

1 **ENROLLED**

2 **Senate Bill No. 585**

3 (BY SENATOR PALUMBO)

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5 [Passed March 8, 2014; in effect ninety days from passage.]
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9
10 AN ACT to repeal §24-3-3b of the Code of West Virginia, 1931, as
11 amended; and to amend and reenact §24-1-1 of said code,
12 relating to removing unconstitutional language regarding
13 access to rail lines.

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

15 That §24-3-3b of the Code of West Virginia, 1931, as amended,
16 be repealed; and that §24-1-1 of said code be amended and reenacted
17 to read as follows:

18 **ARTICLE 1. GENERAL PROVISIONS.**

19 **§24-1-1. Legislative purpose and policy; plan for internal**
20 **reorganization; promulgation of plan as rule; cooperation with**
21 **Joint Committee on Government and Finance.**

22 (a) It is the purpose and policy of the Legislature in

1 enacting this chapter to confer upon the Public Service Commission
2 of this state the authority and duty to enforce and regulate the
3 practices, services and rates of public utilities in order to:

4 (1) Ensure fair and prompt regulation of public utilities in
5 the interest of the using and consuming public;

6 (2) Provide the availability of adequate, economical and
7 reliable utility services throughout the state;

8 (3) Encourage the well-planned development of utility
9 resources in a manner consistent with state needs and in ways
10 consistent with the productive use of the state's energy resources,
11 such as coal;

12 (4) Ensure that rates and charges for utility services are
13 just, reasonable, applied without unjust discrimination or
14 preference, applied in a manner consistent with the purposes and
15 policies set forth in article two-a of this chapter, and based
16 primarily on the costs of providing these services;

17 (5) Encourage energy conservation and the effective and
18 efficient management of regulated utility enterprises; and

19 (6) Encourage removal of artificial barriers to rail carrier
20 service, stimulate competition, stimulate the free flow of goods
21 and passengers throughout the state and promote the expansion of
22 the tourism industry, thereby improving the economic condition of
23 the state.

1 (b) The Legislature creates the Public Service Commission to
2 exercise the legislative powers delegated to it. The Public
3 Service Commission is charged with the responsibility for
4 appraising and balancing the interests of current and future
5 utility service customers, the general interests of the state's
6 economy and the interests of the utilities subject to its
7 jurisdiction in its deliberations and decisions.

8 (c) The Legislature directs the Public Service Commission to
9 identify, explore and consider the potential benefits or risks
10 associated with emerging and state-of-the-art concepts in utility
11 management, rate design and conservation. The commission may
12 conduct inquiries and hold hearings regarding such concepts in
13 order to provide utilities subject to its jurisdiction and other
14 interested persons the opportunity to comment, and shall report to
15 the Governor and the Legislature regarding its findings and
16 policies to each of these areas not later than the first day of the
17 regular session of the Legislature in the year 1985, and every two
18 years thereafter.

19 (d) It is legislative policy to ensure that the Legislature
20 and the general public become better informed regarding the
21 regulation of public utilities in this state and the conduct of the
22 business of the Public Service Commission. To aid in the
23 achievement of this policy, the Public Service Commission annually

1 shall present to the Joint Committee on Government and Finance,
2 created by article three, chapter four of this code, or a
3 subcommittee designated by the joint committee, a management
4 summary report which describes in a concise manner:

5 (1) The major activities of the commission for the year
6 especially as such activities relate to the implementation of the
7 provisions of this chapter;

8 (2) Important policy decisions reached and initiatives
9 undertaken during the year;

10 (3) The current balance of supply and demand for natural gas
11 and electric utility services in the state and forecast of the
12 probable balance for the next ten years; and

13 (4) Other information considered by the commission to be
14 important including recommendations for statutory reform and the
15 reasons for such recommendations.

16 (e) In addition to any other studies and reports required to
17 be conducted and made by the Public Service Commission pursuant to
18 any other provision of this section, the commission shall study and
19 initially report to the Legislature no later than the first day of
20 the regular session of the Legislature in the year 1980 upon:

21 (1) The extent to which natural gas wells or wells heretofore
22 supplying gas utilities in this state have been capped off or shut
23 in; the number of such wells; their probable extent of future

1 production and the reasons given and any justification for capping
2 off or shutting in such wells; the reasons, if any, why persons
3 engaged or heretofore engaged in the development of gas wells in
4 this state or the Appalachian areas have been discouraged from
5 drilling, developing or selling the production of such wells; and
6 whether there are fixed policies by any utility or group of
7 utilities to avoid the purchase of natural gas produced in the
8 Appalachian region of the United States generally and in West
9 Virginia specifically.

10 (2) The extent of the export and import of natural gas utility
11 supplies in West Virginia.

12 (3) The cumulative effect of the practices mentioned in
13 subdivisions (1) and (2) of this subsection upon rates theretofore
14 and hereafter charged gas utility customers in West Virginia.

15 In carrying out the provisions of this section the commission
16 shall have jurisdiction over such persons, whether public utilities
17 or not, as may be in the opinion of the commission necessary to the
18 exercise of its mandate and may compel attendance before it, take
19 testimony under oath and compel the production of papers or other
20 documents. Upon reasonable request by the commission, all other
21 state agencies shall cooperate with the commission in carrying out
22 the provisions and requirements of this subsection.

23 (f) No later than the first day of the regular session of the

1 Legislature in the year 1980, the Public Service Commission shall
2 submit to the Legislature a plan for internal reorganization which
3 plan shall specifically address the following:

4 (1) A division within the Public Service Commission which
5 shall include the office of the commissioners, the hearing
6 examiners and such support staff as may be necessary to carry out
7 the functions of decisionmaking and general supervision of the
8 commission, which functions shall not include advocacy in cases
9 before the commission;

10 (2) The creation of a division which shall act as an advocate
11 for the position of and in the interest of all customers;

12 (3) The means and procedures by which the division to be
13 created pursuant to the provisions of subdivision (2) of this
14 subsection shall protect the interests of each class of customers
15 and the means by which the commission will assure that such
16 division will be financially and departmentally independent of the
17 division created by subdivision (1) of this subsection;

18 (4) The creation of a division within the Public Service
19 Commission which shall assume the duties and responsibilities now
20 charged to the commissioners with regard to motor carriers which
21 division shall exist separately from those divisions set out in
22 subdivisions (1) and (2) of this subsection and which shall relieve
23 the commissioners of all except minimal administrative

1 responsibilities as to motor carriers and which plan shall provide
2 for a hearing procedure to relieve the commissioners from hearing
3 motor carrier cases;

4 (5) Which members of the staff of the Public Service
5 Commission shall be exempted from the salary schedules or pay plan
6 adopted by the civil service commission and identify such staff
7 members by job classification or designation, together with the
8 salary or salary ranges for each such job classification or
9 designation;

10 (6) The manner in which the commission will strengthen its
11 knowledge and independent capacity to analyze key conditions and
12 trends in the industries it regulates extending from general
13 industry analysis and supply-demand forecasting to continuing and
14 more thorough scrutiny of the capacity planning, construction
15 management, operating performance and financial condition of the
16 major companies within these industries.

17 Such plan shall be based on the concept that each of the
18 divisions mentioned in subdivisions (1), (2) and (4) of this
19 subsection shall exist independently of the others and the plan
20 shall discourage ex parte communications between them by such means
21 as the commission shall direct, including, but not limited to,
22 separate clerical and professional staffing for each division.
23 Further, the Public Service Commission is directed to incorporate

1 within the said plan to the fullest extent possible the
2 recommendations presented to the subcommittee on the Public Service
3 Commission of the Joint Committee on Government and Finance in a
4 final report dated February, 1979, and entitled "A Plan for
5 Regulatory Reform and Management Improvement."

6 The commission shall, before January 5, 1980, adopt said plan
7 by order, which order shall promulgate the same as a rule of the
8 commission to be effective upon the date specified in said order,
9 which date shall be no later than December 31, 1980. Certified
10 copies of such order and rule shall be filed on the first day of
11 the 1980 regular session of the Legislature, by the chairman of the
12 commission with the clerk of each house of the Legislature, the
13 Governor and the Secretary of State. The chairman of the
14 commission shall also file with the Office of the Secretary of
15 State the receipt of the clerk of each house and of the Governor,
16 which receipt shall evidence compliance with this section.

17 Upon the filing of a certified copy of such order and rule,
18 the clerk of each house of the Legislature shall report the same to
19 their respective houses and the presiding officer thereof shall
20 refer the same to appropriate standing committee or committees.

21 Within the limits of funds appropriated therefor, the rule of
22 the Public Service Commission shall be effective upon the date
23 specified in the order of the commission promulgating it unless an

1 alternative plan be adopted by general law or unless the rule is
2 disapproved by a concurrent resolution of the Legislature adopted
3 prior to adjournment sine die of the regular session of the
4 Legislature to be held in the year 1980: *Provided*, That if such
5 rule is approved in part and disapproved in part by a concurrent
6 resolution of the Legislature adopted prior to such adjournment,
7 such rule shall be effective to the extent and only to the extent
8 that the same is approved by such concurrent resolution.

9 The rules promulgated and made effective pursuant to this
10 section shall be effective notwithstanding any other provisions of
11 this code for the promulgation of rules or regulations.

12 (g) The Public Service Commission is hereby directed to
13 cooperate with the Joint Committee on Government and Finance of the
14 Legislature in its review, examination and study of the
15 administrative operations and enforcement record of the Railroad
16 Safety Division of the Public Service Commission and any similar
17 studies.

18 (h) (1) The Legislature hereby finds that rates for natural
19 gas charged to customers of all classes have risen dramatically in
20 recent years to the extent that such increases have adversely
21 affected all customer classes. The Legislature further finds that
22 it must take action necessary to mitigate the adverse consequences
23 of these dramatic rate increases.

1 (2) The Legislature further finds that the practices of
2 natural gas utilities in purchasing high-priced gas supplies, in
3 purchasing gas supplies from out-of-state sources when West
4 Virginia possesses abundant natural gas, and in securing supplies,
5 directly or indirectly by contractual agreements including take-or-
6 pay provisions, indefinite price escalators or most-favored nation
7 clauses have contributed to the dramatic increase in natural gas
8 prices. It is therefore the policy of the Legislature to
9 discourage such purchasing practices in order to protect all
10 customer classes.

11 (3) The Legislature further finds that it is in the best
12 interests of the citizens of West Virginia to encourage the
13 transportation of natural gas in intrastate commerce by interstate
14 or intrastate pipelines or by local distribution companies in order
15 to provide competition in the natural gas industry and in order to
16 provide natural gas to consumers at the lowest possible price.

17 (i) The Legislature further finds that transactions between
18 utilities and affiliates are a contributing factor to the increase
19 in natural gas and electricity prices and tend to confuse
20 consideration of a proper rate of return calculation. The
21 Legislature therefore finds that it is imperative that the Public
22 Service Commission have the opportunity to properly study the issue
23 of proper rate of return for lengthy periods of time and to limit

1 the return of a utility to a proper level when compared to return
2 or profit that affiliates earn on transactions with sister
3 utilities.