

SB390

FILED

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**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-SECOND LEGISLATURE**  
**REGULAR SESSION, 2015**

OFFICE OF THE  
SECRETARY OF STATE



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 390**

(SENATOR TRUMP, *ORIGINAL SPONSOR*)

[PASSED MARCH 13, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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## Senate Bill No. 390

(SENATOR TRUMP, ORIGINAL SPONSOR)

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[Passed March 13, 2015; in effect ninety days from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1k, relating to additional duties of the Public Service Commission; authorizing commission to approve expedited cost recovery of natural gas utility infrastructure projects deemed just and reasonable and in the public interest; making findings; establishing application and hearing process; and providing for rulemaking.

*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 §24-2-1k, to read as follows:

**ARTICLE 2. POWERS AND DUTIES OF THE PUBLIC SERVICE COMMISSION.**

**§24-2-1k. Natural gas infrastructure expansion, development, improvement and job creation; findings; expedited process; requirements; rulemaking.**

1 (a) The Legislature hereby finds that:

2 (1) West Virginia is rich in energy resources, which  
3 provide many advantages to the state, its economy and its  
4 citizens;

5 (2) West Virginia is experiencing significant growth in  
6 the natural gas industry with the development of the  
7 Marcellus and Utica shale;

8 (3) West Virginia's abundant natural gas reserves have  
9 created, and will continue to create, many benefits to the state  
10 and its citizens;

11 (4) Growth in the natural gas industry and its  
12 accompanying benefits require West Virginia to be proactive  
13 and increase the focus on the natural gas infrastructure in this  
14 state in order for those benefits to flow to the state and its  
15 citizens, including those citizens in areas unserved or  
16 underserved by natural gas utilities;

17 (5) A comprehensive program of replacing, upgrading  
18 and expanding infrastructure by natural gas utilities at  
19 reasonable cost to ratepayers will benefit the customers of the  
20 natural gas utilities, the public in West Virginia and the  
21 economy of the state, as a whole;

22 (6) A natural gas utility infrastructure program will create  
23 jobs, provide for continued and enhanced safety and  
24 reliability of aging natural gas infrastructure, provide for  
25 more economic natural gas utility service, and provide natural  
26 gas utility service to new customers in areas of the state that  
27 are unserved or underserved; and

28 (7) Natural gas utility infrastructure programs involve the  
29 investment of capital and the incurrence of associated  
30 incremental costs. Accordingly, in order for the natural gas  
31 utility undertaking those infrastructure programs to attract the  
32 necessary capital, the natural gas utility should be permitted  
33 to recover the incremental rate of return, related income  
34 taxes, depreciation and property taxes associated with the  
35 infrastructure programs commencing with the implementation  
36 of an infrastructure program approved by the commission  
37 without waiting for a full base rate tariff filing as more fully  
38 described in subsection (f) of this section.

39 (b) Natural gas utilities may file with the commission an  
40 application for a multi-year comprehensive plan for  
41 infrastructure replacements, upgrades and extensions.  
42 Subject to commission review and approval, a plan may be  
43 amended and updated by the natural gas utility as  
44 circumstances warrant. The recovery of costs in support of  
45 the plans shall be allowed in the manner set forth in this  
46 section if the proposed plans have been found to be prudent  
47 and useful.

48 (c) The application is in lieu of a proceeding pursuant to  
49 section eleven of this article and shall contain the following:

50 (1) A description of the infrastructure program, in such  
51 detail as the commission prescribes, and the projected annual  
52 amount (in approximate line sizes and feet), general location,  
53 type, and projected installation timing of the facilities that the  
54 applicant proposes to replace, construct and/or improve;

55 (2) The projected net cost, on an annual basis, of the  
56 replacement, construction or improvements;

57 (3) The projected starting date for the infrastructure  
58 program;

59 (4) The projected numbers of potential new customers, if  
60 any, that may be served by the infrastructure program and the  
61 projected annual load of the customers;

62 (5) The projected cost of debt for the infrastructure  
63 program funding and the projected capital structure for  
64 infrastructure program funding;

65 (6) Testimony, exhibits or other evidence that  
66 demonstrates the need for the replacement, construction or  
67 improvement of facilities in order to provide and maintain  
68 adequate, efficient, safe, reliable and reasonable natural gas  
69 service;

70 (7) A proposed cost recovery mechanism consistent with  
71 this section; and

72 (8) Other information the applicant considers relevant or  
73 the commission requires.

74 (d) Upon filing of the application, the applicant shall  
75 publish, in the form the commission directs, which form shall  
76 include, but not be limited to, the anticipated rates and, if any,  
77 rate increase under the proposal, by average percentage and  
78 dollar amount for customers within a class of service, as a  
79 Class I legal advertisement in compliance with the provisions  
80 of article three, chapter fifty-nine of this code, the publication  
81 area to be each county in which service is provided by the  
82 natural gas utility, a notice of the filing of the application and  
83 that the commission shall hold a hearing on the application  
84 within ninety days of the notice; unless no opposition to the  
85 rate change is received by the Public Service Commission  
86 within one week of the proposed hearing date, in which case  
87 the hearing can be waived, and issue a final order within one  
88 hundred fifty days of the application filing date. However, if  
89 the proposed infrastructure program includes a request for

90 extension of infrastructure into an unserved area and another  
91 natural gas utility files to extend service to the same area, the  
92 commission may move that extension request of each natural  
93 gas utility into separate proceedings to be considered  
94 concurrently and extend the time period for issuing a final  
95 order on that portion of the proposed programs beyond the  
96 one hundred fifty days.

97 (e) Upon notice and hearing, if required by the  
98 commission, the commission shall approve the infrastructure  
99 program and allow expedited recovery of costs related to the  
100 expenditures as provided in subsection (f) of this section if  
101 the commission finds that the expenditures and the associated  
102 rate requirements are just, reasonable, not contrary to the  
103 public interest and will allow for the provision and  
104 maintenance of adequate, efficient, safe, reliable and  
105 reasonably priced natural gas service.

106 (f) Upon commission approval, natural gas utilities will  
107 be authorized to implement the infrastructure programs and  
108 to recover related incremental costs, net of contributions to  
109 recovery of return and depreciation and property tax expenses  
110 directly attributable to the infrastructure program provided by  
111 new customers served by the infrastructure program  
112 investments, if any, as provided in the following:

113 (1) An allowance for return shall be calculated by  
114 applying a rate of return to the average planned net  
115 incremental increase to rate base attributable to the  
116 infrastructure program for the coming year, considering the  
117 projected amount and timing of expenditures under the  
118 infrastructure program plus any expenditures in previous  
119 years of the infrastructure program. The rate of return shall  
120 be determined by utilizing the rate of return on equity  
121 authorized by the commission in the natural gas utility's most  
122 recent rate case proceeding or in the case of a settled rate

123 case, a rate of return on equity as determined by the  
124 commission, and the projected cost of the natural gas utility's  
125 debt during the period of the infrastructure program to  
126 determine the weighted cost of capital based upon the natural  
127 gas utility's capital structure.

128 (2) Income taxes applicable to the return allowed on the  
129 infrastructure program shall be calculated for inclusion in  
130 rates.

131 (3) Incremental depreciation and property tax expenses  
132 directly attributable to the infrastructure program shall be  
133 estimated for the upcoming year.

134 (4) Following commission approval of its infrastructure  
135 program, a natural gas utility shall place into effect rates that  
136 include an increment that recovers the allowance for return,  
137 related income taxes, depreciation and property tax expenses  
138 associated with the natural gas utility's estimated  
139 infrastructure program investments for the upcoming year,  
140 net of contributions to recovery of those incremental costs  
141 provided by new customers served by the infrastructure  
142 program investments, if any, ("incremental cost recovery  
143 increment"). In each year subsequent to the order approving  
144 the infrastructure program and an incremental cost recovery  
145 increment, the natural gas utility shall file a petition with the  
146 commission setting forth a new proposed incremental cost  
147 recovery increment based on investments to be made in the  
148 subsequent year, plus any under-recovery or minus any  
149 over-recovery of actual incremental costs attributable to the  
150 infrastructure program investments, for the preceding year.

151 (g) The natural gas utility may make any accounting  
152 accruals necessary to establish a regulatory asset or liability  
153 through which actual incremental costs incurred and costs  
154 recovered through the rate mechanism are tracked.

155           (h) Natural gas utilities may defer incremental operation  
156 and maintenance expenditures attributable to regulatory and  
157 compliance-related requirements introduced after the natural  
158 gas utility's last rate case proceeding and not included in the  
159 natural gas utility's current base rates. In a future rate case,  
160 the commission may allow recovery of the deferred costs  
161 amortized over a reasonable period of time to be determined  
162 by the commission provided the commission finds that the  
163 costs were reasonable and prudently incurred and were not  
164 reflected in rates in prior rate cases.



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

*Mark D. Hayward*  
.....  
Chairman Senate Committee

*John P. McCall*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Clark A. Barnes*  
.....  
Clerk of the Senate

*Stephen D. Hoover*  
.....  
Clerk of the House of Delegates

*William P. Blaine*  
.....  
President of the Senate

*Paul M. Stamper*  
.....  
Speaker of the House of Delegates

The within *is approved* ..... this the *27th*  
Day of *March* ....., 2015.

*Earl Ray Tomblin*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 23 2015

Time 10:51 AM