

WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2015



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 390

(SENATOR TRUMP, *ORIGINAL SPONSOR*)

[PASSED MARCH 13, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1k, relating to additional duties of the Public Service Commission; authorizing commission to approve expedited cost recovery of natural gas utility infrastructure projects deemed just and reasonable and in the public interest; making findings; establishing application and hearing process; and providing for rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24-2-1k, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF THE PUBLIC SERVICE COMMISSION.

§24-2-1k. Natural gas infrastructure expansion, development, improvement and job creation; findings; expedited process; requirements; rulemaking.

1 (a) The Legislature hereby finds that:

2 (1) West Virginia is rich in energy resources, which
3 provide many advantages to the state, its economy and its
4 citizens;

5 (2) West Virginia is experiencing significant growth in
6 the natural gas industry with the development of the
7 Marcellus and Utica shale;

8 (3) West Virginia's abundant natural gas reserves have
9 created, and will continue to create, many benefits to the state
10 and its citizens;

11 (4) Growth in the natural gas industry and its
12 accompanying benefits require West Virginia to be proactive
13 and increase the focus on the natural gas infrastructure in this
14 state in order for those benefits to flow to the state and its
15 citizens, including those citizens in areas unserved or
16 underserved by natural gas utilities;

17 (5) A comprehensive program of replacing, upgrading
18 and expanding infrastructure by natural gas utilities at
19 reasonable cost to ratepayers will benefit the customers of the
20 natural gas utilities, the public in West Virginia and the
21 economy of the state, as a whole;

22 (6) A natural gas utility infrastructure program will create
23 jobs, provide for continued and enhanced safety and
24 reliability of aging natural gas infrastructure, provide for
25 more economic natural gas utility service, and provide natural
26 gas utility service to new customers in areas of the state that
27 are unserved or underserved; and

28 (7) Natural gas utility infrastructure programs involve the
29 investment of capital and the incurrence of associated
30 incremental costs. Accordingly, in order for the natural gas
31 utility undertaking those infrastructure programs to attract the
32 necessary capital, the natural gas utility should be permitted
33 to recover the incremental rate of return, related income
34 taxes, depreciation and property taxes associated with the
35 infrastructure programs commencing with the implementation
36 of an infrastructure program approved by the commission
37 without waiting for a full base rate tariff filing as more fully
38 described in subsection (f) of this section.

39 (b) Natural gas utilities may file with the commission an
40 application for a multi-year comprehensive plan for
41 infrastructure replacements, upgrades and extensions.
42 Subject to commission review and approval, a plan may be
43 amended and updated by the natural gas utility as
44 circumstances warrant. The recovery of costs in support of
45 the plans shall be allowed in the manner set forth in this
46 section if the proposed plans have been found to be prudent
47 and useful.

48 (c) The application is in lieu of a proceeding pursuant to
49 section eleven of this article and shall contain the following:

50 (1) A description of the infrastructure program, in such
51 detail as the commission prescribes, and the projected annual
52 amount (in approximate line sizes and feet), general location,
53 type, and projected installation timing of the facilities that the
54 applicant proposes to replace, construct and/or improve;

55 (2) The projected net cost, on an annual basis, of the
56 replacement, construction or improvements;

57 (3) The projected starting date for the infrastructure
58 program;

59 (4) The projected numbers of potential new customers, if
60 any, that may be served by the infrastructure program and the
61 projected annual load of the customers;

62 (5) The projected cost of debt for the infrastructure
63 program funding and the projected capital structure for
64 infrastructure program funding;

65 (6) Testimony, exhibits or other evidence that
66 demonstrates the need for the replacement, construction or
67 improvement of facilities in order to provide and maintain
68 adequate, efficient, safe, reliable and reasonable natural gas
69 service;

70 (7) A proposed cost recovery mechanism consistent with
71 this section; and

72 (8) Other information the applicant considers relevant or
73 the commission requires.

74 (d) Upon filing of the application, the applicant shall
75 publish, in the form the commission directs, which form shall
76 include, but not be limited to, the anticipated rates and, if any,
77 rate increase under the proposal, by average percentage and
78 dollar amount for customers within a class of service, as a
79 Class I legal advertisement in compliance with the provisions
80 of article three, chapter fifty-nine of this code, the publication
81 area to be each county in which service is provided by the
82 natural gas utility, a notice of the filing of the application and
83 that the commission shall hold a hearing on the application
84 within ninety days of the notice; unless no opposition to the
85 rate change is received by the Public Service Commission
86 within one week of the proposed hearing date, in which case
87 the hearing can be waived, and issue a final order within one
88 hundred fifty days of the application filing date. However, if
89 the proposed infrastructure program includes a request for

90 extension of infrastructure into an unserved area and another
91 natural gas utility files to extend service to the same area, the
92 commission may move that extension request of each natural
93 gas utility into separate proceedings to be considered
94 concurrently and extend the time period for issuing a final
95 order on that portion of the proposed programs beyond the
96 one hundred fifty days.

97 (e) Upon notice and hearing, if required by the
98 commission, the commission shall approve the infrastructure
99 program and allow expedited recovery of costs related to the
100 expenditures as provided in subsection (f) of this section if
101 the commission finds that the expenditures and the associated
102 rate requirements are just, reasonable, not contrary to the
103 public interest and will allow for the provision and
104 maintenance of adequate, efficient, safe, reliable and
105 reasonably priced natural gas service.

106 (f) Upon commission approval, natural gas utilities will
107 be authorized to implement the infrastructure programs and
108 to recover related incremental costs, net of contributions to
109 recovery of return and depreciation and property tax expenses
110 directly attributable to the infrastructure program provided by
111 new customers served by the infrastructure program
112 investments, if any, as provided in the following:

113 (1) An allowance for return shall be calculated by
114 applying a rate of return to the average planned net
115 incremental increase to rate base attributable to the
116 infrastructure program for the coming year, considering the
117 projected amount and timing of expenditures under the
118 infrastructure program plus any expenditures in previous
119 years of the infrastructure program. The rate of return shall
120 be determined by utilizing the rate of return on equity
121 authorized by the commission in the natural gas utility's most
122 recent rate case proceeding or in the case of a settled rate

123 case, a rate of return on equity as determined by the
124 commission, and the projected cost of the natural gas utility's
125 debt during the period of the infrastructure program to
126 determine the weighted cost of capital based upon the natural
127 gas utility's capital structure.

128 (2) Income taxes applicable to the return allowed on the
129 infrastructure program shall be calculated for inclusion in
130 rates.

131 (3) Incremental depreciation and property tax expenses
132 directly attributable to the infrastructure program shall be
133 estimated for the upcoming year.

134 (4) Following commission approval of its infrastructure
135 program, a natural gas utility shall place into effect rates that
136 include an increment that recovers the allowance for return,
137 related income taxes, depreciation and property tax expenses
138 associated with the natural gas utility's estimated
139 infrastructure program investments for the upcoming year,
140 net of contributions to recovery of those incremental costs
141 provided by new customers served by the infrastructure
142 program investments, if any, ("incremental cost recovery
143 increment"). In each year subsequent to the order approving
144 the infrastructure program and an incremental cost recovery
145 increment, the natural gas utility shall file a petition with the
146 commission setting forth a new proposed incremental cost
147 recovery increment based on investments to be made in the
148 subsequent year, plus any under-recovery or minus any
149 over-recovery of actual incremental costs attributable to the
150 infrastructure program investments, for the preceding year.

151 (g) The natural gas utility may make any accounting
152 accruals necessary to establish a regulatory asset or liability
153 through which actual incremental costs incurred and costs
154 recovered through the rate mechanism are tracked.

155 (h) Natural gas utilities may defer incremental operation
156 and maintenance expenditures attributable to regulatory and
157 compliance-related requirements introduced after the natural
158 gas utility's last rate case proceeding and not included in the
159 natural gas utility's current base rates. In a future rate case,
160 the commission may allow recovery of the deferred costs
161 amortized over a reasonable period of time to be determined
162 by the commission provided the commission finds that the
163 costs were reasonable and prudently incurred and were not
164 reflected in rates in prior rate cases.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2015.

.....
Governor