WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2010

COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 656

(Senators McCabe, Hall, Kessler, Deem, Jenkins, Green, Stollings and Boley, original sponsors)

[Passed March 9, 2010; in effect ninety days from passage.]
ENROLLED

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(SENATORS Mccabe, Hall, Kessler, Deem, Jenkins, Green, Stollings and Boley, original sponsors)

[Passed March 9, 2010; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1j, relating to special rates for energy-intensive industrial consumers of electric power; setting forth legislative findings on energy-intensive industrial consumers of electric power; defining certain terms; enabling the Public Service Commission to establish special rates for energy-intensive industrial consumers of electric power; setting forth factors that the Public Service Commission may take into consideration in establishing special rates for energy-intensive industrial consumers of electric power, in addition to factors that may already be considered by the Public Service Commission in its rate-setting process; authorizing the Public Service Commission to adopt mechanisms reasonably designed to assure appropriate flexibility and predictability of special rates; establishing procedures for application to the Public Service Commission for a special rate; setting forth data and information
Enr. Com. Sub. for S. B. No. 656] 2

to be included in an application for a special rate; establish­
ing qualifications for eligibility for a special rate; and
requiring Public Service Commission to determine whether
any excess revenue or revenue shortfall created by a special
rate authorized pursuant to this section should be allocated
among any other customers of the utility.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be
amended by adding thereto a new section, designated §24-2-1j,
to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1j. Special rates for energy intensive industrial consum­
ers of electric power.

1 (a) The Legislature hereby finds that:

2 (1) West Virginia enjoys relatively low cost electric
3 power rates for residential customers, business and
4 industry and these relatively low rates constitute a
5 competitive economic advantage for West Virginia;

6 (2) West Virginia has many energy intensive industrial
7 consumer of electric power, and has the ability to retain its
8 existing energy intensive industrial consumers of electric
9 power and attract additional energy intensive industrial
10 consumers of electric power in the future, through the
11 adoption of policies and the establishment of rates that
12 enhance and preserve the attractiveness of West Virginia
13 as a place for energy intensive industrial consumers to do
14 business;

15 (3) Energy intensive industrial consumers of electric
16 power create jobs, provide a substantial tax base and
17 enhance the productive capacity, competitiveness and
18 economic opportunities of West Virginia and all of its
19 citizens;
(4) Energy intensive industrial consumers of electric power help keep power rates low for all consumers of electric power, including residential customers, by providing a large consumption base over which the cost of producing electric power may be spread from time to time;

(5) It is in the best interests of West Virginia, the citizens of West Virginia, electric public utilities in West Virginia, and all consumers of electric power in West Virginia, including residential customers, to encourage the continued development, construction, operation, maintenance and expansion in West Virginia of industrial plants and facilities which are energy intensive consumers of electric power, thereby increasing the creation, preservation and retention of jobs, expanding the tax base, helping keep power rates low for all consumers of electric power, and enhancing the productive capacity, competitiveness and economic opportunities of all citizens of West Virginia; and

(6) To encourage the continued development, construction, operation, maintenance and expansion in West Virginia of industrial plants and facilities which are energy intensive consumers of electric power, the commission may establish special rates under this section that in its judgment are necessary or appropriate for the continued, new or expanded operation of energy intensive industrial consumers and that can reasonably be expected to support the long-term operation of energy intensive industrial consumers, and that do not impose an unreasonable burden upon electric public utilities or their other customers.

(b) As used in this section:

(1) “Energy intensive industrial consumer” means an industrial facility, plant or enterprise that has a contract demand of at least fifty thousand kilowatts of electric power.
Enr. Com. Sub. for S. B. No. 656 | 4

54 power at its West Virginia facilities under normal operating conditions.

56 (2) "Special rate" means a rate set for an energy intensive industrial consumer pursuant to this section.

58 (c) In addition to any authority of the Commission to allow special rates or contracts under any other provision of the code or rule, and in addition to all other factors which the commission may consider in setting rates for consumers of electric power, including, but not limited to the Commission's responsibilities under subsection (b), section one, article one of this chapter, and notwithstanding any other provisions of this code to the contrary, in setting a special rate the commission may take into consideration fluctuations in market prices for the goods or products produced by the energy intensive industrial consumer of electric power, or other variables or factors which may be relevant to or affect the continuing vitality of the energy intensive industrial consumer of electric power in dynamic markets. In setting a special rate by reference to fluctuations in market prices for the goods and products produced by an energy intensive industrial consumer of electric power, the commission may establish variable rates including, but not limited to, ceilings and floors on the special rate, banking or crediting mechanisms, caps, limits or other similar types of safeguards that are intended by the commission, in its reasonable judgment, to provide appropriate flexibility and predictability in the special rate over time, to permit the energy intensive industrial customer the ability to make the capital investments and other commitments necessary to support the continued operation of the facility.

(d) An energy intensive industrial consumer wishing to apply for a special rate shall first enter into negotiations with the utility that provides it with electric power,
regarding the terms and conditions of a mutually agreeable special rate. If the negotiations result in an agreement between the energy intensive industrial consumer and the utility, the energy intensive industrial consumer and the utility shall make a joint filing with the commission seeking approval of the proposed special rate. If the negotiations are unsuccessful, the energy intensive industrial consumer may file a petition with the commission to consider establishing a special rate. The commission shall have the authority to establish a special rate upon the filing of either a joint filing or a petition pursuant to this section.

(e) In order to qualify for a special rate, an energy intensive industrial consumer shall:

1. Have a contract demand of at least fifty thousand kilowatts of electric power at its West Virginia facilities under normal operating conditions;
2. Create or retain at least twenty-five full time jobs in West Virginia;
3. Have invested not less than $500,000 in fixed assets, including machinery and equipment, in West Virginia;
4. Provide reasonable evidence that due to market conditions in the industry in which the energy intensive industrial consumer operates, or other factors bearing on investment in and operation of the industrial facility or facilities, without the special rate the operation or continued operation of the industrial facility or facilities is threatened or not economically viable under reasonable assumptions and projections regarding the market and the operation of the industrial facility or facilities;
5. Provide reasonable evidence that, with the special rate, the energy intensive industrial consumer intends to operate the industrial facility or facilities in West Virginia
for an extended period of time, and that the operation or
continued operation of the industrial facility or facilities
for an extended period of time appears economically
viable, under reasonable assumptions and projections
regarding the market in which the energy intensive
industrial consumer operates and regarding the operation
of the industrial facility or facilities; and
(6) Provide information and data setting forth how the
energy intensive industrial consumer meets the qualifica-
tions of this section, and how the special rate advances the
policy goals set forth in subsection (a) of this section.
(f) The Commission shall determine whether any excess
revenue or revenue shortfall created by a special rate
authorized pursuant to this section should be allocated
among any other customers of the utility. In making that
determination, the Commission shall consider all relevant
factors, including whether such allocation is just, reason-
able, and fairly balances the interests of other customers,
the utility, and the customer receiving the special rate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In 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 approved this the ___ day of ___ , 2010.

Governor