-1e and §24-2-11a of the Code of
West Virginia, 1931, as amended, all relating to not allowing
accelerated rate of recovery for adverse effects of
constructing transmission facilities and revising the
definition of need.

Be it enacted by the Legislature of West Virginia:

That §24-2-1e and §24-2-11a of the Code of West Virginia,
1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

**§24-2-1e. Rate recovery for construction of electric transmission
facilities.**

(a) In order to encourage the construction of transmission
facilities necessary to transmit electric power from generating
facilities located in this state to areas where such power can be
economically marketed, the commission may allow an electric utility
accelerated rate recovery for transmission facilities constructed

1 or upgraded for the purpose of increasing the capacity to transmit
2 electric power to areas outside the utility's service territory
3 where such power can be economically marketed. In allowing
4 accelerated rate recovery, the commission shall include the impact
5 of the investment in transmission facilities on any investment
6 equalization agreement in which the utilities participate.

7 (b) The commission shall not allow accelerated rate recovery
8 if the commission finds that the construction of the transmission
9 facilities creates an adverse effect on ratepayers in West
10 Virginia, reduces competitiveness of business or industries in West
11 Virginia, or has a significant effect on the environment.

12 **§24-2-11a. Requirement for certificate of public convenience and**
13 **necessity before beginning construction of high**
14 **voltage transmission line; contents of application;**
15 **notice; hearing; criteria for granting or denying**
16 **certificate; regulations.**

17 (a) No public utility, person or corporation may begin
18 construction of a high voltage transmission line of two hundred
19 thousand volts or over, which line is not an ordinary extension of
20 an existing system in the usual course of business as defined by
21 the Public Service Commission, unless and until it or he or she has
22 obtained from the Public Service Commission a certificate of public
23 convenience and necessity approving the construction and proposed
24 location of the transmission line.

1 (b) The application for the certificate shall be in the form
2 the commission prescribes and shall contain:

3 (1) A description, in such detail as the commission
4 prescribes, of the location and type of line facilities which the
5 applicant proposes to construct;

6 (2) A statement justifying the need for the facilities;

7 (3) A statement of the direct and indirect environmental
8 impact of the line facilities;

9 (4) A statement of the direct and indirect impacts on
10 emissions of greenhouse gases anticipated from construction and
11 operation of such line facilities;

12 (5) A detailed analysis of reasonable alternatives to the
13 facility, including demand-side reduction programs; and

14 ~~(4)~~ (6) Other information the applicant considers relevant or
15 the commission requires.

16 (c) Upon the filing of the application, the applicant provides
17 written notification to each property owner within one mile of the
18 center line of the proposed transmission line via certified mail,
19 and shall publish, in the form the commission directs, as a Class
20 II legal advertisement in compliance with the provisions of article
21 three, chapter fifty-nine of this code, the publication area for
22 the publication to be each county in which any portion of the
23 proposed transmission line is to be constructed, a notice of the
24 filing of the application and that the commission may approve the

1 application unless within fifteen days after completion of
2 publication a written request for a hearing on the application has
3 been received by the commission from a person or persons alleging
4 that the proposed transmission line or its location is against the
5 public interest. If the request is timely received, the commission
6 shall set the matter for hearing on a date within sixty days from
7 completion of the notification and publication, and shall require
8 the applicant to provide written notice and publish notice of the
9 time and place of hearing in the same manner as is required for the
10 publication of notice of the filing of the application. At least
11 thirty business days before the deadline set by the Public Service
12 Commission to file a petition to intervene with regard to the
13 application, the applicant shall serve notice by certified mail to
14 all owners of surface real estate that lie within the preferred
15 corridor of the proposed transmission line. Notice received by a
16 named owner who is the recipient of record of the most recent tax
17 bill that has been issued by the county sheriff's office for a
18 parcel of land at the time of the filing of the application is
19 sufficient notice regarding that parcel for purposes of this
20 subsection.

21 (d) Within sixty days after the filing of the application, or
22 if hearing is held on the application, within ninety days after
23 final submission on oral argument or brief, the commission may
24 approve the application if it finds that the proposed transmission

1 line:

2 (1) Will economically, adequately and reliably contribute to
3 meeting the present and anticipated requirements for electric power
4 of the customers served by the applicant or is necessary and
5 desirable for present and anticipated reliability of service for
6 electric power for its service area or region;

7 (2) Will be in the best interest of West Virginia customers
8 and its citizens by striking an acceptable balance between power
9 transmission needs of the applicant, reasonable power needs of
10 electricity consumers in West Virginia and reasonable environmental
11 factors;

12 (3) Will not be visible from or cross within five miles of
13 state or federal designated scenic areas, including, but not
14 limited to, scenic rivers, scenic highways and scenic overlooks.;

15 and

16 ~~(3)~~(4) Will result in an acceptable balance between reasonable
17 power needs and reasonable environmental factors.

18 (e) The commission may impose conditions upon its approval of
19 the application, or modify the applicant's proposal, to achieve an
20 acceptable balance between reasonable power needs and reasonable
21 environmental factors.

22 (f) The provisions of this section do not apply to the
23 construction of line facilities which will be part of a
24 transmission line for which any right-of-way has been acquired

1 prior to January 1, 1973.

2 (g) The commission shall prescribe rules it considers proper
3 for the administration and enforcement of the provisions of this
4 section, which rules shall be promulgated in accordance with the
5 applicable provisions of chapter twenty-nine-a of this code.

6 (h) Notwithstanding any other provision of the law to the
7 contrary, the commission shall determine, in its discretion, which
8 transmission line or lines crossing above the Ohio River must be
9 marked to be made visible to airborne traffic flying in any area
10 where the lines exist, and shall promulgate rules requiring that
11 all public utilities or persons who install or maintain the lines
12 make the necessary markings.

NOTE: The purpose of this bill is to stop accelerated rate recovery because of adverse effects of constructing transmission facilities and revising the definition of need.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.