WEST virginia legislature

**FISCAL NOTE**

2021 regular session

Introduced

House Bill 2811

By Delegate Anderson

[Introduced March 01, 2021; Referred to the Committee on Energy and Manufacturing]

A BILL to amend and reenact §24-2-1k of the Code of West Virginia, 1931, as amended, relating to the Public Service Commission; natural gas infrastructure; actual investment of capital 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.

(a) The Legislature hereby finds that:

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

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

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

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

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

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

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

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

(c) ~~The application is~~ Applications made under this section are in lieu of a proceeding pursuant to §24-2-11 of this code and shall contain the following:

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

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

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

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

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

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

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

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

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

(e) Upon notice and hearing, if required by the commission, the commission shall approve the infrastructure program and applications made under this section and allow expedited recovery of costs related to the ~~expenditures~~ actual and projected capital investments as provided in subsection (f) of this section if the commission finds that the ~~expenditures and the associated rate requirements~~ actual and projected capital investments are just, reasonable, not contrary to the public interest and will allow for the provision and maintenance of adequate, efficient, safe, reliable and ~~reasonably priced~~ natural gas service: *Provided*, That the utility’s expedited cost recovery of the costs calculated as provided in subsection (f) of this section shall not be made subject to: (1) Any caps, limitations, or restrictions however derived on actual or projected capital investments, the costs related to the actual and projected capital investments as provided in subsection (f) of this section or the rates calculated to recover such costs; or (2) a requirement to file or to refrain from filing a full base rate tariff filing.

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

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

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

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

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

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

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

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