WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

---

ENROLLED

Com. Sub. for
HOUSE BILL No. 1398

(By Mr. 
Albright)

---

Passed March 12, 1983

In Effect Ninety Days From Passage
AN ACT to amend and reenact section twelve, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto a new section, designated section twelve-a, relating to the public service commission and its powers and duties generally; defining certain acts which may not be done by public utilities without the consent of the commission; requiring commission approval to the proposed reorganization or realignment of any such utility; requiring any such utility to show certain facts where such proposed reorganization or realignment will result in reducing the authority of the commission; establishing procedures for the transfer of certain activities by a public utility from one locality to another and the duties and authority of the commission with respect thereto; prohibiting such transfers without the consent of the commission; limiting the rates to be charged the customers of such utility in locality affected by such transfer; defining certain terms used with respect thereto; establishing procedures for transferring part of a utility’s operations outside this state; prohibiting such transfers without the consent of the commission; prescribing the duties and authority of the commission in such cases; and establishing certain rules with respect to rates or tariffs to be charged customers in such cases.

Be it enacted by the Legislature of West Virginia:

That section twelve, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article two be further amended by adding thereto a new section, designated section twelve-a, all to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-12. What acts may not be done without consent of commission; consent in advance or exemption of transactions; when sale, etc., of franchises, mergers, etc., void.

(a) Unless the consent and approval of the public service commission of West Virginia is first obtained: (1) No public utility subject to the provisions of this chapter, except railroads other than street railroads, may enter into any contract with any other utility to operate any line or plant of any other utility subject thereto, nor which will enable such public utility to operate their lines or plants in connection with each other, but this shall not be construed to prevent physical connections between utilities supplying the same service or commodity, for temporary purposes only, upon condition, however, that prompt notice thereof be given to the commission for such action, if any, as it may deem necessary, and thereafter the commission may require such connection to be removed or discontinued; (2) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may purchase, lease, or in any other manner acquire control, direct or indirect, over the franchises, licenses, permits, plants, equipment, business or other property of any other utility; (3) no public utility subject to the provisions of this chapter, except railroads other than street railroads, may assign, transfer, lease, sell or otherwise dispose of its franchises, licenses, permits, plants, equipment, business or other property or any part thereof; but this shall not be construed to prevent the sale, lease, assignment or transfer by any public utility of any tangible personal property
which is not necessary or useful, nor will become necessary
or useful in the future, in the performance of its duties to
the public; (4) no public utility subject to the provisions
of this chapter, except railroads other than street rail-
roads, may, by any means, direct or indirect merge or
consolidate its franchises, licenses, permits, plants, equip-
ment, business or other property with that of any other
public utility; (5) no public utility subject to the pro-
visions of this chapter, except railroads other than street
railroads, may purchase, acquire, take or receive any
stock, stock certificates, bonds, notes or other evidence
of indebtedness of any other public utility; (6) no public
utility subject to the provisions of this chapter, except
railroads other than street railroads, may, by any means,
direct or indirect, enter into any contract or arrangement
for management, construction, engineering, supply or
financial services or for the furnishing of any other
service, property or thing, with any affiliated corporation,

person or interest.

The commission may grant its consent in advance or
exempt from the requirements of this subsection all assign-
ments, transfers, leases, sales or other disposition of the whole
or any part of the franchises, licenses, permits, plants, equip-
ment, business or other property of any public utility, or
any merger or consolidation thereof and every contract,
purchase of stocks, arrangement or other transaction re-
ferred to in this section, upon proper showing that the terms
and conditions thereof are reasonable and that neither party
thereof is given an undue advantage over the other and do
not adversely affect the public in this state.

(b) In any case in which a utility applies for consent
and approval to realign or reorganize and whether or not
such realignment or reorganization will result, directly or in-
directly, in a limitation or loss of jurisdiction by the com-
mission over the utility, or any part thereof, the utility must
show that such realignment or reorganization will be in the
best interests of, and economically advantageous to, the con-
sumers of the utility.

(c) Whenever a public utility proposes to transfer an ac-
tivity or function from one locality to another or to discontinue
in a locality any such activity or function which is to be
continued to be performed by such utility in another locality,
such public utility shall give notice to the commission of its
intention to effect such transfer or discontinuance: Provided,
That this subsection shall not be construed to apply to the
mere transfer of one or more employees to another locality if
such transfer does not result in the discontinuance of an ac-
tivity or function to be performed by other employees situate
in such locality nor to the mere relocation of a physical fa-
cility to a different locality if such transfer does not result
in the discontinuance of employment of any person employed
in the locality by the public utility. The commission shall
fix a date and time for a public hearing into the desir-
ability, necessity and propriety of and benefit to the pub-
lic, if any, which would result from such proposed transfer
or discontinuance. The commission shall cause to be published
a notice of the date, time, place and general purpose of the
hearing. Such hearing shall be held at least sixty days in
advance of any such transfer or discontinuance, in whole
or in part, and the notice thereof shall be by Class II legal
advertisements, the publication area being each county, or part
thereof to be effected by such transfer or discontinuance. The
first of such advertisements shall not be published earlier than
three weeks in advance of such hearing.

The commission shall not approve the transfer or discontinu-
ance unless the public utility clearly establishes and proves:
(1) that there will be no decrease in the quality or availability
in the service available to the customers of the utility in
the locality from which the activity or function is proposed to
be transferred or discontinued or, if there be any such decrease
in the quality or availability of service, that such decrease
is justified by a reduction of costs to the customers of the util-
ity, and (2) that there will be a decrease in costs to the custo-
mers of the utility served by the activity or function which is to
be transferred or discontinued at least equal to the full cost
to the utility of such transfer or discontinuance and all changes
in operating costs, including, but not limited to, any indirect
and/or intracompany or in-house costs of providing the same
or similar service or services from another area or locality to
If the commission approves the requested transfer or discontinuance of activity or function in or from a locality, in whole or in part, it shall do so by order, and, in such order the commission shall order a reduction in tariffs to customers of the utility served by the activity or function transferred or discontinued and such other customers of the utility which the commission deems it proper to include in order to avoid discrimination, in an amount at least equal the amount of savings or reduction in costs to be realized as a result of the approved transfer or discontinuance. Thereafter the commission shall carefully review all applications for rate increases submitted by such utility so as to assure that any and all projected savings or reductions in costs and the resulting reduction in tariffs attendant to the transfer or discontinuance of any activity or function shall not be later added to or avoided in any such future applications for rate increases.

Unless the context in which used requires a different meaning in this subsection, the term "locality" shall mean an entire conterminious and contiguous area which is the subject of or affected by the transfer or discontinuance by a public utility of specific activities or functions which activities or functions are to be provided, in whole or in part, to the customers of such utility from another and wholly separate area. The term "activity or function" as used in this section shall not include electric substations, electric or telephone distribution and transmission lines, and pole, wires, towers and like material or equipment forming an integral physical part of such substations and lines.

(d) The commission shall prescribe such rules and regulations as, in its opinion, are necessary for the reasonable enforcement and administration of this section, including the procedure to be followed, the notice to be given of any hearing hereunder, if it deems a hearing necessary, and after such hearing or in case no hearing is required, the commission shall, if the public will be convened thereby, enter such order as it may deem proper and as the circumstances may re-
quire, attaching thereto such conditions as it may deem proper, consent to the entering into or doing of the things herein pro-
vided, without approving the terms and conditions thereof, and thereupon it shall be lawful to do the things provided for in such order.

Every assignment, transfer, lease, sale or other disposition of the whole or any part of the franchises, licenses, permits, plant, equipment, business or other property of any public utility, or any merger or consolidation thereof and every contract, pur-
chase of stock, arrangement or other transaction referred to in this section made otherwise than as hereinbefore provided shall be void to the extent that the interests of the public in this state are adversely affected, but this shall not be construed to relieve any utility from any duty required by this section.

Whenever the commission grants its consent and approval under the provisions of this section the utility to which such consent and approval is granted may rely thereon and the transaction or contract to which the commission has granted its consent or approval shall not subsequently be abrogated by the commission.

§24-2-12a. Transfer of operations from this state to another state; restrictions; authority and duty of commission.

Unless the consent and approval of the public service com-
mission is first obtained, no public utility in this state shall transfer or move any part of its operations in this state outside this state or move or transfer any of its operations, activities or functions from this state to any affiliated, related, parent or subsidiary company or utility or to any other company or entity, of whatsoever nature or kind, whether affiliated or related or otherwise, outside this state irrespective of whether such move or transfer will result, directly or indirectly, in a limitation, reduction or loss of juris-
diction over the utility or over any such operation, activity or function: Provided, That the commission may combine pro-
ceedings required in this section with any other proceeding required by law. The commission shall not approve any such move or transfer, in whole or in part, unless the public utility clearly establishes and proves (i) that the proposed move or
transfer is necessary to the orderly and economical operations
of the utility and that the operation, activity or function
proposed to be moved or transferred can be done at substan-
tially less costs in the area outside this state to which the move
or transfer is to be effected and (ii) that there will be no
decrease in the quality or availability in the service available
to the customers of the utility in this state.

If the commission approves the requested move or transfer
from this state, in whole or in part, it shall do so by order,
and, in such order the commission shall order a reduction in
tariffs to customers of such utility in this state in an amount
at least equal the purported amount of savings or reduction
in costs to be realized as a result of the approved move or
transfer. Thereafter the commission shall carefully review all
applications for rate increases submitted by such utility so
as to assure that any and all purported savings or reductions
in costs and the resulting reduction in tariffs attendant to the
approved move or transfer shall not be later added to or in-
cluded in any such future applications for rate increases. The
commission shall further require that it retain its full regulatory
authority over the operation, activity or function to be moved
or transferred to the same extent as if such move or transfer
were not consummated or completed.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is disapproved this the 29 day of March, 1983.

Governor