WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3437

By Delegates Dillon, Dean, and Ross

[Introduced February 13, 2023; Referred to the Committee on Energy and Manufacturing then the Judiciary]

A BILL to amend and reenact §24-2-1d and §24-2-4 of the Code of West Virginia, 1931, as amended, all relating to the creation of the Consumer Energy Affordability and Reliability Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1d. Future electric generating capacity requirements.

(a) In order to maximize the use of electricity generated within the state by using coal or natural gas produced within the state, the Public Service Commission shall by order, no later than December 31, 1989, establish the schedule and amount of future electric generating capacity additions required by each West Virginia electric utility, for the next 10 years, taking into account: (i) Projected load growth; (ii) existing generating capacity; (iii) existing contractual commitments to sell or purchase capacity; (iv) planned retirement and life extensions of existing capacity; (v) planned construction of capacity; (vi) availability of capacity from generating units of affiliated companies; and (vii) such other reasonable factors as the commission may deem relevant and appropriate to consider. The Public Service Commission shall establish uniform standards further defining a supply disruption as any period during which a public electric utility production plant fails to provide at least 50 percent of its maximum output and establishing the maximum allowable time of disruption as a percentage of a rolling 30-day period and establishing material financial consequences for violations of these minimum standards.

(b) If the commission determines after considering all such named and other relevant and appropriate factors that a utility will be required to purchase electric generating capacity beyond those agreements approved by the Federal Energy Regulatory Commission or the West Virginia Public Service Commission in order to serve its West Virginia customers, the amount of such required additional purchased capacity so identified by the commission will for purposes of this section be referred to as the utility's "projected deficient capacity": *Provided,* That this subsection shall not include power generating facilities whose total production of electricity is sold outside the State of West Virginia.

(c) In the interests of: Keeping utility rates of residential customers as low as possible; keeping utility rates for commercial and industrial customers competitive with those of other states; attracting new industry for which electric power costs are a major factor in location determinations; and of not placing any greater cost burden on government than is absolutely necessary for its electric power needs, each utility shall acquire, if reasonable, its projected deficient capacity from electric generation situate in West Virginia which burns coal or gas produced in West Virginia and which will provide the most reliable supply of capacity and energy at the least cost to those customers of the utility who will be served by such electric generation: *Provided,* That all power purchase contracts executed prior to the effective date of this section which satisfy the following requirements, regardless of location, shall be considered, for the purposes of this subsection, as electric generation situate in West Virginia: (1) Said contracts were negotiated in accordance with procedures and priced according to methodologies of other contracts which the commission has ordered approved; (2) said contracts either guarantee or are substantially amended to guarantee for the life of the contract the use of an amount of West Virginia fuel which equals or exceeds the amount which would be required, on a percentage of output basis, to produce the amount of electric power to be consumed in West Virginia; and (3) said contracts meet the requirements for a qualifying facility established by the Federal Energy Regulatory Commission pursuant to the Public Utility Regulatory Policies Act of 1978.

§24-2-4. Procedure for changing rates.

(a) No public utility subject to this chapter, except those utilities subject to the provisions of section four-b of this article, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided,* That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

(b) No public electric utility in the State of West Virginia shall be allowed a rate increase unless verification is provided to the Public Service Commission demonstrating that any investments in new production capacity made by the utility in the preceding three-year period have been solely dedicated toward those sources of energy identified by the Public Service Commission as offering the lowest total possible cost of energy production. All sources of funding received by public electric utilities, including public funds such as tax credits, subsidies, grants, or other sources of funding or benefit, shall be included in this calculation.

(c) All revenues received by a public electric utility in the State of West Virginia which exceed the allowable profit determined by the Public Service Commission must be reinvested in:

(1) Energy production and transmission infrastructure within West Virginia with prejudice toward those sources designated by the PSC as lowest cost means of electricity production for West Virginia consumers.

(2) Increasing transmission and overall grid reliability to minimize outages to consumers

(d) Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission shall have authority, either upon complaint or upon its own initiative without complaint, to enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and, pending such hearing and the decision thereon, the commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided,* That if any such hearing and decision thereon cannot be concluded within the period of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned for the refund to the persons or parties entitled thereto of the amount of the excess, plus interest at the rate of not less than seven percent per annum, as may be specified by the commission, if such rate so put into effect is subsequently determined to be higher than those finally fixed for such utility. In specifying the applicable interest rate, the commission shall be guided by the interest rate which such public utility would in all probability have to agree to pay if such public utility at that time borrowed in the marketplace a sum of money equivalent to the amount of money the commission estimates the increase in rates will produce between the effective date of such increase and the anticipated date the rates will be finally fixed for such public utility, it being intended that a public utility should be discouraged from imposing higher rates than it should reasonably anticipate will be finally fixed as a means in effect of borrowing money at a rate of interest less than such public utility would have to agree to pay if it borrowed money in the marketplace. No such accrued interest paid on any such refund shall be deemed part of the cost of doing business in a subsequent application for changing rates or any decision thereon. At any hearing involving a rate sought to be increased or involving the change of any fare, charge, classification, regulation or practice, the burden of proof to show that the increased rate or proposed increased rate, or the proposed change of fare, charge, classification, regulation or practice is just and reasonable shall be upon the public utility making application for such change. When in any case pending before the commission all evidence shall have been taken, and the hearing completed, the commission shall, within three months, render a decision in such case.

(e) Where more than 20 members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provision of ~~article three, chapter fifty-nine of this code~~ §59-3-1 *et seq*. of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state. The provisions of this section shall expire on and be of no further force and effect after June 30, 1981, except that as to any case pending on said date in which the suspension period has expired and rates are in effect under bond such case shall be proceeded with in accordance with this section; as to any other case pending on said date, the commission shall treat the case as filed anew on July 1, 1981, except that it shall not be necessary for any new process or notice to be served or published.

NOTE: The purpose of this bill is to create the Consumer Energy Affordability and Reliability Act.

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