PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 15th day of October 2026.

CASE NO. 26-0633-E-GI
General Investigation into Adopting and Implementing Rules Governing Electric Generating Capacity Regulations.

COMMISSION ORDER

Having considered comments, the Commission modifies the proposed rules governing the regulation of electric generating capacity requirements subject to the jurisdiction provided to the Commission pursuant to W. Va. Code § 24-2-1d as identified herein, and submits the amended proposed rules, attached hereto as Attachment A, to the Legislature for approval pursuant to W. Va. Code § 29A-3-9.

BACKGROUND

I. PROCEDURAL BACKGROUND

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 and added new subsections (d) through (f).

On July 20, 2026, the Commission initiated a general investigation to receive comments and recommendations on proposed rules governing electric generating capacity requirements within the Commission's jurisdiction under W. Va. Code § 24-2-1d (Proposed Rules).

The Commission established a comment period requiring written comments and recommendations to be filed with the Public Service Commission (Commission) on or before August 10, 2026, and reply comments on or before August 20, 2026.

The Commission received comments from:

West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginian (CAG/SUN/EEWV);

Monongahela Power Company (Mon Power) and the Potomac Edison Company (PE);

The West Virginia Coal Association (WVCA);

Appalachian Power Company (APCo) and Wheeling Power Company (WPCo);

West Virginia Energy Users Group (WVEUG);

The Sierra Club; and

The United Mine Workers of America (UMWA).

On August 19, 2026, the Commission scheduled a public comment hearing for September 28, 2026. The Commission required members of the public who wished to participate in the hearing through oral argument, witness testimony, or audiovisual presentation to notify the Commission by September 18, 2026. The Commission required participants to submit any additional comments, testimony, or written materials for presentation at the hearing by September 23, 2026.

During the extended comment period, the Commission received written comments from Northeast Natural Energy, LLC (NNE), the West Virginia Energy and Community Alliance (WV Energy Alliance), and Persistence Analytics Group, LLC (Persistence Analytics).

Between August 14 and September 29, 2026, the Commission also received comments from the following individuals: Betty Rivard, Lori Sundstrom, Luanne McGovern, Carolyn Rodis, Alecia Rice, Matthew Lebo, Elaine Matheny, Heather Ransom, Brenda Ellid, Sally Roberts Wilson, Diane Wooten, Angela Roton, Kristi Corbin, Cindy Lewellen, Amber Boggs, Jeff Myers, Derek Adkins, Dustin Adkins, Marsha Wells, Tom Carpenter, Susan Wade, Ivan Frishberg, Kitty Keefer, Rev. Ray Stonestreet, Dana Adkins, Julie Wingard, Dan Faugl, Richard Stonestreet, Ms. F. Bean (two comments), Richard Kinder, Cynthia Anderson, Bonnie Allen, Rev. Ralph Dunkin, Mary Alice Milnes, Michael Chelnov, Kemmeth Rivers, Larry Adkins, Regan Quinn, Warren Neal, Mike Don, Joe Stanley, Anne Chopyak, Steve Silverberg, Alan and Carol Kuhlman, Leah Knicely, Organizer for West Virginians for Energy Freedom[1], Catherine Grant, Dr. Rose Lowther, Larry Levine, Casey

[1] Ms. Knicely filed substantially similar form comments from approximately 100 individuals.

Robinson, Jennifer Blake, Dr. David Shaw, Pamela Cubberly, Marcie Bell, Eric Fitts, Terry Wolfe, Carole Williams, Timothy Simmons, Merri Morgan, Gina Griffith, Teresa Koon, Steven Runfola, Andrew Wadsworth, Michael Klausing, John Doyle, Rosanna Anthony, AJ Cho, Art Glick, James Plitt, Justin Philipps, Diane Difante, Dr. Michael Attfield, Tom Harris, DK Anestos (two comments), Jan King, Frank Muth, Me Joe Stanley, Cynthia Cox, Rodney Cox, Amanda Barnes, Amanda Stroud, Leslie Holstein, Rita Catherine Caufield, Melissa Burn, Terri Porter, Jenny Thacker, Elaine Matheny, Alecia Rice, Meryl Williams Clark, Carol Peck, Liane Mace, Jon Shayne DiMarino, Angela Marie Adkins, Christine Joy, Lew McDaniel, Adam Johnson, Amber Bartholow, Carolyn T. Cadle, Krista Adkins, Mary Lickert, Mary Wildfire, and Katherine Moeller.

The Commission held the hearing on September 28, 2026. The Commission received comments from the following members of the public, which include individuals affiliated with West Virginians for Energy Freedom (WVEF) and the UMWA:

Jennifer Holloway
Mary Wildfire
Wes Holden
Heather Ransom
Kelly Coyle
Krista Adkins
Alecia Rice
Donald Amos
Lani Wean (WVEF)
Leah Knicely on behalf of Mary Lickert (WVEF)
Clara Everett (WVEF)
Marian Keyes (WVEF)
Brian Lacy (UMWA)
Chad Francis (UMWA)
Ben Cook (UMWA)
Josh King (UMWA)
Kris Mallory (UMWA)
Mike Payton (UMWA)
Todd Toothman (UMWA)
Caleb Nazelrodt (UMWA)
Tim Snoderly (UMWA)
Brian Toothman (UMWA)
David Dayton (UMWA)

In addition, the following entities were present at the hearing:

WVCA, by witness Chris R. Hamilton, President and CEO;
Gas and Oil Association of West Virginia (GO-WV), by Rebecca McPhail;
West Virginia Citizen Action Group, by Dani Parent, Executive Director;
Northeast Natural Energy LLC (NNE), by counsel Tara Shumate-Lee;
Mon Power and PE, by counsel Gary Jack and Randy Feucht, Director of Regulated Commodity Sourcing;
CAG/SUN/EEWV, by counsel Emmett Pepper;
WVEUG, by counsel James M. Bailey; and
APCo and WPCo, by counsel Keith Fisher.[2]

On October 2, 2026, GO-WV filed Proposed Amendments (GO-WV Proposed Amendments) to the Proposed Rules.

On the same day, the UMWA filed Proposed Amendments (UMWA Proposed Amendments).

On October 5, 2026, APCo, WPCo, Mon Power and PE filed Joint Proposed Amendments (Joint Proposed Amendments) to the proposed regulations.

On the same day, the WVCA filed further comments.

In addition, Persistence Analytics filed its Proposed Amendment to Proposed Series 41 Projected-Load Evidence and Revalidation (Persistence Analytics Proposed Amendment).

On October 6, 2026, Krista Adkins filed a "Request for an Evidence-Based, Reviewable Record" (Request of Ms. Adkins).

II. SUMMARY OF COMMENTS

WVEUG

WVEUG argued that the Proposed Rules must be revised to ensure utilities only operate or self-schedule generation when it is economic and beneficial to ratepayers, not simply to meet a 69 percent capacity factor.[3] Specifically, WVEUG argued that HB 2014 requires generating electric utilities to maintain their generating units so they can achieve a 69 percent capacity factor, but does not

[2] *See generally*, Transcript of the September 28, 2026, Public Comment hearing (Tr.).
[3] WVEUG Comments at Bates 4-5. The Commission provides a summary of the pertinent issues presented in the comments filed in this matter. For the full text of the comments, please *see* the Commission's webdocket at wvpsc.state.wv.us/WebDocket/default.htm.

require utilities to operate at a 69 percent capacity factor if doing so would increase customer rates.[4] WVEUG argued that the Proposed Rules imply that utilities must achieve a 69 percent capacity factor. WVEUG reiterated this point in their Reply Comments by noting that the UMWA, in its initial comments, argued that HB 2014 required coal-fired plants to operate at the highest achievable capacity factor.[5]

WVEUG also argued that the Proposed Rules improperly require self-scheduling as the default.[6] WVEUG argues that HB 2014 does not require this, and it should be used only when it is economic and consistent with the lowest costs to ratepayers.[7]

WVCA

The WVCA stated that the Proposed Rule is an important "first step" in addressing issues related to the operation of West Virginia's coal-fired power plants.[8] It argued that coal-fired generation has not been used to the maximum benefit of ratepayers, affecting not only utility bills but also the economic health of surrounding communities, the mining operations that supply fuel to the plants, and the workforces of both.[9] The WVCA suggested that the Commission expand the Proposed Rule to include mandatory oversight and reporting on plant upgrades.[10]

Mon Power and PE

Mon Power and PE argued that the Proposed Rules are overly burdensome, duplicative of existing Expanded Net Energy Cost (ENEC) and other filings, costly to implement, and extend beyond the authority and intent of HB 2014.[11] They recommended that the Commission convene a workshop with utilities and stakeholders to redesign the rules so they meet legislative intent without imposing unnecessary monthly reporting obligations, operational mandates, or legal risks.

In addition, Mon Power and PE argued that the new amendments require utilities to maintain their generating units to achieve a 69 percent capacity factor, and do not require that they achieve a 69 percent capacity factor. Furthermore, Mon Power and PE argued that the amendments do not require monthly reporting or detailed operational disclosures, and that the Proposed Rules go well beyond the statutory language.

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[4] Id.
[5] WVEUG Reply Comments at Bates 5.
[6] Id. at Bates 5.
[7] Id.
[8] WVCA Comments at p. 2.
[9] Id.
[10] Id. at p. 4.
[11] Mon Power and PE Comments at pp. 1-2.

With respect to specific provisions, Mon Power and PE objected to requiring capacity bid information 28 days before submission to PJM, because bids are not finalized that far in advance.[12] They support providing information after auction results, consistent with current practice.[13]

With respect to Proposed Rule 4 regarding Consumer Economic Dispatch, Mon Power and PE argued that the Commission approach here may appear to regulate wholesale power markets through capacity auctions and energy bidding, which lies within the exclusive jurisdiction of the Federal Energy Regulatory Commission.[14] Furthermore, they argued that the reporting requirements in Proposed Rule 4 are unworkable, and would require additional employees to even attempt to comply.[15]

Mon Power and PE also recommended striking Proposed Rule 4.4 regarding self-scheduling. They argued that implying self-scheduling should be the norm is improper and could harm ratepayers.[16] Further, Mon Power and PE argued that the statutory language regarding capacity factors[17] must match the language in W. Va. Code § 24-2-1d(f), which states:

> The commission shall require the utilities to maintain their thermal baseload generating units in a manner to allow them to be able to self-generate and achieve at least a sixty-nine percent capacity factor. Nothing herein shall require a utility to operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule.

Mon Power and PE opposed sharing unredacted confidential information with other state agencies, arguing that once the data is transmitted to another state agency, the risk of exposing confidential information increases. They also argued that the Office of Energy (or other state agencies) lack statutory authority or a need for the data. Thus, Mon Power and PE recommend deleting Section 8.2.[18]

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[12] Id. at p. 3.
[13] Id. at p. 4.
[14] Id.
[15] Id. at p. 5.
[16] Id. at pp. 6-7.
[17] Id. at p. 7.
[18] Id. at p. 10.

APCo and WPCo

APCo and WPCo provided similar comments to those of Mon Power and PE. In sum, APCo and WPCo argued that the Commission's Proposed Rules exceed statutory authority, conflict with HB 2014, intrude into PJM/FERC jurisdiction, and would impose massive, duplicative, and costly monthly reporting burdens that ultimately increase customer rates. They urge the PSC to rescind and restart the rulemaking after stakeholder workshops and recommend handling most reporting through annual ENEC filings, where similar data already exists.

Specifically, they argued that HB 2014 requires utilities to maintain units so they *can* achieve 69 percent capacity factor—not to operate at 69 percent.[19] Furthermore, Proposed Rules 5.3 and 5.3.2 improperly impose minimum capacity-factor expectations and self-scheduling mandates, contradicting statutory language and the federal consent decree entered in Perrone, et al. v. Lane, et al., Civil Action No. 2:24-cv-00434 (United States District Court for the Southern District of West Virginia) (Perrone).[20]

Like Mon Power and PE, APCo and WPCo also argued that the expectation of self-scheduling conflicts with economic dispatch and PJM market rules.[21] Likewise, APCo and WPCo argued that the reporting requirements would be costly and almost impossible with which to comply.[22] APCo and WPCo also agreed with the confidentiality concerns raised by Mon Power and PE.[23]

In addition, APCo and WPCo argued that the Commission failed to comply with the West Virginia Administrative Procedures Act (APA), W. Va. Code § 29A-3-1, *et seq.* Specifically, APCo and WPCo argued that the Commission failed to file an appropriate fiscal note with the Proposed Rules as required by W. Va. Code § 29A-3-4.[24] It further argued that the Commission failed to afford interested persons a full thirty days to file initial comments.[25]

The Sierra Club

The Sierra Club argued that Proposed Rule 5.3.2 exceeds statutory authority by creating an expectation of self-scheduling, which forces units to run even when PJM would not economically dispatch them.[26] According to the Sierra

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[19] APCo and WPCo Comments at Bates 10.
[20] Id. at Bates 7 and 19.
[21] Id. at Bates 24-25.
[22] *See, e.g.*, id. at Bates 6.
[23] Id. at Bates 21-22.
[24] Id. at Bates 28.
[25] Id.
[26] Sierra Club Comments at p. 2.

Club, self-scheduling guarantees clearing the day-ahead market and creates negative margins, which utilities will seek to recover from ratepayers.[27]

The Sierra Club also argued that Proposed Rule 5.3 conflicts with the Consent Decree in Perrone. Specifically, the Consent Decree stated that the Commissioners "have not and will not, in their official capacities, interpret a 69 percent capacity factor as setting a minimum operation threshold."[28] The Sierra Club argued that Proposed Rule 5.3 states that utilities are "expected ... to achieve a minimum capacity factor of 69%."[29] It argues that this directly contradicts the Consent Decree's prohibition on treating 69 percent as a minimum operational threshold.

UMWA

The UMWA argued that the Proposed Rules are too weak, fail to ensure utilities operate coal-fired plants in West Virginians' best interests, and lack the transparency and oversight needed to enforce HB 2014. They urge the Commission to substantially strengthen the Proposed Rules, require real-time operational reporting, enforce strict upgrade timelines, and prevent utilities from reducing coal-plant output for non-reliability reasons. They also request a public hearing so workers and communities can speak directly to the Commission.

At the public hearing, UMWA members appeared and provided comments that align with the UMWA's filed written comments.

CAG/SUN/EEWV

CAG/SUN/EEWV's core concern is that the Proposed Rules will increase customer bills. They argued that the Proposed Rules will further drive up customer energy bills by incentivizing utilities to operate their coal units more frequently, regardless of market price.[30] This runs contrary to the clear instruction in W. Va. Code § 24-2-1d(f) that nothing under the statute requires the utility to achieve a specific capacity factor "if doing so will cause an increase in the charge or charges for electric energy."[31]

They identified several sections that would push utilities to operate coal units more often regardless of PJM market prices:

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[27] Id.
[28] Id. at p. 3.
[29] Id. at p. 4.
[30] CAG/SUN/EEWV Comments at p. 2.
[31] Id.

- Proposed Rule 5.3 — Treats a 69 percent capacity factor as an operational target rather than a maintenance standard.

- Proposed Rule 5.3.2 — Encourages self-scheduling and anticipates negative margins, effectively directing utilities to run units at a loss.

- Proposed Rules 4.1, 4.3, 4.3.1, 4.4 — Create reporting burdens and operational expectations that incentivize higher output even when market prices are lower than unit costs.[32]

The groups further note that utilities currently follow PJM's economic dispatch, which protects customers from losses, and that the Proposed Rules would undermine this practice.

Individual Commenters

Throughout this proceeding, various individuals provided very similar comments, if not the same. These commenters argued that the Proposed Rules would likely increase electric bills for West Virginia ratepayers because the Proposed Rules expect utilities to self-schedule their plants, even when cheaper electricity is available from the grid. Many of these comments were echoed by the individual commenters at the public hearing. Implementation of the original proposed rules would not in and of itself cause an increase in rates. However, to clarify that point, the revised rules proposed herein state, allowing generation to achieve a minimum net capacity factor does not require a utility to operate a unit at 69 percent capacity if doing so will cause an increase in electric charges.

In addition, several of the individual commenters filed comments voicing various concerns about data centers and issues with electric utility practices that are not the subject of this proceeding.

Comments from Zach Kent, Midwest Executive Director, Consumer Energy Alliance

Consumer Energy Alliance (CEA) filed comments on September 25, 2026 (CEA Comments). CEA was founded in 2006 and is a nonpartisan, nonprofit organization that advocates for balanced energy policy and responsible access to resources.[33]

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[32] *See* id. at pp. 6-8.
[33] CEA Comments at p. 1.

CEA is particularly concerned that the Proposed Rules could reduce the perceived need for new natural gas generation, which could affect investment decisions on power plants, pipeline capacity, gathering infrastructure, and long-term natural gas supply. This could negatively affect energy jobs and economic activity throughout the state.[34]

CEA believes that coal remains an important part of West Virginia's economy and electric system, but cautioned the Commission in establishing rules that could make one of the state's natural resources more attractive than another.[35] CEA encouraged the Commission to ensure that the final rules do not discourage investment in new natural gas generation or related infrastructure, lead to unnecessary utility costs, or impact utilities' ability to make economical and operational decisions.[36]

Comments from Melissa Hope, President of the West Virginia Energy and Community Alliance

The West Virginia Community Energy and Community Alliance (WVECA) filed comments on September 28, 2026 (WVECA Comments). WVECA was formed after the Commission's initial comment period closed in this matter. WVECA offered four recommendations in response to the Proposed Rules. First, "[c]apacity decisions should reflect the strength of the underlying load forecast."[37] According to WVECA, the Commission needs data on the demand assumptions and project certainty driving utility capacity decisions in addition to transparency required for power generation. Second, "[u]tilities should identify the degree of certainty behind extraordinary projected load growth."[38] WVECA argued that the Commission should evaluate the difference between projected demand supported by meaningful customer commitments and what remains preliminary. WVECA further asserted that capacity decisions should reflect current information rather than projections that may not accurately represent the demand. Third, "[e]xisting West Virginia customers should be protected from costs attributable to extraordinary new loads."[39] WVECA recommended that the Commission scrutinize the assumptions that create the need for additional capacity. Fourth, the "final rule should provide the Commission with sufficient information to evaluate the demand assumptions underlying capacity decisions."[40] WVECA believes that utilities should provide the Commission with information to distinguish firmly

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[34] Id. at p. 2.
[35] Id.
[36] Id.
[37] WVECA Comments, Sept. 28, 2026, at p. 1.
[38] Id. at p. 2.
[39] Id.
[40] Id. at p. 3.

supported project loads from projections at earlier and less certain stages of development and the organization believes that the Commission should consider potential costs to West Virginia customers when extraordinary new loads drive the need for additional capacity or related investments.[41]

Northeast Natural Energy

Northeast Natural Energy (NNE) filed comments on September 23, 2026 (NNE Comments). NNE was founded in 2009 and is a West Virginia natural gas exploration and production company with offices in Charleston and Morgantown. NNE believes that the language in W. Va. Code § 24-2-1d(f) directing the Commission to "propose rules for legislative approval . . . to carry out its duties and obligations set forth herein" obligates the Commission to ensure that coal and natural gas are considered as equally viable sources of power generation in West Virginia and should be reflected as so in the Proposed Rules. NNE argued that W. Va. Code § 24-2-1d(f) is clear that "nothing . . . shall require a utility to operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule," and, because of the unambiguous language of the statute, "the Proposed Rules should be revised to eliminate any language that suggests the 69 percent capacity factor is a mandate rather than a readiness and maintenance standard."[42] Further, NNE asserted that it agrees with other parties that the Proposed Rules should not require, or suggest a requirement, that investor-owned utilities in the state self-schedule their generating units with PJM without an economic basis. NNE supports revisions to the Proposed Rules that would clarify that self-scheduling of generation resources in PJM should occur when it is economic and in the best interests of ratepayers.[43] Finally, NNE believes that the Proposed Rules, in Rule 6, should implement similar rules for natural gas generation and adequately address fuel supplies and contracts in addition to the rules that provide specific guidance for coal supplies and contracts.[44]

Persistence Analytics Group, LLC, Supplemental Written Comments, Load Assumption Record, Decision Gates, and Revalidation

Persistence Analytics filed supplemental written comments on September 28, 2026 (Persistence Analytics Comments). Persistence Analytics agreed with WVEAC's recommendations and believes that the Commission should consider evidence supporting extraordinary projected load when that load materially affects

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[41] Id.
[42] NNE Comments, Sept. 23, 2026, at pp. 3-4.
[43] Id. at p. 4.
[44] Id. at p. 5.

a capacity decision. Persistence Analytics presented the following question for implementation: "What record should the Commission require so that those distinctions can be administered consistently when projected load materially affects a generation-capacity decision?"[45]

Persistence Analytics recommended that the Commission require utilities to maintain a Load Assumption Record and recommended that the Commission should differentiate between planning reliance, commitment reliance, and irreversible reliance.[46] Persistence Analytics further recommended that the Commission require a sensitivity analysis that distinguishes the result produced by the full projected-load forecast from the result supported by more firmly supported demand, so the Commission can identify whether a capacity decision is based on demonstrated system need or a small number of future assumptions.[47] Persistence Analytics recommended the Commission require utilities to build an evidentiary record to distinguish baseline or independently required investment from investment caused by or reasonably attributable to the extraordinary new load when a large-load assumption contributes materially to an investment. Further, Persistence Analytics believes that the Commission should require revalidation after material changes to requested megawatts, timing, counterparties, contracts, financing, construction progress, or any other material dependency.[48] Finally, Persistence Analytics recommended that the Commission require utilities to present demand evidence in a way that provides appropriate confidentiality protections while ensuring the Commission has the evidence it needs to evaluate the forecast's reliability.[49]

III. POST-HEARING FILINGS

At the public hearing in this matter, Chairman Lane requested that any parties who suggested amendments to the rules file them with the Commission by October 5, 2026.[50] In addition to the proposed comments, the Commission provided counsel for CAG/SUN/EEWV with questions regarding their initial comments filed in this matter. The WVCA also filed additional comments post-hearing, and Ms. Adkins filed a Request for an Evidence-Based Record.

A. UMWA Proposed Amendments

The UMWA proposed the following amendments to the Proposed Rules:

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[45] Persistence Analytics Comments at p. 1.
[46] Id. at p. 2.
[47] Id. at p. 3.
[48] Id. at pp. 3-4.
[49] Id. at p. 4.
[50] Tr. at p. 64.

1. Section 3.1, Capacity Auctions – The UMWA Proposed Amendments state here that "Every Electric utility and electric generating unit subject to the jurisdiction of the Commission shall participate in each applicable PJM capacity auction and shall offer all available accredited capacity from its existing coal-fired generating units, unless the Commission grants a specific waiver upon clear and convincing evidence that participation would be unlawful, physically infeasible, or materially contrary to the interests of West Virginia ratepayers. The utility bears the burden of proving entitlement to any waiver.

2. Section 4.1 Consumer Economic Dispatch. The UMWA Proposed Amendments make several edits in this section regarding "maximizing reliable generation and the use of West Virginia Coal."[51]

3. The UMWA also added a report in section 4.3 requiring a utility to compare coal-fired generation with purchased power and alternative generation on a total-cost basis, and section 4.4, titled "Presumption Favoring Coal Dispatch."

4. Section 4.6. The UMWA Proposed Amendments added a section titled "Self-Scheduling Requirement." This section states, in part, that "[a] utility subject to this rule shall self-schedule all available coal-fired generation capacity in the PJM day-ahead market to the maximum extent permitted by federal law and PJM rules."

5. Section 5.2.8, Capacity Factors – the UMWA Proposed Amendments add provisions that require generating electric utilities to "operate each existing coal-fired thermal baseload generating unit, and shall schedule maintenance to that the unit is capable of achieving and does achieve a minimum annual net capacity factor of 69%"[52]

6. New section 5.2.10, Coal-Unit Life-Extension Planning. The UMWA edits add this section to require a utility to file and maintain a ten-year unit life-extension plan for an existing coal-fired generating unit.

7. New Section 5.2.12. The UMWA Proposed Amendments add this section, which requires a utility to file a verified corrective-action plan if a coal-fired generating unit fails to achieve the required minimum capacity factor.

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[51] Edits Proposed by UMWA at p. 5.
[52] UMWA Edits at p. 9.

8. New section 6.3, Minimum Coal Inventory. The UMWA Proposed Amendments add this section, which requires each electric utility to maintain a "Commission-approved minimum coal inventory."[53]

9. Section 6.4, Coal Contracting. The UMWA Proposed Amendments change this section to read: Each electric utility subject to this rule shall maintain firm, reasonably diversified coal supplies sufficient to support reliable operation of its existing coal-fired generating units and achievement of the capacity-factor requirements of this rule. Solicitations shall give a preference, consistent with W. Va. Code §24-2-1d and the least total cost to West Virginia ratepayers, to coal produced in West Virginia and shall include a reasonable mix of short-term and long-term contracts, inventory targets, transportation arrangements, and contingency supplies. A utility may not allow a coal contract, transportation arrangement, or inventory level to lapse if doing so would foreseeably constrain generation, unless the Commission first approves the action upon a verified showing that it is lawful, prudent. and consistent with reliability and ratepayer interests.

10. New sections 7.1.3, 7.1.4, and 7.1.5. The UMWA Edits add new sections regarding "Replacement Power Approval" (Section 7.1.3); Commission approval prior to retiring, deactivating, or converting an existing coal-fired generating unit from coal (Section 7.1.4); and "Coal Investment Prudence" (Section 7.1.5).

B. GO-WV Proposed Amendments

GO-WV proposed edits to the following sections:

1. Section 5.3, Capacity Factor. GO-WV proposed clarifying that the 69 percent capacity standard is a maintenance and operational-readiness standard.

2. Sections 4.4 and 5.3.2. GO-WV proposed removing the presumption in favor of self-scheduling.

3. Sections 4.1, 4.3, and 4.3.1. GO-WV proposed defining "consumer economic dispatch" by using total cost to customers rather than an individual plant's production cost.

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[53] UMWA Edits at p. 11.

4. Expressly recognize West Virginia natural gas alongside West Virginia coal.

a. Section 1.6. Edit as follows: This rule is promulgated pursuant to W. Va. Code § 24-2-1d to implement the Commission's duties regarding electric generating capacity and consumer economic dispatch, consistent with the statutory policy of maximizing economically beneficial electricity generation within West Virginia utilizing energy resources produced within the State, including coal and natural gas, while maintaining reliable service and protecting West Virginia ratepayers from unreasonable costs.

b. Section 6.1, Fuel Supply Information. Add the following: In evaluating the management of fuel supplies and contracts pursuant to W. Va. Code § 24-2-1d(e), the Commission shall recognize the differing commercial, operational, storage, transportation and delivery characteristics of coal and natural gas and shall tailor reporting requirements accordingly.

c. New Section 6.5, which would add a natural gas-specific fuel supply provision: Natural Gas Fuel Supply and Transportation. — For a natural gas-fired generating unit subject to this rule, the utility shall maintain reasonable fuel-supply and transportation arrangements consistent with the operational characteristics, anticipated utilization and reliability needs of the generating facility.

In evaluating natural gas fuel supply and transportation, the Commission may consider, as applicable:

6.5.1. The availability and diversity of natural gas supply arrangements;

6.5.2. The availability and nature of interstate or intrastate pipeline transportation serving the generating facility;

6.5.3. The extent to which transportation arrangements are firm, interruptible or otherwise subject to contractual or operational limitations;

6.5.4. Material limitations affecting the ability of the generating facility to obtain natural gas during periods of expected high electricity demand or constrained pipeline conditions;

6.5.5. The manner in which natural gas commodity and transportation costs are incorporated into generation offers and consumer economic dispatch decisions; and

6.5.6. Other information reasonably necessary to evaluate the reliability and economic availability of natural gas supply to the generating facility. Nothing in this subsection shall require a utility to maintain physical inventories of natural gas or otherwise apply coal-stockpile requirements to natural gas-fired generating facilities.

Information regarding specific natural gas supply or transportation contracts that constitutes confidential business information, commercially sensitive information or trade secrets shall be protected in accordance with § 150-41-8 and applicable law

5. Reduce unnecessary and duplicative reporting. The proposed edits here provide generalized revisions to Sections 4.2 and 7. The Commission may want to consider adding GO-WV's revision to Section 4.2.1, which reads: "To the extent information required by this rule is already provided to the Commission in another recurring report or proceeding, including an Expanded Net Energy Cost proceeding, the Commission may permit the utility to identify or incorporate that information by reference rather than require duplicative submission."

6. Expressly preserve PJM Market signals and operation flexibility by adding a new section 4.5:

Nothing in this rule shall be interpreted to require a utility to disregard applicable PJM market prices, dispatch instructions, reliability requirements, tariffs, manuals, operating agreements or other binding market requirements.

The Commission recognizes that PJM day-ahead and real-time energy markets provide relevant economic signals concerning the relative cost and availability of generation resources.

A utility shall retain reasonable operational discretion, consistent with applicable law and Commission oversight, to respond to PJM market conditions and to determine whether economic dispatch, self-scheduling or another permissible operating strategy is reasonably expected to provide the greatest overall benefit to West Virginia ratepayers.

The Commission's review of such decisions shall be based upon the information reasonably available to the utility when the operational decision was made and shall not presume imprudence solely because actual market conditions subsequently differed from reasonable forecasts.

7. Ensure Series 41 accommodates new dispatchable generation, including natural gas-fired generation by adding new section 1.6.1: Fuel-Neutral Application and Future Generation. — This rule shall be administered in a fuel-neutral manner consistent with W. Va. Code § 24-2-1d and shall not be interpreted or applied in a manner that establishes a regulatory preference among coal-fired and natural gas-fired generating resources based solely upon fuel type.

   In administering this rule, the Commission shall recognize the importance of both maintaining economically competitive existing dispatchable generation and providing a regulatory environment that accommodates investment in new dispatchable generation capable of providing reliable and affordable electricity to West Virginia consumers.

   Nothing in this rule shall be construed to discourage the development, construction, or operation of new natural gas-fired generation or other dispatchable generating resources otherwise consistent with West Virginia law and Commission requirements.

C. Joint Proposed Amendments

APCo, WPCo, Mon Power and PE provided substantial Joint Proposed Amendments to the Proposed Rules. The Joint Proposed Amendments address several commenters' comments and suggested edits regarding the language on the 69 percent capacity factor and self-scheduling, and streamline the reporting requirements. It also addresses the confidentiality issues in Proposed Rule 8.2.

D. Additional Comments of the WVCA

The WVCA reiterated its previous comments and urged the Commission to reject any revisions to the Proposed Rules that "will undermine or weaken the direction and intent established by the West Virginia Legislature in House Bill 2014: to ensure that West Virginia's regulated fleet of coal power plants is being operated at capacity factors that benefit West Virginia ratepayers, maximizing consumption of in-state resources and minimizing reliance on purchases of more expensive megawatts from the wholesale power market."[54] The WVCA argued that many of the commenters and their suggested revisions would dilute the Proposed Rules intent and effectiveness.

E. Ms. Adkins' "Request for an Evidence-Based, Reviewable Record" (Request).

Ms. Adkins, who testified at the public comment hearing and made an extensive pre-hearing filing, filed the above document to request that "the Commission's final rules and findings be based upon identifiable evidence, disclosed assumptions, demonstrated need, and a record that permits the public—and, if necessary, a reviewing court—to understand how the Commission reached its conclusions." [55] Ms. Adkins references many exhibits she filed before the hearing and asks the Commission to enter each into the record. Ms. Adkins also posed various questions that are largely related to data centers, PJM forecasts, including large-load forecasts, and transmission projects which are not the subject of this proceeding.

F. Response to Questions by CAG/SUN/EEWV

At the public hearing in this matter, the Commission had several proposed questions addressed to CAG/SUN/EEWV regarding their comments. The Commission attached the proposed questions to the Transcript as Exhibit 1. CAG/SUN/EEWV responded to these questions on October 5, 2026, as requested by Chairman Lane.

DISCUSSION

In HB 2014, the West Virginia Legislature added several new subsections to W. Va. Code § 24-2-1d. 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

[54] WVCA Additional Comments at p. 1.
[55] Request at p. 1.

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."[56] In subsection (e), in order to ensure the state's existing generating units can continue to meet future generating needs, the Legislature charged the Commission to conduct a review of each generating unit's current consumer economic dispatch, stating:

> Factors to be considered by the commission in reviewing consumer economic dispatch shall include, but not be limited to:
>
> (1) current capacity factors;
>
> (2) management of fuel supplies and contracts;
>
> (3) overall plant operation and maintenance;
>
> (4) placement of bids in the PJM Interconnection, LLC, or its successor's day-ahead and real-time energy markets;
>
> (5) utilization of the PJM Interconnection, LLC, or its successor's Reliability Pricing Model (RPM) or Fixed Resource Requirement (FRR); and
>
> (6) the utilization of automatic adjustment clauses, price indexes, or fuel adjustment clauses by the utilities. For purposes of this section, "consumer economic dispatch" shall mean the process of operating generation facilities to produce electricity at the lowest cost while reliably meeting consumer demand, considering the operational limits of generation and transmission facilities. [57]

Subsection (f) required, in part, that:

> Electric utilities shall be prepared to maximize the production of electricity from their generating units when such self-generation will result in reduced energy costs for West Virginia ratepayers. The commission shall

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[56] W. Va. Code § 24-2-1d(d).
[57] W. Va. Code § 24-2-1d(e).

> require the utilities to maintain their thermal baseload generating units in a manner to allow them to be able to self-generate and achieve at least a sixty-nine percent capacity factor. Nothing herein shall require a utility to operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule.[58]

Further, subsection (f) required the Commission to propose rules for legislative approval, in accordance with W. Va. Code § 29A-3-1 *et seq.*, to carry out its duties and obligations under the newly enacted W. Va. Code § 24-2-1d. As such, the Commission proposes new section W. Va. C.S.R. § 150-41, *et seq.* attached hereto as Attachment A, regarding the regulation of electric generating capacity requirements subject to the jurisdiction provided to the Commission pursuant to W. Va. Code § 24-2-1d. As Attachment B, we attached a summary of the changes from the Original Proposed Rules to the rules proposed in this Order at Attachment A.

The Commission promulgated the Proposed Rules to fulfill the West Virginia Legislature's requirements under the newly amended W. Va. Code § 24-2-1d. With this backdrop, the Commission has reviewed all comments and finds that the Joint Proposed Amendments to the originally Proposed Rules address many of the same concerns raised by other commenters and are an appropriate exercise of the authority allowed the Commission pursuant to W. Va. Code § 24-2-1d(d through f). The Commission will address the various comments of other entities as outlined below.

The WVCA and UMWA

Both the WVCA and the UMWA argued that the Proposed Rules do not, in essence, go far enough to maximize the use of West Virginia coal resources for electric generating utilities. Specifically, the UMWA and its proposed amendments recommend numerous sections that would require mandatory self-scheduling of all available coal-fired generation capacity in the PJM day-ahead market and an annual net capacity factor of 69 percent. While the Commission appreciates these comments, these proposed changes are, or could be interpreted as, inconsistent with the authority granted by the amendments to W. Va. Code § 24-2-1d.

Some of the proposals of WVCA and UMWA are or could be interpreted as inconsistent with the amendments to W. Va. Code § 24-2-1d and would add to the

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[58] W. Va. Code § 24-2-1d(f).

confusion that some parties apparently have when attempting to read implications into the originally proposed rules. The Commission never proposed requiring any specific actions by the utilities that would disregard or violate the statutory requirement that utility actions must be designed to protect ratepayers against higher than necessary rates. We will respond to those objections to the proposed rules by making it abundantly clear that neither the original proposed rules nor the revised final proposed rules require, imply favor for, induce, or reward utility actions designed solely to increase utilization of the power plants that may cause higher customer rates. To the extent that some of the proposed mandatory language of the UMWA and WVCA could be perceived as violating the statute, they will not be incorporated in the attached revised proposed rules.

GO-WV Proposed Amendments

Several of the amendments suggested by GO-WV seek to expressly recognize West Virginia natural gas alongside of West Virginia coal. GO-WV points to W. Va. Code § 24-2-1d(a), which required the Commission to, by order, no later than December 31, 1989, establish the schedule and amount of future electric generating capacity additions required by each West Virginia electric utility, for the next ten years, "[i]n order to maximize the use of electricity generated within the state by using coal or natural gas produced within the state."[59] That provision, however, is separate and distinct from the new amendments to W. Va. Code § 24-2-1d(d)–(f) and the Commission's authority with respect to this rulemaking. The requested amendments regarding natural gas, natural gas fuel supply and transportation, and new dispatchable generation are beyond the new statutory provisions of W. Va. Code § 24-2-1d and we will limit the rules approved herein solely to those necessary to directly respond to the new statutory provisions.

Comments Regarding the 69 Percent Capacity Factor

Most commenters had concerns about the references to the 69 percent capacity factor that is included in W. Va. Code § 24-2-1d. While there was no clear description of a conflict, some commenters argued that the proposed rule's language on the 69 percent capacity factor conflicted with the statute. Having reviewed these concerns, the Commission believes they are inaccurate and not well-founded. The originally proposed rules did not mandate any minimum capacity factor. Moreover, the originally proposed rules did not require or encourage utilization of coal-fired generation when it would result in higher rates. However, considering the commenters that said they thought the proposed rules did that, and the comments that said the rules may or could be so construed, we

[59] W. Va. Code § 24-2-1d(a).

will make the point even more clear by repeating the statutory language regarding actions that would knowingly or reasonably be expected to result in higher customer rates. While several commenters suggested language quoting or paraphrasing the statutory language regarding actions that could result in higher rates, the Commission believes the Joint Proposed Amendments address this issue by adding the pertinent language from W. Va. Code § 24-2-1d(f) in several places. That language will be adopted by the Commission in the revised proposed rules recommended to the Legislature.

Comments Regarding Self-Scheduling

Similarly, many commenters felt that the Proposed Rules' presumption for self-scheduling would increase costs to ratepayers, may interfere with FERC's exclusive jurisdiction, and go beyond the authority granted to the Commission in W. Va. Code § 24-2-1d. The Commission disagrees and determines that the objections to our discussion of self-scheduling were based on incorrect assumptions, misreading of the Proposed Rules, and a lack of understanding of the efficient operations of base load, steam driven power plants that cannot be turned off and on with the flick of a switch. In fact, we specifically referenced the PJM rules on self-scheduling and stated that we expected the utilities to heed and follow the self-scheduling rules to achieve the most efficient hour by hour scheduling while recognizing the need to run the plants every hour, when they are operating, but to do so in a way that minimized output during hours of the day when PJM prices are low, while being able to safely and efficiently ramp-up generation output during the hours of the day when PJM prices rise above the marginal cost of generation. Doing so does not directly or indirectly interfere with FERC's jurisdiction over wholesale rates when we are merely directing the utilities to follow the PJM rules as approved by FERC.

We note that the Joint Proposed Amendments from the utilities who know better than most commenters the requirement to follow PJM rules, clarify the self-scheduling issue, but did not delete the subject altogether. With the clarifications as contained in the Joint Proposed Amendments the self-scheduling issue is adequately addressed and clearly falls within the Commission's regulatory authority under the statute.

Reporting Requirements

The Commission has reviewed comments on excessive reporting requirements and report timing, which were filed mostly by the utilities. We agree that reporting requirements incorporated into the rules should be simplified and should be sufficient to be used in various types of cases. Similarly, since coal report data is required by a separate statute, W. Va. Code § 24-2-14(a) and some

additional information regarding coal contracting is required by HB 2014, the coal reporting data required by our revised proposed rule should be adequate to satisfy the requirements of both W. Va. Code § 24-2-14 and HB 2014.

The Joint Proposed Amendments adequately address these issues, streamline the reports, and eliminate duplicative reports. Furthermore, the timing concerns related to the filing of certain reports have been addressed in those proposed amendments We will incorporate those amendments into our revised proposed rules. .

Comments and Proposed Amendments by Persistence Analytics

Persistence Analytics commented that the Commission should consider evidence supporting extraordinary projected load when that load materially affects a capacity decision. Persistence Analytics presented the following question for implementation: "What record should the Commission require so that those distinctions can be administered consistently when projected load materially affects a generation-capacity decision?"[60] Persistence Analytics proposed an amendment requiring the evidentiary basis, material dependencies, downside exposure, and revalidation triggers to be visible to the Commission when projected load materially affects a consequential capacity decision.

The Commission finds that this proposed requirement is not germane to the new language in W. Va. Code § 24-2-1d. While it may be appropriate information to be included in a filing for a certificate under W. Va. Code § 24-2-11, we do not believe it is necessary or appropriate to add into the revised Proposed Rules submitted to the Legislature in response to W. Va. Code § 24-2-1d.

WVECA

The WVECA is also concerned that the Commission analyze projected load growth in connection with capacity requirements and capacity assumptions. Again, the Legislature has clearly directed the Commission regarding its authority with respect to these regulations. The comment that the Commission scrutinize extraordinary load growth assumptions and their possible effect on capacity regulation is beyond the scope of the authority for this rulemaking.

Request for Evidence-Based Reviewable Record

First, the Commission will note that every comment and every exhibit filed in the Commission's docket in this case is part of the record. Thus, Ms. Adkins'

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[60] Persistence Analytics Comments at p. 1.

request to make certain exhibits part of the record is moot. Second, as noted during the hearing, this rulemaking does not concern the regulation of data centers and large-load forecasts. Contrary to Ms. Adkins' Request for Evidence-Based Reviewable Record, the Proposed Regulations are not the "implementation of HB 2014."[61] The Proposed Rules concern only the newly enacted W. Va. Code § 24-2-1d(d) – (f), and the Commission's regulatory authority therein. Similarly, the Proposed Rules do not address the expansion or approval of transmission infrastructure projects, including the Valley Link/Valley North project noted in Ms. Adkins' Request.[62]

CAG/SUN/EEWV Response to Commission's Questions

The CAG/SUN/EEWV comments contained many of the objections to the Proposed Rules based on conjecture or supposition regarding the intent, rather than the actual language of the Proposed Rules. Moreover, in their initial comments they recommended striking large portions of the Proposed Rules that we believe would have rendered the Proposed Rules to be ineffective and contrary to the requirement that the Commission propose rules to effectuate the requirements of HB 2014. The Commission has normally valued comments from these parties which appear before us as advocates for positions that support their policies and goals in various types of cases. In a legislative rulemaking we can be confident in comments that suggested edits to proposed rules when the commenters support the policies and the goals of the State, as set forth in legislation. Since we were unsure where CAG/SUN/EEWV found provisions in the Proposed Rules that contradicted the statute, we asked specific questions to request clarification of the comments and to clarify that the goals and policies of CAG/SUN/EEWV were consistent with the goals and policies contained in Chapter 24 which establish, inform and instruct the regulatory authority of the Commission.

To obtain that information, in addition to requesting more detail on individual rule changes proposed by CAG/SUN/EEWV, we asked:

> House Bill 2014 added language that utility generation should be run as economically as possible to ensure the state's existing generating units can continue to meet future generation needs (W. Va. Code § 24-2-d(e)). Do CAG/SUN/EEWV support ensuring the state's existing generating units can continue to meet future generation needs?
>
> House Bill 2014 added language that utilities shall be prepared to maximize

[61] Request for Evidence-Based Reviewable Record at p. 2.
[62] Id. at p. 9.

the production of electricity from their generating units. (W. Va. Code § 24-2 1d(f)).
Do CAG/SUN/EEWV support maximizing the production of electricity from West Virginia utility generating units when such self-generation will result in reduced energy costs for West Virginia ratepayers?

House Bill 2014 added language that the Commission shall require the utilities to maintain their thermal baseload generating units and be able to achieve a sixty-nine percent capacity factor when it would not increase rates. (W. Va. Code § 24-21d(f)).
Do CAG/SUN/EEWV support that, if it can be done without causing a rate increase, the utilities should maintain their thermal baseload generating units in a manner to allow them to be able to self-generate and achieve at least a sixty nine percent capacity factor?

House Bill 2014 stated a preference for increasing generation from coal-fired power plants. (W. Va. Code § 24-2-15).
Do CAG/SUN/EEWV support encouraging the use of permitted automatic adjustment clauses, fuel supply contract price indexes, or fuel adjustment clauses as a means of Increasing the generation of coal-fired power plants within the state?

We were hopeful that CAG/SUN/EEWV would verify that for rulemaking comments their primary purpose was to support the policies and goals of the State as described in the statutory sections cited in the questions. Instead, the response was unresponsive to the above cited questions, and merely stated:

> These questions ask for CAG/SUN/EEWV's organizational positions on a number of policies. CAG/SUN/EEWV's positions on these policies are irrelevant to this proceeding. Both this proceeding and CAG/SUN/EEWV's comments are about whether the Commission's Proposed Rules are consistent with the statute and are within the Commission's authority.

While we agree that comments in a rulemaking proceeding should be about whether the Commission's proposed rules are consistent with the statute, we are more comfortable if we are assured that the commenters support the entire statute, including the stated goals and objectives. Unfortunately, CAG/SUN/EEWV did not provide that assurance. Nevertheless we have reviewed all of the CAG/SUN/EEWV' comments and where the comments were understandable and based on a clear understanding of the statute and proposed rules, we have considered them and clarified the rules to address the major

concerns expressed by all commenters, including CAG/SUN/EEWV where appropriate.

APCo and WPCo's Assertion Regarding Violations of the APA

APCo and WPCo argued that the Commission failed to file an appropriate fiscal note with the Proposed Rules as required by W. Va. Code § 29A-3-4(6).[63] West Virginia Code § 29A-3-4 requires all proposed rules to be filed with a fiscal note attached "itemizing the cost of implementing the rules as they relate to this state and to persons affected by the rules. The fiscal note shall include all information included in a fiscal note for either house of the Legislature and a statement of the economic impact of the rule on the state or its residents." The Commission did file the proper fiscal note with the Proposed Rules. First, it should be noted that the fiscal note was provided on a form provided by and required with the Secretary of State. To the extent the Proposed Rules require utilities to report information to the Commission, increased costs would not be known at this time. Moreover, we have modified the reporting requirements as recommended by the utilities which reduce reporting requirement costs.

APCo and WPCo also argued that the Commission failed to afford interested persons a full thirty days to file initial comments pursuant to W. Va. Code § 29A-3-7.[64] The Commission notes that the companies filed their initial comments before the Commission extended the comment period and scheduled the public comment hearing in this case. As such, this argument is moot.

Conclusion

Based upon all of the above, the Commission determines that the Joint Proposed Amendments as filed by APCo, WPCo, Mon Power, and PE, resolve the most substantive objections raised by the power companies, and at the same time resolve most of the substantive comments made by other parties. The Commission approves the Proposed Rules as amended and discussed herein, and incorporates the necessary and reasonable changes contained in the Joint Proposed Amendments filed by APCo, WPCo, Mon Power and PE as reflected in Appendix A, attached hereto. Pursuant to W. Va. Code § 29A-3-9, the Commission submits these rules to the Legislature for approval.

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[63] APCo and WPCo Comments at Bates 28.
[64] Id.

FINDINGS OF FACT

1. In the 2025 regular session, the West Virginia Legislature enacted HB 2014.

2. Among other things, HB 2014 added new subsections (d) through (f) to W. Va. Code § 24-2-1d.

3. 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."[65]

4. In subsection (e), in order to ensure the state's existing generating units can continue to meet future generating needs, the Legislature charged the Commission to conduct a review of each generating unit's current consumer economic dispatch.

5. Subsection (f) required, in part, that:

> Electric utilities shall be prepared to maximize the production of electricity from their generating units when such self-generation will result in reduced energy costs for West Virginia ratepayers. The commission shall require the utilities to maintain their thermal baseload generating units in a manner to allow them to be able to self-generate and achieve at least a sixty-nine percent capacity factor. Nothing herein shall require a utility to operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule.[66]

6. Further, subsection (f) required that the Commission propose rules for legislative approval, in accordance with W. Va. Code § 29A-3-1 *et seq.*, to carry out its duties and obligations under the newly enacted W. Va. Code § 24-2-1d.

7. By Order dated On July 20, 2026, the Commission initiated a general investigation to receive comments and recommendations on proposed rules

[65] W. Va. Code § 24-2-1d(d).
[66] W. Va. Code § 24-2-1d(f).

governing electric generating capacity requirements within the Commission's jurisdiction under W. Va. Code § 24-2-1d.

8. Thereafter, the Commission received comments from various entities and stakeholders, including from APCo, WPCo, Mon Power, and PE, as well as from community interest groups, the UMWA and the WVCA, and numerous individual members of the public as identified herein.

9. On September 28, 2026, the Commission held a public comment hearing on the Proposed Rules.

10. At the request of the Commission, GO-WV, the UMWA, and Persistence Analytics filed suggested amendments to the Proposed Rules.

11. APCo, WPCo, Mon Power and PE filed Joint Proposed Amendments to the Proposed Rules.

CONCLUSIONS OF LAW

1. Upon review of the comments and proposed amendments to the Proposed Rules, it is reasonable for the Commission to amend the Proposed Rules based on the Joint Proposed Amendments as filed by APCo, WPCo, Mon Power, and PE.

2. As discussed herein, the Joint Proposed Amendments address the comments related to the 69 percent capacity factor by tracking the language in W. Va. Code § 24-2-1d(f).

3. Similarly, the Joint Proposed Amendments address the comments related to excessive reporting requirements and report timing.

4. The Joint Proposed Amendments further address comments and suggestions that the Commission exclude language related to the presumption to self-schedule without consideration of the impact on rates.

5. Furthermore, the Joint Proposed Amendments clarify the definitions of "economic dispatch" and "consumer economic dispatch."

6. The UMWA proposed amendments that recommend numerous sections that would require mandatory self-scheduling of all available coal-fired generation capacity in the PJM day-ahead market and an annual net capacity factor of 69 percent go beyond the authority granted to the Commission by the amendments to W. Va. Code § 24-2-1d.

7. Similarly, the UMWA's proposed amendments that would require a minimum coal inventory and corrective-action plans if a coal-fired generating unit fails to achieve the required minimum capacity factor also exceed the authority granted to the Commission under W. Va. Code § 24-2-1d(d through f).

8. Likewise, the UMWA's proposed amendments regarding coal contracting and minimum coal inventories are beyond the authority granted to the Commission for this rulemaking.

9. West Virginia Code § 24-2-1d(a), which required the Commission to, by order, no later than December 31, 1989, establish the schedule and amount of future electric generating capacity additions required by each West Virginia electric utility, for the next ten years, "[i]n order to maximize the use of electricity generated within the state by using coal or natural gas produced within the state"[67] is separate and distinct from the new amendments to W. Va. Code § 24-2-1d(d)–(f) and the Commission's authority with respect to this rulemaking.

10. The requested amendments regarding natural gas, natural gas fuel supply and transportation, and new dispatchable generation are beyond the scope of W. Va. Code § 24-2-1d for purposes of this rulemaking.

11. Persistence Analytics 's proposed amendments appear to require electric generating utilities to maintain a record sufficient to support a determination of a material projected-load assumption when projected load growth materially affects a determination of future electric generating capacity requirements is neither supported by the authority granted in W. Va. Code § 24-2-1d nor necessary. The information necessary to support such an assumption is maintained by electric generating utilities and is provided in various forms as required elsewhere in the Proposed Rules.

12. Ms. Adkins' request to make certain exhibits part of the record is moot because all documents filed in the Commission's docket in this matter automatically become a part of the record.

13. The Commission adequately complied with W. Va. Code § 29A-3-4 as described herein.

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[67] W. Va. Code § 24-2-1d(a).

14. The APCo and WPCo argument that the Commission failed to afford interested persons a full thirty days to file initial comments pursuant to W. Va. Code § 29A-3-7[68] is moot.

15. Based upon all of the above, the Commission should approve the Proposed Rules as amended and discussed herein, and adopt the changes contained in the Joint Proposed Amendments filed by APCo, WPCo, Mon Power and PE and submits these rules to the Legislature for approval.

ORDER

IT IS THEREFORE ORDERED that the Commission approves the amended proposed Rules Governing Review And Regulation of Generating Capacity and Consumer Economic Dispatch of Electric Utilities, 150 C.S.R. 41, attached hereto as Exhibit A and as described herein.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission file a copy of the text of these rules, with the forms attached, with the offices of the Secretary of State and the Legislative Rule-making Review Committee, together with the forms required by those offices.

IT IS FURTHER ORDERED that the Commission Executive Secretary shall serve a copy of this Order and its attachments on all electric utilities in this State, all parties of record, and the Consumer Advocate Division by electronic service if e-service agreements are on file, or by United States First Class Mail, and on Staff by hand delivery.

A True Copy, Teste,

Karen Buckley

Karen Buckley, Executive Secretary

JAF/lch
260633cb.sca

[68] Id.

Attachment A

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 41
RULES GOVERNING REVIEW AND REGULATION OF GENERATING CAPACITY AND CONSUMER ECONOMIC DISPATCH OF ELECTRIC UTILITIES

§150-41-1. General

1.1. Scope. -- The following rules govern the review and regulation of generating capacity and consumer economic dispatch of electric utilities 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. -- .

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 review and regulate generating capacity and consumer economic dispatch of electric utilities subject to the jurisdiction of the Public Service Commission.

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 generation unit over a specific period to the maximum possible energy it could have produced if running at full capacity during that same period. The term "full capacity" means the gross dependable capacity, after considering ambient conditions, that the unit can sustain over a specified period of time when not restricted by deratings as described in NERC Generating Availability Data System Data Reporting Instructions 1/1/26 Section IV . (https://www.nerc.com/globalassets/programs/rapa/gads/conventional/2026-gads-dri.pdf.

2.1.1. "Net capacity factor" means the ratio of the net electricity delivered to the grid by a generation unit, for the time considered, to the energy that could have been generated at continuous full

capacity operation minus any capacity utilized for that unit's station service and auxiliary load during the same period.

2.2. "Capacity Resources" means resources 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. "Economic Dispatch" for purposes of PJM market dispatching means the optimization across the PJM system of the incremental cost of delivered power by allocating generating requirements among the PJM on-control units with consideration of such factors as incremental generating costs and incremental transmission losses. Economic dispatch is different than "consumer economic dispatch," which is defined in W. Va. Code §24-2-1d(e) as the process of operating generation facilities to produce electricity at the lowest cost while reliably meeting consumer demand, considering the operational limits of generation and transmission facilities.

2.4. "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.

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

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

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

2.8. "Locational Marginal Price" (LMP) 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.

2.9. "Margin" means, for each megawatt-hour of electricity sold at wholesale from a generating unit, including deliveries into the PJM market, revenue received for the electricity less the incremental cost of producing the electricity. Incremental cost means the additional cost incurred by a generating unit to produce one additional megawatt-hour of electricity, including fuel and other variable costs that increase or decrease with the amount of electricity generated.

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

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

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

2.13. "Self-schedule" is the process by which a generation owner elects to submit a specific hourly MW schedule for a generating resource into PJM's Day-Ahead Market rather than allowing PJM's market optimization process to determine whether and at what level the resource will be scheduled. A self-scheduled resource indicates the owner's intent to operate at the specified output levels, but the resource remains subject to PJM operating requirements, transmission constraints, and reliability directives.

2.14. "Price-Taker RPM Participation" means offering available Unforced Capacity from a Generation Capacity Resource into the PJM Reliability Pricing Model ("RPM") Auction as a Price-Taker. A Price-Taker offer indicates that the utility is willing to accept the RPM Auction clearing price for the offered capacity regardless of the level of that clearing price, unless the offer is restricted by applicable PJM market-power mitigation requirements. The utility shall receive the applicable RPM clearing price for all offered capacity that clears the auction.

2.15. "Unforced Capacity" (UCAP) is the MW value of accredited capacity as assigned by PJM that an individual generating unit provides to PJM.

§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 PJM capacity auction unless the generating unit owner has committed the unit as an FRR unit or into a contract with another party that limits such unit's availability to participate in the PJM capacity auction.

3.2. RPM Auction 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 RPM base residual capacity auction as described herein.

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 offer into the capacity auction,

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

3.2.1.f. 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 no later than seven (7) calendar days after capacity auction results are posted. 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 its West Virginia ratepayers of remaining in the RPM auction. The benefits should be listed along with dollar values of the benefits achieved over 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 information contained in its report, which shall comply with the Commission directives for limiting and marking redacted information. The confidential version 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.

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 no later than seven (7) calendar days after its annual FRR requirement is provided by PJM. 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 listed along with dollar values of the benefits achieved over 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 the lowest cost consistent with consumer demand, operational limits of the generation facility and transmission facilities, and considering the requirements or obligations to operate in conformance with applicable PJM market rules. Consumer economic dispatch measures the operating cost of individual generating units and maximizing consumer economic dispatch measures improving efficiency or reducing costs of operating generating units, not the dispatch of units at increased capacity factors. To determine if the utility is operating each generating unit at its lowest reasonable cost, the Commission will review the cost of producing electricity per kilowatt hour of output at each generating unit at varying capacity utilization levels. The Commission review will take into consideration that the age of facility components, life extension, and capital investment timing will enter into the evaluation of optimum consumer economic dispatch. Each electric utility should plan the operation of each generating unit under its control to produce electricity at the lowest reasonably achievable cost per kilowatt hour.

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 information regarding the hourly dispatch of each of its generation units into the PJM day-ahead and real-time energy markets for the months prior to the filing month. The Generation Dispatch Report is due no later than the last business day of the first calendar month of each quarter and shall include information for the three months immediately preceding the filing month.

4.2.1. Information on Consumer Economic Dispatch. -- Each Generation Dispatch Report filed pursuant to this rule shall provide the cost of generation at actual output levels and the estimated cost at the output level to generate safely and reliably that would have produced the lowest operating cost per kilowatt hour for each generation unit. If units are run at less than the maximum consumer economic dispatch, which is the estimated lowest cost per kilowatt hour output level, the utility shall explain why the lowest cost was not achieved.

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

4.2.2.a. The net capacity available to be offered into the day-ahead market,

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

4.2.2.c. The net capacity that cleared the day-ahead market,

4.2.2.d. The self-scheduled capacity delivered into the day-ahead market, and

4.2.2.e. The PJM LMP at the pricing nodes for each capacity resource, including the PJM identification number for each node.

4.2.3. 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.

§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 and net capacity factors achieved at each generating unit and 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 capacity availability. The report shall include:

5.2.1. Reasons for outages and derates; and

5.2.2. Duration of outages and derates.

5.3. Capacity Factor. -- The Commission expects generating electric utilities subject to the rate jurisdiction of the Commission to maintain their generation units and schedule maintenance to minimize down time to allow it to be able to achieve a minimum net capacity factor of sixty-nine percent (69%); provided, this shall not require a utility to operate a generating unit at a 69% net capacity factor if doing so will cause an increase in the charges for electric energy. Considering that net capacity factors can vary hourly, daily, and monthly due to planned and unplanned outage maintenance, market conditions, and other factors, the reported capacity factors will be accumulated and evaluated over twelve-month periods.

5.3.1. The utilities will include in their Generation Dispatch Reports a monthly capacity factor schedule showing their actual capacity factors for each steam generating unit in tabular format for the report period and a rolling monthly average up to December. Beginning with January of each year the rolling average reported shall restart. All prior months' 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. 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. -- The electric utility shall continue to file fuel information. The monthly filing shall include a printed 8 ½ x 11 inch document and a PDF file properly formatted for printing as an 8 ½ x 11 inch document along with a spreadsheet relating to the fuel supplies for the utility. This data shall comply with the detailed information required by W. Va. Code §24-2-14. A separate monthly report pursuant to W. Va. Code §24-2-14 is not required. In addition to the statutory fuel information required, the report shall include:

6.1.1. If there was a fuel 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.

6.1.2. 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 for the adjustment.

6.2. Solicited Bids for Coal. -- For each monthly fuel 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.

6.3. 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 an indexed contract, a fixed price 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 may contain a mix of fixed-price and indexed contracts.

6.4. To impute volumes and cost of fixed-price coal and index-priced coal burned the utility may prorate volumes and costs on the basis of the relative volume and cost of those contract price categories in inventory at the beginning of each month, or on such other reasonable allocation method accepted by the commission.

§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 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 any deadline required by this rule, and such failure is because it has not or cannot receive the PJM information 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. If the Director of the Office of Energy requests confidential information filed with the Commission by an electric utility pursuant to this rule, the request shall not be subject to the Commission procedures applicable to a party requesting confidential information in a formal Commission proceeding or to a request made pursuant to the West Virginia Freedom of Information Act. The Commission shall promptly transmit the request to the utility. Upon receipt of such request, the utility shall promptly arrange to provide the requested information directly to the Office of Energy pursuant to an appropriate confidentiality agreement between the utility and the Office of Energy.

Attachment B

SUMMARY OF CHANGES TO TITLE 150, SERIES 41
BASED ON COMMENTS RECEIVED

The following changes were made to the Commission's proposed "Rules Governing Review and Regulation of Generating Capacity and Consumer Economic Dispatch of Electric Utilities," 150 C.S.R. 41, based on comments received in Case No. 26-0633-E-GI:

1. The title was changed to read "Rules Governing Review and Regulation Of ~~Electric~~ Generating Capacity ~~Utilization~~ and Consumer Economic Dispatch of Electric Utilities."

2. Section 1.1 was changed to read "Scope. -- The following rules govern the review and regulation of ~~electric~~ generating capacity ~~requirements~~ and consumer economic dispatch of electric utilities subject to the jurisdiction of the Public Service Commission pursuant to W. Va. Code §24-2-1d."

3. Section 1.6. was changed to read "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~~review and regulate generating capacity and consumer economic dispatch of electric utilities subject to the jurisdiction of the Public Service Commission."

4. Section 2.1, was changed to read "Capacity factor' means the ratio of the actual energy produced by a ~~power plant or unit within a power plant~~generation unit over a specific period to the maximum possible energy it could have produced if running at full capacity during that same period. The term "full capacity" means the gross dependable capacity, after considering ambient conditions, that the unit can sustain over a specified period of time when not restricted by deratings. as described in NERC Generating Availability Data System Data Reporting Instructions 1/1/26 Section IV . (https://www.nerc.com/globalassets/programs/rapa/gads/conventional/2026-gads-dri.pdf.~~Capacity factors can be calculated based on various measures of maximum possible energy production, including, but not limited to:~~"

5. Original Section 2.1.1 was deleted.

6. Original Section 2.1.2. was renumbered 2.1.1., and changed to read " Net ~~installed~~ capacity factor" means the ratio of the net electricity ~~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~~ by a generation unit, for the time considered, to the energy that could have been generated at continuous full capacity operation minus any capacity utilized for that unit's station service and auxiliary load during the same period. ~~The term "full capacity" means the gross dependable capacity, after considering ambient conditions, that the unit can sustain over a specified period of time when not restricted by deratings.~~"

7. Original Section 2.1.3 was deleted.

8. Original Section 2.1.4 was deleted.

9. New Section 2.3. was added and reads " "Economic Dispatch" for purposes of PJM market dispatching means the optimization across the PJM system of the incremental cost of delivered power by allocating generating requirements among the PJM on-control units with consideration of such factors as incremental generating costs and incremental transmission losses. Economic dispatch is different than "consumer economic dispatch," which is defined in W. Va. Code §24-2-1d(e) as the process of operating generation facilities to produce electricity at the lowest cost while reliably meeting consumer demand, considering the operational limits of generation and transmission facilities."

10. Original Section 2.3 was renumbered to Section 2.4.

11. Original Section 2.4. was renumbered to Section 2.5., and changed to read "Fixed Resource Requirement" (FRR) is an alternative option for Load Serving Entities (LSEs) to self-supply capacity resources rather than participate in the PJM RPM auction process."

12. Original Section 2.5 was renumbered to Section 2.6.

13. Original Section 2.6 was renumbered to Section 2.7.

14. Original Section 2.7 was renumbered to Section 2.8, and a typo was corrected.

15. New Section 2.9. was added and reads "Margin" means, for each megawatt-hour of electricity sold at wholesale from a generating unit, including deliveries into the PJM market, revenue received for the electricity less the incremental cost of producing the electricity. Incremental costs means the

additional cost incurred by a generating unit to produce one additional megawatt-hour of electricity, including fuel and other variable costs that increase or decrease with the amount of electricity generated."

16. Original Section 2.8 was renumbered to Section 2.10.

17. Original Section 2.9 was renumbered to Section 2.11.

18. Original Section 2.10 was renumbered to Section 2.12.

19. Original Section 2.11 was renumbered to Section 2.13 and changed to read "Self-schedule" is the process by which a generation owner elects to submit a specific hourly MW schedule for a generating resource into PJM's Day-Ahead Market rather than allowing PJM's market optimization process to determine whether and at what level the resource will be scheduled. A self-scheduled resource indicates the owner's intent to operate at the specified output levels, but the resource remains subject to PJM operating requirements, transmission constraints, and reliability directives. ~~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.~~"

20. Original Section 2.12 was deleted and replaced with new Section 2.13, above.

21. New Section 2.14 was added and reads "Price-Taker RPM Participation' means offering available Unforced Capacity from a Generation Capacity Resource into the PJM Reliability Pricing Model ("RPM") Auction as a Price-Taker. A Price-Taker offer indicates that the utility is willing to accept the RPM Auction clearing price for the offered capacity regardless of the level of that clearing price, unless the offer is restricted by applicable PJM market-power mitigation requirements. The utility shall receive the applicable RPM clearing price for all offered capacity that clears the auction."

22. Original Section 2.13 was renumbered to Section 2.15 and changed to read " Unforced Capacity" (UCAP) is the MW value of aaccredited capacity ~~resource that is available to meet demand, adjusted for the resource's expected forced outage rate~~ as assigned by PJM that an individual generating unit provides to PJM."

23. Section 3.1 was changed to read "Capacity Auctions. -- The Commission encourages voluntary participation by every electric generating unit subject to the jurisdiction of the Commission in each ~~capacity auction~~PJM capacity

auction unless the generating unit owner has committed the unit as an FRR unit or into a contract with another party that limits such unit's availability to participate in the PJM capacity auction."

24. Section 3.2 was changed as follows: "RPM Auction 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 base residual capacity auction as described herein."

25. Section 3.2.1.d was changed to read "Identification of units that are eligible to ~~bid~~ offer into the capacity auction,"

26. Section 3.2.1.e was changed to read "The UCAP quantity of each eligible resource proposed to be ~~bid~~ offered into the market, and"

27. Original Section 3.2.1.f was deleted.

28. Original Section 3.2.1.g was renumbered to Section 3.2.1.f.

29. Section 3.2.2. was changed to read "This report shall be submitted to the Commission ~~at least 28~~no later than seven (7) calendar days ~~prior to submitting the capacity bid~~ after capacity auction results are posted. The Commission may modify the filing deadline by a general or specific order."

30. Section 3.2.3. was changed to read "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 its West Virginia ratepayers of remaining in the RPM auction. The benefits should be ~~quantified~~ listed along with ~~comparisons~~ dollar values 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~~benefits achieved over 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."

31. Section 3.2.4. was changed to read "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."

32. Section 3.3.2. was changed to read "This report shall be submitted to the Commission ~~at least 28~~ no later than seven (7) calendar days ~~prior to submitting the capacity bid~~ after its annual FRR requirement is provided by PJM. The Commission may modify the filing deadline by a general or specific order."

33. Section 3.3.3. was changed to read "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~~ listed along with ~~comparisons~~ dollar values 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~~ benefits achieved over 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."

34. Section 4.1 was changed to read "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~~ the lowest cost consistent with consumer demand, ~~and~~ operational limits of the generation facility and transmission facilities, and considering the requirements or obligations to operate in conformance with applicable PJM market rules. Consumer economic dispatch measures the operating cost of individual generating units and maximizing consumer economic dispatch measures improving efficiency or reducing costs of operating generating units, not the dispatch of units at increased capacity factors. To determine if the utility is operating each generating unit at its lowest reasonable cost, the Commission will review the cost of producing electricity per kilowatt hour of output at each generating unit at varying capacity utilization levels. The Commission review will take into consideration that the age of facility components, life extension, and capital investment timing will enter into the evaluation of optimum consumer economic dispatch. Each electric utility ~~subject to the jurisdiction of the Commission must~~ should plan the operation of each generating unit under its control to produce electricity at the lowest reasonably achievable cost per kilowatt hour. ~~The Commission will review~~

~~consumer economic dispatch results on a daily, weekly, monthly, and annual basis.~~"

35. Section 4.2. was changed to read "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<u>s</u> prior to the filing month. The Generation Dispatch Report is due <u>no later than the last business day of the first calendar month of each quarter</u> ~~on the tenth business day of each month~~, and shall include information for the <u>three</u> month<u>s</u> immediately preceding the filing month."

36. Original Section 4.3. was renumbered and changed to Section 4.2.1., and changed to read "Information on Consumer Economic Dispatch. -- Each Generation Dispatch Report filed pursuant to this rule shall provide the cost of generation at ~~various~~ <u>actual</u> output levels <u>and the estimated cost at the output level to generate safely and reliably that would have produced the lowest operating cost per kilowatt hour for each generation unit</u>. If ~~plants~~ <u>units</u> are run at less than the ~~lowest cost output levels the utility shall quantify the impact on~~<u>maximum</u> consumer economic dispatch, <u>which is the estimated lowest</u> ~~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 <u>level</u>, the utility ~~must~~ <u>shall</u> explain why ~~it did not maximize consumer economic dispatch of the generating units~~<u>the lowest cost was not achieved</u>."

37. Original Section 4.3.1 was deleted.

38. Original Section 4.3.2. was renumbered to Section 4.2.2. and changed to read "In a working and editable spreadsheet with the formulas intact, the report shall show for each <u>generating unit for each</u> hour of each day the following information:"

39. Original Section 4.3.2.a. was renumbered to Section 4.2.2.a. and changed to read "The ~~hourly installed gross and~~ net capacity available to be ~~bid or self-scheduled~~ <u>offered</u> into the day-ahead market,"

40. Original Section 4.2.b. was renumbered to Section 4.2.2.b. and changed to read "The ~~hourly~~ volume of net capacity ~~bid~~ <u>offered</u> into the market and the related cost-based and market-based bid amounts as dollars per megawatt hour,"

41. Original Section 4.3.2.c. was renumbered to Section 4.2.2.c. and changed to read "The ~~hourly~~ net capacity that cleared the day-ahead market,"

42. Original Section 4.3.2.d. was renumbered to Section 4.2.2.d. and changed to read "The ~~hourly~~ self-scheduled capacity delivered into the day-ahead market, and"

43. Original Section 4.3.2.e. was renumbered to Section 4.2.2.e. and changed to read "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.~~ "

44. Original Section 4.3.3. was deleted.

45. Original Section 4.3.4. was renumbered to Section 4.2.3.

46. Original Section 4.4. was deleted.

47. Section 5.1. was changed to read "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 and net capacity factors achieved at each generating unit ~~relative to the following~~ and the underlying values supporting the calculated capacity factors.~~:~~"

48. Sections 5.1.1., 5.1.2., 5.1.3. 5.1.4., and 5.1.5 were deleted.

49. Section 5.2 was changed to read " 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~~capacity availability. The report shall include:

50. Section 5.2.1. was changed to read "Reasons for outages and derates; and"

51. Section 5.2.2 was changed to read "Duration of outages and derates.~~;~~"

52. Sections 5.2.3., 5.2.4, 5.2.5., 5.2.6, and 5.2.7. were deleted.

53. Section 5.3 was changed to read "Capacity Factor. -- The Commission expects generating electric utilities subject to the rate jurisdiction of the

Commission to maintain their generation ~~plants~~ units and schedule maintenance to minimize down time to allow it to be able to achieve a minimum net capacity factor of sixty-nine ~~(69%)~~ percent (69%); provided, this shall not require a utility to operate a generating unit at a 69% net capacity factor if doing so will cause an increase in the charges for electric energy. ~~The success in achieving a minimum capacity factor will initially be measured~~Considering that net capacity factors can vary hourly, daily, and monthly due to planned and unplanned outage maintenance, market conditions, and other factors, the reported capacity factors will be accumulated and evaluated over ~~a~~ twelve-month periods.

54. Section 5.3.1. was changed to read "The utilities will include in their ~~monthly~~ Generation Dispatch Reports a monthly capacity factor schedule showing their actual capacity factors for each steam generating unit in tabular format for the report ~~month period~~ and a rolling monthly average up to December. Beginning with January of each year the rolling average reported shall restart. All prior months' data shall continue to be reported even though the rolling average is restarted."

55. Section 5.3.2. was changed to read "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."

56. Sections 6.1. was changed to read "Information on Fuel. -- ~~At the time of filing of the Generation Dispatch Report, t~~The electric utility shall ~~file a PDF file properly formatted for printing as an~~continue to file fuel information. The monthly filing shall include a printed 8 ½ x 11 inch document and 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. This data shall comply with the detailed information required by W. Va. Code §24-2-14. A separate monthly report pursuant to W. Va. Code §24-2-14 is not required. In addition to the statutory fuel information required, the report shall include:

57. Sections 6.1.1. through 6.2. were deleted.

58. Original Section 6.2.1. was renumbered to Section 6.1.1. and changed to read "If there was a fuel 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."

59. Original Section 6.2.2. was renumbered to Section 6.1.2. and changed to read "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~~ for the adjustment."

60. Original Section 6.3. was renumbered to Section 6.2. and changed to read "Solicited Bids for Coal. -- For each monthly ~~Generated Dispatch Report~~fuel 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."

61. Original Section 6.4. was renumbered to Section 6.3. and changed to read "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, a fixed price 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 may contain a mix of fixed-price and indexed contracts."

62. New Section 6.4. was added and reads "To impute volumes and cost of fixed-price coal and index-priced coal burned the utility may prorate volumes and costs on the basis of the relative volume and cost of those contract price categories in inventory at the beginning of each month, or on such other reasonable allocation method accepted by the commission."

63. A typo was corrected in Section 7.1.1.a.

64. Sections 8.2. and 8.3. were deleted.

65. New Section 8.2. was added and reads "If the Director of the Office of Energy requests confidential information filed with the Commission by an electric utility pursuant to this rule, the request shall not be subject to the Commission procedures applicable to a party requesting confidential information in a formal Commission proceeding or to a request made

pursuant to the West Virginia Freedom of Information Act. The Commission shall promptly transmit the request to the utility. Upon receipt of such request, the utility shall promptly arrange to provide the requested information directly to the Office of Energy pursuant to an appropriate confidentiality agreement between the utility and the Office of Energy."

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RE: Case No. 26-633-E-GI
General Investigation into Adopting and Implementing Rules
Governing Electric Generating Capacity Regulations.

Ladies and Gentlemen:

Enclosed is a copy of a Commission Order issued today in the above-styled proceeding. **Please note all other parties have agreed to receive this order via electronic notification.**

Documents submitted to the Public Service Commission of West Virginia may be 1) uploaded to its public website, 2) subject to public disclosure under the West Virginia Freedom of Information Act, and/or 3) subject to disclosure under the West Virginia Open Governmental Proceedings Act. Do not submit personal information with your filings. The Commission is not responsible for confidential or personal information included with your submission. A list of personal information is available here: http://www.psc.state.wv.us/Privacy_Policy/WhatisPII.htm

If you have provided an email address you will automatically receive notifications as documents are filed in this proceeding. The email notifications allow recipients to view a document within an hour from the time the filing is processed. If you have not provided your email address, please send an email to caseinfo@psc.state.wv.us and state the case number in the email subject field. **You are encouraged to file an Electronic Mail Agreement which allows the commission to serve all orders issued in this matter via electronic notification.**

Sincerely,

Karen Buckley
Executive Secretary

KB/al
Enc.