

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2722**

BY DELEGATES ANDERSON, AZINGER, HOWELL, J. KELLY,  
WESTFALL, PETHTEL, STORCH, D. KELLY, HARSHBARGER,  
QUEEN AND P. MARTIN

[ Introduced January 29, 2019; Referred  
to the Committee on Energy then the Judiciary.]

1 A BILL to amend and reenact §24-2-3 of the Code of West Virginia, 1931, as amended, relating  
 2 to the Public Service Commission; and requiring the use of statutory income tax rates for  
 3 ratemaking purposes for public utilities that are part of a publicly-traded, consolidated  
 4 group.

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

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

**§24-2-3. General power of commission with respect to rates.**

1 (a) The commission may enforce, originate, establish, change, and promulgate tariffs,  
 2 rates, joint rates, tolls, and schedules for all public utilities except for municipal power systems  
 3 and water and/or sewer utilities that are political subdivisions of this state providing a separate or  
 4 combined services and having at least 4,500 customers and annual combined gross revenues of  
 5 \$3 million or more: *Provided*, That the commission may exercise such rate authority over  
 6 municipally owned natural gas utilities or a municipally owned water and/or sewer utility having  
 7 less than 4,500 customers or annual combined gross revenues of less than \$3 million only under  
 8 the circumstances and limitations set forth in §24-2-4b of this code, and subject to the provisions  
 9 set forth in §24-2-3(b) of this code. And whenever the commission, after hearing, finds any existing  
 10 rates, tolls, tariffs, joint rates, or schedules enacted or maintained by a utility regulated under the  
 11 provisions of this section to be unjust, unreasonable, insufficient, or unjustly discriminatory or  
 12 otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix  
 13 reasonable rates, joint rates, tariffs, tolls, or schedules to be followed in the future in lieu of those  
 14 found to be unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation  
 15 of any provisions of law, and the commission, in fixing the rate of any railroad company, may fix  
 16 a fair, reasonable, and just rate to be charged on any branch line thereof, independent of the rate  
 17 charged on the main line of that railroad.

18 (b) Any complaint filed with the commission by a resale or wholesale customer of a  
 19 municipally owned water and/or sewer utility having less than 4,500 customers or annual

20 combined gross revenue of less than \$3 million concerning rates, fees, or charges applicable to  
21 such resale or wholesale customer shall be filed within 30 days of the enactment by the governing  
22 body of the political subdivision of an ordinance changing rates, fees, or charges for such service.  
23 The commission shall resolve said complaint within 120 days of filing. The 120-day period for  
24 resolution of the complaint may be tolled by the commission until the necessary information  
25 showing the basis of the rates, fees, charges, and other information as the commission considers  
26 necessary is filed: *Provided*, That rates, fees, and charges so fixed by the political subdivision  
27 providing separate or combined water and/or sewer services shall remain in full force and effect  
28 until set aside, altered, or amended by the commission in an order to be followed in the future:  
29 *Provided however*, That the commission ~~shall have no authority to~~ may not order refunds for  
30 amounts collected during the pendency of the complaint proceeding unless the rates, fees, or  
31 charges so enacted by the governing body were enacted subject to refund under the provisions  
32 of §24-2-4b(d)(2) or §24-2-4b(g) of this code.

33 (c) In determining just and reasonable rates, the commission may audit and investigate  
34 management practices and policies, or have performed an audit and investigation of such  
35 practices and policies, in order to determine whether the utility is operating with efficiency and is  
36 utilizing sound management practices. The commission shall adopt rules and regulations setting  
37 forth the scope, frequency, and application of such audits and investigations to the various utilities  
38 subject to its jurisdiction. The commission may include the cost of conducting the management  
39 audit in the cost of service of the utility.

40 (d) In determining just and reasonable rates, the commission shall investigate and review  
41 transactions between utilities and affiliates. The commission shall limit the total return of the utility  
42 to a level which, when considered with the level of profit or return the affiliate earns on transactions  
43 with the utility, is just and reasonable.

44 (e) For ratemaking purposes, including, but not limited to, under §24-2-1k of this code, the  
45 commission shall determine the federal and state income tax costs, including provisions for

46 deferred taxes, for any water, gas, or electric utility that is a part of a publicly-traded consolidated  
47 group as follows:

48 (i) The utility's apportioned total state income tax costs shall be calculated according to  
49 the applicable statutory rate,

50 (ii) The utility's total federal income tax costs shall be calculated according to the  
51 applicable federal income tax rate, and

52 (iii) The utility's total income tax costs shall exclude any consolidated tax liability or benefit  
53 adjustments originating from any taxable income or loss of its parent or its affiliates. In addition, if  
54 an expense or investment is allowed to be included in a utility's rates for ratemaking purposes,  
55 the related income tax deductions and credits shall also be included in the computation of current  
56 or deferred income tax expense to reduce rates. If an expense or investment is not allowed to be  
57 included in a public utility's rates, the related income tax deductions and credits, including tax  
58 losses of the public utility's parent or affiliated companies, may not be included in the computation  
59 of current or deferred income tax expense to reduce rates.

NOTE: The purpose of this bill is to provide that state and federal income tax rates are to be used for ratemaking purposes for public utilities that are part of a publicly-traded, consolidated group.

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