

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3437

By Delegates Dillon, Dean, and Ross

[Introduced February 13, 2023; Referred to the
Committee on Energy and Manufacturing then the
Judiciary]

1 A BILL to amend and reenact §24-2-1d and §24-2-4 of the Code of West Virginia, 1931, as
2 amended, all relating to the creation of the Consumer Energy Affordability and Reliability
3 Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1d. Future electric generating capacity requirements.

1 (a) In order to maximize the use of electricity generated within the state by using coal or
2 natural gas produced within the state, the Public Service Commission shall by order, no later than
3 December 31, 1989, establish the schedule and amount of future electric generating capacity
4 additions required by each West Virginia electric utility, for the next 10 years, taking into account:
5 (i) Projected load growth; (ii) existing generating capacity; (iii) existing contractual commitments to
6 sell or purchase capacity; (iv) planned retirement and life extensions of existing capacity; (v)
7 planned construction of capacity; (vi) availability of capacity from generating units of affiliated
8 companies; and (vii) such other reasonable factors as the commission may deem relevant and
9 appropriate to consider. The Public Service Commission shall establish uniform standards further
10 defining a supply disruption as any period during which a public electric utility production plant fails
11 to provide at least 50 percent of its maximum output and establishing the maximum allowable time
12 of disruption as a percentage of a rolling 30-day period and establishing material financial
13 consequences for violations of these minimum standards.

14 (b) If the commission determines after considering all such named and other relevant and
15 appropriate factors that a utility will be required to purchase electric generating capacity beyond
16 those agreements approved by the Federal Energy Regulatory Commission or the West Virginia
17 Public Service Commission in order to serve its West Virginia customers, the amount of such
18 required additional purchased capacity so identified by the commission will for purposes of this
19 section be referred to as the utility's "projected deficient capacity": *Provided*, That this subsection
20 shall not include power generating facilities whose total production of electricity is sold outside the

21 State of West Virginia.

22 (c) In the interests of: Keeping utility rates of residential customers as low as possible;
23 keeping utility rates for commercial and industrial customers competitive with those of other
24 states; attracting new industry for which electric power costs are a major factor in location
25 determinations; and of not placing any greater cost burden on government than is absolutely
26 necessary for its electric power needs, each utility shall acquire, if reasonable, its projected
27 deficient capacity from electric generation situate in West Virginia which burns coal or gas
28 produced in West Virginia and which will provide the most reliable supply of capacity and energy at
29 the least cost to those customers of the utility who will be served by such electric generation:
30 *Provided*, That all power purchase contracts executed prior to the effective date of this section
31 which satisfy the following requirements, regardless of location, shall be considered, for the
32 purposes of this subsection, as electric generation situate in West Virginia: (1) Said contracts were
33 negotiated in accordance with procedures and priced according to methodologies of other
34 contracts which the commission has ordered approved; (2) said contracts either guarantee or are
35 substantially amended to guarantee for the life of the contract the use of an amount of West
36 Virginia fuel which equals or exceeds the amount which would be required, on a percentage of
37 output basis, to produce the amount of electric power to be consumed in West Virginia; and (3)
38 said contracts meet the requirements for a qualifying facility established by the Federal Energy
39 Regulatory Commission pursuant to the Public Utility Regulatory Policies Act of 1978.

§24-2-4. Procedure for changing rates.

1 (a) No public utility subject to this chapter, except those utilities subject to the provisions of
2 section four-b of this article, shall change, suspend or annul any rate, joint rate, charge, rental or
3 classification except after thirty days' notice to the commission and the public, which notice shall
4 plainly state the changes proposed to be made in the schedule then in force and the time when the
5 changed rates or charges shall go into effect; but the commission may enter an order suspending
6 the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new

7 schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to
8 public inspection: *Provided*, That the commission may, in its discretion, and for good cause shown,
9 allow changes upon less time than the notice herein specified, or may modify the requirements of
10 this section in respect to publishing, posting and filing of tariffs, either by particular instructions or
11 by general order.

12 (b) No public electric utility in the State of West Virginia shall be allowed a rate increase
13 unless verification is provided to the Public Service Commission demonstrating that any
14 investments in new production capacity made by the utility in the preceding three-year period have
15 been solely dedicated toward those sources of energy identified by the Public Service
16 Commission as offering the lowest total possible cost of energy production. All sources of funding
17 received by public electric utilities, including public funds such as tax credits, subsidies, grants, or
18 other sources of funding or benefit, shall be included in this calculation.

19 (c) All revenues received by a public electric utility in the State of West Virginia which
20 exceed the allowable profit determined by the Public Service Commission must be reinvested in:

21 (1) Energy production and transmission infrastructure within West Virginia with prejudice
22 toward those sources designated by the PSC as lowest cost means of electricity production for
23 West Virginia consumers.

24 (2) Increasing transmission and overall grid reliability to minimize outages to consumers

25 (d) Whenever there shall be filed with the commission any schedule stating a change in the
26 rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint
27 classification or any new individual or joint regulation or practice affecting any rate or charge, the
28 commission shall have authority, either upon complaint or upon its own initiative without complaint,
29 to enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or
30 practice; and, if the commission so orders, it may proceed without answer or other form of pleading
31 by the interested parties, but upon reasonable notice, and, pending such hearing and the decision
32 thereon, the commission, upon filing with such schedule and delivering to the public utility affected

33 thereby a statement in writing of its reasons for such suspension, may suspend the operation of
34 such schedule and defer the use of such rate, charge, classification, regulation or practice, but not
35 for a longer period than one hundred and twenty days beyond the time when such rate, charge,
36 classification, regulation or practice would otherwise go into effect; and after full hearing, whether
37 completed before or after the rate, charge, classification, regulation or practice goes into effect, the
38 commission may make such order in reference to such rate, charge, classification, regulation or
39 practice as would be proper in a proceeding initiated after the rate, charge, classification,
40 regulation or practice had become effective: *Provided*, That if any such hearing and decision
41 thereon cannot be concluded within the period of suspension, as above stated, such rate, charge,
42 classification, regulation or practice shall go into effect at the end of such period. In such case the
43 commission may require such public utility to enter into a bond in an amount deemed by the
44 commission to be reasonable and conditioned for the refund to the persons or parties entitled
45 thereto of the amount of the excess, plus interest at the rate of not less than seven percent per
46 annum, as may be specified by the commission, if such rate so put into effect is subsequently
47 determined to be higher than those finally fixed for such utility. In specifying the applicable interest
48 rate, the commission shall be guided by the interest rate which such public utility would in all
49 probability have to agree to pay if such public utility at that time borrowed in the marketplace a sum
50 of money equivalent to the amount of money the commission estimates the increase in rates will
51 produce between the effective date of such increase and the anticipated date the rates will be
52 finally fixed for such public utility, it being intended that a public utility should be discouraged from
53 imposing higher rates than it should reasonably anticipate will be finally fixed as a means in effect
54 of borrowing money at a rate of interest less than such public utility would have to agree to pay if it
55 borrowed money in the marketplace. No such accrued interest paid on any such refund shall be
56 deemed part of the cost of doing business in a subsequent application for changing rates or any
57 decision thereon. At any hearing involving a rate sought to be increased or involving the change of
58 any fare, charge, classification, regulation or practice, the burden of proof to show that the

59 increased rate or proposed increased rate, or the proposed change of fare, charge, classification,
60 regulation or practice is just and reasonable shall be upon the public utility making application for
61 such change. When in any case pending before the commission all evidence shall have been
62 taken, and the hearing completed, the commission shall, within three months, render a decision in
63 such case.

64 (e) Where more than 20 members of the public are affected by a proposed change in rates,
65 it shall be a sufficient notice to the public within the meaning of this section if such notice is
66 published as a Class II legal advertisement in compliance with the provision of ~~article three,~~
67 ~~chapter fifty-nine of this code~~ §59-3-1 et seq. of this code, and the publication area for such
68 publication shall be the community where the majority of the resident members of the public
69 affected by such change reside or, in case of nonresidents, have their principal place of business
70 within this state. The provisions of this section shall expire on and be of no further force and effect
71 after June 30, 1981, except that as to any case pending on said date in which the suspension
72 period has expired and rates are in effect under bond such case shall be proceeded with in
73 accordance with this section; as to any other case pending on said date, the commission shall
74 treat the case as filed anew on July 1, 1981, except that it shall not be necessary for any new
75 process or notice to be served or published.

NOTE: The purpose of this bill is to create the Consumer Energy Affordability and Reliability Act.

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