WEST VIRGINIA CODE: §24-2-18

§24-2-18. Legislative findings on electric service; jurisdictionof the commission to determine public interest inpermitting retail access to competitive power supply markets; participation of interested parties; development of deregulation plan; legislative approval or rejection of plan; certain reports required or permitted; continuing jurisdiction.

(a) The Legislature hereby finds that:

(1) Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and the cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in West Virginia. Therefore, reliable electric service should continue to be available to all customers at reasonable rates and on reasonable terms and conditions;

(2) Many state governments have been studying policies that would create a competitive market for the supply of electricity;

(3) The Public Service Commission is the appropriate agency to determine whether West Virginia should adopt a plan whereby users of electricity in the state would have open access across existing and new utility delivery systems to a competitive market for power supply. An affirmative determination of this question is hereafter designated in this section as a "finding of public interest." If the commission makes a finding of public interest, the commission is also the appropriate agency to develop such a plan for submission to the Legislature for approval, hereafter designated in this section as a "deregulation plan."

(4) Notwithstanding the commission's substantial expertise in the supervision and regulation of the electricity generation industry, the significant public policy issues involved in determining whether to make a finding of public interest and, if necessary, in developing a deregulation plan, require that the commission seek and secure the involvement of a wide spectrum of interests in the state, including but not limited to the following interests, hereafter collectively designated in this section as "all interested parties": Groups representing senior citizens and other persons on fixed incomes, including the American association of retired persons; groups representing low income persons and the working poor, including the West Virginia community action directors association; labor unions, including the West Virginia AFL-CIO, the communications workers of America, the united mine workers of America, the West Virginia state building and construction trades council, the international brotherhood of electrical workers, the independent steel workers, and the united steel workers of America; groups representing residential consumers; groups representing industrial consumers; groups representing commercial consumers; groups representing the electric utility industry and electricity generation concerns; groups representing natural resources industries and associated industries, including the West Virginia coal association and the West Virginia oil and natural gas association; groups

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representing heating, ventilating and air conditioning contractors, including the West Virginia heating, ventilating, air conditioning and electrical contractors association; groups representing environmental concerns; the electric industry research group of West Virginia University; the West Virginia municipal league; and any other person or group which has an interest in these issues.

(5) In order to provide meaningful involvement and participation to all interested parties in determining whether to make a finding of public interest and, if necessary, in developing a deregulation plan, the commission is directed (A) to provide notice to all interested parties of each public meeting to be held by the commission in studying whether to make a finding of public interest and, if necessary, in developing a deregulation plan, including providing written notice by first class mail at least five days prior to the date of each public meeting to each of the groups specifically identified in subdivision (4) of this subsection; (B) to consult with all interested parties attending such public meetings; and (C) to report periodically to the Joint Committee on Government and Finance of the Legislature or any interim study committee appointed by the Joint Committee on Government and Finance on the commission's progress on these issues.

(6) The commission may not submit a deregulation plan to the Legislature for approval unless it submits findings and explains the basis for its findings, after providing adequate notice to all interested parties and other persons and holding a hearing or hearings, that the deregulation plan fairly balances the interests of the electric utilities, their customers, and the state's economy, and that the deregulation plan:

(A) Is in the best interest of West Virginia electric energy consumers;

(B) Results in potential benefits available for all customers, considering that while some customers may be immediately benefited by reductions in electricity costs, depending on their individual needs and choices, no customer should be worse off;

(C) Preserves universal electric service at reasonable rates;

(D) Maintains reasonable standards of safety, availability and reliability of electric service for all customers at all times, including at times of peak load usage of electric service;

(E) Does not result in a substantial negative impact on employment in the state or the state's economy;

(F) Does not impact compliance with environmental rules;

(G) Considers and maintains the public benefits of energy efficiency, renewable resource technology and research and development;

(H) Encourages the continued and expanded use of West Virginia coal, oil, natural gas and other energy resources;

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(I) Assures that customers have meaningful choices among electricity providers and that customers are protected from anticompetitive behavior, poor service, and unfair billing, collection and disconnection procedures;

(J) Is conditioned upon workable competition with a level playing field for all buyers and sellers, and provides for a code of conduct for electric service providers to be established by commission rule;

(K) Assures that existing commitments of utilities arising from past decisions made pursuant to historical regulatory and legal principles are addressed in a fair and reasonable manner, considering the financial integrity of the utilities;

(L) Addresses and maintains adequate protections for low-income consumers and gives meaningful consideration to the development of funding mechanisms to protect senior citizens and other persons on fixed incomes, low income persons and the working poor; and

(M) Ensures that regulated industries do not subsidize nonregulated industries and businesses.

(7) Restructuring of the electric utility industry should reasonably preserve tax revenues for state and local governments and should neither result in a shift of the tax burden to any customer or customer group nor result in a tax system which places any competitor in the market place at a disadvantage.

(b) In addition to its other powers and duties, the commission is authorized to determine, in consultation with all interested parties, whether to make a finding of public interest, and if a finding of public interest is made:

(1) To develop, in consultation with all interested parties, a deregulation plan to allow deregulation of existing utility generation assets and direct access by retail customers to competitive electric power supply markets and which is consistent with the legislative findings set forth in subsection (a) of this section;

(2) To prescribe, by order or rules, procedures and standards for the marketing of power supply in the state; and

(3) To resolve all issues necessary to provide for an orderly transition from the current regulated structure to a system of direct retail access in a fully workable competitive power supply market in a manner that is fair to customers, electric utilities and other affected parties.

(c) If the commission develops a deregulation plan pursuant to subsection (b) of this section, the commission shall submit the deregulation plan to each house of the Legislature during the next succeeding regular session of the Legislature or during any special session of the Legislature occurring after such regular session if legislative approval of the deregulation plan is included in the call therefor. Upon such submission, the Legislature shall, by

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concurrent resolution, approve or reject the deregulation plan. If the deregulation plan is so rejected, the concurrent resolution shall set forth the reasons for such rejection, and the commission may subsequently modify the deregulation plan to meet the objections of the Legislature and may resubmit it as modified to the Legislature pursuant to this subsection. No initial or modified deregulation plan may be adopted or implemented by the commission until the Legislature has approved it pursuant to this subsection.

(d) Upon the development of a deregulation plan and prior to or concurrently with the submission of the deregulation plan to the Legislature pursuant to subsection (c) of this section, the commission shall issue a report to the Governor, the President of the Senate and the Speaker of the House of Delegates on the potential state or local tax consequences which might be created by implementation of the deregulation plan, along with recommendations for statutory changes, if any are necessary, to satisfy the legislative findings specified in subdivisions (6) and (7), subsection (a) of this section.

(e) Upon the development of a deregulation plan and prior to or concurrently with the submission of the deregulation plan to the Legislature pursuant to subsection (c) of this section, any interested party who actively consulted with the commission during the development of the deregulation plan may issue a report to the Governor, the President of the Senate and the Speaker of the House of Delegates setting forth the instances in which such interested party believes the deregulation plan does not satisfy one or more of the legislative findings specified in subdivisions (6) and (7), subsection (a) of this section.

(f) After the adoption and implementation of a deregulation plan approved by the Legislature pursuant to subsection (c) of this section, the commission shall retain authority and jurisdiction to modify or rescind the deregulation plan if, upon application to the commission or upon the commission's own motion, and after notice to all interested parties and a hearing, the commission finds that it is in the public interest to do so, after making a finding that a substantial change in state or federal law or a court decision necessitates the rescission or modification of the deregulation plan to continue to meet the legislative findings in this section or that for any other reason the deregulation plan is not meeting such legislative findings. The implementation of a deregulation plan through an order of the commission pursuant to this section does not amend existing provisions of this code, except as specifically herein modified.

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