WEST VIRGINIA CODE: §24-2-1K

§24-2-1k. Natural gas infrastructure expansion, development, improvement and job creation; findings; expedited process; requirements; rulemaking.

(a) The Legislature hereby finds that:

(1) West Virginia is rich in energy resources, which provide many advantages to the state, its economy and its citizens;

(2) West Virginia is experiencing significant growth in the natural gas industry with the development of the Marcellus and Utica shale;

(3) West Virginia's abundant natural gas reserves have created, and will continue to create, many benefits to the state and its citizens;

(4) Growth in the natural gas industry and its accompanying benefits require West Virginia to be proactive and increase the focus on the natural gas infrastructure in this state in order for those benefits to flow to the state and its citizens, including those citizens in areas unserved or underserved by natural gas utilities;

(5) A comprehensive program of replacing, upgrading and expanding infrastructure by natural gas utilities at reasonable cost to ratepayers will benefit the customers of the natural gas utilities, the public in West Virginia and the economy of the state, as a whole;

(6) A natural gas utility infrastructure program will create jobs, provide for continued and enhanced safety and reliability of aging natural gas infrastructure, provide for more economic natural gas utility service, and provide natural gas utility service to new customers in areas of the state that are unserved or underserved; and

(7) Natural gas utility infrastructure programs involve the investment of capital and the incurrence of associated incremental costs. Accordingly, in order for the natural gas utility undertaking those infrastructure programs to attract the necessary capital, the natural gas utility should be permitted to recover the incremental rate of return, related income taxes, depreciation and property taxes associated with the infrastructure programs commencing with the implementation of an infrastructure program approved by the commission without waiting for a full base rate tariff filing as more fully described in subsection (f) of this section.

(b) Natural gas utilities may file with the commission an application for a multi-year comprehensive plan for infrastructure replacements, upgrades and extensions. Subject to commission review and approval, a plan may be amended and updated by the natural gas utility as circumstances warrant. The recovery of costs in support of the plans shall be allowed in the manner set forth in this section if the proposed plans have been found to be

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prudent and useful.

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

(1) A description of the infrastructure program, in such detail as the commission prescribes, and the projected annual amount (in approximate line sizes and feet), general location, type, and projected installation timing of the facilities that the applicant proposes to replace, construct and/or improve;

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

(3) The projected starting date for the infrastructure program;

(4) The projected numbers of potential new customers, if any, that may be served by the infrastructure program and the projected annual load of the customers;

(5) The projected cost of debt for the infrastructure program funding and the projected capital structure for infrastructure program funding;

(6) Testimony, exhibits or other evidence that demonstrates the need for the replacement, construction or improvement of facilities in order to provide and maintain adequate, efficient, safe, reliable and reasonable natural gas service;

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

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

(d) Upon filing of the application, the applicant shall publish, in the form the commission directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate increase under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, the publication area to be each county in which service is provided by the natural gas utility, a notice of the filing of the application and that the commission shall hold a hearing on the application within ninety days of the notice; unless no opposition to the rate change is received by the Public Service Commission within one week of the proposed hearing date, in which case the hearing can be waived, and issue a final order within one hundred fifty days of the application filing date. However, if the proposed infrastructure program includes a request for extension of infrastructure into an unserved area and another natural gas utility files to extend service to the same area, the commission may move that extension request of each natural gas utility into separate proceedings to be considered concurrently and extend the time period for issuing a final order on that portion of the proposed programs beyond the one hundred fifty days.

(e) Upon notice and hearing, if required by the commission, the commission shall approve

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the infrastructure program and allow expedited recovery of costs related to the expenditures as provided in subsection (f) of this section if the commission finds that the expenditures and the associated rate requirements are just, reasonable, not contrary to the public interest and will allow for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced natural gas service.

(f) Upon commission approval, natural gas utilities will be authorized to implement the infrastructure programs and to recover related incremental costs, net of contributions to recovery of return and depreciation and property tax expenses directly attributable to the infrastructure program provided by new customers served by the infrastructure program investments, if any, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the average planned net incremental increase to rate base attributable to the infrastructure program for the coming year, considering the projected amount and timing of expenditures under the infrastructure program plus any expenditures in previous years of the infrastructure program. The rate of return shall be determined by utilizing the rate of return on equity authorized by the commission in the natural gas utility's most recent rate case proceeding or in the case of a settled rate case, a rate of return on equity as determined by the commission, and the projected cost of the natural gas utility's debt during the period of the infrastructure program to determine the weighted cost of capital based upon the natural gas utility's capital structure.

(2) Income taxes applicable to the return allowed on the infrastructure program shall be calculated for inclusion in rates.

(3) Incremental depreciation and property tax expenses directly attributable to the infrastructure program shall be estimated for the upcoming year.

(4) Following commission approval of its infrastructure program, a natural gas utility shall place into effect rates that include an increment that recovers the allowance for return, related income taxes, depreciation and property tax expenses associated with the natural gas utility's estimated infrastructure program investments for the upcoming year, net of contributions to recovery of those incremental costs provided by new customers served by the infrastructure program investments, if any, ("incremental cost recovery increment"). In each year subsequent to the order approving the infrastructure program and an incremental cost recovery increment, the natural gas utility shall file a petition with the commission setting forth a new proposed incremental cost recovery increment based on investments to be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual incremental costs attributable to the infrastructure program investments, for the preceding year.

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

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

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