

H. B. 2358

(By Delegates Fleischauer, Manypenny and Marshall)
[Introduced February 13, 2013; referred to the
Committee on Energy, Industry and Labor, Economic
Development and Small Business then the Judiciary.]

A BILL to amend and reenact §24-2-1e and §24-2-11a of the Code of West Virginia, 1931, as amended, all relating to prohibiting accelerated rates of recovery for the construction of electric transmission facilities if the construction results in certain adverse effects; requiring an application by a utility for a certificate of need to include a statement of the impact of greenhouse emissions and an analysis of alternatives to the transmission line to be constructed; requiring the commission, when approving an application, to determine whether the line strikes an acceptable balance among competing interests; requiring the commission to deny applications for lines that are visible from or cross within five miles of certain scenic areas; and requiring notices be given.

Be it enacted by the Legislature of West Virginia:

That §24-2-1e and §24-2-11a of the Code of West Virginia,

1 1931, as amended, be amended and reenacted, all to read as follows:

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

3 **§24-2-1e. Rate recovery for construction of electric transmission**
4 **facilities.**

5 (a) In order to encourage the construction of transmission
6 facilities necessary to transmit electric power from generating
7 facilities located in this state to areas where such power can be
8 economically marketed, the commission may allow an electric utility
9 accelerated rate recovery for transmission facilities constructed
10 or upgraded for the purpose of increasing the capacity to transmit
11 electric power to areas outside the utility's service territory
12 where such power can be economically marketed. In allowing
13 accelerated rate recovery, the commission shall include the impact
14 of the investment in transmission facilities on any investment
15 equalization agreement in which the utilities participate.

16 (b) The commission may not allow accelerated rate recovery if
17 it finds that the construction of the transmission facilities
18 adversely effects ratepayers in West Virginia, reduces
19 competitiveness of business or industries in West Virginia, or has
20 a significant effect on the environment.

21 **§24-2-11a. Requirement for certificate of public convenience and**
22 **necessity before beginning construction of high**
23 **voltage transmission line; contents of application;**

1 **notice; hearing; criteria for granting or denying**
2 **certificate; regulations.**

3 (a) No public utility, person or corporation may begin
4 construction of a high voltage transmission line of two hundred
5 thousand volts or over, which line is not an ordinary extension of
6 an existing system in the usual course of business as defined by
7 the Public Service Commission, unless and until it or he or she has
8 obtained from the Public Service Commission a certificate of public
9 convenience and necessity approving the construction and proposed
10 location of the transmission line.

11 (b) The application for the certificate shall be in the form
12 the commission prescribes and shall contain:

13 (1) A description, in such detail as the commission
14 prescribes, of the location and type of line facilities which the
15 applicant proposes to construct;

16 (2) A statement justifying the need for the facilities;

17 (3) A statement of the direct and indirect environmental
18 impact of the line facilities; ~~and~~

19 (4) A statement of the direct and indirect impacts on
20 emissions of greenhouse gases anticipated from construction and
21 operation of such line facilities;

22 (5) A detailed analysis of reasonable alternatives to the
23 facility, including demand-side reduction programs; and

24 ~~(4)~~ (6) Other information the applicant considers relevant or

1 the commission requires.

2 (c) Upon the filing of the application, the applicant provides
3 written notification to each property owner within one mile of the
4 center line of the proposed transmission line via certified mail,
5 and shall publish, in the form the commission directs, as a Class
6 II legal advertisement in compliance with ~~the provisions of~~ article
7 three, chapter fifty-nine of this code, the publication area for
8 the publication to be each county in which any portion of the
9 proposed transmission line is to be constructed, a notice of the
10 filing of the application and that the commission may approve the
11 application unless within fifteen days after completion of
12 publication a written request for a hearing on the application has
13 been received by the commission from a person or persons alleging
14 that the proposed transmission line or its location is against the
15 public interest. If the request is timely received, the commission
16 shall set the matter for hearing on a date within sixty days from
17 completion of the notification and publication, and shall require
18 the applicant to provide written notice and publish notice of the
19 time and place of hearing in the same manner as is required for the
20 publication of notice of the filing of the application. At least
21 thirty business days before the deadline set by the Public Service
22 Commission to file a petition to intervene with regard to the
23 application, the applicant shall serve notice by certified mail to
24 all owners of surface real estate that lie within the preferred

1 corridor of the proposed transmission line. Notice received by a
2 named owner who is the recipient of record of the most recent tax
3 bill that has been issued by the county sheriff's office for a
4 parcel of land at the time of the filing of the application is
5 sufficient notice regarding that parcel for purposes of this
6 subsection.

7 (d) Within sixty days after the filing of the application, or
8 if hearing is held on the application, within ninety days after
9 final submission on oral argument or brief, the commission may
10 approve the application if it finds that the proposed transmission
11 line:

12 (1) Will economically, adequately and reliably contribute to
13 meeting the present and anticipated requirements for electric power
14 of the customers served by the applicant or is necessary and
15 desirable for present and anticipated reliability of service for
16 electric power for its service area or region;

17 (2) Will be in the best interest of West Virginia customers
18 and its citizens by striking an acceptable balance among power
19 transmission needs of the applicant, reasonable power needs of
20 electricity consumers in West Virginia and reasonable environmental
21 factors;

22 (3) Will not be visible from or cross within five miles of
23 state or federal designated scenic areas, including, but not
24 limited to, scenic rivers, scenic highways and scenic overlooks;

1 and

2 ~~(3)~~ (4) Will result in an acceptable balance between
3 reasonable power needs and reasonable environmental factors.

4 (e) The commission may impose conditions upon its approval of
5 the application, or modify the applicant's proposal, to achieve an
6 acceptable balance between reasonable power needs and reasonable
7 environmental factors.

8 (f) ~~The provisions of this section do~~ This section does not
9 apply to the construction of line facilities which will be part of
10 a transmission line for which any right-of-way has been acquired
11 prior to January 1, 1973.

12 (g) The commission shall prescribe rules it considers proper
13 for the administration and enforcement of ~~the provisions of this~~
14 section, which rules shall be promulgated in accordance with the
15 applicable provisions of chapter twenty-nine-a of this code.

16 (h) Notwithstanding any other provision of the law to the
17 contrary, the commission shall determine, in its discretion, which
18 transmission line or lines crossing above the Ohio River must be
19 marked to be made visible to airborne traffic flying in any area
20 where the lines exist, and shall promulgate rules requiring that
21 all public utilities or persons who install or maintain the lines
22 make the necessary markings.

NOTE: The purpose of this bill is to prohibit accelerated rates of recovery for the construction of electric transmission facilities if the construction results in certain adverse effects. The bill requires an application by a utility for a certificate of need to include a statement of the impact of greenhouse emissions and an analysis of alternatives to the transmission line to be constructed. The bill requires the commission, when approving an application, to determine whether the line strikes an acceptable balance among competing interests. The bill requires the commission to deny applications if a line is visible from or crosses within five miles of certain scenic areas. The bill requires notices be given.

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