

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1975



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.

W. B. Blackenship, Clerk
House of Delegates

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.

J. C. Duder, Jr. Clerk
Senate

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 966
(By MR. SHAFFER and MR. SONIS)

[Passed March 8, 1975; in effect from passage.]

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.

1 (a) On a monthly basis and within thirty days of the last
2 day of the month for which the information is required, each
3 electric utility shall submit to the commission, on an individual
4 basis for each power plant it owns or operates, a list of each
5 purchase or other acquisition of coal or other fuel at the
6 plant, the tonnage or other amount of each purchase or acquisition,
7 the fuel's cost at the mine or other source, fuel handling
8 costs (including but not limited to costs of loading and un-
9 loading such fuel and the cost of storage thereof), fuel
10 transportation costs and the method or mode of such trans-
11 portation, the name of the person, firm or corporation from
12 which the fuel was purchased or otherwise acquired, the
13 mine or other source of the fuel, the heat value of the fuel
14 expressed in British Thermal Units, the sulfur and ash content
15 of the fuel, the fuel's actual cost per one million British Ther-
16 mal Units; the terms of purchase of such fuel; whether the
17 fuel was purchased under a long-term or short-term agree-
18 ment or was a spotmarket purchase; the terms of purchase

19 of such fuel; the date of execution of any contract pertaining
20 to the purchase of such fuel and the expiration date of such
21 contract; if the fuel is coal, the amount mined underground
22 and on the surface; and whether the source of the fuel was an
23 affiliated or nonaffiliated person, firm or corporation.

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

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

55 (b) If any information required under any provision of this
56 section is located outside this state, the electric utility shall,
57 at the option of the commission, either make the information

58 available to the commission at the commission's offices or pay
59 all reasonable and necessary expenses actually incurred by the
60 commission or its designated representative in obtaining the
61 information at the place where such information is maintained.
62 The commission may designate representatives, including com-
63 parable officials of the state in which the information is located,
64 to obtain such information on its behalf.

65 (c) If he makes a written request thereof and pays the
66 actual cost thereof, any member of the general public shall
67 receive a copy of any information obtained by the commission
68 under any provision of this section. Upon request, the Legisla-
69 ture or its designated staff shall receive any such information
70 without delay and at no cost.

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

84 The commission, no later than January first, one thousand
85 nine hundred seventy-six, shall prepare its first report with
86 recommendations and shall submit the same to the governor
87 and both houses of the Legislature, and shall thereafter, from
88 time to time, submit such updates and periodic reports as may
89 be deemed appropriate to keep the governor and the Legislature
90 fully advised of systems and policies for the pricing of electrical
91 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.

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

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

20 When a hearing has been requested, the commission shall, by
21 order duly entered, allow the proposed increase to go into effect
22 under bond and subject to refund in a manner consistent with
23 the provisions of section four of this article, except that the pro-
24 posed increase shall go into effect immediately and shall con-
25 tinue until the commission renders its final decision on the
26 propriety of the increase.

27 In conducting the hearing, the commission may exercise any
28 power given to it under the provisions of section ten of this
29 article. Any member of the general public affected by such re-
30 quested increase shall have the right to participate in the hear-
31 ing as a proponent or opponent of the requested increase. With-

32 in fifteen days after completion of the hearing, the commission
33 shall render a final written decision on whether or not the re-
34 quested increase will be permitted or modified, but in no event
35 and irrespective of any continuances shall the final decision of
36 the commission with respect to such requested increase be ren-
37 dered later than sixty days from the date of the filing of such re-
38 quested increase. After such sixty day period, any electric util-
39 ity or user of electric energy affected by a proposed increase
40 may petition any circuit court in the area served by such electric
41 utility to require the commission to render its final decision.

42 The increase shall be approved only to the extent that such
43 increase does not violate subsection (b) of this section and only
44 if the commission makes a written determination that the in-
45 crease is fair, just and reasonable and reflects good-faith man-
46 agement and sound business policy decisions by the public util-
47 ity. The commission shall specify in sufficient detail the reasons
48 for its decision.

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

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

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

67 (3) For the purpose of determining the propriety of the re-
68 quested increase, only a variable efficiency formula shall be
69 used. Such formula shall, in addition to other factors permitted

70 by the commission, be computed on the basis of the average
71 heat rate and the average losses in the delivery system of such
72 utility of all fossil fuel steam generating plants of the utility re-
73 questing the increase computed for the six-months' period next
74 preceding the period for which the requested increase is made.
75 The same variable efficiency formula shall be used by and
76 applied to all steam generating electric utilities.

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

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

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

91 (d) In order to have the information necessary to make a
92 fair determination in any hearing which is held under the pro-
93 visions of this section or in determining whether to permit an
94 increase or a decrease in any tariff, rate, joint rate, charge, toll
95 or schedule, the commisison shall obtain and use all available
96 pertinent information on fuel and fuel costs. Such information
97 shall include, but not be limited to, the information required to
98 be reported pursuant to section fourteen of this article, data
99 contained in forms, reports and other documents required by
100 the Federal Power Commission, Securities and Exchange Com-
101 mission and other federal agencies, publications by other
102 agencies, publications by other agencies of this state and private
103 publications relating to the coal industry and the electric
104 power industry. The commission shall make a special effort
105 to obtain all available information on coal costs, coal contract
106 terms and conditions, coal quality, coal availability and coal
107 purchases and production.

108 (e) It shall be the duty of the commission to conduct
109 annual audits of all books, records and accounts of all utilities
110 whose tariffs, rates, joint rates, charges, toll or schedules have
111 been increased or decreased pursuant to this section or
112 pursuant to any automatic adjustment clause or fuel adjustment
113 clause prior to the effective date of this section.

114 (f) Any costs which are excluded from an increase re-
115 quested pursuant to this section may be included by the utility
116 as a cost of operation in an application for a rate order there-
117 after made and the commission may allow all or any part of
118 such excluded costs as costs of operation if and only to the ex-
119 tent that the commission finds in its hearings on such later
120 application on the record made therein that such costs are
121 fair, just, reasonable and necessary and arrived at by bona fide
122 negotiations in accord with sound management and business
123 practices.

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

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

139 (i) As used in this section the term:

140 (1) "Long term contract" shall mean any contract or agree-
141 ment of more than twenty-four months duration by which
142 agreed quantities of fuel is purchased at an agreed price in-
143 volving more than one delivery of such fuel.

144 (2) "Short term contract" shall mean any contract or
145 agreement of less than twenty-four months duration by which

146 agreed quantities of fuel is purchased at an agreed price in-
147 volving more than one delivery of such fuel.

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

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

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

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

174 (m) If any subsection, subdivision, provision, clause or
175 phrase of this section or the application thereof to any person
176 or circumstance is held unconstitutional or invalid, such
177 unconstitutionality or invalidity shall not affect other subsec-
178 tions, subdivision, provisions, clauses or phrases or applications
179 of the article, and to this end each and every subsection, sub-
180 division, provision, clause and phrase of this article are de-
181 clared to be severable. The Legislature hereby declares that
182 it would have enacted the remaining subsections, subdivisions,
183 provisions, clauses and phrases of this section even if it had

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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 C. Christensen
Chairman House Committee

Originated in the House.
Takes effect from passage.

J. J. Sullivan Jr.
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

W. A. Brotherton Jr.
President of the Senate

Lewis F. Th. Thorne
Speaker House of Delegates

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

Arthur A. Haare Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/14/75

Time 4:30 p.m.