WEST VIRGINIA CODE CHAPTER 24B

WV Legislature

§24B-1-1. Purpose.

It is hereby declared to be the purpose and policy of the Legislature in enacting this chapter to empower the Public Service Commission of West Virginia, in addition to all other powers conferred and duties imposed upon it by law, to prescribe and enforce safety standards for pipeline facilities as hereinafter defined, and to regulate safety practices of persons engaged in the transportation of gas or hazardous liquids as hereinafter defined.

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§24B-1-2. Definitions.

When used in this chapter:

(1) "Person" means any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association or joint-stock association, and includes any trustee, receiver, assignee or personal representative thereof;

(2) "Gas" means natural gas, flammable gas or gas which is toxic or corrosive;

(3) "Transportation of gas" means the gathering, transmission or distribution of gas by pipeline or its storage;

(4) "Hazardous liquid" means:

(a) Petroleum or any petroleum product; and

(b) Any substance or material which is in liquid state (excluding liquefied natural gas) when transported by pipeline facilities and which, as determined by the commission, may pose an unreasonable risk to life or property when transported by pipeline facilities: Provided, That a hazardous liquid as herein defined shall not be construed so as to include or permit the regulation of any substance transported through pipeline or otherwise when used in the operation of coal mines, coal processing plants or coal slurry pipelines: Provided, however, That the commission shall not determine that any substance or material is a hazardous liquid under this section if the secretary has not determined that the substance or material is a hazardous liquid under regulations promulgated in accordance with Section 202(2) of the Hazardous Liquid Pipeline Safety Act of 1979;

(5) "Transportation of hazardous liquids" means the movement of hazardous liquids by pipeline, or their storage incidental to such movements; except that it shall not include any such movement through gathering lines in rural locations or on shore production, refining or manufacturing facilities or storage or in-plant piping systems associated with any of such facilities;

(6) "Pipeline facilities" means, without limitation, new and existing pipe, pipe rights-of-way and any equipment, facility, or building used in the transportation of gas or the treatment of gas during the course of transportation, or used in the transportation of hazardous liquid or the treatment of hazardous liquid during the course of transportation; but "rights-of-way" as used in this chapter does not authorize the commission to prescribe the location or routing of any pipeline facility;

(7) "Municipality" means a city, county or any other political subdivision of the state;

(8) "Interstate transmission facilities" means facilities used in the transportation of gas which are subject to the jurisdiction of the federal power commission under the act of Congress known as the Natural Gas Act;

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(9) "Interstate pipeline facilities" means the pipeline facilities used in the transportation of hazardous liquids in interstate or foreign commerce;

(10) "Director" means the director of the gas pipeline safety section of the commission;

(11) "Commission" means the Public Service Commission of West Virginia;

(12) "Secretary" means the United States secretary of transportation;

(13) "Pipeline company" means a person engaged in the operation of pipeline facilities or the transportation of gas or hazardous liquids subject to the provisions of this chapter;

(14) "Act of 1968" means the act of Congress known as the Natural Gas Pipeline Safety Act of 1968; and

(15) "Act of 1979" means the act of Congress known as the "Hazardous Liquid Pipeline Safety Act of 1979."

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§24B-2-1. Jurisdiction.

The commission shall have power and authority to prescribe and enforce safety standards for pipeline facilities, and to regulate safety practices of persons engaged in the transportation of gas or hazardous liquids, to the extent permitted by the "Act of 1968" and the "Act of 1979" and any amendments thereto. Such standards may apply to the design, installation, inspection, testing, construction, extension, operation, replacement and maintenance of pipeline facilities. Standards affecting the design, installation, construction, initial inspection and initial testing shall not be applicable to pipeline facilities in existence on the date such standards are adopted. Whenever the commission shall find a particular facility to be hazardous to life or property, it shall be empowered to require the person operating such facility to take such steps necessary to remove such hazards. Such safety standards shall be practicable and designed to meet the need for pipeline safety. In prescribing such standards, the commission shall consider:

(a) Relevant available pipeline safety data;

(b) Whether such standards are appropriate for the particular type of pipeline transportation;

(c) The reasonableness of any proposed standards; and

(d) The extent to which such standards will contribute to public safety.

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§24B-2-2. Rules and regulations.

The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this chapter without distinction based on the interstate or intrastate character of the person, thing or activity to which such rules and regulations apply.

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§24B-2-3. General investigatory powers.

The commission shall have power to investigate all methods and practices of pipeline companies; to require the maintenance and filing of reports, records and other information in such form and detail as the commission may prescribe; to enter upon and to inspect the property, buildings, plants, and offices of such pipeline companies; and to inspect books, records, papers and documents relevant to the enforcement of this chapter.

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§24B-2-4. Cooperation with the federal government.

The commission shall cooperate with the secretary and other agencies of the United States in the enforcement of this chapter and the "Act of 1968" and amendments thereto; and to this end, the commission shall take such steps as may be necessary to make annual certifications to the secretary under section five (a) of the "Act of 1968," and shall file such certificates with the secretary. The commission is hereby authorized and empowered (a) to act as the secretary's agent in the enforcement of the "Act of 1968" and amendments thereto with respect to interstate transmission facilities; and (b) to accept for the State of West Virginia, and to expend for the purpose designated, any funds that may hereafter be made available to the commission out of the federal treasury by an act or acts of Congress and allocated to this state for the purpose of carrying out the provisions of this chapter and the "Act of 1968" and amendments thereto.

The commission shall further cooperate with the secretary and other agencies of the United States in the enforcement of the "Act of 1979" and amendments thereto; and to this end the commission shall take such steps as may be necessary to make annual certifications to the secretary under section two hundred five-a of the "Act of 1979" and shall file such certificates with the secretary. The commission is hereby authorized and empowered (a) to act as the secretary's agent in the enforcement of the "Act of 1979" and amendments thereto with respect to interstate pipeline facilities; and (b) to accept for the State of West Virginia, and expend for the purpose designated, any funds that may hereafter be made available to the commission out of the federal treasury by an act or acts of Congress and allocated to this state for the purpose of carrying out the "Act of 1979" and amendments thereto.

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§24B-3-1. In general.

Every pipeline company shall comply with the provisions of this chapter and of all valid regulations and orders issued by the commission.

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§24B-3-2. Inspection and maintenance plans.

Every pipeline company shall file with the commission a plan for inspection and maintenance of the pipeline facilities owned or operated by it, and shall subsequently file any changes in such plan, in form and content as the commission may prescribe.

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§24B-3-3. Annual safety reports.

Every pipeline company shall file with the commission an annual report showing: (1) Name and address of the pipeline company filing the report; (2) all accidents or incidents involving its pipeline facilities that occurred during the preceding twelve months involving personal injury requiring hospitalization, fatality, or property damage exceeding $1,000, together with a summary of the pipeline company's investigation as to the cause and circumstances surrounding such accident or incident; and (3) such other information as the commission may require.

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§24B-3-4. Effect of chapter.

Nothing in this chapter shall affect the common law or statutory tort liability of any person.

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§24B-4-1. Hearings.

To carry out the purposes of this chapter, the commission is authorized to conduct conferences, formal and informal hearings, to make findings of fact and conclusions of law, and to enter orders with respect to any issues that may arise under this chapter.

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§24B-4-2. Burden of proof.

Where an issue is made of the propriety of a plan submitted under section two, article three hereof, the burden of proof of the propriety of such plan shall be on the pipeline company submitting such plan.

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§24B-4-3. Rules of practice and procedure.

The commission shall prescribe rules of practice and procedure, the method and manner of holding hearings, and for taking evidence on all matters that may come before it, and enter such orders as may be just and lawful. In the investigations, preparations, and hearings of cases, the commission shall not be bound by the technical rules of pleadings and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justness of the matter before it.

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§24B-4-4. Witnesses; testimony; subpoena.

The commission shall, either as a commission or by any of its members, or by designated employees, subpoena witnesses, take testimony, administer oaths to any witness in any proceeding or examination instituted before or conducted by it with reference to any matter within its jurisdiction hereunder. In all hearings or proceedings before the commission or its designated employees, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing within the state; and in the case of disobedience to a subpoena or other process, the commission or any party to the proceedings before the commission may invoke the aid of any circuit court in the state in requiring the evidence and testimony of witnesses and the production of papers, books, and documents. And such court, in case of refusal to obey this subpoena issued to any person or other witness, shall issue an order requiring such person or other witness to appear before the commission or designated employees and produce books and papers, if so ordered, and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as contempt thereof. A claim that such testimonial evidence may intend to incriminate the witness giving the same shall not excuse any witness from testifying, but such witness shall not be prosecuted for any offense concerning which he is compelled hereunder to testify.

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§24B-4-5. Enforcement of lawful orders.

The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the Supreme Court of Appeals direct.

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§24B-4-6. Penalties.

(a) Any person who violates any provision of this chapter or any valid regulation or order issued thereunder is subject to a civil penalty to be imposed by the commission not to exceed $200,000 for each violation for each day the violation persists: Provided, That the maximum aggregate civil penalty may not exceed $2 million for any related series of violations.

(b) Any civil penalty may be compromised by the commission. In determining the amount of penalty, or the amount agreed upon in compromise, the commission shall consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of the violation. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the state to the person charged or may be recovered in a civil action in the state courts.

(c) Civil penalties collected by the commission under this section shall be submitted to the Treasurer for deposit into the General Revenue Fund.

(d) No civil penalty paid under this section may be considered by the commission in support of any application for a rate increase submitted by the violator.

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§24B-5-1. Employees.

The commission shall appoint a director of the pipeline safety section of the Public Service Commission and such employees as may be necessary to carry out the provisions of this chapter, and shall fix their respective salaries or compensation. The commission may designate such employees as it deems necessary to take evidence at any hearing held or required by the provisions of this chapter, which employees are hereby empowered to administer oaths in all parts of this state so far as the exercise of such power is properly incidental to the performance of their duties in connection with the provisions of this chapter.

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§24B-5-2. Compensation to commissioners.

Each member of the commission shall receive a salary in the amount set forth in section three, article one, chapter twenty-four of this code as compensation for the administration of this chapter in addition to all other salary or compensation otherwise provided for by law, to be paid at least twice per month from the Public Service Commission Pipeline Safety Fund.

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§24B-5-3. Funding; property and revenue license fees.

(a) Every pipeline company 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 levied by it annually on each pipeline company at a rate of $18.60 per mile of three-inch equivalent pipeline included in a company's pipeline facilities. The calculation of a company's number of miles of three-inch equivalent pipeline for the purposes of assessing fees shall be determined on the basis of the pipeline company's reports submitted to the commission in such form as the commission may prescribe. All fees assessed pursuant to this section shall be paid on or before July 1 in each year.

(b) Such sums collected under subsection (a) of this section shall be paid into the State Treasury and kept as a special fund, designated the Public Service Commission Pipeline Safety Fund, to be appropriated as provided by law for the purpose of paying the salaries, compensation, costs and expenses of its employees to the extent of the employees' direct involvement in the enforcement of the provisions of this article. Any balance 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 as provided in this subsection. All funds which heretofore were in the Public Service Commission Gas Pipeline Safety Fund shall be transferred to the Public Service Commission Pipeline Safety Fund.

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§24B-6-1. Appeal from commission's action.

Any party feeling aggrieved by the entry of a final order by the commission, affecting him or it, may present a petition in writing to the Supreme Court of Appeals, or to a judge thereof in vacation, within thirty days after the entry of such order, praying for the suspension of such final order. The petitioner shall deliver a copy of such petition to the secretary of the commission before presenting the same to the court or the judge. The court or judge shall fix a time for the hearing on the petition, but such hearing, unless by agreement of the parties, shall not be held sooner than five days after its presentation; and notice of the time and place of such hearing shall be forthwith delivered to the secretary of the commission, so that the commission may be represented at such hearing by one or more of its members or by counsel. If the court or the judge after such hearing be of the opinion that a suspending order should issue, the court or the judge may require bond, upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable. For such hearing the commission shall file with the clerk of said court all papers, documents, evidence and records or certified copies thereof as were before the commission at the hearing or investigation resulting in the entry of the order from which the petitioner appeals. The commission shall file with the court before the day fixed for the final hearing a written statement of its reasons for the entry of such order, and after arguments by counsel the court shall decide the matter in controversy as may seem to be just and right.

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§24B-6-2. Commission's powers additional in nature.

The powers conferred and duties imposed upon the commission by this chapter are in addition to, and not in derogation of, the powers conferred and duties imposed upon the commission by chapter twenty-four and chapter twenty-four-a of the code.

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