

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2120

FISCAL
NOTE

By Delegate Anderson

[Introduced January 11, 2023; Referred to the
Committee on Energy and Manufacturing]

1 A BILL to amend and reenact §24-2-1l of the Code of West Virginia, 1931, as amended, relating to
 2 coal fired power plants, regarding environmental pollution controls for coal-fired power
 3 plant findings; allowing utilities to file with the commission an application for the expedited
 4 recovery of costs for the installation and operation and maintenance of environmental
 5 pollution control equipment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

**§24-2-1l. 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 energy and protect the environment, including air, water and land;

18 ~~(5)~~ (7) A comprehensive program of modernizing, upgrading and improving coal-fired
19 boilers and a program of modifying and installing pollution controls and other related equipment at
20 existing West Virginia power plants owned by electric utilities at reasonable cost to ratepayers, will
21 benefit the customers of the electric utilities, the public in West Virginia, the environment and the
22 economy of the state as a whole;

23 ~~(6)~~ (8) A coal-fired boiler modernization and improvement program or an environmental
24 pollution control program which includes modification or installation of pollution control equipment,
25 associated infrastructure, and necessary ancillary equipment, will create jobs, provide for
26 continued and enhanced safety and reliability of aging electrical generation infrastructure, and
27 provide for more economical generation of electricity from coal, all of which will benefit customers
28 located throughout the state; and

29 ~~(7)~~ (9) Efforts to modernize and improve coal-fired boilers and to comply with
30 environmental regulatory mandates at coal-fired power plants owned by electric utilities and used
31 to generate electricity in this state involve the investment of capital and the incurrence of
32 associated incremental costs. Accordingly, in order for the electric utility undertaking those coal-
33 fired boiler modernization and improvement programs or environmental pollution control programs
34 to comply with air, water, land and related requirements to attract the necessary capital, the
35 electric utility should be permitted to recover an ~~the~~ incremental rate of return on incremental
36 increases in net rate base, related income taxes, depreciation and property taxes associated with
37 the coal-fired boiler modernization and improvement programs or environmental pollution control
38 programs commencing with the implementation of a coal fired-boiler modernization program
39 approved by the commission without waiting for a full base rate tariff filing, as more fully described
40 in subsection ~~(f)~~(g) of this section; and

41 (10) Environmental pollution control equipment shall include, but not be limited to, carbon
42 capture, reduction, and/or storage if state or federal reductions of carbon or CO2 emissions is

43 required.

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

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

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

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

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

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

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

69 structure for coal-fired boiler modernization and improvement program or environmental pollution
70 control program funding;

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

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

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

77 ~~(d)~~ (e) Upon filing of the application, the applicant shall publish, in the form the commission
78 directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate
79 increase under the proposal, by average percentage and dollar amount for customers within a
80 class of service, as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et*
81 *seq.* of this code, the publication area to be each county in which service is provided by the
82 electrical utility, a notice of the filing of the application and that the commission shall may hold a
83 hearing on the application within 180 days of the notice; unless no substantial opposition to the
84 application is received by the Public Service Commission within one week, 60 days of the
85 publication, of the proposed hearing date in which case the hearing can be waived. ~~and~~ The
86 Commission shall issue a final order within 270 days of the application filing date unless the
87 Commission tolls the running of the 270 days due to failure of the electric utility to timely provide
88 information required by the commission.

89 ~~(e)~~ (f) Upon notice and hearing, if required by the commission, the commission shall
90 approve the coal-fired boiler modernization and improvement program or environmental pollution
91 control program and allow expedited recovery of costs related to the expenditures as provided in
92 subsection (g) of this section if the commission finds that the expenditures and the associated rate
93 requirements are just, reasonable, based on prudent investments, not contrary to the West
94 Virginia public interest, used and useful to the utilities' West Virginia ratepayers, and will allow for

95 the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced
96 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 programs
99 and to recover related incremental capital costs and operation and maintenance costs, net of
100 contributions to recovery of return and depreciation and property tax expenses directly attributable
101 to the coal-fired boiler modernization and improvement program, or environmental pollution
102 control program provided by electric utility's customers, if any, as provided in the following
103 subparagraphs (1), (2) and (3) and net increases or decreases in operation and maintenance
104 expenses as provided in the following subparagraph (4):

105 (1) An allowance for return shall be calculated by applying a rate of return to the average
106 planned net incremental increase ~~to~~ in rate base attributable to the net rate base effect of the coal-
107 fired boiler modernization and improvement program or environmental pollution control program
108 for the coming year, considering the projected amount and timing of expenditures under the coal-
109 fired boiler modernization and improvement program or environmental pollution control program
110 plus any expenditures in previous years of the program. The rate of return shall be determined by
111 utilizing the rate of return on equity authorized by the commission in the electric utility's most
112 recent base rate case proceeding or in the case of a settled rate case a rate of return on equity set
113 forth in or associated with such settlement or, if neither is set forth or associated with such
114 settlement, a rate of return on equity as determined by the commission, and the projected cost of
115 the electric utility's debt during the period of the coal-fired boiler modernization and improvement
116 program or environmental pollution control programs to determine the weighted cost of capital
117 based upon the electric utility's capital structure used in the most recent base rate case
118 proceeding.

119 (2) Income taxes at the corporate statutory income rates applicable to the return allowed
120 on the coal-fired boiler modernization and improvement program or environmental pollution

121 control program shall be calculated for inclusion in rates.

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

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

129 ~~(4)~~ (5) Following commission approval of its coal-fired boiler modernization and
130 improvement program or environmental pollution control program, an electric utility shall place into
131 effect rates that include an increment, approved by the commission in accordance with subsection
132 (g) above, that recovers the allowance for return, operation, and maintenance expenses, related
133 income taxes, depreciation and property tax expenses associated with the electric utility's
134 estimated coal-fired boiler modernization and improvement program investments for the
135 upcoming year, net of contributions to recovery of those incremental costs provided by the electric
136 utility's customers, if any, ("incremental cost recovery increment"). In each year subsequent to the
137 order approving the coal-fired boiler modernization and improvement program or environmental
138 pollution control program and an incremental cost recovery increment, the electric utility shall file a
139 petition with the commission setting forth a new proposed incremental cost recovery increment
140 based on investments and expenses to be made in the subsequent year, plus any under-recovery
141 or minus any over-recovery of actual incremental costs attributable to the coal-fired boiler
142 modernization and improvement program or environmental pollution control program investments,
143 for the preceding year.

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

147 ~~(h)~~ (i) Electric utilities may defer incremental operation and maintenance expenditures
148 attributable to regulatory and compliance-related requirements introduced after the electric utility's
149 last rate case proceeding and not included in the electric utility's current base rates. In a future
150 base rate case, the commission shall allow recovery of the deferred costs amortized over a
151 reasonable period of time to be determined by the commission if the commission finds that the
152 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.