

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 600

BY SENATORS SMITH, FERNS, AND WELD

[Originating in the Committee on Energy, Industry,
and Mining; Reported on February 23, 2018]

1 A BILL to amend and reenact §24-2-1j of the Code of West Virginia, 1931, as amended, relating
2 to powers and duties of the Public Service Commission; establishing special rates and
3 provisions for energy intensive industrial and manufacturing consumers of electric power;
4 adding new definitions; and establishing the procedure required for approval of these rates
5 for manufacturing consumers by the commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

**§24-2-1j. Special rates and provisions for energy intensive industrial and manufacturing
consumers of electric power.**

1 (a) The Legislature hereby finds that:

2 (1) Whereas West Virginia ~~enjoys~~ historically enjoyed relatively low cost electric power
3 rates for residential customers, business and industry and these relatively low rates ~~constitute~~
4 constituted a competitive economic advantage for West Virginia, this competitive economic
5 advantage has eroded;

6 (2) West Virginia has many energy intensive industrial and manufacturing consumers of
7 electric power, and has the ability to retain its existing energy intensive industrial and
8 manufacturing consumers of electric power and attract additional energy intensive industrial and
9 manufacturing consumers of electric power in the future, through the adoption of policies and the
10 establishment of rates that enhance and preserve the ~~attractiveness~~ competitiveness of West
11 Virginia as a place for energy intensive industrial and manufacturing consumers to do business;

12 (3) Energy intensive industrial and manufacturing consumers of electric power create jobs,
13 provide a substantial tax base, and enhance the productive capacity, competitiveness, and
14 economic opportunities of West Virginia and all of its citizens;

15 (4) Energy intensive industrial and manufacturing consumers of electric power help keep
16 power rates low for all consumers of electric power, including residential customers, by providing
17 a large consumption base over which the cost of producing and delivering electric power may be

18 spread from time to time;

19 (5) It is in the best interests of West Virginia, the citizens of West Virginia, electric public
20 utilities in West Virginia, and all consumers of electric power in West Virginia, including residential
21 customers, to encourage the continued development, construction, operation, maintenance, and
22 expansion in West Virginia of industrial and manufacturing plants and facilities which are energy
23 intensive consumers of electric power, thereby increasing the creation, preservation, and
24 retention of jobs, retaining and expanding the tax base, helping keep power rates low for all
25 consumers of electric power, and enhancing the productive capacity, competitiveness, and
26 economic opportunities of all citizens of West Virginia and;

27 (6) To encourage the continued development, construction, operation, maintenance, and
28 expansion in West Virginia of industrial and manufacturing plants and facilities which are energy
29 intensive consumers of electric power, the commission may accept special contracts and
30 establish special rates and other supply arrangements under this section that in its judgment are
31 necessary or appropriate for the continued, new, or expanded operation of energy intensive
32 industrial and manufacturing consumers and that can reasonably be expected to support the long-
33 term operation of energy intensive industrial and manufacturing consumers, and that do not
34 impose an unreasonable burden upon electric public utilities or their other customers.

35 ~~(7) To assist the commission in the exercise of its authority to establish special rates under~~
36 ~~this section, the Legislature creates in article thirteen-cc, chapter eleven of this code a tax credit~~
37 ~~mechanism to provide a source of funding to support special rates of which the commission may~~
38 ~~avail itself in exercising said authority in certain circumstances~~

39 (b) As used in this section:

40 (1) "Energy intensive industrial and manufacturing consumer" means an industrial or
41 manufacturing facility, plant, or enterprise located or to be located in West Virginia that has an
42 actual demand in the past 12 months, or a projected contract demand of at least ~~fifty thousand~~
43 10,000 kilowatts of electric power at its West Virginia facilities, and the cost of electricity consumed

44 in the industrial or manufacturing process constitutes at least 10 percent of the cost of production
45 under normal operating conditions.

46 (2) "Special contract" means a bilateral contract for electric service negotiated between an
47 energy intensive industrial or manufacturing consumer and a utility regulated by the commission,
48 including rates, terms, and conditions that may reflect the unique circumstances of the consumer,
49 or are designed to attract, retain, or incentivize additional investment by the consumer, or provide
50 benefits to the utility and its customers through actions that serve to reduce the utility's cost of
51 providing service.

52 ~~(2)~~ (3) "Special rate" means a rate set for an energy intensive industrial or manufacturing
53 consumer pursuant to this section.

54 (4) "Special tariff" means a commission-approved economic development, retention,
55 opportunity, or other tariff offering designed to attract, retain, or incentivize additional investment
56 by energy intensive industrial and manufacturing consumer(s), or that provides benefits to the
57 utility and its customers through actions that serve to reduce the utility's cost of providing service.

58 (c) In addition to any authority of the commission to allow special ~~rates or contracts~~ or
59 special tariffs under any other provision of the code or rule, and in addition to all other factors
60 which the commission may consider in setting rates for consumers of electric power, including,
61 but not limited to, the commission's responsibilities under §24-1-1(b) of this code, and
62 notwithstanding any other provisions of this code to the contrary, in setting a special rate the
63 commission may take into consideration fluctuations in market prices for the goods or products
64 produced by the energy intensive industrial or manufacturing consumer of electric power, or other
65 variables or factors which may be relevant to or affect the continuing vitality of the energy intensive
66 industrial or manufacturing consumer of electric power in dynamic markets. In setting a special
67 rate by reference to fluctuations in market prices for the goods and products produced by an
68 energy intensive industrial or manufacturing consumer of electric power, the commission may
69 establish variable rates including, but not limited to, ceilings and floors on the special rate, banking

70 or crediting mechanisms, caps, limits, or other similar types of safeguards that are intended by
71 the commission, in its reasonable judgment, to provide appropriate flexibility and predictability in
72 the special rate over time, to permit the energy intensive industrial or manufacturing consumer
73 ~~customer~~ the ability to make the capital investments and other commitments necessary to support
74 the continued operation of the facility.

75 (d) An energy intensive industrial or manufacturing consumer ~~wishing to apply for~~ seeking
76 a special contract or special rate shall first enter into negotiations with the utility that provides, or
77 would provide, it with electric power, regarding the terms and conditions of a mutually agreeable
78 ~~special~~ rate. If the negotiations result in an agreement between the energy intensive industrial or
79 manufacturing consumer and the utility, ~~the energy intensive industrial consumer and the utility~~
80 ~~shall make a joint filing with the commission seeking approval of the proposed special rate. If the~~
81 utility may implement the provisions of the agreement pursuant to the provisions of §24-2-1j(f)
82 and §24-2-1j(h) of this code. Nothing herein limits the legal rights of the energy intensive industrial
83 or manufacturing consumer if the negotiations are unsuccessful. ~~the energy intensive industrial~~
84 ~~consumer may file a petition with the commission to consider establishing a special rate. The~~
85 ~~commission shall have the authority to establish a special rate upon the filing of either a joint filing~~
86 ~~or a petition pursuant to this section~~

87 (e) In order to qualify for a special rate or special contract, an energy intensive industrial
88 or manufacturing consumer shall:

89 (1) ~~Have a contract demand of at least fifty thousand kilowatts of electric power at its West~~
90 ~~Virginia facilities under normal operating conditions~~ Affirm and demonstrate that the electric
91 energy consumed in the industrial or manufacturing process constitutes or will constitute at least
92 10 percent of the cost of production;

93 (2) Create or retain at least 25 full-time jobs in West Virginia;

94 (3) Have invested not less than \$500,000 in fixed assets, including machinery and
95 equipment, in West Virginia;

96 (4) Provide reasonable evidence that due to market conditions in the industry in which the
97 energy intensive industrial or manufacturing consumer operates, or other factors bearing on
98 investment in and operation of the industrial or manufacturing facility or facilities, without the
99 special rate the operation or continued operation of the industrial or manufacturing facility or
100 facilities is threatened or not economically viable under reasonable assumptions and projections
101 regarding the market and the operation of the industrial or manufacturing facility or facilities;

102 (5) Provide reasonable evidence that, with the special rate, the energy intensive industrial
103 or manufacturing consumer intends to operate the industrial or manufacturing facility or facilities
104 in West Virginia for an extended period of time, and that the operation or continued operation of
105 the industrial or manufacturing facility or facilities for an extended period of time appears
106 economically viable, under reasonable assumptions and projections regarding the market in
107 which the energy intensive industrial or manufacturing consumer operates and regarding the
108 operation of the industrial or manufacturing facility or facilities; and

109 (6) Provide information and data setting forth how the energy intensive industrial or
110 manufacturing consumer meets the qualifications of this section, and how the special rate
111 advances the policy goals set forth in §24-2-1j(a) of this code.

112 ~~(f) The commission shall determine whether any excess revenue or revenue shortfall~~
113 ~~created by a special rate authorized pursuant to this section should be allocated among any other~~
114 ~~customers of the utility. In making that determination, the commission shall consider all relevant~~
115 ~~factors, including whether such allocation is just, reasonable, and fairly balances the interests of~~
116 ~~other customers, the utility, and the customer receiving the special rate~~ A special rate or special
117 contract under this article related to new or expanded electrical load of the consumer shall be
118 considered reasonable and may become effective upon filing of the agreement with the
119 commission under its rules, provided the fixed cost recovery component of the revenue projected
120 to be received by the utility over the term of the agreement is no less than 60 percent of the fixed
121 cost recovery component that the utility would have received under the applicable tariff rates for

122 which the consumer would otherwise qualify and the term of the agreement does not exceed five
123 years in duration. If the negotiated rate is less than 60 percent of the fixed cost recovery
124 component of the applicable tariff rate or if the term of the agreement exceeds five years, the
125 effective date of the special rate or special contract shall be suspended for an initial period of 60
126 days from the date of filing. If the commission takes no action during the 60-day review period to
127 further suspend the effectiveness by setting the agreement for hearing, the rates and any other
128 provisions set forth in the agreement shall be considered reasonable and may be implemented
129 by the utility. The special rate or special contract may not provide any discount on the variable
130 cost recovery component that the utility would have received under the applicable tariff rates for
131 which the consumer would otherwise qualify.

132 ~~(g) If the commission determines that: (1) A special rate is necessary for the creation,~~
133 ~~preservation or retention of jobs by the energy intensive industrial consumer; (2) in connection~~
134 ~~with the initial special rate that is authorized by the commission for an energy intensive industrial~~
135 ~~consumer, the energy intensive industrial consumer will increase the number of persons it~~
136 ~~employs, including both persons who have been previously employed by the energy intensive~~
137 ~~industrial consumer and persons not previously employed by the energy intensive industrial~~
138 ~~consumer, by at least one hundred fifty persons as a result of the special rate; (3) the energy~~
139 ~~intensive industrial consumer will employ no fewer than three hundred persons, which number~~
140 ~~may include, but is not limited to, the persons newly hired or rehired pursuant to the preceding~~
141 ~~clause in this subsection; (4) the energy intensive industrial consumer has a contract demand of~~
142 ~~at least two hundred fifty thousand kilowatts of electric power at its West Virginia facilities under~~
143 ~~normal operating conditions; and (5) a special rate for an energy intensive industrial consumer of~~
144 ~~electric power would create a revenue shortfall, the commission shall, prior to determining~~
145 ~~whether it is reasonable to allocate all or a portion of the revenue shortfall amount among a public~~
146 ~~utility's other customers, first consider the availability of tax credits and payments required to be~~
147 ~~made to public utilities pursuant to article thirteen-cc, chapter eleven of this code to reduce or~~

148 ~~eliminate a revenue shortfall. The commission shall identify in each proceeding in which it~~
149 ~~establishes a special rate for an eligible energy intensive industrial consumer the amount of any~~
150 ~~unallocated revenue shortfall in need of funding pursuant to article thirteen-cc, chapter eleven of~~
151 ~~this code to defray it and shall project the amount of the gross tax credits needed for that purpose~~
152 ~~after taking into consideration the net amounts of credits that are required to be paid to utilities~~
153 ~~pursuant to subsection (a), section four, article thirteen-cc, chapter eleven of this code and the~~
154 ~~limits specified in section three, article thirteen-cc, chapter eleven of this code. Tax credits~~
155 ~~authorized under this section may be designated by the commission only in respect of periods of~~
156 ~~time during which the eligible energy intensive industrial consumer employs at least three hundred~~
157 ~~persons. The commission's determination as to the amount of tax credits on which it relies in~~
158 ~~establishing a given special rate, shall constitute an authorization for each supplier of West~~
159 ~~Virginia coal to the utility offering that special rate to claim its allocated share of the total amount~~
160 ~~of tax credits. The allocated share shall be calculated by the affected public utility, subject to the~~
161 ~~approval of the commission~~ A utility entering into a special rate or special contract under the
162 provisions of §24-2-1j(f) of this code may not seek recovery outside of a general rate proceeding
163 filed pursuant to Rule 42 of the commission's rules for the construction and filing of tariffs of any
164 revenue differential attributable to the difference between the fixed cost recovery component of
165 the special rate or special contract and the fixed cost recovery component of the applicable
166 approved tariff rate for which the consumer would otherwise qualify. In a future general rate
167 proceeding establishing rates to be effective during the term of any agreement, the commission
168 may not impute revenues to the utility in excess of that provided for by the special rate or special
169 contract, and any revenue differential should be allocated among other customers of the utility. In
170 determining this allocation, the commission shall consider all relevant factors, including whether
171 the allocation is just, reasonable, and fairly balances the interests of other customers, the utility,
172 the consumer receiving the special rate or special contract, and the West Virginia economy.
173 Nothing in this section may limit the utility's recovery of the variable cost recovery component.

174 ~~(h) The commission shall include in the annual report to the Legislature which it makes~~
175 ~~pursuant to subsection (d), section one, article one of this chapter a report on the tax credits being~~
176 ~~employed pursuant to article thirteen-cc, chapter eleven of this code to help fund special rates~~
177 ~~created under this section~~ A special rate or special contract under this subsection related to
178 existing electrical load of the consumer shall become effective 60 days after the filing of the
179 agreement with the commission under its rules, unless upon review the commission finds cause
180 within the 60-day period to suspend the effectiveness of the agreement and sets the agreement
181 for further consideration or hearing. If the commission takes no action to suspend the
182 effectiveness of the agreement during the 60-day review period, the rates set forth in the
183 agreement shall be considered reasonable and may be implemented by the utility.

184 (i) A utility entering into a special rate or special contract under §24-2-1j(h) of this code
185 shall recover in a timely manner the revenue differential attributable to the difference between the
186 special rate or special contract and the rates previously applicable to the consumer in a general
187 rate proceeding, a special purpose rate proceeding, or other proceeding specific to the special
188 rate or special contract. In any rate proceeding establishing revised rates to be effective during
189 the term of any agreement, the commission may not impute revenues to the utility in excess of
190 that provided for by the special rate or special contract, and any revenue differential should be
191 allocated among other customers of the utility. In determining this allocation, the commission shall
192 consider all relevant factors, including whether the allocation is just, reasonable, and fairly
193 balances the interests of other customers, the utility, the consumer receiving the special rate or
194 special contract, and the West Virginia economy.

195 (j) Notwithstanding the capacity limit for energy intensive industrial or manufacturing
196 consumers set forth in §24-2-1j(b)(1) of this code, individual consumers with capacities less than
197 10,000 kilowatts and for which the cost of electricity consumed in the industrial or manufacturing
198 process constitutes at least 10 percent of the cost of production under normal operating conditions
199 may qualify for a special rate or special contract under this subsection provided that the aggregate

200 capacity for consumers participating in a special rate or special contract under this subsection
201 does not exceed 20,000 kilowatts for affiliated regulated utilities operating in West Virginia.

202 (k) The commission may establish or modify the total aggregate number of energy
203 intensive industrial or manufacturing consumers or the aggregate amount of capacity eligible for
204 special rates, special contracts, or special tariffs under this section.