

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2660**

BY DELEGATES ANDERSON, AZINGER, HOWELL, KELLY, J.,

WESTFALL, PETHTEL, STORCH, KELLY, D.,

SWARTZMILLER, NELSON AND HARSHBARGER

[Introduced January 24, 2019; Referred  
to the Committee on Energy.]

1 A BILL to amend and reenact §24-2-1k of the Code of West Virginia, 1931, as amended, relating  
 2 to the Public Service Commission; natural gas infrastructure; actual investment of capital  
 3 and costs; and how utility’s expedited cost recovery are calculated and determined.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 2. POWERS AND DUTIES OF 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 provide many advantages to the state,  
 3 its economy and its citizens;

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

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

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

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

15 (6) A natural gas utility infrastructure program will create jobs, provide for continued and  
 16 enhanced safety and reliability of aging natural gas infrastructure, provide for more economic  
 17 natural gas utility service, and provide natural gas utility service to new customers in areas of the  
 18 state that are unserved or underserved; and

19 (7) Natural gas utility infrastructure programs involve the investment of capital and the

20 incurrence of associated ~~incremental~~ costs. Accordingly, in order for the natural gas utility  
21 undertaking those infrastructure programs to attract the necessary capital, the natural gas utility  
22 should be permitted to recover the ~~incremental~~ rate of return, related income taxes, depreciation  
23 and property taxes associated with the infrastructure programs commencing with the  
24 implementation of an infrastructure program approved by the commission without waiting for, or  
25 otherwise being subject to a commission requirement for, a full base rate tariff filing as more fully  
26 described in §24-2-1k(f) of this code.

27 (b) Natural gas utilities may file with the commission an application for a multi-year  
28 comprehensive plan for infrastructure replacements, upgrades and extensions. Subject to  
29 commission review and approval, a plan may be amended and updated by the natural gas utility  
30 as circumstances warrant. The recovery of costs in support of the plans and applications made  
31 under this section shall be allowed in the manner set forth in this section if the proposed plans  
32 have been found to be prudent and useful.

33 (c) ~~The Applications is~~ made under this section are in lieu of a proceeding pursuant to  
34 section eleven of this article and shall contain the following:

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

39 (2) The actual and projected net capital investments and its cost, on an annual basis, of  
40 the replacement, construction or improvements;

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

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

44 (5) The projected cost of debt for the infrastructure program funding and the projected  
45 capital structure for infrastructure program funding;

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

49 (7) A proposed cost recovery mechanism for actual and projected capital investments  
50 under the infrastructure program consistent with this section; and

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

52 (d) Upon filing of the applications under this section, the applicant shall publish, in the form  
53 the commission directs, which form shall include, but not be limited to, the anticipated rates and,  
54 if any, rate increase under the proposal, by average percentage and dollar amount for customers  
55 within a class of service, as a Class I legal advertisement in compliance with ~~the provisions of~~  
56 §59-3-1 *et seq.* of this code, the publication area to be each county in which service is provided  
57 by the natural gas utility, a notice of the filing of the application and that the commission shall hold  
58 a hearing on the application within 90 days of the notice; unless no opposition to the rate change  
59 is received by the Public Service Commission within one week of the proposed hearing date, in  
60 which case the hearing can be waived, and issue a final order within 150 days of the application  
61 filing date. However, if ~~the proposed infrastructure program~~ an application made under this section  
62 includes a request for extension of infrastructure into an unserved area and another natural gas  
63 utility files to extend service to the same area, the commission may move that extension request  
64 of each natural gas utility into separate proceedings to be considered concurrently and extend  
65 the time period for issuing a final order on that portion of the proposed programs beyond the 150  
66 days.

67 (e) Upon notice and hearing, if required by the commission, the commission shall approve  
68 the infrastructure program and applications made under this section and allow expedited recovery  
69 of costs related to the ~~expenditures~~ actual and projected capital investments as provided in  
70 subsection (f) of this section if the commission finds that the ~~expenditures and the associated rate~~  
71 ~~requirements~~ actual and projected capital investments are just, reasonable, not contrary to the

72 public interest and will allow for the provision and maintenance of adequate, efficient, safe, and  
73 ~~reliable and reasonably priced~~ natural gas service: Provided, That the utility's expedited cost  
74 recovery of the costs calculated as provided in §24-2-1k(f) of this code shall not be made subject  
75 to: (i) Any caps, limitations or restrictions however derived on actual or projected capital  
76 investments, the costs related to the actual and projected capital investments as provided in  
77 subsection (f) of this section, or the rates calculated to recover such costs; or (ii) a requirement to  
78 file or to refrain from filing a full base rate tariff filing.

79 (f) Upon commission approval, natural gas utilities will be authorized to implement the  
80 infrastructure programs and applications made under this section and to recover ~~related~~  
81 ~~incremental~~ costs related to actual and projected capital investments, net of contributions to  
82 recovery of return and depreciation and property tax expenses directly attributable to the  
83 infrastructure program provided by new customers served by the infrastructure program  
84 investments, if any, as provided in the following:

85 (1) An allowance for return shall be calculated by applying a rate of return to the average  
86 ~~planned net incremental increase to rate base attributable to~~ cumulative actual rate base as well  
87 as projected rate base under the infrastructure program ~~for the coming year, considering the~~  
88 ~~projected amount and timing of expenditures under the infrastructure program plus any~~  
89 ~~expenditures in previous years of the infrastructure program.~~ The rate of return shall be  
90 determined by utilizing the rate of return on equity authorized by the commission in the natural  
91 gas utility's most recent rate case proceeding or in the case of a settled rate case, a rate of return  
92 on equity set forth in such settlement or, if none is set forth in such settlement, as determined by  
93 the commission, and the projected cost of the natural gas utility's debt during the period of the  
94 infrastructure program to determine the weighted cost of capital based upon the natural gas  
95 utility's capital structure.

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

98           (3) ~~Incremental~~ Depreciation and property tax expenses directly attributable to the  
99 infrastructure program shall be estimated for the upcoming year.

100           (4) Following commission approval of its infrastructure program and its applications made  
101 under this section, a natural gas utility shall place into effect rates that ~~include an increment that~~  
102 recover the allowance for return, related income taxes, depreciation and property tax expenses  
103 associated with the natural gas utility's ~~estimated~~ actual and projected capital investments under  
104 the infrastructure program investments for the upcoming year, net of contributions to recovery of  
105 those ~~incremental~~ costs provided by new customers served by the infrastructure program  
106 investments, if any, ("~~incremental~~ cost recovery increment"). In each year subsequent to the order  
107 approving the infrastructure program and ~~an incremental~~ a cost recovery increment rate, the  
108 natural gas utility shall file ~~a petition~~ an application with the commission setting forth a new  
109 proposed ~~incremental~~ cost recovery ~~increment rate~~ rate based on projected capital investments to be  
110 made in the subsequent year, plus any under-recovery or minus any over-recovery of actual  
111 ~~incremental~~ costs for the preceding year attributable to the infrastructure ~~program~~ program's  
112 actual investments, ~~for the preceding year~~.

113           (5) In calculating the cost recovery of the allowance for return, related income taxes,  
114 depreciation and property tax expenses associated with the actual and projected total capital  
115 investments under the infrastructure program, there shall be no requirement imposed on the gas  
116 utility to reduce actual or projected total capital investments under the infrastructure program or  
117 infrastructure program rate base: (i) For any amount of, or any amount representative of, return,  
118 income taxes, depreciation expense, property tax expense or any other item embedded in the  
119 gas utility's current base rates; or (ii) for any amount of, or any amount representative of, revenues  
120 or costs associated with actual or projected capital investments by the gas utility where the costs  
121 associated with such capital investments are not the subject of the gas utility's applications under  
122 this section.

123           (g) The natural gas utility may make any accounting accruals necessary to establish a

124 regulatory asset or liability through which actual ~~incremental~~ costs incurred and costs recovered  
125 through the rate mechanism are tracked.

126 (h) Natural gas utilities may defer ~~incremental~~ operation and maintenance expenditures  
127 attributable to regulatory and compliance-related requirements introduced after the natural gas  
128 utility's last rate case proceeding and not included in the natural gas utility's current base rates.  
129 In a future rate case, the commission ~~may~~ shall allow recovery of the deferred costs amortized  
130 over a reasonable period of time to be determined by the commission provided the commission  
131 finds that the costs were reasonable and prudently incurred and were not reflected in rates in prior  
132 rate cases.

NOTE: The purpose of this bill is to amend the manner in which actual investment of capital and costs and a natural gas utility's expedited cost recovery are calculated and determined by the Public Service Commission.

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