WEST VIRGINIA CODE CHAPTER 24 ARTICLE 3

WV Legislature

§24-3-1. Adequate facilities; safety appliances; reasonable rates; railroad switch connections; discontinuing service.

Every public utility subject to this chapter shall establish and maintain adequate and suitable facilities, safety appliances or other suitable devices, and shall perform such service in respect thereto as shall be reasonable, safe and sufficient for the security and convenience of the public, and the safety and comfort of its employees, and in all respects just and fair, and without any unjust discrimination or preference. All charges, tolls and rates shall be just and reasonable, and no change shall be made in any tariffs, rates, joint rates, tolls, schedules or classifications except as herein provided. Every railroad shall permit switch connections for intrastate business to be made with its tracks at suitable and safe points by other carriers or shippers, upon such terms and conditions as the commission may prescribe, whenever, in the judgment of the commission, the business to be offered by the connecting company of shipper justifies it. Every railroad and other transportation company may be required by the commission to establish and maintain such suitable public service facilities and conveniences as may be reasonable and just, to make reasonable connections with trains on branch lines of such railroads and with all connecting railroad lines; to require any passenger trains to stop at junctions or intersections with other railroads; and may prescribe the number of men required to constitute safe crews for the handling of trains on any railroad in this state or any division of any such railroad. No railroad or other public utility shall discontinue any regular passenger train, or other public service facility, or change any regular passenger train schedule or timetable, without first obtaining authority from the commission so to do, unless the same be done under uniform rules and regulations filed by such railroad or public utility with the Public Service Commission and approved by said commission.

WV Legislature

§24-3-1a. Definitions; telemetry systems required.

(a) As used in this article:

(1) "Head end device" means a device located on the lead locomotive of a railroad train designed to receive information from the rear end device. It may also be used to transmit information to the rear end device;

(2) "Mainline" means a railroad track extending through railroad yards and between stations which must not be occupied without authority or protection;

(3) "Rear end device" means a device located on the rear car of a railroad train designed to transmit information to the head end device and equipped with a rear marker light, red in color, and at least one hundred, but not more than one thousand, candela. It may also be used to receive information from the head end device;

(4) "Telemetry system" means a radio transmitter and receiver system between a front end device and a rear end device which indicates through a display at the head end device the following:

(i) Brake pipe pressure at the rear of the train, displayed in increments of one pound per square inch;

(ii) Rear car movement;

(iii) Whether the rear marker light is operating;

(iv) Remaining battery life powering the system;

(v) Any interruption in radio transmission as established by a distance measuring device at the rear end device; and

(vi) The location of the rear of the train as established by a distance measuring device at the rear end device.

(b) It is unlawful to operate a railroad train over one thousand five hundred feet in length on any mainline track within any railroad yard, without an occupied caboose as the rear car of such train unless it is equipped with an operable telemetry system.

(c) No train may depart any crew change point or its point of origin unless the train is equipped with telemetry system as required by this article. Any inoperable system shall be repaired or replaced before leaving the point of origin or at crew change point.

(d) The rear marker light required by this article shall be flashing during the period from one hour before sunset until one hour after sunrise.

WV Legislature

(e) Beginning July 1, 1991, all telemetry devices shall be equipped so that an emergency application of the brakes of the train can be initiated at the rear car of the train either by the engineer in the lead or controlling locomotive or by a crew member riding on the rear car.

It is unlawful to institute any disciplinary action or other adverse administrative or employment action against any person who reports a violation or acts to enforce the provisions of this article. Such person's remedies under this chapter shall be in addition to any other remedies that might be available to such person.

WV Legislature

§24-3-1b. Locomotive power units; helper units; one person crew prohibited; engineer requirement; restrictions on selection of crew; definitions; promulgation of rules.

(a) Except for operation in its yards or terminals, and except where a train is being moved as an actual movement into or from another state not having a requirement of at least two persons controlling a locomotive as is required in this state pursuant to this section, no railroad may permit or require any crew-controlled locomotive power unit, including helper units, that is not attached to a train to be operated by a crew of fewer than two persons. At least one crew member shall be a federal railroad administration certified and licensed locomotive engineer within the meaning of applicable federal statutes and regulations. The second crew member shall be selected from either train service or engine service personnel: Provided, That the selection does not violate federal statutes or regulations or local collective bargaining agreements.

(b) As used in this section:

(1) "Crew-controlled locomotive" means a locomotive power unit, single or in multiple, which is operated by on-board personnel, but does not include units controlled by radio or other remote control by a crew on another locomotive power unit.

(2) "Helper unit" means a locomotive power unit placed at some point in a train for the purpose of supplementing the power available from the locomotive power unit controlling a train.

(c) It is unlawful to institute any disciplinary action or other adverse administrative action against any person who reports a violation of or acts to enforce the provisions of this section or this article. The person's remedies under this section are in addition to any other remedies that may be otherwise available.

(d) The Public Service Commission shall, on or before July 1, 1993, promulgate rules to implement the provisions of this section.

WV Legislature

§24-3-2. Discrimination prohibited.

No public utility subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person, firm or corporation, a greater or less compensation, for any service rendered or to be rendered, than it charges, demands, collects, or receives from any other person, firm or corporation for doing a like and contemporaneous service under the same or substantially similar circumstances and conditions.

It shall be unlawful for any public utility subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular character of traffic or service, in any respect whatsoever, or to subject any particular person, firm, corporation, company or locality, or any particular character of traffic or service, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Nothing in this section shall be construed to prevent the commission from:

(a) Authorizing or requiring any rate design consistent with the purposes and policies set forth in §24-2A-1 et seq. of this code; or

(b) Authorizing a private water, sewer, or combined water and sewer utility to voluntarily implement a rate design featuring reduced rates and charges for service to qualifying low-income residential customers.

WV Legislature

§24-3-3. Connecting carriers generally; sharing use of terminals; discrimination by railroad main lines against tap, etc., lines.

All common carriers subject to this chapter shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines, and those connecting therewith, and shall not discriminate in their rates and charges or methods or manner of service between such connecting lines.

If the commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main- line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be.

Trunk lines, or principal railroads, shall, in the distribution of cars and the furnishing of facilities, treat industries and shippers, located on and tributary to lateral, industrial or tap lines, as if they were located directly on the track of the trunk lines or principal railroads, and not discriminate between such industries and shippers and those which may be located in direct proximity to their own tracks. And trunk lines or principal railroads shall allow and pay to the lateral, industrial or tap lines, a reasonable and equitable portion of the rate, consistent with the service rendered, giving due consideration to the fact that such lateral, industrial or tap line originates and assembles the freight. But nothing out of the main line rate shall be allowed the shipper or owner for the use of what may be termed "plant facilities."

WV Legislature

§24-3-3a. Gas utility pipelines declared as common carriers; commission approval of certain transportation.

(a) As used in this section or in section eleven, article two of this chapter:

(1) "Intrastate pipeline" means (i) any utility or (ii) any other person, firm or corporation engaged in natural gas transportation in intrastate commerce to or for another person, firm or corporation for compensation.

(2) "Interstate pipeline" means any person, firm or corporation engaged in natural gas transportation subject to the jurisdiction of the FERC under the Natural Gas Act or the Natural Gas Policy Act of 1978.

(3) "Local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption.

(4) "Intrastate commerce" includes the production, gathering, treatment, processing, transportation and delivery of natural gas entirely within this state.

(5) "Transportation" includes exchange, backhaul, displacement or other means of transportation.

(6) "FERC" means the Federal Energy Regulatory Commission.

(b) The commission may by rule or order, authorize and require the transportation of natural gas in intrastate commerce by intrastate pipelines, by interstate pipelines with unused or excess capacity not needed to meet interstate commerce demands or by local distribution companies for any person for one or more uses, as defined, by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline or other seller to such person; or

(2) Natural gas produced by such person.

(c) For reasons of safety, deliverability or operational efficiency the commission may, in its discretion, by rule or order, exclude from the requirements of this section any part of any pipeline solely dedicated to storage, or gathering, or low pressure distribution of natural gas.

(d) (1) The rates and charges of any interstate pipeline with respect to any transportation authorized and required under subsection (b) of this section shall be just and reasonable and computed by the Public Service Commission in accordance with the guidelines set forth by the FERC and in effect upon the date of application by the commission for the transportation of natural gas by any interstate pipeline on behalf of any intrastate pipeline or any local distribution company.

WV Legislature

(2) The rates and charges of any intrastate pipeline with respect to any transportation authorized and required under subsection (b) of this section shall be fair and reasonable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar transportation service. The computation of such rates and charges by the Public Service Commission shall be in accordance with the guidelines set forth by the FERC and in effect upon the date of application by the commission for the transportation of natural gas by any intrastate pipeline in behalf of any interstate pipeline or any local distribution company served by any interstate pipeline.

(e) The provisions of this article and each section, subsection, subdivision, paragraph and subparagraph thereof shall be severable from the provisions of each other subparagraph, paragraph, subdivision, subsection, section, article or chapter of this code so that if any provision of this article be held void, the remaining provisions of this act and this code shall remain valid.

WV Legislature

§24-3-3b.

Repealed.

Acts, 2014 Reg. Sess., Ch. 152.

WV Legislature

§24-3-4. Free transportation and passes; reduced rates; exchange of services and privileges.

Nothing in this chapter shall be construed to prevent any common carrier from furnishing free transportation to its officers, attorneys, agents and employees, and their families, and like free transportation to the officers, attorneys, agents and employees of other common carriers and their families, mail clerks, expressmen and sleeping car conductors and porters, and like free transportation according to its own regulations to persons devoting their entire time to religious work, and reduced rates to all other persons engaged in religious, charitable and literary pursuits, and for excursions, and for children and students attending schools and colleges, and for commutation tickets; or to prevent telephone, telegraph, sleeping car and express companies from entering into contracts with one another, and with common carriers for the exchange of services, or from exchanging with one another and with common carriers, the privileges of passes or franks for the officers, agents, employees and their families of such companies and common carriers.

WV Legislature

§24-3-5. Schedule of rates to be filed with commission.

Every public utility shall file with the commission, and keep open to public inspection, schedules showing all the rates, charges and tolls for service to be rendered by it or by other persons, firms or corporations in connection with it: Provided, That the reports and tariffs filed by interstate carriers with the Public Service Commission may be copies of its reports and tariffs filed with the Interstate Commerce Commission; but nothing herein shall preclude the Public Service Commission from requiring interstate carriers to furnish information bearing upon any complaint or question pending before said Public Service Commission and with which it has a right to deal.

WV Legislature

§24-3-6. Special license fee;"Public Service Commission fund."

(a) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to those now required by law. The amount of such fees shall be fixed by the Public Service Commission and such fee shall not exceed 10¢ on each $100 of value and shall be levied by it upon each of such public utilities according to the value of its property as ascertained by the last assessment, and shall be apportioned among such public utilities upon the basis of such valuation, which fees shall be paid on or before January 20, in each year. Such sum, together with that provided in subsection (b) hereof shall be paid into the State Treasury and kept as a special fund designated "Public Service Commission fund," to be appropriated as provided by law for the purpose of paying the salaries of the commission, as fixed by this chapter, its expenses and salaries, compensations, costs and expenses of its employees.

(b) All public utilities subject to the provisions of this chapter shall pay a special license fee in addition to any and all fees now required by law. The amount of such fees shall be fixed by the Public Service Commission and such fee shall not exceed 40¢ on each $100 of total gross revenue and shall be levied by it upon each of such public utilities, in the proportion which the total gross revenue derived from intrastate business done by each of such public utilities in the calendar year next preceding bears to the total gross revenue derived from intrastate business done in such year by all public utilities subject to regulation by the Public Service Commission, in addition to such fees as may be fixed by the Public Service Commission under the provisions of subsection (a) hereof and which fees shall be paid on or before July 1, in each year. Such sum shall be paid into the State Treasury and be kept, appropriated and used as provided in subsection (a) hereof.

(c) Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury but shall remain in said fund and may be appropriated and used as provided in subsection (a) hereof in the ensuing fiscal years.

WV Legislature

§24-3-7. Permit to abandon service; certificate; hearing upon intervention by consumer advocate; alternative service; recouping costs of converting customers.

(a) No railroad or other public utility shall abandon all or any portion of its service to the public or the operation of any of its lines which would affect the service it is rendering the public unless and until there shall first have been filed with the Public Service Commission of this state an application for a permit to abandon service and obtained from the commission an order stating that the present and future public convenience and necessity permits such abandonment.

(b) The consumer advocate's office shall be notified of all notices to abandon rail service. Within five days of the receipt of such notice the consumer advocate shall notify the West Virginia public port authority of such proposed abandonment. The public port authority shall advise the consumer advocate as to whether such abandonment is in the public interest or if such rail line or service is an integral part of the intermodal transportation system within West Virginia. If the public port authority deems such abandonment to be not in the public interest, then the consumer advocate shall intervene to block such abandonment before all appropriate state and federal agencies or courts.

(c) The Public Service Commissioner, to the extent permitted by federal law, shall promulgate rules and regulations to govern the abandonment of rail lines and rail service, including, but not limited to, the providing of a hearing for the presentation of evidence in cases where the consumer advocate seeks intervention pursuant to subsection (b).

(d) In the event the commission determines that an application to abandon gas service or any part thereof is in the public interest and required by the present and future public convenience and necessity, it shall include in its order, as a condition of releasing any such utility from its public service obligation to provide gas service, a provision requiring the utility, prior to discontinuing service, to pay the cost reasonably necessary to convert each customer to an alternate fuel source. Natural gas utilities may defer reasonable and prudent actual expenses attributable to converting each customer incurred after the test year for the utility's last rate case proceeding and which are not included in the utility's current base rates. The utility shall recover its reasonable and prudent deferred customer conversion expenses in a future base rate case through recovery of the deferred expenses amortized over a reasonable period of time to be determined by the commission, but such recovery will be allowed only to the extent that the commission also determines, based on evidence presented by the utility, that deferred amounts did not contribute to base rate earnings in excess of the utility's last authorized return on equity calculated since the effective date of base rates from the utility's last rate case proceeding.

WV Legislature

§24-3-8. Deposits; interest.

(a) No public utility shall require any deposit of any residential customer which shall exceed one twelfth of the estimated annual charge to the customer for such service: *Provided*, That the provisions of this section shall not apply to deposits received prior to March 12, 1983.

(b) Public utilities may collect and hold a security deposit in accordance with this statute and the rules established by the commission. No interest shall be payable on security deposits when a deposit is, no later than 30 days following the date of the end of the eighteenth month of service, either (1) applied as a credit to the customer's account, or (2) returned or refunded to the customer by some other means.

WV Legislature

§24-3-9. Easement and right-of-way.

A public utility may not acquire an easement or right-of-way unless the deed or other instrument granting or reserving the easement or right-of-way describes the property in accordance with the requirements of section five-a, article three, chapter thirty-six of this code.

WV Legislature

§24-3-10. Termination of water service for delinquent sewer or stormwater bills.

(a) In the event that any publicly or privately owned utility, city, incorporated town, municipal corporation, or public service district owns and operates either water facilities or sewer facilities, and a privately owned public utility or a public utility that is owned and operated by a homeowners' association owns and operates the other kind of facilities, either water or sewer, then the privately owned public utility or the homeowners' association may contract with the publicly or privately owned utility, city, incorporated town, or public service district which provides the other services to shutoff and discontinue the supplying of water service for the nonpayment of sewer service fees and charges.

(b) Any contracts entered into by a privately owned public utility or by a public utility that is owned and operated by a homeowners' association pursuant to this section must be submitted to the Public Service Commission for approval.

(c) Any privately owned public utility or any public utility that is owned and operated by a homeowners' association which provides water and sewer service to its customers may terminate water service for delinquency in payment of either water or sewer bills.

(d) Where a privately owned public utility or a public utility that is owned and operated by a homeowners' association is providing sewer service and another utility is providing water service, and the privately owned public utility or the homeowners' association providing sewer service experiences a delinquency in payment, the utility providing water service, upon the request of the homeowners' association or the privately owned public utility providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account.

(e) Any termination of water service must comply with all rules and orders of the Public Service Commission. Nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the water or sewer utility to accept payment at the customer's premises in lieu of discontinuing water service for a delinquent water or sewer bill.

(f) A publicly or privately owned utility, city, incorporated town, municipal corporation, or public service district that owns or operates water facilities, or a public utility that is owned and operated by a homeowners’ association that owns or operates water facilities may not discontinue or shut off water service to its customers for delinquency in payment of stormwater fees or charges, nor may it contract with any other utility, public or private, to which it provides water service to terminate water service to customers of the other utility for delinquency in the payment of stormwater services, fees, and charges except as provided in subsections (g) and (h) of this section.

(g) The governing body, board, or association collecting the rates, fees, or charges may shut off and discontinue water services to users with delinquent stormwater fees, provided that:

WV Legislature

(1) The water service and stormwater fee are in the name of the same user;

(2) The rates, fees, or charges incurred by the user are 90 days past due;

(3) The provider has given the user written notice of termination of water service for nonpayment. Such notice must be given to the user at least 10 days before the termination of service and must notify the user of the user's right to enter into a deferred payment plan;

(4) The provider has attempted to make personal contact with the user at least two times in the 24 hours immediately before the termination of the service. If the provider makes personal contact with the user, the provider must inform the user of the user's right to enter into a deferred payment plan.

(5) The water service for a user who has entered into a deferred payment plan under this subsection may not be shut off or discontinued as long as the user is in conformance with the agreed-to payment plan. In the event the user falls out of compliance with the deferred payment plan, no sooner than five days after the missed payment, the provider may terminate service: *Provided*, That the provider must make one attempt to make personal contact with the user in the 24 hours immediately before the termination of the service.

(h) All rates, fees, or charges, if not paid when due, shall constitute a lien upon the premises served by the works. If any service rate, fee, or charge is not paid within 20 days after it is due, the amount thereof, together with a penalty of 10 percent and a reasonable attorney's fee, may be recovered by the provider in a civil action in the name of the provider. The lien may be foreclosed against the lot, parcel of land, or building in accordance with the laws relating thereto. Where water, stormwater, and sewer services are furnished by any provider to any premises, the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

WV Legislature