

ENROLLED
COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 390

(Senator Trump, *original sponsor*)

[Passed March 13, 2015; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1k, relating to additional duties of the Public Service Commission; authorizing commission to approve expedited cost recovery of natural gas utility infrastructure projects deemed just and reasonable and in the public interest; making findings; establishing application and hearing process; and providing for rulemaking.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §24-2-1k, to read as follows:

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

§24-2-1k. Natural gas infrastructure expansion, development, improvement and job creation; 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 is experiencing significant growth in the natural gas industry with the

1 development of the Marcellus and Utica shale;

2 (3) West Virginia's abundant natural gas reserves have created, and will continue to create,
3 many benefits to the state and its citizens;

4 (4) Growth in the natural gas industry and its accompanying benefits require West Virginia
5 to be proactive and increase the focus on the natural gas infrastructure in this state in order for those
6 benefits to flow to the state and its citizens, including those citizens in areas unserved or underserved
7 by natural gas utilities;

8 (5) A comprehensive program of replacing, upgrading and expanding infrastructure by
9 natural gas utilities at reasonable cost to ratepayers will benefit the customers of the natural gas
10 utilities, the public in West Virginia and the economy of the state, as a whole;

11 (6) A natural gas utility infrastructure program will create jobs, provide for continued and
12 enhanced safety and reliability of aging natural gas infrastructure, provide for more economic natural
13 gas utility service, and provide natural gas utility service to new customers in areas of the state that
14 are unserved or underserved; and

15 (7) Natural gas utility infrastructure programs involve the investment of capital and the
16 incurrence of associated incremental costs. Accordingly, in order for the natural gas utility
17 undertaking those infrastructure programs to attract the necessary capital, the natural gas utility
18 should be permitted to recover the incremental rate of return, related income taxes, depreciation and
19 property taxes associated with the infrastructure programs commencing with the implementation of
20 an infrastructure program approved by the commission without waiting for a full base rate tariff
21 filing as more fully described in subsection (f) of this section.

22 (b) Natural gas utilities may file with the commission an application for a multi-year
23 comprehensive plan for infrastructure replacements, upgrades and extensions. Subject to

1 commission review and approval, a plan may be amended and updated by the natural gas utility as
2 circumstances warrant. The recovery of costs in support of the plans shall be allowed in the manner
3 set forth in this section if the proposed plans have been found to be prudent and useful.

4 (c) The application is in lieu of a proceeding pursuant to section eleven of this article and
5 shall contain the following:

6 (1) A description of the infrastructure program, in such detail as the commission prescribes,
7 and the projected annual amount (in approximate line sizes and feet), general location, type, and
8 projected installation timing of the facilities that the applicant proposes to replace, construct and/or
9 improve;

10 (2) The projected net cost, on an annual basis, of the replacement, construction or
11 improvements;

12 (3) The projected starting date for the infrastructure program;

13 (4) The projected numbers of potential new customers, if any, that may be served by the
14 infrastructure program and the projected annual load of the customers;

15 (5) The projected cost of debt for the infrastructure program funding and the projected capital
16 structure for infrastructure program funding;

17 (6) Testimony, exhibits or other evidence that demonstrates the need for the replacement,
18 construction or improvement of facilities in order to provide and maintain adequate, efficient, safe,
19 reliable and reasonable natural gas service;

20 (7) A proposed cost recovery mechanism consistent with this section; and

21 (8) Other information the applicant considers relevant or the commission requires.

22 (d) Upon filing of the application, the applicant shall publish, in the form the commission
23 directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate increase

1 under the proposal, by average percentage and dollar amount for customers within a class of service,
2 as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine
3 of this code, the publication area to be each county in which service is provided by the natural gas
4 utility, a notice of the filing of the application and that the commission shall hold a hearing on the
5 application within ninety days of the notice; unless no opposition to the rate change is received by
6 the Public Service Commission within one week of the proposed hearing date, in which case the
7 hearing can be waived, and issue a final order within one hundred fifty days of the application filing
8 date. However, if the proposed infrastructure program includes a request for extension of
9 infrastructure into an unserved area and another natural gas utility files to extend service to the same
10 area, the commission may move that extension request of each natural gas utility into separate
11 proceedings to be considered concurrently and extend the time period for issuing a final order on that
12 portion of the proposed programs beyond the one hundred fifty days.

13 (e) Upon notice and hearing, if required by the commission, the commission shall approve
14 the infrastructure program and allow expedited recovery of costs related to the expenditures as
15 provided in subsection (f) of this section if the commission finds that the expenditures and the
16 associated rate requirements are just, reasonable, not contrary to the public interest and will allow
17 for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced natural
18 gas service.

19 (f) Upon commission approval, natural gas utilities will be authorized to implement the
20 infrastructure programs and to recover related incremental costs, net of contributions to recovery of
21 return and depreciation and property tax expenses directly attributable to the infrastructure program
22 provided by new customers served by the infrastructure program investments, if any, as provided in
23 the following:

1 (1) An allowance for return shall be calculated by applying a rate of return to the average
2 planned net incremental increase to rate base attributable to the infrastructure program for the
3 coming year, considering the projected amount and timing of expenditures under the infrastructure
4 program plus any expenditures in previous years of the infrastructure program. The rate of return
5 shall be determined by utilizing the rate of return on equity authorized by the commission in the
6 natural gas utility's most recent rate case proceeding or in the case of a settled rate case, a rate of
7 return on equity as determined by the commission, and the projected cost of the natural gas utility's
8 debt during the period of the infrastructure program to determine the weighted cost of capital based
9 upon the natural gas utility's capital structure.

10 (2) Income taxes applicable to the return allowed on the infrastructure program shall be
11 calculated for inclusion in rates.

12 (3) Incremental depreciation and property tax expenses directly attributable to the
13 infrastructure program shall be estimated for the upcoming year.

14 (4) Following commission approval of its infrastructure program, a natural gas utility shall
15 place into effect rates that include an increment that recovers the allowance for return, related income
16 taxes, depreciation and property tax expenses associated with the natural gas utility's estimated
17 infrastructure program investments for the upcoming year, net of contributions to recovery of those
18 incremental costs provided by new customers served by the infrastructure program investments, if
19 any, ("incremental cost recovery increment"). In each year subsequent to the order approving the
20 infrastructure program and an incremental cost recovery increment, the natural gas utility shall file
21 a petition with the commission setting forth a new proposed incremental cost recovery increment
22 based on investments to be made in the subsequent year, plus any under-recovery or minus any
23 over-recovery of actual incremental costs attributable to the infrastructure program investments, for

1 the preceding year.

2 (g) The natural gas utility may make any accounting accruals necessary to establish a
3 regulatory asset or liability through which actual incremental costs incurred and costs recovered
4 through the rate mechanism are tracked.

5 (h) Natural gas utilities may defer incremental operation and maintenance expenditures
6 attributable to regulatory and compliance-related requirements introduced after the natural gas
7 utility's last rate case proceeding and not included in the natural gas utility's current base rates. In
8 a future rate case, the commission may allow recovery of the deferred costs amortized over a
9 reasonable period of time to be determined by the commission provided the commission finds that
10 the costs were reasonable and prudently incurred and were not reflected in rates in prior rate cases.