

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 4435**

BY DELEGATES R. SMITH, IRELAND, MCCUSKEY AND

MARCUM

[Introduced February 8, 2016; Referred  
to the Committee on Energy then Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §24-2-11, relating to additional duties of the Public Service Commission;  
 3 authorizing commission to approve expedited cost recovery of electric utility coal-fired  
 4 boiler modernization and improvement projects deemed just and reasonable and in the  
 5 public interest; making findings; and establishing application and hearing process.

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

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
 2 section, designated §24-2-11, to read as follows:

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

**§24-2-11. Modernization and improvement of coal-fired boilers at electric 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) A comprehensive program of modernizing, upgrading and improving coal-fired boilers  
 13 at existing West Virginia power plants owned by electric utilities at reasonable cost to ratepayers,  
 14 will benefit the customers of the electric utilities, the public in West Virginia and the economy of  
 15 the state as a whole;

16 (6) A coal-fired boiler modernization and improvement program will create jobs, provide  
17 for continued and enhanced safety and reliability of aging electrical generation infrastructure, and  
18 provide for more economical generation of electricity from coal all of which will benefit customers  
19 located throughout the state; and

20 (7) Programs to modernize and improve coal-fired boilers owned by electric utilities and  
21 used to generate electricity in this state involve the investment of capital and the incurrence of  
22 associated incremental costs. Accordingly, in order for the electric utility undertaking those coal-  
23 fired boiler modernization and improvement programs to attract the necessary capital, the electric  
24 utility should be permitted to recover the incremental rate of return, related income taxes,  
25 depreciation and property taxes associated with the coal-fired boiler modernization and  
26 improvement programs commencing with the implementation of a coal-fired boiler modernization  
27 and improvement program approved by the commission without waiting for a full base rate tariff  
28 filing, as more fully described in subsection (f) of this section.

29 (b) Electric utilities may file with the commission an application for a multiyear  
30 comprehensive plan for modernizing and improving coal-fired boilers at power plants located in  
31 this state and owned, in whole or in part, by the electric utility. Subject to commission review and  
32 approval, a plan may be amended and updated by the electric utility as circumstances warrant.  
33 The recovery of costs in support of the plan shall be allowed in the manner set forth in this section  
34 if the proposed plan has been found to be prudent and useful.

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

37 (1) A description of the coal-fired boiler modernization and improvement program, in such  
38 detail as the commission prescribes, the projected cost, and timing of the installation of equipment  
39 and facilities that the applicant proposes to replace, construct, modernize and/or improve;

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

42 (3) The projected starting and completion dates for the modernization and improvement  
43 program;

44 (4) The projected cost of debt for the coal-fired boiler modernization and improvement  
45 program funding and the projected capital structure for coal-fired boiler modernization and  
46 improvement program funding;

47 (5) Testimony, exhibits or other evidence that demonstrates the need for the  
48 modernization and improvement of coal-fired boilers in order to provide and maintain adequate,  
49 efficient, safe, reliable and reasonably priced electrical generation;

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

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

52 (d) Upon filing of the application, the applicant shall publish, in the form the commission  
53 directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate  
54 increase under the proposal, by average percentage and dollar amount for customers within a  
55 class of service, as a Class I legal advertisement in compliance with the provisions of article three,  
56 chapter fifty-nine of this code, the publication area to be each county in which service is provided  
57 by the electrical utility, a notice of the filing of the application and that the commission shall hold  
58 a hearing on the application within ninety days of the notice; unless no opposition to the rate  
59 change is received by the Public Service Commission within one week of the proposed hearing  
60 date, in which case the hearing can be waived, and issue a final order within one hundred fifty  
61 days of the application filing date.

62 (e) Upon notice and hearing, if required by the commission, the commission shall approve  
63 the coal-fired boiler modernization and improvement program and allow expedited recovery of  
64 costs related to the expenditures as provided in subsection (f) of this section if the commission  
65 finds that the expenditures and the associated rate requirements are just, reasonable, not contrary  
66 to the public interest and will allow for the provision and maintenance of adequate, efficient, safe,  
67 reliable and reasonably priced electricity generated from coal.

68 (f) Upon commission approval, electric utilities will be authorized to implement the coal-  
69 fired boiler modernization and improvement programs and to recover related incremental costs,  
70 net of contributions to recovery of return and depreciation and property tax expenses directly  
71 attributable to the coal-fired boiler modernization and improvement program provided by electric  
72 utility's customers, if any, as provided in the following:

73 (1) An allowance for return shall be calculated by applying a rate of return to the average  
74 planned net incremental increase to rate base attributable to the coal-fired boiler modernization  
75 and improvement program for the coming year, considering the projected amount and timing of  
76 expenditures under the coal-fired boiler modernization and improvement program plus any  
77 expenditures in previous years of the program. The rate of return shall be determined by utilizing  
78 the rate of return on equity authorized by the commission in the electric utility's most recent rate  
79 case proceeding or in the case of a settled rate case, a rate of return on equity as determined by  
80 the commission, and the projected cost of the electric utility's debt during the period of the coal-  
81 fired boiler modernization and improvement program to determine the weighted cost of capital  
82 based upon the electric utility's capital structure.

83 (2) Income taxes applicable to the return allowed on the coal-fired boiler modernization  
84 and improvement program shall be calculated for inclusion in rates.

85 (3) Incremental depreciation and property tax expenses directly attributable to the coal-  
86 fired boiler modernization and improvement program shall be estimated for the upcoming year.

87 (4) Following commission approval of its coal-fired boiler modernization and improvement  
88 program, an electric utility shall place into effect rates that include an increment that recovers the  
89 allowance for return, related income taxes, depreciation and property tax expenses associated  
90 with the electric utility's estimated coal-fired boiler modernization and improvement program  
91 investments for the upcoming year, net of contributions to recovery of those incremental costs  
92 provided by the electric utility's customers, if any, ("incremental cost recovery increment"). In each  
93 year subsequent to the order approving the coal-fired boiler modernization and improvement

94 program and an incremental cost recovery increment, the electric utility shall file a petition with  
95 the commission setting forth a new proposed incremental cost recovery increment based on  
96 investments to be made in the subsequent year, plus any under-recovery or minus any over-  
97 recovery of actual incremental costs attributable to the coal-fired boiler modernization and  
98 improvement program investments, for the preceding year.

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

102 (h) Electric utilities may defer incremental operation and maintenance expenditures  
103 attributable to regulatory and compliance-related requirements introduced after the electric utility's  
104 last rate case proceeding and not included in the electric utility's current base rates. In a future  
105 rate case, the commission may allow recovery of the deferred costs amortized over a reasonable  
106 period of time to be determined by the commission if the commission finds that the costs were  
107 reasonable and prudently incurred and were not reflected in rates in prior rate cases.

NOTE: The purpose of this bill is to authorize the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects.

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