

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 505**

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[Reported March 24, 2025, from the Committee on

Energy, Industry, and Mining]



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 ensuring  
3 energy reliability and affordability; proposing legislative findings; providing definitions;  
4 requiring bulk-power system reliability factor into determining rates; establishing a legal  
5 standard; and providing commission directives.

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

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

### **§24-2J-1. Legislative findings.**

1 The Legislature finds that:

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

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

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

(4) It is the policy of West Virginia that electric utility service shall be reliable and that an electric utility's recovery of costs and expenses through rates shall be for only those costs and expenses that are fair, just, and reasonable; and

(5) 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, the following terms and phrases have the meanings ascribed to them.

"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 in 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 upon at a given time to 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 also shall 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 set forth for a transmission organization in 18 C.F.R. §39.1.

“Rate base” means the net amount of investment funded by investors in a 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.

“Rate of return” (RoR) means the percentage of profit a utility company is allowed to earn on its invested capital as determined by the commission. The rate of return considers the debt/equity split in the company’s weighted average cost of capital (WACC) to ensure utilities can attract investment for infrastructure while maintaining affordability for customers using the formula:  $RoR = ((D/D+E) \times rd \times (1-T)) + ((E/D+E) \times re)$ . For purposes of this formula:

(i) “D” equals total debt;

(ii) “E” equals total equity;

(iii) “rd” equals cost of debt or interest rate on debt;

(iv) “re” equals cost of equity or return on equity (ROE); and

(v) “T” equals corporate tax rate.

“Reliability” has the definition set forth in 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 in 16 U.S.C. §824o (a)(4).

47 “Transmission organization” means a regional transmission organization, independent  
48 system operator, independent transmission provider, or other transmission organization fully  
49 approved by the Federal Energy Regulatory Commission for the operation of transmission  
50 facilities as set forth in 16 U.S.C. §824o(a)(6).

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

53 “Transmission asset” means any equipment necessary to transmit electricity from a new  
54 or existing EGU to the distribution network used to provide electricity to an end consumer.  
55 Transmission asset includes, but is not limited to, any substation, inverter, transformer,  
56 transmission tower, or 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) In determining whether costs and expenses related to and associated with an asset  
2 are fair, just, reasonable, and should be approved for recovery in or adjustment to electric utility  
3 rates, the commission shall consider the following regarding any asset used for producing or  
4 transmitting electric energy, including, but not limited to, any electric generation unit, transmission  
5 asset, and all other related assets:

6 (1) The bulk-power system reliability;

7 (2) Energy capacity;

8 (3) On-demand dispatch ability;

9 (4) Useful life;

10 (5) Intermittent operational nature;

11 (6) Overall operational costs, including back end disposal costs; and

12 (7) Environmental compliance costs.

13 (b) Each application for an adjustment in rates shall include the following information,  
14 which may be provided by a transmission organization, the applicant, or its agent:

(1) For each electric generation unit the applicant proposes to add to its generation portfolio, a statement that includes:

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

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

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

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

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

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

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

41           (3) The statement required in this subsection shall address, to the best of the declarant's  
42 knowledge, the effective load or effective demand carrying capacity of the electric generation unit.  
43 The effective load or effective demand carrying capacity of the electric generation unit may be  
44 indicated as the unforced or accredited capacity of the asset.

45           (4) For each transmission asset the applicant proposes to build or acquire the application  
46 shall include an evaluation of each transmission asset's ability to meet its capability to support  
47 the applicant's capacity contributions to bulk-power system reliability during times of peak  
48 demand, as projected in the application. The statement shall address, to the best of the  
49 declarant's knowledge, how the transmission asset will support the applicant's capacity  
50 contributions to bulk-power system reliability during times of peak demand, as projected in the  
51 application.

52           (5) For each transmission asset the applicant proposes to scale down, utilize less  
53 frequently, retire, or otherwise remove from its portfolio, a statement from the applicant that  
54 includes an evaluation of each transmission asset's current ability to meet its capability to support  
55 the applicant's capacity contributions to bulk-power system reliability during times of peak  
56 demand, as projected in the application.

**§24-2J-4. Burden of proof.**

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

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

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



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

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

**§24-2J-5. Commission directives.**

1           (a) In any order approving an adjustment of rates, the commission shall include in a  
2 separate finding:

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

6           (2) For each electric generation unit the applicant proposes to build or acquire, and for  
7 which cost recovery is requested through rates, the commission shall adjust the allowed rate of  
8 return to reflect the capacity value of the resource, which may be expressed as the effective load  
9 carrying capacity, for the balancing authority in which the asset operates using this formula:  $RoR$   
10  $= (((D/D+E) \times rd \times (1-T)) + ((E/D+E) \times re)) \times (CV)$ . For purposes of this formula, CV equals the  
11 capacity value of the resource expressed as a percentage of its nameplate capacity as  
12 determined by the balancing authority in which it operates;

13           (3) For each transmission asset the applicant proposes to build or acquire and for which  
14 cost recovery is requested through rates, a statement regarding whether that asset meets the  
15 requirements of this chapter;

16           (4) For each electric generation unit that the applicant proposes to scale down, utilize less

frequently, retire, or otherwise remove from its generation portfolio, a statement regarding whether the proposed action, in conjunction with the remaining proposals identified in the application, will negatively impact the applicant's ability to meet its capacity contributions to bulk-power system reliability during times of peak demand, as projected in the application; and

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

(b) If the commission finds that an electric generation unit that the applicant proposes to build or acquire fails to meet the requirements of this chapter, the commission shall determine:

(1) What portion, if any, of the costs and expenses related to and associated with that electric generation unit are fair, just, and reasonable, and should be eligible for recovery from ratepayers through rates; and

(2) What portion, if any, of the costs and expenses related to and associated with that electric generation unit are not fair, just, and reasonable, and should not be recovered by the applicant through rates or ratepayers.

(c) If the commission finds that a transmission asset that the applicant proposes to add to its portfolio fails to meet the requirements of this chapter, the commission shall determine:

(1) What portion, if any, of the costs and expenses related to and associated with that transmission asset are fair, just, and reasonable, and should be eligible for recovery from ratepayers through rates; and

(2) What portion, if any, of the costs and expenses related 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.

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

45 (e) In any order approving an adjustment of rates, the commission shall include the  
46 following information in boldface type and in separate and distinct paragraphs:

47 (1) The total dollar amount of any increase in rate recovery approved;

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

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

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

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

58 (f) This section does not require disclosure of information which is confidential pursuant to  
59 the laws of this state.

60 (g) Any agreed order of settlement or similar instrument among the parties does not  
61 circumvent the requirements of this chapter or any other applicable law, and does not abrogate  
62 the responsibility of the commission to make the findings as directed in this section.