ENROLLED

Committee Substitute for

HOUSE BILL No. 966

April 11, 1975

The House of Delegates on reconsideration has passed, notwithstanding the objections of His Excellency, the Governor, Com. Sub. for H. B. 966, as provided by Section 14, Article VII of the Constitution of the State.

Mr. Sonis to the Senate.

April 12, 1975

The Senate on reconsideration has passed, notwithstanding the objections of His Excellency, the Governor, Com. Sub. for H. B. 966, as provided by Section 14, Article VII of the Constitution of the State.

Mr. Ward to the House.
AN ACT to amend article two, chapter twenty-four, of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections fourteen and fifteen, all relating to the powers and duties of the public service commission; procedures for changing certain electric utility rates and other charges; requiring electric utilities to file with such commission monthly reports as to coal purchases, disclosure of affiliations with or of such electric utilities and certain other information; specifying the contents of such reports; relating to commission's duties with respect to coal purchases, and authorizing release of such reports to the public; authorizing the commission to obtain certain information outside the state in certain instances; requiring the commission, in certain cases, to hold a full public hearing before allowing an electric utility to increase, directly or indirectly, the price charged for electricity due to certain increased fuel costs; limiting the application of such requirement to the happening of certain contingencies; authorizing the commission to permit such increases in the cost of electric energy because of an increase in the fuel costs only after making a written determination that such increases are fair, just and reasonable and reflect certain good faith management and certain sound business policy decisions; limiting such increases in certain instances; permitting certain requested increases to go into effect under bond pending
a certain hearing and decision; giving certain criteria and rules which the commission must apply in determining whether certain requested increases in allowable fuel costs are fair, just and reasonable; providing for a certain notice of hearing to the general public; defining certain terms; requiring the commission to conduct annual audits of such utilities and to obtain and use certain information on fuel and fuel costs; limiting effect of section in certain cases; rendering the section inoperative in certain cases and providing for the severability of its provisions.

Be it enacted by the Legislature of West Virginia:

That article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections fourteen and fifteen, all to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-14. Reports required to be filed by generating electric utilities; contents; powers of commissioner to obtain information; availability to the public; certain studies required.

(a) On a monthly basis and within thirty days of the last day of the month for which the information is required, each electric utility shall submit to the commission, on an individual basis for each power plant it owns or operates, a list of each purchase or other acquisition of coal or other fuel at the plant, the tonnage or other amount of each purchase or acquisition, the fuel's cost at the mine or other source, fuel handling costs (including but not limited to costs of loading and unloading such fuel and the cost of storage thereof), fuel transportation costs and the method or mode of such transportation, the name of the person, firm or corporation from which the fuel was purchased or otherwise acquired, the mine or other source of the fuel, the heat value of the fuel expressed in British Thermal Units, the sulfur and ash content of the fuel, the fuel's actual cost per one million British Thermal Units; the terms of purchase of such fuel; whether the fuel was purchased under a long-term or short-term agreement or was a spotmarket purchase; the terms of purchase
of such fuel; the date of execution of any contract pertaining
to the purchase of such fuel and the expiration date of such
contract; if the fuel is coal, the amount mined underground
and on the surface; and whether the source of the fuel was an
affiliated or nonaffiliated person, firm or corporation.

In addition, at the same time and on a similar basis, such
electric utility shall submit to the commission a list of all
persons, firms and corporations in this state with which it or
its parent corporation is affiliated and which produce coal
or some other fuel which can be used at a power plant. Such
list shall state the name of each affiliate, its principal place of
business, the nature of the affiliation; each mine or other source
of fuel which the affiliate owns or operates, whether within or
outside the state; the amount of fuel produced each month at
each mine or other source of fuel; the name of each person,
firm or corporation to whom the fuel is sold or otherwise
disposed of, a breakdown of the amount of fuel sold or other-
wise disposed of under long-term or short-term agreements,
the final location at which the fuel will actually be used and
a breakdown of related handling costs and transportation costs,
the heat value of the fuel expressed in British Thermal Units,
the sulfur and ash content of the fuel; if the fuel is coal, the
amount mined underground and on the surface; and the fuel’s
cost per one million British Thermal Units.

The commission shall require the electric utility to submit a
list of all persons, firms and corporations, within and outside
this state, with which it or its parent corporation is affiliated
and which provide transportation or are a part of a network
providing transportation of fuel to a power plant. It shall
obtain and use all available pertinent information on trans-
portation and transportation costs from each such electric
utility and its affiliated persons, firms and corporations, in-
cluding its parent corporation. The commission may require
the electric utility or any affiliated person, firm or corporation,
including its parent corporation, to submit such other informa-
tion as it considers necessary or advisable.

(b) If any information required under any provision of this
section is located outside this state, the electric utility shall,
at the option of the commission, either make the information
available to the commission at the commission’s offices or pay all reasonable and necessary expenses actually incurred by the commission or its designated representative in obtaining the information at the place where such information is maintained. The commission may designate representatives, including comparable officials of the state in which the information is located, to obtain such information on its behalf.

(c) If he makes a written request therefor and pays the actual cost thereof, any member of the general public shall receive a copy of any information obtained by the commission under any provision of this section. Upon request, the Legislature or its designated staff shall receive any such information without delay and at no cost.

(d) The commission is hereby directed from time to time to investigate, study, and if necessary, conduct public hearings with respect to, new systems and policies for the pricing of electrical power to consumers taking into consideration the following: (1) Daily peak load pricing; (2) time of day metering system; (3) the lifeline service rate system; (4) the progressive or inverted rate system; (5) any other rate system designed or which may be designed to save energy and to lower consumer charges and in addition thereto the commission shall investigate and study with respect to the propriety and feasibility of including automatic adjustment clauses or fuel adjustment clauses in any electric utility tariff, rate, joint rate, charge, toll or schedule.

The commission, no later than January first, one thousand nine hundred seventy-six, shall prepare its first report with recommendations and shall submit the same to the governor and both houses of the Legislature, and shall thereafter, from time to time, submit such updates and periodic reports as may be deemed appropriate to keep the governor and the Legislature fully advised of systems and policies for the pricing of electrical power.
§24-2-15. Hearings required for certain fuel cost adjustments; notice and conduct of hearings; criteria for decision; certain information to be obtained and used by public service commission; public information; limitation and expiration of section.

(a) The commission shall not enforce, originate, continue, establish, change or otherwise authorize or permit an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule through any automatic adjustment clause or fuel adjustment clause contained in any such tariff, rate, joint rate, charge, toll or schedule, or through any other automatic device or practice until it has held a full public hearing on the propriety of such increase.

Any such hearing shall be held within thirty days of a request therefor by the concerned public utility. Within ten days after receiving such request, the same shall be filed and the commission shall give the general public notice of the hearing date, time and place and other necessary details pertaining thereto by causing the notice to be published as a Class II-0 legal advertisement in accordance with the provisions of article three, chapter fifty-nine of this code. The publication area for the notice shall be the county or counties in which the public utility requesting the increase provides electric energy.

When a hearing has been requested, the commission shall, by order duly entered, allow the proposed increase to go into effect under bond and subject to refund in a manner consistent with the provisions of section four of this article, except that the proposed increase shall go into effect immediately and shall continue until the commission renders its final decision on the propriety of the increase.

In conducting the hearing, the commission may exercise any power given to it under the provisions of section ten of this article. Any member of the general public affected by such requested increase shall have the right to participate in the hearing as a proponent or opponent of the requested increase. With-
in fifteen days after completion of the hearing, the commission shall render a final written decision on whether or not the requested increase will be permitted or modified, but in no event and irrespective of any continuances shall the final decision of the commission with respect to such requested increase be rendered later than sixty days from the date of the filing of such requested increase. After such sixty day period, any electric utility or user of electric energy affected by a proposed increase may petition any circuit court in the area served by such electric utility to require the commission to render its final decision.

The increase shall be approved only to the extent that such increase does not violate subsection (b) of this section and only if the commission makes a written determination that the increase is fair, just and reasonable and reflects good-faith management and sound business policy decisions by the public utility. The commission shall specify in sufficient detail the reasons for its decision.

(b) In determining whether a request made pursuant to this section for an increase is fair, just and reasonable, the following rules shall apply:

(1) For the purpose of determining fuel costs, the price paid for the fuel shall be computed at the actual cost of fuel purchased from non-affiliated persons, firms and corporations and the actual cost of the production of fuel received from affiliated persons, firms and corporations and, in no event, shall the cost of fuel purchased through short-term contract purchases or spotmarket purchases be permitted to exceed by fifteen percent the average cost of fuel purchased from non-affiliated persons under long-term contracts for similar quality fuel for the twelve months period next preceding the filing of the requested increase.

(2) The cost of fuel shall be considered as purchased free-on-board at its site of production and such requested increase shall not include the cost of transportation of fuel beyond its site of production.

(3) For the purpose of determining the propriety of the requested increase, only a variable efficiency formula shall be used. Such formula shall, in addition to other factors permitted
by the commission, be computed on the basis of the average
heat rate and the average losses in the delivery system of such
utility of all fossil fuel steam generating plants of the utility re-
questing the increase computed for the six-months' period next
preceding the period for which the requested increase is made.
The same variable efficiency formula shall be used by and
applied to all steam generating electric utilities.

(4) The amount of electric energy produced by hydro-
electric or other nonfossil fuel steam generating plants of the
public utility requesting the increase shall be deducted from the
amount of electric energy to which any fuel cost applies.

(5) Such increase shall not include, directly or indirectly,
taxes imposed against or paid by the utility pursuant to the pro-
visions of article thirteen, chapter eleven of this code.

(c) The commission shall, on its own initiative hold a
hearing in the same manner as provided in subsection (a) of
this section, and may order a decrease in any tariff, rate, joint
rate, charge, toll or schedule when it believes such action to be
appropriate based upon the information obtained by the com-
mission pursuant to section fourteen of this article and pursuant
to subsections (d) and (e) of this section.

(d) In order to have the information necessary to make a
fair determination in any hearing which is held under the pro-
visions of this section or in determining whether to permit an
increase or a decrease in any tariff, rate, joint rate, charge, toll
or schedule, the commission shall obtain and use all available
pertinent information on fuel and fuel costs. Such information
shall include, but not be limited to, the information required to
be reported pursuant to section fourteen of this article, data
contained in forms, reports and other documents required by
the Federal Power Commission, Securities and Exchange Com-
misson and other federal agencies, publications by other
agencies, publications by other agencies of this state and private
publications relating to the coal industry and the electric
power industry. The commission shall make a special effort
to obtain all available information on coal costs, coal contract
terms and conditions, coal quality, coal availability and coal
purchases and production.
(e) It shall be the duty of the commission to conduct annual audits of all books, records and accounts of all utilities whose tariffs, rates, joint rates, charges, toll or schedules have been increased or decreased pursuant to this section or pursuant to any automatic adjustment clause or fuel adjustment clause prior to the effective date of this section.

(f) Any costs which are excluded from an increase requested pursuant to this section may be included by the utility as a cost of operation in an application for a rate order thereafter made and the commission may allow all or any part of such excluded costs as costs of operation if and only to the extent that the commission finds in its hearings on such later application on the record made therein that such costs are fair, just, reasonable and necessary and arrived at by bona fide negotiations in accord with sound management and business practices.

(g) No increase in charges for electric energy granted pursuant to this section shall become thereby a part of or considered to be an amendment to such charges permitted by the last rates or tariffs filed with or established by order of the commission with respect to the applicant for such increase.

(h) No public utility shall have pending before the commission more than one application for increase pursuant to this section at any one time, except that if the commission has not made a final decision within the sixty-day period required under the provisions of subsection (a) of this section or if, having made such decision, the same is appealed to any court of competent jurisdiction, then, and in either event, such electric utility may apply for an additional increase pursuant to this section.

(i) As used in this section the term:

(1) "Long term contract" shall mean any contract or agreement of more than twenty-four months duration by which agreed quantities of fuel is purchased at an agreed price involving more than one delivery of such fuel.

(2) "Short term contract" shall mean any contract or agreement of less than twenty-four months duration by which
agreed quantities of fuel is purchased at an agreed price involving more than one delivery of such fuel.

(3) "Spot market purchases" shall mean all purchases of fuel not made pursuant to either a long term contract or a short term contract nor shall the term include purchases of fuel from an affiliate.

(j) The Legislature recognizes that on the effective date of this section that the commission has, by order entered the twentieth day of February, in the year one thousand nine hundred seventy-five, declared automatic adjustment clauses or fuel adjustment clauses contained in tariffs, rates, joint rates, charges, tolls or schedules to be cancelled and stricken and that such clauses are of no further force and effect. To the extent that such order remains in effect the provisions of this section shall be inoperative. To the extent that such order of the commission is changed, modified or reversed whereby such automatic adjustment clauses or fuel adjustment clauses are reinstated, in whole or in part, the provisions of this section are hereby declared to be operable. Nothing contained in this section shall be construed as authorization for the inclusion in any tariff, rate, joint rate, charge, toll or schedule of any automatic adjustment clause or fuel adjustment clause.

(k) The provisions of this section shall apply only to electric utilities.

(l) Unless hereafter extended by the Legislature, the provisions of this section shall expire on and be of no further force and effect on and after the first day of July, one thousand nine hundred seventy-six.

(m) If any subsection, subdivision, provision, clause or phrase of this section or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other subsections, subdivisions, provisions, clauses or phrases or applications of the article, and to this end each and every subsection, subdivision, provision, clause and phrase of this article are declared to be severable. The Legislature hereby declares that it would have enacted the remaining subsections, subdivisions, provisions, clauses and phrases of this section even if it had
184 known that any subsections, subdivisions, provisions, clauses
185 and phrases thereof would be declared to be unconstitutional
186 or invalid.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence E. Christian  
Chairman House Committee

Originated in the House.
Takes effect from passage.

J. Russell Jr.  
Clerk of the Senate

Clerk of the House of Delegates

W.B. Bland  
President of the Senate

James G. Thinnes  
Speaker House of Delegates

The within **disapproved** this the 20th day of **March**, 1975.

Ark.A.Thorne Jr.  
Governor
PRESENTED TO THE
GOVERNOR

Date  3/14/75  
Time   4:30 p.m.