WEST VIRGINIA CODE: §24-2-1J

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

(a) The Legislature hereby finds that:

(1) West Virginia enjoys relatively low cost electric power rates for residential customers, business and industry and these relatively low rates constitute a competitive economic advantage for West Virginia;

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

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

(4) Energy intensive industrial consumers of electric power help keep power rates low for all consumers of electric power, including residential customers, by providing a large consumption base over which the cost of producing electric power may be spread from time to time;

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

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

(7) To assist the commission in the exercise of its authority to establish special rates under

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this section, the Legislature creates in article thirteen-cc, chapter eleven of this code a tax credit mechanism to provide a source of funding to support special rates of which the commission may avail itself in exercising said authority in certain circumstances.

(b) As used in this section:

(1) "Energy intensive industrial consumer" means an industrial facility, plant or enterprise that has a contract demand of at least fifty thousand kilowatts of electric power at its West Virginia facilities under normal operating conditions.

(2) "Special rate" means a rate set for an energy intensive industrial consumer pursuant to this section.

(c) In addition to any authority of the commission to allow special rates or contracts under any other provision of the code or rule, and in addition to all other factors which the commission may consider in setting rates for consumers of electric power, including, but not limited to, the commission's responsibilities under subsection (b), section one, article one of this chapter, and notwithstanding any other provisions of this code to the contrary, in setting a special rate the commission may take into consideration fluctuations in market prices for the goods or products produced by the energy intensive industrial consumer of electric power, or other variables or factors which may be relevant to or affect the continuing vitality of the energy intensive industrial consumer of electric power in dynamic markets. In setting a special rate by reference to fluctuations in market prices for the goods and products produced by an energy intensive industrial consumer of electric power, the commission may establish variable rates including, but not limited to, ceilings and floors on the special rate, banking or crediting mechanisms, caps, limits or other similar types of safeguards that are intended by the commission, in its reasonable judgment, to provide appropriate flexibility and predictability in the special rate over time, to permit the energy intensive industrial customer the ability to make the capital investments and other commitments necessary to support the continued operation of the facility.

(d) An energy intensive industrial consumer wishing to apply for a special rate shall first enter into negotiations with the utility that provides it with electric power, regarding the terms and conditions of a mutually agreeable special rate. If the negotiations result in an agreement between the energy intensive industrial consumer and the utility, the energy intensive industrial consumer and the utility shall make a joint filing with the commission seeking approval of the proposed special rate. If the negotiations are unsuccessful, the energy intensive industrial consumer may file a petition with the commission to consider establishing a special rate. The commission shall have the authority to establish a special rate upon the filing of either a joint filing or a petition pursuant to this section.

(e) In order to qualify for a special rate, an energy intensive industrial consumer shall:

(1) Have a contract demand of at least fifty thousand kilowatts of electric power at its West Virginia facilities under normal operating conditions;

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

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

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

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

(6) Provide information and data setting forth how the energy intensive industrial consumer meets the qualifications of this section, and how the special rate advances the policy goals set forth in subsection (a) of this section.

(f) The commission shall determine whether any excess revenue or revenue shortfall created by a special rate authorized pursuant to this section should be allocated among any other customers of the utility. In making that determination, the commission shall consider all relevant factors, including whether such allocation is just, reasonable, and fairly balances the interests of other customers, the utility, and the customer receiving the special rate.

(g) If the commission determines that: (1) A special rate is necessary for the creation, preservation or retention of jobs by the energy intensive industrial consumer; (2) in connection with the initial special rate that is authorized by the commission for an energy intensive industrial consumer, the energy intensive industrial consumer will increase the number of persons it employs, including both persons who have been previously employed by the energy intensive industrial consumer and persons not previously employed by the energy intensive industrial consumer, by at least one hundred fifty persons as a result of the special rate; (3) the energy intensive industrial consumer will employ no fewer than three hundred persons, which number may include, but is not limited to, the persons newly hired or rehired pursuant to the preceding clause in this subsection; (4) the energy intensive industrial consumer has a contract demand of at least two hundred fifty thousand kilowatts of electric power at its West Virginia facilities under normal operating conditions; and (5) a special rate for an energy intensive industrial consumer of electric power would create a revenue shortfall, the commission shall, prior to determining whether it is reasonable to allocate all or a portion of the revenue shortfall amount among a public utility's other

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customers, first consider the availability of tax credits and payments required to be made to public utilities pursuant to article thirteen-cc, chapter eleven of this code to reduce or eliminate a revenue shortfall. The commission shall identify in each proceeding in which it establishes a special rate for an eligible energy intensive industrial consumer the amount of any unallocated revenue shortfall in need of funding pursuant to article thirteen-cc, chapter eleven of this code to defray it and shall project the amount of the gross tax credits needed for that purpose after taking into consideration the net amounts of credits that are required to be paid to utilities pursuant to subsection (a), section four, article thirteen-cc, chapter eleven of this code and the limits specified in section three, article thirteen-cc, chapter eleven of this code. Tax credits authorized under this section may be designated by the commission only in respect of periods of time during which the eligible energy intensive industrial consumer employs at least three hundred persons. The commission's determination as to the amount of tax credits on which it relies in establishing a given special rate, shall constitute an authorization for each supplier of West Virginia coal to the utility offering that special rate to claim its allocated share of the total amount of tax credits. The allocated share shall be calculated by the affected public utility, subject to the approval of the commission.

(h) The commission shall include in the annual report to the Legislature which it makes pursuant to subsection (d), section one, article one of this chapter a report on the tax credits being employed pursuant to article thirteen-cc, chapter eleven of this code to help fund special rates created under this section.

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