WEST VIRGINIA CODE: §24-2-1L

§24-2-1l. Modernization and improvement of coal-fired boilers at electric power plants; 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's abundant coal reserves have created, and will continue to create, many benefits to the state and its citizens;

(3) West Virginia is experiencing a significant downturn in the coal industry as a result of increasing environmental regulation and increased competition from natural gas and oil;

(4) Stabilization of the coal industry to maintain its accompanying benefits to the state and its citizens requires West Virginia to be proactive and focus on the modernization and improvement of coal-fired boilers used by electric utilities in this state to allow the more efficient use of coal in the generation of electricity with reduced environmental impact;

(5) A comprehensive program of modernizing, upgrading and improving coal-fired boilers at existing West Virginia power plants owned by electric utilities at reasonable cost to ratepayers, will benefit the customers of the electric utilities, the public in West Virginia and the economy of the state as a whole;

(6) A coal-fired boiler modernization and improvement program will create jobs, provide for continued and enhanced safety and reliability of aging electrical generation infrastructure, and provide for more economical generation of electricity from coal, all of which will benefit customers located throughout the state; and

(7) Efforts to modernize and improve coal-fired boilers owned by electric utilities and used to generate electricity in this state involve the investment of capital and the incurrence of associated incremental costs. Accordingly, in order for the electric utility undertaking those coal-fired boiler modernization and improvement programs to attract the necessary capital, the electric utility should be permitted to recover the incremental rate of return, related income taxes, depreciation and property taxes associated with the coal-fired boiler modernization and improvement programs commencing with the implementation of a coal-fired boiler modernization and improvement 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) Electric utilities may file with the commission an application for a multiyear comprehensive program for modernizing and improving coal-fired boilers at power plants

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located in this state and owned, in whole or in part, by the electric utility. Subject to commission review and approval, a program may be amended and updated by the electric utility as circumstances warrant. The recovery of costs in support of the program shall be allowed in the manner set forth in this section if the proposed program and related rates are found to be just, reasonable, and based on prudent investments that are used and useful to the utilities' West Virginia ratepayers.

(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 coal-fired boiler modernization and improvement program, in such detail as the commission prescribes, which may include costs associated with or incidental to the reduction of emissions or compliance with environmental requirements, the projected cost, and timing of the installation of equipment and facilities that the applicant proposes to replace, construct, modernize and/or improve;

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

(3) The projected starting and completion dates for the modernization and improvement program;

(4) The projected cost of debt for the coal-fired boiler modernization and improvement program funding and the projected capital structure for coal-fired boiler modernization and improvement program funding;

(5) Testimony, exhibits or other evidence that demonstrates the need for the modernization and improvement of coal-fired boilers in order to provide and maintain adequate, efficient, safe, reliable and reasonably priced electrical generation;

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

(7) 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 electrical utility, a notice of the filing of the application and that the commission shall hold a hearing on the application within one-hundred eighty days of the notice; unless no opposition to the application 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 two-hundred seventy days of the application filing date.

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

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the coal-fired boiler modernization and improvement 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, prudent, not contrary to the West Virginia public interest and will allow for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced electricity generated from coal.

(f) Upon commission approval, electric utilities will be authorized to implement the coal-fired boiler modernization and improvement programs and to recover related incremental capital and operation and maintenance costs, net of contributions to recovery of return and depreciation and property tax expenses directly attributable to the coal-fired boiler modernization and improvement program provided by electric utility’s customers, 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 coal-fired boiler modernization and improvement program for the coming year, considering the projected amount and timing of expenditures under the coal-fired boiler modernization and improvement program plus any expenditures in previous years of the program. The rate of return shall be determined by utilizing the rate of return on equity authorized by the commission in the electric 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 electric utility's debt during the period of the coal-fired boiler modernization and improvement program to determine the weighted cost of capital based upon the electric utility's capital structure.

(2) Income taxes at the corporate statutory income rates applicable to the return allowed on the coal-fired boiler modernization and improvement program shall be calculated for inclusion in rates.

(3) Incremental depreciation and property tax expenses directly attributable to the coal-fired boiler modernization and improvement program shall be estimated for the upcoming year.

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

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modernization and improvement program investments, for the preceding year.

(g) The electric 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.

(h) Electric utilities may defer incremental operation and maintenance expenditures attributable to regulatory and compliance-related requirements introduced after the electric utility's last rate case proceeding and not included in the electric utility's current base rates. In a future rate case, the commission shall allow recovery of the deferred costs amortized over a reasonable period of time to be determined by the commission if 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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