

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **Senate Bill 505**

By Senators Martin and Smith (Mr. President)

[Introduced February 14, 2025; referred  
to the Committee on the Energy, Industry, and Mining;  
and then to the Committee on Government  
Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,  
2 designated §24-2J-1, §24-2J-2, §24-2J-3, §24-2J-4, and §24-2J-5, relating to energy;  
3 proposing legislative findings; providing definitions; requiring bulk-power system reliability  
4 factor into determining rates; establishing a legal standard; and providing commission  
5 directives.

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

## **ARTICLE 2J. RELIABLE AND AFFORDABLE ELECTRICITY ACT.**

### **§24-2J-1.**

### **Findings.**

1 (1) The West Virginia Legislature finds that West Virginia citizens, including its families,  
2 schools, hospitals, small businesses, farms, and industries depend on reliable and affordable  
3 electric utility service for everything they do, from operating lifesaving medical equipment to  
4 operating lifesaving building temperature and humidity control;

5 (2) The West Virginia Legislature finds that the transition from fossil fuel based electric  
6 power generation to carbon-neutral and carbon-free electric power generation presents  
7 opportunities for innovation and investment and challenges an electric utility to maintain an asset  
8 inventory that can provide a reliable energy capacity that is equivalent in its ability to be dispatched  
9 on demand, its useful life, and its overall costs compared to its asset inventory that existed before  
10 the transition from fossil fuel based electric power generation began;

11 (3) The West Virginia Legislature finds that the reliability of electric service for West Virginia  
12 citizens requires attention due to the ability of an electric utility to retire a reliable and affordable  
13 electric generation unit ("EGU") and replace that EGU with a different asset or assets, regardless  
14 of whether that asset is equal to or greater in its energy capacity, its ability to be dispatched on  
15 demand, its useful life, and its overall costs compared to those characteristics in a previously  
16 retired EGU;

17 (4) The West Virginia Legislature finds that it is the policy of West Virginia that electric utility  
18 service shall be reliable and that an electric utility's recovery of costs and expenses through rates

shall only be for those costs and expenses that are fair, just, and reasonable; and

(5) The West Virginia Legislature finds that in order to provide electric utility service in West Virginia, an electric utility subject to the jurisdiction of the Public Service Commission shall operate a reliable system.

**§24-2J-2. Definitions.**

As used in this section:

"Application" means any application, amended application, and any and all other amendments to any document filed for the purpose of adjustment to electric utility rates.

"Bulk-power system" means facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof) and electric energy from generation facilities needed to maintain transmission system reliability as set forth for at 16 U.S.C. §824o (a)(1).

"Capacity value" or "Capacity credit" means the fraction of the installed capacity of an electric generating unit which can be relied on at a given time to reliably meet demand. The capacity value or capacity credit of an electric generating unit is frequently measured either in terms of the physical output capacity of the unit such as kilowatt (kW), megawatt (MW), or gigawatt (GW); or as the fractional output percentage (%) of the asset's nameplate capacity.

"Cost-of-service formula" means the total amount of revenue that must be collected in rates for the utility to recover its costs and earn a reasonable return on its investment.

"Effective load or effective demand Carrying Capacity" (ELCC or EDCC) means an electric generating unit's contribution to reliability based on the incremental quantity of load or demand that can be satisfied by adding that resource asset to the electric power grid.

"Electric Generation Unit" (EGU) means any asset used to generate or store electricity, regardless of fuel source, including but not limited to coal, natural gas, nuclear fuel, hydroelectric, geothermal, wind, solar, hydrogen, or other applicable technologies. EGU shall also include, but is not limited to, pumped hydroelectric storage, lithium-ion batteries, and any other device or asset

used to store energy for later use as electricity.

“Independent System Operator” (ISO) has the definition as set forth for a transmission organization at 18 C.F.R. §39.1.

“Rate Base” means the net amount of investment, funded by investors, in utility plant and other assets, including transmission and distribution assets, devoted to the rendering of utility service upon which an electric utility may seek recovery from ratepayers which may include a reasonable rate of return on equity.

“Reliability has the definition as set forth at 16 U.S.C. §824o and the regulations promulgated pursuant thereto.

“Reliable operation” means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements as set forth at 16 U.S.C. §824o (a)(4).

“Transmission Organization” means a regional transmission organization, independent system operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities as set forth at 16 U.S.C. §824o (a)(6). The “Commission” referred to in this definition is the Federal Energy Regulatory Commission.

“Retirement” means any scale down, scale back, intent for lesser usage, or any other similar term with respect to an electric generation unit or a transmission asset.

“Transmission asset” means any and all equipment necessary to transmit electricity from a new or existing EGU to the distribution network used to provide electricity to an end consumer. Transmission asset includes, but is not limited to, any and all substations, inverters, transformers, transmission towers, and additional transmission mileage operating above 69 kilovolts (kV).

**§24-2J-3. Addition of bulk-power system reliability as a factor in the determination of fair,**

**just, and reasonable rates.**

1        (a) For any and all adjustments of electric utility rates subject to the jurisdiction of the Public  
2        Service Commission is hereby amended by adding the following:

3        (1) The bulk-power system reliability, the energy capacity, on-demand dispatch ability,  
4        useful life, intermittent operational nature, overall operational costs including back end disposal  
5        costs, environmental compliance costs, of each and every asset used for the production or  
6        transmission of electric energy, including but not limited to any electric generation unit (EGU), any  
7        transmission asset, and any and all other related assets shall be considered by the Public Service  
8        Commission in its determination of whether the costs and expenses related to and associated with  
9        that asset are fair, just, and reasonable and should be approved for recovery in rates.

10       (b) Each application for an adjustment in rates shall include:

11       (1) For each electric generation unit the applicant proposes to add to its generation  
12       portfolio a statement that shall include:

13       (A) An evaluation of each generation unit's ability to reliably meet the applicant's capacity  
14       contributions to bulk-power system reliability during times of peak demand, as projected in the  
15       application;

16       (B) An assessment of the estimated percentage contribution of each generation unit in  
17       meeting the applicant's capacity contributions to bulk-power system reliability during times of peak  
18       demand, as projected in the application; and

19       (C) A narrative outlining how the addition of each electric generation unit when considered  
20       in conjunction with any proposed scale down, less utilization, retirement or other similar action with  
21       respect to any other electric generation will impact the applicant's ability to meet its capacity  
22       contributions to bulk-power system reliability during times of peak demand as projected in the  
23       application.

24       (2) For each electric generation unit that the applicant proposes to scale down, utilize less  
25       frequently, retire, or otherwise remove from its generation portfolio, a statement that shall include:

26 (A) An evaluation of each generation unit's current ability to reliably meet the electric  
27 utility's capacity contributions to bulk-power system reliability during times of peak demand, as  
28 projected in the application;

29 (B) An assessment of the current estimated percentage contribution of each generation  
30 unit in meeting the electric utility's capacity contributions to bulk-power system reliability during  
31 times of peak demand, as projected in the application; and

32 (C) A narrative outlining how the scale down, less frequent utilization, retirement, or  
33 removal of each electric generation unit from the applicant's portfolio when considered in  
34 conjunction with any proposed addition of an electric generation unit to the applicant's portfolio will  
35 impact the applicant's ability to meet its capacity contributions to bulk-power system reliability  
36 during times of peak demand as projected in the application.

37 (3) The statement in (b)(1) and (b)(2) above shall address, to the best of the declarant's  
38 knowledge, the effective load or effective demand carrying capacity (ELCC or EDCC) of the  
39 electric generation unit. The effective load or effective demand carrying capacity of the electric  
40 generation unit may be indicated as the unforced or accredited capacity of the asset and the  
41 statement may be provided by a Transmission Organization, the applicant, or its agent.

42 (4) For each transmission asset the applicant proposes to build or acquire a statement that  
43 shall include an evaluation of each transmission asset's ability to meet its capability to support the  
44 applicant's capacity contributions to bulk-power system reliability during times of peak demand, as  
45 projected in the application. The statement shall address, to the best of the declarant's  
46 knowledge, how the transmission asset will support the applicant's capacity contributions to bulk-  
47 power system reliability during times of peak demand, as projected in the application. The  
48 statement may be provided by a Transmission Organization, the applicant, or its agent.

49 (5) For each transmission asset the applicant proposes to scale down, utilize less  
50 frequently, retire, or otherwise remove from its portfolio, a statement from the applicant that shall  
51 include an evaluation of each transmission asset's current ability to meet its capability to support

the applicant's capacity contributions to bulk-power system reliability during times of peak demand, as projected in the application. The statement may be provided by a Transmission Organization, the applicant, or its agent.

**§24-2J-4. Burden of proof.**

Each applicant for an adjustment in electric utility rates shall establish by clear and convincing evidence that:

(1) Each electric generating unit that it proposes to build or acquire shall fully meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application;

(2) Each transmission asset that it proposes to build or acquire shall fully meet its capability in order for the applicant to fully meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application;

(3) Each electric generation unit that it proposes to scale down, remove, retire, or perform other similar action with respect thereto will not negatively impact the applicant's ability to fully meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application; and

(4) Each transmission asset that it proposes to scale down, remove, retire, or perform other similar action with respect thereto will not negatively impact the applicant's ability to fully meet its capacity contributions to bulk-power system reliability during times of peak demand as projected in the application.

**§24-2J-5. Commission directives.**

(a) In any order approving an adjustment of rates, the Public Service Commission shall include in a separate finding:

(1) For each electric generation unit the applicant proposes to build or acquire and for which cost recovery is requested through rates, indicating whether that asset meets the requirements of this chapter;

6           (2) For each transmission asset the applicant proposes to build or acquire and for which  
7 cost recovery is requested through rates, indicating whether that asset meets the requirements of  
8 this chapter;

9           (3) For each electric generation unit that the applicant proposes to scale down, utilize less  
10 frequently, retire, or otherwise remove from its generation portfolio indicating whether such  
11 proposed action, in conjunction with the remaining proposals identified in the application, will  
12 negatively impact the applicant's ability to meet its capacity contributions to bulk-power system  
13 reliability during times of peak demand as projected in the application; and

14           (4) For each transmission asset that the applicant proposes to scale down, utilize less  
15 frequently, retire, or otherwise remove from its portfolio indicating whether such proposed action,  
16 in conjunction with the remaining proposals identified in the application, will negatively impact the  
17 applicant's ability to meet its capacity contributions to bulk-power system reliability during times of  
18 peak demand as projected in the application.

19           (b) If the Public Service Commission finds that an electric generation unit that the applicant  
20 proposes to build or acquire fails to meet the requirements of this chapter, the Public Service  
21 Commission shall determine what portion, if any, of the costs and expenses related to and  
22 associated with that electric generation unit are fair, just, and reasonable, and should be eligible  
23 for recovery from ratepayers through rates; and what portion, if any, of the costs and expenses  
24 related to and associated with that electric generation unit are not fair, just, and reasonable and  
25 should not be recovered by the applicant through rates or ratepayers.

26           (c) If the Public Service Commission finds that a transmission asset that the applicant  
27 proposes to add to its portfolio fails to meet the requirements of this chapter, the Public Service  
28 Commission shall determine what portion, if any, of the costs and expenses related to and  
29 associated with that transmission asset are fair, just, and reasonable, and should be eligible for  
30 recovery from ratepayers through rates; and what portion, if any, of the costs and expenses related  
31 to and associated with that transmission asset are not fair, just, and reasonable, and should not be



recovered by the applicant through rates but should be funded from the applicant's business sources, which could include an impact to shareholder returns.

(d) The Public Service Commission in its discretion may approve in part, deny in part, approve, or deny any portion of an applicant's proposal as set forth in its application.

(e) In any order approving an adjustment of rates, the Public Service Commission shall include the following:

(1) A separate and distinct paragraph in boldface type for each of the following and that sets forth:

(A) The total dollar amount of the increase in rate recovery approved;

(B) Whether a rate of return on any electric generating unit asset has been approved, the amount of the rate of return reflected as a percentage of the total dollar amount approved for such return, and the duration of such return;

(C) Whether a rate of return on any transmission asset has been approved, the amount of the rate of return reflected as a percentage of the total dollar amount approved for such return, and the duration of such return;

(D) A summary of the total amount of the electric generating unit costs and expenses, if any, that have been denied for rate recovery; and

(E) A summary of the total amount of the transmission asset costs and expenses, if any, that have been denied for rate recovery.

(f) Nothing herein shall be construed to require the disclosure of confidential information in accordance with the applicable laws, rules, and regulations of the state.

(g) Any agreed order of settlement or similar instrument among the parties shall not circumvent the requirements of this chapter and any and all other applicable law, and shall not abrogate the responsibility of the Public Service Commission to make the findings as directed in subsections (a), (b), (c), (d), and (e) hereinabove.

NOTE: The purpose of this bill is to protect ratepayers from excessive costs stemming from the recent trend of electric utilities in building generation assets, transmission lines, substations, and interconnections that may underperform during periods of peak demand as compared to legacy assets.

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