WEST VIRGINIA SECRETARY OF STATE

KRIS WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Public Service Commission

TITLE-SERIES: 150-41

RULE TYPE: Legislative

Amendment to Existing Rule: No

Repeal of existing rule: No

RULE NAME: General Investigation into adopting and implementing Rules governing Electric Generating Capacity Regulations

CITE STATUTORY AUTHORITY: 24-2-1d

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 08/20/2026 4 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: Karen Buckley

ADDRESS: Public Service Commission

PO Box 812, Charleston WV 25323

EMAIL: jneal@psc.state.wv.us

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The new Rule is designed to meet the purposes of HB 2014 to maximize the generation of electricity within this State using coal produced in the State of West Virginia. In 2025, the West Virginia Legislature amended W. Va. Code § 24-2-1d, by adding new subsections (d) through (f). In newly enacted subsection (d), the Commission is required to evaluate each capacity auction conducted by PJM Interconnection, LLC, or its successor and, to the maximum extent permitted by law, encourage the coordination of the voluntary participation of every electric generating unit in the state in each capacity auction for the benefit of ratepayers in the state. In subsection (e), in order to ensure the states existing generating units can continue to meet future generating needs, the Legislature charged the Commission to conduct a review of each generating units current consumer economic dispatch.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

On April 12, 2025, the West Virginia Legislature passed Enrolled Committee Substitute for House Bill 2014 (HB 2014), the Power Generation and Consumption Act, effective ninety days from passage, July 11, 2025. Among other things, HB 2014 amended W. Va. Code § 24-2-1d, added a new subsections (d) through (f). In newly enacted subsection (d), the Commission is required to evaluate each capacity auction conducted by PJM Interconnection, LLC, or its successor and, to the maximum extent permitted by law, encourage the coordination of the voluntary participation of every electric generating unit in the state in each capacity auction for the benefit of ratepayers in the state. In subsection (e), in order to ensure the states existing generating units can continue to meet future generating needs, the Legislature charged the Commission to conduct a review of each generating units current consumer economic dispatch. Subsection (f) required the Commission to propose rules for legislative approval in accordance with the provisions of W. Va. Code § 29A-3-1, et seq., to carry out its duties and obligations contained in the newly enacted W. Va. Code § 24-2-1d.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	**Fiscal Year**		
	2026 Increase/Decrease (use "-")	**2027 Increase/Decrease (use "-")**	**Fiscal Year (Upon Full Implementation)**
1. Estimated Total Cost			n/a
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			n/a

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Jane Neal -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 41
RULES GOVERNING ELECTRIC GENERATING CAPACITY UTILIZATION

§150-41-1. General

1.1. Scope. -- The following rules govern the regulation of electric generating capacity requirements subject to the jurisdiction of the Public Service Commission pursuant to W. Va. Code §24-2-1d.

1.2 Authority. -- W. Va. Code §24-2-1d.

1.3. Filing Date. -- [ ] 2026.

1.4. Effective Date. -- [ ].

1.5. Sunset Date. – This rule shall terminate and have no further force and effect on August 1, 2031.

1.6. Intent. -- This Rule is promulgated pursuant to the mandate contained in W. Va. Code §24-2-1d(f), which required the Commission to issue rules regarding the regulation of future electric generating capacity requirements.

1.7. The contact information for the Commission is:

Public Service Commission of West Virginia
201 Brooks St.
P.O. Box 812
Charleston, WV 25323
Main switchboard telephone 304-340-0300
Main telefax 304-340-0325
Web site: www.psc.state.wv.us

§150-41-2. Definitions.

The definitions set forth in W. Va. Code §24-1-2, and the definitions for “projected deficient capacity” and “consumer economic dispatch,” set forth in W. Va. Code §24-2-1d, shall apply to this rule, and have the same meanings when used herein, unless the context clearly indicates otherwise. For purposes of this rule, the following additional terms have the meanings as described below:

2.1. “Capacity factor” means the ratio of the actual energy produced by a power plant or unit within a power plant over a specific period to the maximum possible energy it could have produced if running at full capacity during that same period. Capacity factors can be calculated based on various measures of maximum possible energy production, including, but not limited to:

2.1.1. “Gross installed capacity factor” means the ratio of the gross energy produced by a power plant or unit to the maximum possible energy it could have produced if running at full installed capacity during the same period.

2.1.2. "Net installed capacity factor" means the ratio of the net energy delivered to the grid after deducting parasitic load to the maximum energy that could have been delivered to the grid after deducting parasitic load if running at full installed capacity during the same period.

2.1.3. "Gross available capacity factor" means the ratio of the gross energy produced by a power plant or unit to the maximum possible energy it could have produced if running at full available capacity during the same period.

2.1.4. "Net available capacity factor" means the ratio of the net energy delivered to the grid after deducting parasitic load to the maximum possible energy that could have been delivered to the grid after deducting parasitic load if running at the available capacity during that same period.

2.2. "Capacity Resources" means a resource that can provide electricity or reduce the demand for electricity and includes megawatts of net capacity from existing or planned Generation Resources or load reduction capability provided by demand resources.

2.3. "Effective Load Carrying Capability" (ELCC) is the capacity value fractional multiplier applied by PJM to various resources' maximum rated capacity to define their expected output during periods of maximum stress on the system. ELCC values are revised annually by PJM.

2.4. "Fixed Resource Requirement" (FRR) is an alternative option for Load Serving Entities (LSEs) to self-supply resources rather than participate in the PJM RPM auction process.

2.5. "Generation Resource" means any generating unit that meets the qualification requirements to participate in the PJM capacity market or energy market.

2.6. "Installed Capacity" (ICAP) is the summer capacity rating for capacity resources before adjustments for expected forced outages.

2.7. "Locational Marginal Price" (LPM) is the pricing mechanism used in the PJM wholesale electricity market and represents the hourly integrated marginal market clearing price for electrical energy at the location where the energy is delivered into PJM or received to serve load.

2.8. "Office of Energy" means the West Virginia Office of Energy established in W.Va. Code §5B-2F-2.

2.9. "PJM" stands for the PJM Interconnection LLC, the regional transmission organization responsible for coordinating, controlling, and transmitting electricity throughout its authorized footprint.

2.10. "Reliability Pricing Model" (RPM) is PJM's resource adequacy construct designed to acquire capacity resources to meet net capacity requirements on the PJM system.

2.11. "Self-schedule" as applied to electrical energy means the daily scheduling and control of a Generation Resource by the owner or operator of the facility that is not dependent on economic dispatch control by PJM.

2.12. "Self-schedule" as applied to electrical capacity means resources specified price takers by a resource provider in the PJM Capacity Auctions to guarantee that the resource will clear in the auction. If a resource is designated as Self-scheduled by the resource provider, the Self-Scheduled resources is cleared first in the auction before clearing any market bids.

2.13. "Unforced Capacity" (UCAP) is the MW value of a capacity resource that is available to meet demand, adjusted for the resource's expected forced outage rate.

§150-41-3. Participation in PJM Capacity Auctions.

3.1. Capacity Auctions. -- The Commission encourages voluntary participation by every electric generating unit subject to the jurisdiction of the Commission in each capacity auction.

3.2. RPM Option. -- To enable the Commission to monitor and evaluate the participation in the capacity market each electric utility subject to jurisdiction of the Commission that owns or is contractually entitled to a capacity resource and is operating under the RPM option in PJM, shall report to the Commission its proposed capacity offers for the next upcoming RPM capacity auction.

3.2.1. The utility report shall include the following:

3.2.1.a. A listing of its owned or under contract capacity resources,

3.2.1.b. The ICAP and UCAP of each resource,

3.2.1.c. The PJM assigned ELCC of each resource,

3.2.1.d. Identification of units that are eligible to bid into the capacity auction,

3.2.1.e. The UCAP quantity of each eligible resource proposed to be bid into the market,

3.2.1.f. The price proposed for each bid, which may be zero for self-scheduled capacity, and

3.2.1.g. Other information which the Commission determines is necessary to allow the Commission to meet the objectives of this subsection.

3.2.2. This report shall be submitted to the Commission at least 28 calendar days prior to submitting the capacity bid. The Commission may modify the filing deadline by a general or specific order.

3.2.3. The utility participating in this model shall also file a verified statement or testimony explaining why it chooses to forego the FRR option and the benefits to West Virginia ratepayers of remaining in the RPM. The benefits should be quantified with comparisons of the costs to ratepayers of RPM participation versus the costs of FRR participation using the RPM capacity to meet its FRR obligation. The comparisons should cover the last three PJM delivery years. The statement or testimony shall provide information on the timing and steps necessary to switch to FRR and any jurisdictional issues that would complicate such switching if required by the Commission.

3.2.4. The utility shall simultaneously file a public version and a confidential version of the quantity and price information contained in its report, which shall comply with the Commission directives for limiting and marking redacted information. The confidential version of the quantity and price information shall be deemed to be a confidential trade secret, as recognized in W.Va. Code §29B-1-4, and shall not be available to any entity seeking access to the information, unless access under a Confidentiality Agreement is required by order of the Commission.

3.3. FRR Option. -- To enable the Commission to monitor and evaluate the participation of the utility in the capacity market each electric utility subject to the jurisdiction of the Commission that owns or is contractually entitled to a capacity resource and is operating under the FRR option in PJM shall report to the Commission its current capacity requirement as assigned by PJM, and the resources that it owns or has under contract that qualify to satisfy its PJM FRR capacity obligation.

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3.3.1. The information filed shall include the following:

3.3.1.a. A description of the timing for the development of the capacity obligation by PJM,

3.3.1.b. The current ICAP and UCAP of each FRR resource,

3.3.1.c. The PJM assigned ELCC of each capacity resource, and

3.3.1.d. Other information which the Commission determines is necessary to allow the Commission to meet the objectives of this subsection.

3.3.2. This report shall be submitted to the Commission at least 28 calendar days prior to submitting the capacity bid. The Commission may modify the filing deadline by a general or specific order.

3.3.3. The FRR utility shall file a verified statement or testimony explaining why it chooses to forego the RPM and the corollary benefits to West Virginia ratepayers. The benefits should be quantified with comparisons of the costs to ratepayers of FRR capacity versus the costs of RPM participation using the FRR capacity within the RPM. The comparisons should cover the last three PJM delivery years. The statement or testimony shall also provide information on the timing and steps necessary to switch to the RPM and any jurisdictional issues that would complicate such switching if required by the Commission.

§150-41-4. Consumer Economic Dispatch.

4.1. Consumer Economic Dispatch. -- In accordance with W. Va. Code §24-2-1d(e) the commission shall review each generating unit's consumer economic dispatch to determine if each unit is operated to produce electricity at its lowest cost consistent with consumer demand, and operational limits of the generation facility and transmission facilities. To determine if the utility is operating each generating unit at its lowest cost, the Commission will review the cost of producing electricity per kilowatt hour of output at each generating unit at varying capacity utilization levels. Each electric utility subject to the jurisdiction of the Commission must plan the operation of each generating unit under its control to produce electricity at the lowest achievable cost per kilowatt hour. The Commission will review consumer economic dispatch results on a daily, weekly, monthly, and annual basis.

4.2. Generation Dispatch Reports. -- Each electric utility subject to this rule that owns or controls energy resources shall file a Generation Dispatch Report, which shall include monthly information regarding the hourly dispatch of each of its generation units into the PJM day-ahead and real-time energy markets for the month prior to the filing month. The Generation Dispatch Report is due on the tenth business day of each month, and shall include information for the month immediately preceding the filing month.

4.3. Information on Consumer Economic Dispatch. -- Each Generation Dispatch Report filed pursuant to this rule shall provide the cost of generation at various output levels. If plants are run at less than the lowest cost output levels the utility shall quantify the impact on consumer economic dispatch from running plants at less than their optimum economic capability. If running generation units at higher output levels than those achieved during any reporting period would have resulted in lower cost per kilowatt hour of output, the utility must explain why it did not maximize consumer economic dispatch of the generating units.

4.3.1. The utility should report the actual or estimated impact on maintenance costs and future equipment replacement attributable to significant ramping of unit output throughout each 24-hour period. If ramping output resulted in generating at less than optimum consumer economic dispatch was a trade-off between optimum consumer economic dispatch of generation units and lower cost market purchases, then the utility must quantify benefits of market purchases as compared to the total cost of generation, after considering the actual or estimated impact on maintenance costs and future equipment replacement attributable to ramping of unit output.

4.3.2. In a working and editable spreadsheet with the formulas intact, the report shall show for each hour of each day the following information:

4.3.2.a. The hourly installed gross and net capacity available to be bid or self-scheduled into the day-ahead market,

4. 3.2.b.The hourly volume of net capacity bid into the market and the related cost-based and market-based bid amounts as dollars per megawatt hour,

4. 3.2.c.The hourly net capacity that cleared the day-ahead market,

4. 3.2.d.The hourly self-scheduled capacity delivered into the day-ahead market, and

4.3.2.e. The hourly PJM LMP at the pricing nodes for each capacity resource, including the PJM identification number for each node. The report shall also show energy delivered into the PJM real-time energy market.

4.3.3. Each Generation Dispatch Report shall provide the schedules of availability for seven days in advance provided to PJM during the report month as required by PJM Manual 11 as follows: "Generation Capacity Resources that have an RPM or FRR commitment shall submit a schedule of availability for the next seven (7) days and may submit non-binding offer prices for the days beyond the next Operating Day." (*See* PJM Manual 11 at page 27, https://www.pjm.com/-/media/DotCom/documents/manuals/m11.pdf, effective October 1, 2025.)

4.3.4. The Generation Dispatch Report shall also indicate multiple-day volumes and offer prices if energy market offers or Self-scheduled volumes were submitted for days beyond the next Operating Day.

4.4. Alternative. -- If a utility subject to this rule has chosen not to self-schedule all or any of its generation capacity during any day or portions of a day it shall explain why it made that decision. This explanation must be included in its monthly Generation Dispatch Report.

§150-41-5. Capacity Factors.

5.1. Information on Capacity Factors. -- Each electric utility subject to the rate jurisdiction of the Commission that operates generation facilities shall report in its Generation Dispatch Report the capacity factors achieved at each generating unit relative to the following:

5.1.1. Maximum nameplate generation capacity of each unit,

5.1.2. Net maximum generation capacity of each unit after plant parasitic load,

5.1.3. Available nameplate generation capacity of each generating unit, 5.1.4. Available net maximum generation capacity of each unit after plant parasitic load; and

5.1.5 The underlying values supporting the calculated capacity factors.

5.2. Verified Statement. -- Each electric utility shall include in its Generation Dispatch Report a verified statement which may be in standard narrative format or in question and answer format explaining the causes and reasons that the net capacity after parasitic plant use was not one hundred percent of installed capacity net of typical plant use. The report shall include:

5.2.1. Reasons for outages;

5.2.2. Duration of outages;

5.2.3. Remedial action scheduled to remedy outages;

5.2.4. Time when the outage first occurred;

5.2.5. Time when the outage was remediated;

5.2.6. Total elapsed hours of each outage; and,

5.2.7. Direct incremental cost of each remediation, excluding overheads. Direct incremental costs are those costs that would not have been incurred but for the remediation.

5.3. Capacity Factor. -- The Commission expects generating electric utilities subject to the rate jurisdiction of the Commission to maintain their generation plants and schedule maintenance to minimize down time to allow it to achieve a minimum capacity factor of sixty-nine (69%) percent. The success in achieving a minimum capacity factor will initially be measured over a twelve-month period.

5.3.1. The utilities will include in their monthly Generation Dispatch Reports their actual capacity factors in tabular format for the report month and a rolling average up to December. Beginning with January of each year the rolling average reported shall restart. All prior month's data shall continue to be reported even though the rolling average is restarted.

5.3.2. The utilities are expected to take advantage of PJM Manual 11 Market Rules 2.3.3., *et seq.*, which allow self-scheduling rather than allowing PJM to accept or reject their output into the day-ahead market. The utility is not expected to operate at a net-positive margin in all hours of the day. It is expected to reasonably anticipate and project expected day-ahead market prices and schedule increments of generation to minimize negative margins during periods of low market prices while allowing for reasonable, and limited ramping of generation levels as market prices fluctuate in the day-ahead market.

§150-41-6. Management of fuel supplies and contracts.

6.1. Information on Fuel. -- At the time of filing of the Generation Dispatch Report, the electric utility shall file a PDF file properly formatted for printing as an 8 ½ x 11 inch document or a printed document along with a spreadsheet relating to the fuel supplies for the utility.

6.1.1. The Generation Dispatch Report shall include the following information:

6.1.1.a. The average cost and the volumes of coal in inventory at the beginning of the report month at each coal stockpile location;

6.1.1.b. The volumes and cost of coal delivered into the stockpile(s) during the month;

6.1.1.c. The volumes burned each month;

6.1.1.d. Any stockpile adjustments made during the month; and

6.1.1.e. The average cost and the volumes of coal in inventory at the end of the month.

6.1.2. The volumes and costs of coal in inventory shall be reported on both a tonnage basis and million British thermal unit ("MMBTu") basis.

6.1.3. The report shall also show the detailed total dollars and weighed average cost of coal per ton for each of the four volume categories listed above, divided between F.O.B. mine, transportation, and handling costs, both transportation and in-plant related, if applicable.

6.2. Summary Price Adjustments. -- The utility shall include a summary of price adjustments at each coal stockpile location applicable to prior months that were not known at the time reports for those months were made.

6.2.1. If there was a stockpile adjustment for any report month, the utility shall file a copy of the stockpile report and the derivation of the adjustment in tons and dollars.

6.2.2. If any stockpile adjustment exceeds five percent of the tonnage or dollar value of the inventory, the electric utility shall file a verified statement or testimony explaining the reasons that the stockpile had been misreported in the past.

6.3. Solicited Bids for Coal. -- For each monthly Generated Dispatch Report, the utility shall report the expected date for its next solicitation of bids for coal. It shall also report on the results and details of any bids received and contracts consummated prior to the report month.

6.4. Coal Contracting. -- When eliciting requests for coal contracting proposals, each electric utility subject to these rules shall make it clear that contracts indexed to the price of PJM day-ahead LMP will be considered. It shall indicate that alternative indexing that is expected to follow electricity wholesale prices in PJM may also be offered and will be considered by the utility. It shall make it clear that proposals may contain only an indexed contract or a mix of fixed-price and indexed contracts. The utility shall endeavor to maintain a mix of short-term and long-term contracts that also contain a mix of fixed-price and indexed contracts.

§150-41-7. Additional information.

7.1. Additional Information. -- The information required by this rule is not exhaustive of all information that the electric utility must provide.

7.1.1. The Commission may require additional or differently formatted information if the Commission determines that the additional information is necessary:

7.1.1.a. To ensure that the utility is maximizing the production of electricity from their generating units, 7.1.1.b. To ensure that the utility is acting to reduce energy costs for West Virginia ratepayers, or

7.1.1.c. To clarify, explain, justify, or further explain any information required by the code or this rule to be provided to the Commission.

7.1.2. A modification may be achieved by general order, specific order applicable to a single utility, or as a request from the Commission or designated staff.

7.1.3. It shall be the responsibility of the utility to provide timely additional requested information.

7.2. Amended Deadlines. – If a utility is unable to meet a deadline required by this rule, and such failure is because it has not or cannot receive the PJM in time, or for any reason outside the control of the utility, then the utility may request the Commission to modify the deadline. The Commission may grant the requested modification, for good cause shown, and shall set a new deadline. The Commission may employ a standard extension timeframe for utilities, when the cause for the deadline extension is a failure to timely receive PJM information.

§150-41-8. Confidentiality

8.1. In addition to section 3.2.4 of this rule, but subject to the other provisions of this section, all confidential business information, including trade secrets or other proprietary data or processes, shall be exempt from disclosure pursuant to W. Va. Code §§29B-1-1 *et seq*.

8.2. The Commission shall forward, share, or otherwise make available to the Director of the Office of Energy all unredacted reports and records provided to the Commission pursuant to this rule. The Office of Energy shall be bound by the same confidentiality restrictions as the Commission, and may not publicly disclose confidential business information.

8.3. Nothing contained herein precludes either the Commission or the Office of Energy from relying upon confidential business information or other protected information to address challenges with, and make improvements to, the state of energy in West Virginia. Protected information may be used to develop an energy plan, manage affordability, increase availability, rectify vulnerabilities, or take any other action consistent with the statutory directives of either the Commission or the Office of Energy. Any data compilation, plan, report, or other document which is made publicly available shall not include confidential business information which can be readily associated with the source utility. Such restrictions does not extend to information which is not determined to be confidential, and which is not otherwise protected by law.