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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

Com. Sub. for House Bill No. 4277

(By Mr. Speaker, Mr. Kiss, and Delegate Ashley)



Passed March 14, 1998

In Effect from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4277

(BY MR. SPEAKER, MR. KISS, AND DELEGATE ASHLEY)

[Passed March 14, 1998; 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 a new section, designated section eighteen, relating to deregulation of electric service; setting forth legislative findings; providing jurisdiction to the public service commission to determine whether permitting retail customers in West Virginia to obtain direct access to competitive markets for their power supply is in the public interest; authorizing commission to develop a deregulation plan if such a determination is made; providing for involvement of interested parties; requiring that deregulation plan be submitted to the Legislature for approval or rejection; requiring issuance of reports on findings and on the potential state and local tax consequences of any plan submitted by the commission; permitting persons participating in plan development to issue reports; and providing continuing jurisdiction to the commission to modify or rescind any plan implemented by the commission.

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 a new section, designated section

eighteen, to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-18. Legislative findings on electric service; jurisdiction of the commission to determine public interest in permitting retail access to competitive power supply markets; participation of interested parties; development of deregulation plan; legislative approval or rejection of plan; certain reports required or permitted; continuing jurisdiction.

1 (a) The Legislature hereby finds that:

2 (1) Electric service is essential to the health and well-
3 being of residents, to public safety and to orderly
4 economic development, and the cost of electricity is an
5 important factor in decisions made by businesses
6 concerning locating, expanding and retaining facilities in
7 West Virginia. Therefore, reliable electric service should
8 continue to be available to all customers at reasonable
9 rates and on reasonable terms and conditions;

10 (2) Many state governments have been studying
11 policies that would create a competitive market for the
12 supply of electricity;

13 (3) The public service commission is the appropriate
14 agency to determine whether West Virginia should adopt a
15 plan whereby users of electricity in the state would have
16 open access across existing and new utility delivery
17 systems to a competitive market for power supply. An
18 affirmative determination of this question is hereafter
19 designated in this section as a "finding of public
20 interest." If the commission makes a finding of public
21 interest, the commission is also the appropriate agency to
22 develop such a plan for submission to the Legislature for
23 approval, hereafter designated in this section as a
24 "deregulation plan."

25 (4) Notwithstanding the commission's substantial
26 expertise in the supervision and regulation of the
27 electricity generation industry, the significant public

28 policy issues involved in determining whether to make a
29 finding of public interest and, if necessary, in developing a
30 deregulation plan, require that the commission seek and
31 secure the involvement of a wide spectrum of interests in
32 the state, including but not limited to the following
33 interests, hereafter collectively designated in this section as
34 “all interested parties”: groups representing senior
35 citizens and other persons on fixed incomes, including the
36 American association of retired persons; groups
37 representing low income persons and the working poor,
38 including the West Virginia community action directors
39 association; labor unions, including the West Virginia
40 AFL-CIO, the communications workers of America, the
41 united mine workers of America, the West Virginia state
42 building and construction trades council, the international
43 brotherhood of electrical workers, the independent steel
44 workers, and the united steel workers of America; groups
45 representing residential consumers; groups representing
46 industrial consumers; groups representing commercial
47 consumers; groups representing the electric utility
48 industry and electricity generation concerns; groups
49 representing natural resources industries and associated
50 industries, including the West Virginia coal association and
51 the West Virginia oil and natural gas association; groups
52 representing heating, ventilating and air conditioning
53 contractors, including the West Virginia heating,
54 ventilating, air conditioning and electrical contractors
55 association; groups representing environmental concerns;
56 the electric industry research group of West Virginia
57 University; the West Virginia municipal league and any
58 other person or group which has an interest in these issues.

59 (5) In order to provide meaningful involvement and
60 participation to all interested parties in determining
61 whether to make a finding of public interest and, if
62 necessary, in developing a deregulation plan, the
63 commission is directed (A) to provide notice to all
64 interested parties of each public meeting to be held by the
65 commission in studying whether to make a finding of
66 public interest and, if necessary, in developing a
67 deregulation plan, including providing written notice by
68 first class mail at least five days prior to the date of each

69 public meeting to each of the groups specifically
70 identified in subdivision (4) of this subsection; (B) to
71 consult with all interested parties attending such public
72 meetings; and (C) to report periodically to the joint
73 committee on government and finance of the Legislature
74 or any interim study committee appointed by the joint
75 committee on government and finance on the
76 commission's progress on these issues.

77 (6) The commission may not submit a deregulation
78 plan to the Legislature for approval unless it submits
79 findings and explains the basis for its findings, after
80 providing adequate notice to all interested parties and
81 other persons and holding a hearing or hearings, that the
82 deregulation plan fairly balances the interests of the
83 electric utilities, their customers, and the state's economy,
84 and that the deregulation plan:

85 (A) Is in the best interest of West Virginia electric
86 energy consumers;

87 (B) Results in potential benefits available for all
88 customers, considering that while some customers may be
89 immediately benefited by reductions in electricity costs,
90 depending on their individual needs and choices, no
91 customer should be worse off;

92 (C) Preserves universal electric service at reasonable
93 rates;

94 (D) Maintains reasonable standards of safety,
95 availability and reliability of electric service for all
96 customers at all times, including at times of peak load
97 usage of electric service;

98 (E) Does not result in a substantial negative impact on
99 employment in the state or the state's economy;

100 (F) Does not impact compliance with environmental
101 rules;

102 (G) Considers and maintains the public benefits of
103 energy efficiency, renewable resource technology and
104 research and development;

105 (H) Encourages the continued and expanded use of

106 West Virginia coal, oil, natural gas and other energy
107 resources;

108 (I) Assures that customers have meaningful choices
109 among electricity providers and that customers are
110 protected from anticompetitive behavior, poor service, and
111 unfair billing, collection and disconnection procedures;

112 (J) Is conditioned upon workable competition with a
113 level playing field for all buyers and sellers, and provides
114 for a code of conduct for electric service providers to be
115 established by commission rule;

116 (K) Assures that existing commitments of utilities
117 arising from past decisions made pursuant to historical
118 regulatory and legal principles are addressed in a fair and
119 reasonable manner, considering the financial integrity of
120 the utilities;

121 (L) Addresses and maintains adequate protections for
122 low-income consumers and gives meaningful
123 consideration to the development of funding mechanisms
124 to protect senior citizens and other persons on fixed
125 incomes, low income persons and the working poor; and

126 (M) Ensures that regulated industries do not subsidize
127 non-regulated industries and businesses.

128 (7) Restructuring of the electric utility industry should
129 reasonably preserve tax revenues for state and local
130 governments and should neither result in a shift of the tax
131 burden to any customer or customer group nor result in a
132 tax system which places any competitor in the market
133 place at a disadvantage.

134 (b) In addition to its other powers and duties, the
135 commission is authorized to determine, in consultation
136 with all interested parties, whether to make a finding of
137 public interest, and if a finding of public interest is made:

138 (1) To develop, in consultation with all interested
139 parties, a deregulation plan to allow deregulation of
140 existing utility generation assets and direct access by retail
141 customers to competitive electric power supply markets
142 and which is consistent with the legislative findings set

143 forth in subsection (a) of this section;

144 (2) To prescribe, by order or rules, procedures and
145 standards for the marketing of power supply in the state;
146 and

147 (3) To resolve all issues necessary to provide for an
148 orderly transition from the current regulated structure to a
149 system of direct retail access in a fully workable
150 competitive power supply market in a manner that is fair
151 to customers, electric utilities and other affected parties.

152 (c) If the commission develops a deregulation plan
153 pursuant to subsection (b) of this section, the commission
154 shall submit the deregulation plan to each house of the
155 Legislature during the next succeeding regular session of
156 the Legislature or during any special session of the
157 Legislature occurring after such regular session if
158 legislative approval of the deregulation plan is included in
159 the call therefor. Upon such submission, the Legislature
160 shall, by concurrent resolution, approve or reject the
161 deregulation plan. If the deregulation plan is so rejected,
162 the concurrent resolution shall set forth the reasons for
163 such rejection, and the commission may subsequently
164 modify the deregulation plan to meet the objections of the
165 Legislature and may resubmit it as modified to the
166 Legislature pursuant to this subsection. No initial or
167 modified deregulation plan may be adopted or
168 implemented by the commission until the Legislature has
169 approved it pursuant to this subsection.


170 (d) Upon the development of a deregulation plan and
171 prior to or concurrently with the submission of the
172 deregulation plan to the Legislature pursuant to subsection
173 (c) of this section, the commission shall issue a report to
174 the governor, the president of the Senate and the speaker
175 of the House of Delegates on the potential state or local
176 tax consequences which might be created by
177 implementation of the deregulation plan, along with
178 recommendations for statutory changes, if any are
179 necessary, to satisfy the legislative findings specified in
180 subdivisions (6) and (7), subsection (a) of this section.

181 (e) Upon the development of a deregulation plan and

182 prior to or concurrently with the submission of the
183 deregulation plan to the Legislature pursuant to subsection
184 (c) of this section, any interested party who actively
185 consulted with the commission during the development of
186 the deregulation plan may issue a report to the governor,
187 the president of the Senate and the speaker of the House
188 of Delegates setting forth the instances in which such
189 interested party believes the deregulation plan does not
190 satisfy one or more of the legislative findings specified in
191 subdivisions (6) and (7), subsection (a) of this section.

192 (f) After the adoption and implementation of a
193 deregulation plan approved by the Legislature pursuant to
194 subsection (c) of this section, the commission shall retain
195 authority and jurisdiction to modify or rescind the
196 deregulation plan if, upon application to the commission
197 or upon the commission's own motion, and after notice to
198 all interested parties and a hearing, the commission finds
199 that it is in the public interest to do so, after making a
200 finding that a substantial change in state or federal law or
201 a court decision necessitates the rescission or modification
202 of the deregulation plan to continue to meet the legislative
203 findings in this section or that for any other reason the
204 deregulation plan is not meeting such legislative findings.
205 The implementation of a deregulation plan through an
206 order of the commission pursuant to this section does not
207 amend existing provisions of this code, except as
208 specifically herein modified.

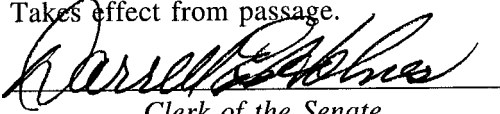
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee



Chairman House Committee

Originating in the House.

Takes effect from passage.

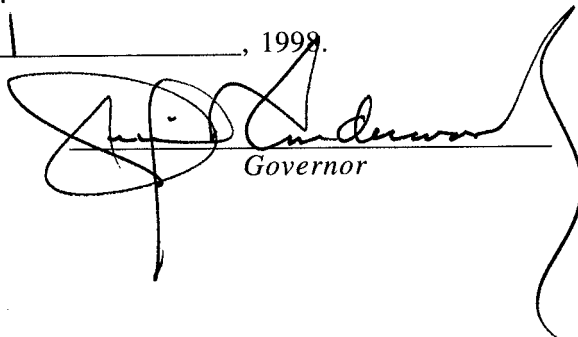

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 1st
day of April, 1999.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 11:15 AM