WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014

ENROLLED
Senate Bill No. 585
(By Senator Palumbo)

[Passed March 8, 2014; in effect ninety days from passage.]
AN ACT to repeal §24-3-3b of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-1-1 of said code, relating to removing unconstitutional language regarding access to rail lines.

Be it enacted by the Legislature of West Virginia:

That §24-3-3b of the Code of West Virginia, 1931, as amended, be repealed; and that §24-1-1 of said code be amended and reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with Joint Committee on Government and Finance.

(a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the Public Service Commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:
(1) Ensure fair and prompt regulation of public utilities in the interest of the using and consuming public;

(2) Provide the availability of adequate, economical and reliable utility services throughout the state;

(3) Encourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state's energy resources, such as coal;

(4) Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference, applied in a manner consistent with the purposes and policies set forth in article two-a of this chapter, and based primarily on the costs of providing these services;

(5) Encourage energy conservation and the effective and efficient management of regulated utility enterprises; and

(6) Encourage removal of artificial barriers to rail carrier service, stimulate competition, stimulate the free flow of goods and passengers throughout the state and promote the expansion of the tourism industry, thereby improving the economic condition of the state.

(b) The Legislature creates the Public Service Commission to exercise the legislative powers delegated to it. The Public Service Commission is charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state's economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions.

(c) The Legislature directs the Public Service Commission to identify, explore and consider the potential
benefits or risks associated with emerging and state-of-the-art concepts in utility management, rate design and conservation. The commission may conduct inquiries and hold hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other interested persons the opportunity to comment, and shall report to the Governor and the Legislature regarding its findings and policies to each of these areas not later than the first day of the regular session of the Legislature in the year 1985, and every two years thereafter.

(d) It is legislative policy to ensure that the Legislature and the general public become better informed regarding the regulation of public utilities in this state and the conduct of the business of the Public Service Commission. To aid in the achievement of this policy, the Public Service Commission annually shall present to the Joint Committee on Government and Finance, created by article three, chapter four of this code, or a subcommittee designated by the joint committee, a management summary report which describes in a concise manner:

(1) The major activities of the commission for the year especially as such activities relate to the implementation of the provisions of this chapter;

(2) Important policy decisions reached and initiatives undertaken during the year;

(3) The current balance of supply and demand for natural gas and electric utility services in the state and forecast of the probable balance for the next ten years; and

(4) Other information considered by the commission to be important including recommendations for statutory reform and the reasons for such recommendations.
(e) In addition to any other studies and reports required to be conducted and made by the Public Service Commission pursuant to any other provision of this section, the commission shall study and initially report to the Legislature no later than the first day of the regular session of the Legislature in the year 1980 upon:

(1) The extent to which natural gas wells or wells heretofore supplying gas utilities in this state have been capped off or shut in; the number of such wells; their probable extent of future production and the reasons given and any justification for capping off or shutting in such wells; the reasons, if any, why persons engaged or heretofore engaged in the development of gas wells in this state or the Appalachian areas have been discouraged from drilling, developing or selling the production of such wells; and whether there are fixed policies by any utility or group of utilities to avoid the purchase of natural gas produced in the Appalachian region of the United States generally and in West Virginia specifically.

(2) The extent of the export and import of natural gas utility supplies in West Virginia.

(3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia.

In carrying out the provisions of this section the commission shall have jurisdiction over such persons, whether public utilities or not, as may be in the opinion of the commission necessary to the exercise of its mandate and may compel attendance before it, take testimony under oath and compel the production of papers or other documents. Upon reasonable request by the commission, all other state agencies
shall cooperate with the commission in carrying out the provisions and requirements of this subsection.

(f) No later than the first day of the regular session of the Legislature in the year 1980, the Public Service Commission shall submit to the Legislature a plan for internal reorganization which plan shall specifically address the following:

(1) A division within the Public Service Commission which shall include the office of the commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decisionmaking and general supervision of the commission, which functions shall not include advocacy in cases before the commission;

(2) The creation of a division which shall act as an advocate for the position of and in the interest of all customers;

(3) The means and procedures by which the division to be created pursuant to the provisions of subdivision (2) of this subsection shall protect the interests of each class of customers and the means by which the commission will assure that such division will be financially and departmentally independent of the division created by subdivision (1) of this subsection;

(4) The creation of a division within the Public Service Commission which shall assume the duties and responsibilities now charged to the commissioners with regard to motor carriers which division shall exist separately from those divisions set out in subdivisions (1) and (2) of this subsection and which shall relieve the commissioners of all except minimal administrative responsibilities as to motor carriers and which plan shall provide for a hearing procedure
to relieve the commissioners from hearing motor carrier cases;

(5) Which members of the staff of the Public Service Commission shall be exempted from the salary schedules or pay plan adopted by the civil service commission and identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation;

(6) The manner in which the commission will strengthen its knowledge and independent capacity to analyze key conditions and trends in the industries it regulates extending from general industry analysis and supply-demand forecasting to continuing and more thorough scrutiny of the capacity planning, construction management, operating performance and financial condition of the major companies within these industries.

Such plan shall be based on the concept that each of the divisions mentioned in subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage ex parte communications between them by such means as the commission shall direct, including, but not limited to, separate clerical and professional staffing for each division. Further, the Public Service Commission is directed to incorporate within the said plan to the fullest extent possible the recommendations presented to the subcommittee on the Public Service Commission of the Joint Committee on Government and Finance in a final report dated February, 1979, and entitled “A Plan for Regulatory Reform and Management Improvement.”

The commission shall, before January 5, 1980, adopt said plan by order, which order shall promulgate the same as a rule of the commission to be effective upon the date specified in said order, which date shall be no later than December 31,
162 1980. Certified copies of such order and rule shall be filed on
163 the first day of the 1980 regular session of the Legislature, by
164 the chairman of the commission with the clerk of each house
165 of the Legislature, the Governor and the Secretary of State.
166 The chairman of the commission shall also file with the
167 Office of the Secretary of State the receipt of the clerk of
168 each house and of the Governor, which receipt shall evidence
169 compliance with this section.

170 Upon the filing of a certified copy of such order and rule,
171 the clerk of each house of the Legislature shall report the
172 same to their respective houses and the presiding officer
173 thereof shall refer the same to appropriate standing committee
174 or committees.

175 Within the limits of funds appropriated therefor, the rule
176 of the Public Service Commission shall be effective upon the
177 date specified in the order of the commission promulgating it
178 unless an alternative plan be adopted by general law or unless
179 the rule is disapproved by a concurrent resolution of the
180 Legislature adopted prior to adjournment sine die of the
181 regular session of the Legislature to be held in the year 1980:
182 Provided, That if such rule is approved in part and
183 disapproved in part by a concurrent resolution of the
184 Legislature adopted prior to such adjournment, such rule shall
185 be effective to the extent and only to the extent that the same
186 is approved by such concurrent resolution.

187 The rules promulgated and made effective pursuant to
188 this section shall be effective notwithstanding any other
189 provisions of this code for the promulgation of rules or
190 regulations.

191 (g) The Public Service Commission is hereby directed to
192 cooperate with the Joint Committee on Government and
193 Finance of the Legislature in its review, examination and
study of the administrative operations and enforcement
record of the Railroad Safety Division of the Public Service
Commission and any similar studies.

(h) (1) The Legislature hereby finds that rates for natural
gas charged to customers of all classes have risen
dramatically in recent years to the extent that such increases
have adversely affected all customer classes. The Legislature
further finds that it must take action necessary to mitigate the
adverse consequences of these dramatic rate increases.

(2) The Legislature further finds that the practices of
natural gas utilities in purchasing high-priced gas supplies, in
purchasing gas supplies from out-of-state sources when West
Virginia possesses abundant natural gas, and in securing
supplies, directly or indirectly by contractual agreements
including take-or-pay provisions, indefinite price escalators
or most-favored nation clauses have contributed to the
dramatic increase in natural gas prices. It is therefore the
policy of the Legislature to discourage such purchasing
practices in order to protect all customer classes.

(3) The Legislature further finds that it is in the best
interests of the citizens of West Virginia to encourage the
transportation of natural gas in intrastate commerce by
interstate or intrastate pipelines or by local distribution
companies in order to provide competition in the natural gas
industry and in order to provide natural gas to consumers at
the lowest possible price.

(i) The Legislature further finds that transactions between
utilities and affiliates are a contributing factor to the increase
in natural gas and electricity prices and tend to confuse
consideration of a proper rate of return calculation. The
Legislature therefore finds that it is imperative that the Public
Service Commission have the opportunity to properly study
the issue of proper rate of return for lengthy periods of time
and to limit the return of a utility to a proper level when
compared to return or profit that affiliates earn on
transactions with sister utilities.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chaiman Senate Committee

Chaiman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Secretary of State

President of the Senate

Speaker of the House of Delegates

The within is approved this the Day of , 2014.

Governor
PRESENTED TO THE GOVERNOR

MAR 27 2014

Time 3:00 PM