WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

ENROLLED

House Bill No. 3280

(By Delegates Staton, Browning, Pino, Varner, Ennis, Yost and DeLong)

Passed April 9, 2005

In Effect Ninety Days from Passage
AN ACT to amend and reenact §16-13A-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-2-11 of said code, all relating to modifying the review by the Public Service Commission of public convenience and necessity applications where the project has been approved by Infrastructure and Jobs Development Council; removing the necessity for public service districts to prefile with the public service commission; providing for a waiver of thirty day notice requirement for projects approved by the Infrastructure and Jobs Development Council; providing that the public service commission render a final decision on infrastructure and jobs development council approved applications; providing that infrastructure and jobs development council approved projects receiving a certificate of public convenience may not be compelled to reopen; and allowing electric power projects to apply for and receive certain licenses and permits.

Be it enacted by the Legislature of West Virginia:
That §16-13A-25 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-11 of said code be amended and reenacted, all to read as follows:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-25. Borrowing and bond issuance; procedure.

(a) Notwithstanding any other provisions of this article to the contrary, a public service district may not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article, without the prior consent and approval of the Public Service Commission.

(b) The Public Service Commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied with chapter five-g of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to:

(1) Experience with the same engineering firm; or

(2) completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.
(c) An engineering contract that meets one or more of the following criteria is exempt from the waiver or approval requirements:

(1) A contract with a public service district that is a Class A utility on the first day of April, two thousand three, or subsequently becomes a Class A utility as defined by commission rule;

(2) A contract with a public service district that does not require borrowing and that can be paid out of existing rates;

(3) A contract where the payment of engineering fees are contingent upon the receipt of funding, and commission approval of the funding, to construct the project which is the subject of the contract; or

(4) A contract that does not exceed fifteen thousand dollars.

(d) Requests for approval or waivers of engineering contracts shall be deemed granted thirty days after the filing date unless the staff of the Public Service Commission or a party files an objection to the request. If an objection is filed, the Public Service Commission shall issue its decision within one hundred twenty days of the filing date. In the event objection is received to a request for a waiver, the application shall be considered a request for waiver as well as a request for approval in the event a waiver is not appropriate.

(e) Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the Public Service Commission in accordance with the provisions of chapter twenty-four of this code, when a public service district is seeking to acquire or construct public service property.
CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11. Requirements for certificate of public convenience and necessity.

(a) No public utility, person or corporation shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing such construction franchise, license or permit.

(b) Upon the filing of any application for such certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, such certificate of convenience and necessity: Provided, That the commission, after it gives proper notice and if no protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of protest, made within thirty days, to the application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the proposed area of operation.

(c) Any public utility, person or corporation subject to the provisions of this section shall give the commission at least thirty days’ notice of the filing of any such application for a certificate of public convenience and necessity under this section: Provided, That the commission may modify or waive
the thirty-day notice requirement and shall waive the thirty day
notice requirement for projects approved by the infrastructure
and jobs development council.

(d) The commission shall render its final decision on any
application filed under the provisions of this section or section
eleven-a of this article within two hundred seventy days of the
filing of the application and within ninety days after final
submission of any such application for decision following a
hearing:

(e) The commission shall render its final decision on any
application filed under the provisions of this section that has
received the approval of the Infrastructure and Jobs Develop-
ment Council pursuant to article fifteen-A of chapter thirty-one
of this code, within one hundred-eighty days after filing of the
application: Provided, That if a protest is received within thirty
days after the notice is provided pursuant to subsection (b), the
commission shall render its final decision within two hundred
seventy days of the filing of the application.

(f) If the projected total cost of a project which is the
subject of an application filed pursuant to this section or section
eleven-a of this article is greater than fifty million dollars, the
commission shall render its final decision on any such applica-
tion filed under the provisions of this section or section eleven-
a of this article within four hundred days of the filing of the
application and within ninety days after final submission of any
such application for decision after a hearing.

(g) If a decision is not rendered within the aforementioned
one hundred eighty-days, two hundred seventy days, four
hundred days or ninety days, the commission shall issue a
certificate of convenience and necessity as applied for in the
application.
(h) The commission shall prescribe such rules as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(i) Pursuant to the requirements of this section the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline, or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined, by rule, by the commission in the case of

(1) Natural gas sold by a producer, pipeline or other seller to such person; or

(2) Natural gas produced by such person.

(j) A public utility which has received a certificate of public convenience and necessity from the commission and has been approved by the infrastructure and jobs development council, is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not effect the rates established for the project.

(k) Any public utility, person or corporation proposing any electric power project that requires a certificate under this section is not required to obtain such certificate before applying for or obtaining any franchise, license or permit from any municipality or other governmental agency.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days 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 4th day of May, 2005.

Governor