

WEST VIRGINIA LEGISLATURE

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Committee Substitute

for

House Bill 2959

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[Originating in the Committee on Energy and
Manufacturing, March 16, 2021]

1 A BILL to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended, relating
2 to the powers and duties of the Public Service Commission concerning cost recovery for
3 improvements modernizing coal-fired boilers and installing pollution control equipment on
4 coal-fired power plants; amending legislative findings to include language concerning
5 environmental pollution controls on power plants to comply with federal and state
6 environmental regulatory requirements; adding provisions creating a program for the
7 installation, operation, and maintenance of environmental pollution control equipment;
8 providing that electric utilities may file with the commission an application for expedited
9 recovery of costs for the installation, operation, and maintenance of environmental
10 pollution control equipment; amending requirements for cost recovery regarding programs
11 for modernizing coal-fired boilers; amending and providing for application requirements
12 for both programs; altering provisions concerning the time required for a waiver of public
13 hearings for both programs; amending conditions and terms for recovery of incremental
14 capital costs; and amending provisions concerning rates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

**§24-2-11. Modernization and improvement of coal-fired boilers at electric power plants;
required environmental pollution controls for coal-fired power plants; 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's abundant coal reserves have created, and will continue to create, many
5 benefits to the state and its citizens;

6 (3) West Virginia is experiencing a significant downturn in the coal industry as a result of
7 increasing environmental regulation and increased competition from natural gas and oil;

8 (4) Stabilization of the coal industry to maintain its accompanying benefits to the state and
9 its citizens requires West Virginia to be proactive and focus on the modernization and
10 improvement of coal-fired boilers used by electric utilities in this state to allow the more efficient
11 use of coal in the generation of electricity with reduced environmental impact;

12 (5) Electric utilities in the state have made considerable investments in equipment at coal-
13 fired plants to comply with numerous environmental regulations;

14 (6) Electric utilities in West Virginia continue to modify and install environmental pollution
15 controls on power plants to comply with federal and state environmental regulatory requirements
16 to ensure that those facilities can continue to operate and serve the citizens of the state with
17 reliable and affordable capacity and energy while protecting the environment, including air, water
18 and land;

19 ~~(5)~~ (7) A comprehensive program of modernizing, upgrading and improving coal-fired
20 boilers and a program of modifying and installing pollution controls and other related equipment
21 at existing West Virginia power plants owned by electric utilities at reasonable cost to ratepayers,
22 will benefit the customers of the electric utilities, the public in West Virginia, the environment and
23 the economy of the state as a whole;

24 ~~(6)~~ (8) A coal-fired boiler modernization and improvement program or an environmental
25 pollution control program which includes modification or installation of pollution control equipment,
26 associated infrastructure, and necessary ancillary equipment, will create jobs, provide for
27 continued and enhanced safety and reliability of aging electrical generation infrastructure, and
28 provide for more economical generation of electricity from coal, all of which will benefit customers
29 located throughout the state; ~~and~~

30 ~~(7)~~ (9) Efforts to modernize and improve coal-fired boilers and to comply with
31 environmental regulatory mandates at coal-fired power plants owned by electric utilities and used
32 to generate electricity in this state involve the investment of capital and the incurrence of
33 associated incremental costs. Accordingly, in order for the electric utility undertaking those coal-

34 fired boiler modernization and improvement programs or environmental pollution control
35 programs to comply with air, water, land and related requirements to attract the necessary capital,
36 the electric utility should be permitted to recover ~~a the incremental~~ rate of return on incremental
37 increases in net rate base, related income taxes, depreciation and property taxes associated with
38 the coal-fired boiler modernization and improvement programs or environmental pollution control
39 programs commencing with the implementation of a coal-fired boiler modernization program
40 approved by the commission without waiting for a full base rate tariff filing, as more fully described
41 in subsection ~~(f)~~(g) of this section; and

42 (10) Environmental pollution control equipment shall include, but not be limited to, carbon
43 capture, reduction, and storage if state or federal reductions of carbon or CO2 emissions are
44 required.

45 (b) Electric utilities may file with the commission an application for a multiyear
46 comprehensive program for modernizing and improving coal-fired boilers at power plants located
47 in this state and owned, in whole or in part, by the electric utility. Subject to commission review
48 and approval, a program may be amended and updated by the electric utility as circumstances
49 warrant. ~~The recovery of costs in support of the program shall be allowed in the manner set forth~~
50 ~~in this section if the proposed program and related rates are found to be just, reasonable, and~~
51 ~~based on prudent investments that are used and useful to the utilities' West Virginia ratepayers~~

52 (c) Electric utilities may file with the commission an application for the expedited recovery
53 of costs for the installation, operation, and maintenance of environmental pollution control
54 equipment that will be installed to comply with federal or state environmental requirements. The
55 filing may be a separate filing from a coal-fired boiler modernization and improvement program
56 filing.

57 ~~(e)~~ (d) The application is in lieu of a proceeding pursuant to section eleven of this article
58 and shall contain the following:

59 (1) A description of the coal-fired boiler modernization and improvement program or
60 environmental pollution control program, in such detail as the commission prescribes, which may
61 include costs associated with or incidental to the reduction of emissions or compliance with
62 environmental requirements, the projected cost, and timing of the installation of equipment and
63 facilities that the applicant proposes to replace, construct, modernize and/or improve;

64 (2) The projected net increase in rate base, on an average annual basis, related to the
65 replacement, construction or improvements;

66 (3) The projected starting and completion dates for the modernization and improvement
67 program or environmental pollution control program;

68 (4) The projected cost of debt for the coal-fired boiler modernization and improvement
69 program funding or environmental pollution control program funding and the projected capital
70 structure for coal-fired boiler modernization and improvement program or environmental pollution
71 control program funding;

72 (5) Testimony, exhibits or other evidence that demonstrates the need for the
73 modernization and improvement of coal-fired boilers or environmental pollution control equipment
74 and other related equipment in order to provide and maintain adequate, efficient, safe, reliable
75 and reasonably priced electrical generation;

76 (6) A proposed cost recovery mechanism consistent with this section; and

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

78 ~~(d)~~ (e) Upon filing of the application, the applicant shall publish, in the form the commission
79 directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate
80 increase under the proposal, by average percentage and dollar amount for customers within a
81 class of service, as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et*
82 *seq.* of this code, the publication area to be each county in which service is provided by the
83 electrical utility, a notice of the filing of the application and that the commission ~~shall~~ may hold a
84 hearing on the application within 180 days of the notice; unless no substantial opposition to the

85 application is received by the Public Service Commission within ~~one week,~~ 60 days of the
86 publication, of the proposed hearing date in which case the hearing can be waived. ~~and The~~
87 Commission shall issue a final order within 270 days of the application filing date unless the
88 Commission tolls the running of the 270 days due to failure of the electric utility to timely provide
89 information required by the commission.

90 (e) (f) Upon notice and hearing, if required by the commission, the commission shall
91 approve the coal-fired boiler modernization and improvement program or environmental pollution
92 control program and allow expedited recovery of costs related to the expenditures as provided in
93 subsection (g) of this section if the commission finds that the expenditures and the associated
94 rate requirements are just, reasonable, based on prudent investments, not contrary to the West
95 Virginia public interest, and will allow for the provision and maintenance of adequate, efficient,
96 safe, reliable and reasonably priced electricity generated from coal.

97 (f) (g) Upon commission approval, electric utilities will be authorized to implement the coal-
98 fired boiler modernization and improvement programs or environmental pollution control
99 programs and to recover related incremental capital costs and net operation and maintenance
100 costs of contributions to recovery of return and depreciation and property tax expenses directly
101 attributable to the coal-fired boiler modernization and improvement program, provided by electric
102 utility's customers, if any, as provided in the following subdivisions:

103 (1) An allowance for return shall be calculated by applying a rate of return to the average
104 planned net incremental increase to in rate base attributable to the net rate base effect of the
105 coal-fired boiler modernization and improvement program or environmental pollution control
106 program for the coming year, considering the projected amount and timing of expenditures under
107 the coal-fired boiler modernization and improvement program or environmental pollution control
108 program plus any expenditures in previous years of the program. The rate of return shall be
109 determined by utilizing the rate of return on equity authorized by the commission in the electric
110 utility's most recent base rate case proceeding or in the case of a settled rate case a rate of return

111 on equity set forth in or associated with such settlement or, if neither is set forth or associated
112 with such settlement, a rate of return on equity as determined by the commission, and the
113 projected cost of the electric utility's debt during the period of the coal-fired boiler modernization
114 and improvement program or environmental pollution control programs to determine the weighted
115 cost of capital based upon the electric utility's capital structure used in the most recent base rate
116 case proceeding.

117 (2) Income taxes at the corporate statutory income rates applicable to the return allowed
118 on the coal-fired boiler modernization and improvement program or environmental pollution
119 control program shall be calculated for inclusion in rates.

120 (3) Incremental depreciation and property tax expenses directly attributable to the coal-
121 fired boiler modernization and improvement program or environmental pollution control program
122 shall be estimated for the upcoming year.

123 (4) Incremental net increases in operation and maintenance expenses attributable to the
124 coal-fired boiler modernization and improvement program or environmental pollution control
125 program estimated for the upcoming year after consideration of any operation and maintenance
126 expense savings from modified use of existing boiler or environmental control equipment.

127 ~~(4)~~ (5) Following commission approval of its coal-fired boiler modernization and
128 improvement program or environmental pollution control program, an electric utility shall place
129 into effect rates that include an increment, approved by the commission in accordance with
130 subsection (g) above, that recovers the allowance for return, operation and maintenance
131 expenses, related income taxes, depreciation and property tax expenses associated with the
132 electric utility's estimated coal-fired boiler modernization and improvement program investments
133 for the upcoming year, net of contributions to recovery of those incremental costs provided by the
134 electric utility's customers, if any, ("incremental cost recovery increment"). In each year
135 subsequent to the order approving the coal-fired boiler modernization and improvement program
136 or environmental pollution control program and an incremental cost recovery increment, the

137 electric utility shall file a petition with the commission setting forth a new proposed incremental
138 cost recovery increment based on investments and expenses to be made in the subsequent year;
139 The filing shall also include a true-up for ~~plus~~ any under-recovery or ~~minus any~~ over-recovery of
140 actual incremental costs attributable to the coal-fired boiler modernization and improvement
141 program or environmental pollution control program investments, for the preceding year.

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

145 ~~(h)~~ (i) Electric utilities may defer incremental operation and maintenance expenditures
146 attributable to regulatory and compliance-related requirements introduced after the electric utility's
147 last rate case proceeding and not included in the electric utility's current ~~base~~ rates. In a future
148 base rate case, the commission shall allow recovery of the deferred costs amortized over a
149 reasonable period of time to be determined by the commission if the commission finds that the
150 costs were reasonable and prudently incurred and were not reflected in rates in prior rate cases.

NOTE: The purpose of this bill is regarding required environmental pollution controls for coal-fired power plants and to allow utilities to file with the commission an application for the expedited recovery of costs for the installation and operation and maintenance of environmental pollution control equipment.

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