

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 234

(Senators Trump, M. Hall,
Blair and Plymale, *original sponsors*)

[Passed March 14, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-19 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §16-13A-1a, §16-13A-9 and §16-13A-25 of said code; to amend and reenact §24-1-1, §24-1-1b and §24-1-2 of said code; to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code; and to amend and reenact §24-3-5 of said code, all relating to operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state; modifying procedure for sale or lease of municipal public utility; providing procedures for adjustment of rates by certain public service districts and municipal water and sewer utilities; eliminating requirement for consent and approval of Public Service Commission with respect to public service districts borrowing money, issuing bonds and entering into certain engineering contracts; relating to the authority of bondholders to petition the Public Service Commission for redress when there is a deficiency in bond revenue or bond reserve accounts or is otherwise in breach of bond covenants; limiting jurisdiction of Public Service Commission over certain water and sewer utilities owned or operated by political subdivisions of the state; defining terms; providing procedure for providing notice of construction projects to be undertaken by certain water and sewer utilities; requiring all public utilities to file schedules of rates with Public Service Commission; expanding jurisdiction of the Public Service Commission to provide assistance to public service districts and municipal corporations regarding proposed rate

changes; providing for a working capital reserve; expanding powers of certain public service boards; providing mechanism for Public Service Commission to address deficiencies in the measurements, practices acts or services provided by certain public utility that is a political subdivision of the state; and providing mechanisms for various functions of political subdivisions related to water and sewer services.

Be it enacted by the Legislature of West Virginia:

1 That §8-12-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
2 that §8-16-19 of said code be amended and reenacted; that §8-19-4 of said code be amended and
3 reenacted; that §16-13A-1a, §16-13A-9 and §16-13A-25 of said code be amended and reenacted; that
4 §24-1-1, §24-1-1b and 24-1-2 of said code be amended and reenacted; that §24-2-1, §24-2-2,
5 §24-2-3, §24-2- 4a, §24-2-4b, §24-2-7 and §24-2-11 of said code be amended and reenacted; and
6 that §24-3-5 of said code be amended and reenacted, all to read as follows:

7 **CHAPTER 8. MUNICIPAL CORPORATIONS.**

8 **ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS**
9 **OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND**
10 **EMPLOYEES; SUITS AGAINST MUNICIPALITIES.**

11 **§8-12-17. Sale or lease of municipal public utility.**

12 In any case where a municipality owns a gas system, an electric system, a waterworks system,
13 a sewer system or other public utility and a majority of not less than sixty percent of the members
14 of the governing body thereof shall deem it for the best interest of such municipality that such utility
15 be sold or leased, the governing body may so sell or lease such gas system, electric system,
16 waterworks system, sewer system or other public utility upon such terms and conditions as said
17 governing body in its discretion considers in the best interest of the municipality: *Provided*, That
18 such sale or lease may be made only upon: (1) The publication of notice of a hearing before the
19 governing body of the municipality, as a Class I legal advertisement in compliance with the
20 provisions of article three, chapter fifty-nine of this code, in a newspaper published and of general
21 circulation in the municipality, such publication to be made not earlier than twenty days and not later
22 than seven days prior to the hearing; and (2) the approval by the Public Service Commission of West

1 Virginia. The governing body, upon the approval of the sale or lease by a majority of its members
2 of not less than sixty percent of the members of the governing body, shall have full power and
3 authority to proceed to execute or effect such sale or lease in accordance with the terms and
4 conditions prescribed in the ordinance approved as aforesaid, and shall have power to do any and
5 all things necessary or incident thereto: *Provided, however,* That if at any time after such approval
6 and before the execution of the authority under the ordinance, any person should present to the
7 governing body an offer to buy such public utility at a price which exceeds by at least five percent
8 the sale price which shall have been so approved and authorized or to lease the same upon terms
9 which the governing body, in its discretion, shall consider more advantageous to the municipality
10 than the terms of the lease which shall have been previously approved as aforesaid, the governing
11 body shall have the power to accept such subsequent offer, and to make such sale or such lease to
12 the person making the offer, upon approval of the offer by a majority of not less than sixty percent
13 of the members of the governing body; but, if a sale shall have been approved by the governing body
14 as aforesaid, and the subsequent proposition be for a lease, or, if a lease shall have been approved
15 by the governing body, and the subsequent proposition shall be for a sale, the governing body shall
16 have the authority to accept the same upon approval of the offer by a majority of not less than sixty
17 percent of the members of the governing body. The person making such proposition shall furnish
18 bond, with security to be approved by the governing body, in a penalty of not less than twenty-five
19 percent of such proposed bid, conditioned to carry such proposition into execution, if the same shall
20 be approved by the governing body. In any case where any such public utility shall be sold or leased
21 by the governing body as hereinabove provided, no part of the moneys derived from such sale or
22 lease shall be applied to the payment of current expenses of the municipality, but the proceeds of
23 such sale or lease shall be applied in payment and discharge of any indebtedness created in respect
24 to such public utility, and in case there be no indebtedness, the governing body, in its discretion,
25 shall have the power and authority to expend all such moneys when received for the purchase or
26 construction of firefighting equipment and buildings for housing such equipment, a municipal
27 building or city hall, and the necessary land upon which to locate the same, or for the construction
28 of paved streets, avenues, roads, alleys, ways, sidewalks, sewers and other like permanent

1 improvements, and for no other purposes. In case there be a surplus after the payment of such
2 indebtedness, the surplus shall be used as aforesaid.

3 The requirements of this section shall not apply to the sale or lease of any part of the
4 properties of any such public utility determined by the governing body to be unnecessary for the
5 efficient rendering of the service of such utility.

6 **§8-16-19. Appeal to Public Service Commission from rates fixed.**

7 If any party in interest is dissatisfied with the rates fixed under the provisions of section
8 eighteen of this article, such party shall have the right to appeal to the Public Service Commission
9 at any time within thirty days after the fixing of such rates by the governing body, but the rates so
10 fixed by the governing body shall remain in full force and effect, until set aside, altered or amended
11 by the Public Service Commission.

12 **ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER**
13 **SYSTEMS.**

14 **§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on**
15 **bonds; rates for services; exemption from taxation.**

16 Whenever a municipality or county commission shall, under the provisions of this article,
17 determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks
18 system or an electric power system, or to construct any additions, betterments or improvements to
19 any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof,
20 and may, by ordinance or order, provide for the issuance of revenue bonds under the provisions of
21 this article, which ordinance or order shall set forth a brief description of the contemplated
22 undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of
23 payment and other details in connection with the issuance of the bonds. The bonds shall be in such
24 form and shall be negotiated and sold in such manner and upon such terms as the governing body
25 of such municipality or county commission may, by ordinance or order, specify. All the bonds and
26 the interest thereon shall be exempt from all taxation by this state, or any county, municipality or
27 county commission, political subdivision or agency thereof. Notwithstanding any other provision
28 of this code to the contrary, the real and personal property which a municipality or county has

1 acquired and constructed according to the provisions of this article, and any leasehold interest therein
2 held by other persons, shall be deemed public property and shall be exempt from taxation by the
3 state, or any county, municipality or other levying body, so long as the same is owned by the
4 municipality or county: *Provided*, That with respect to electric power systems, this exemption for
5 real and personal property shall be applicable only for the real and personal property: (1) Physically
6 situate within the municipal or county boundaries of the municipality or county which acquired or
7 constructed the electric power system and there was in place prior to the effective date of the
8 amendments to this section made in the year 1992 an agreement between the municipality and the
9 county commission for payments in lieu of tax; or (2) acquired or constructed with the written
10 agreement of the county school board, county commission and any municipal authority within whose
11 jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything
12 contained in this statute to the contrary, this exemption shall be applicable to any leasehold or similar
13 interest held by persons other than a municipality or county only if acquired or constructed with the
14 written agreement of the county school board, county commission and any municipal authority
15 within whose jurisdiction the electric power system is or is to be physically situate: *Provided*,
16 *however*, That payments made to any county commission, county school board or municipality in
17 lieu of tax pursuant to such an agreement shall be distributed as if the payments resulted from ad
18 valorem property taxation. The bonds shall bear interest at a rate per annum set by the municipality
19 or county commission, payable at such times, and shall be payable as to principal at such times, not
20 exceeding fifty years from their date, and at such place or places, within or without the state, as shall
21 be prescribed in the ordinance or order providing for their issuance. Unless the governing body of
22 the municipality or county commission shall otherwise determine, the ordinance or order shall also
23 declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed,
24 established, extended or equipped, fix minimum rates or charges for water or electricity to be
25 collected prior to the payment of all of said bonds and shall pledge the revenues derived from the
26 waterworks or electric power system for the purpose of paying the bonds and interest thereon, which
27 pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set
28 apart and applied to the payment of the principal of and interest upon the bonds and the proportion

1 of the balance of the revenues, which are to be set aside as a proper and adequate depreciation
2 account, and the remainder shall be set aside for the reasonable and proper maintenance and
3 operation thereof. The rates or charges to be charged for the services from the waterworks or electric
4 power system shall be sufficient at all times to provide for the payment of interest upon all bonds
5 and to create a sinking fund to pay the principal thereof as and when the same become due, and
6 reasonable reserves therefor, and to provide for the repair, maintenance and operation of the
7 waterworks or electric power system, and to provide an adequate depreciation fund, and to make any
8 other payments which shall be required or provided for in the ordinance or order authorizing the
9 issuance of said bonds.

10 **CHAPTER 16. PUBLIC HEALTH.**

11 **ARTICLE 13A. PUBLIC SERVICE DISTRICTS.**

12 **§16-13A-1a. Jurisdiction of the Public Service Commission.**

13 The jurisdiction of the Public Service Commission relating to public service districts shall
14 be expanded to include the following powers and the powers shall be in addition to all other powers
15 of the Public Service Commission set forth in this code:

16 (a) To study, modify, approve, deny or amend the plans created under section one-b of this
17 article for consolidation or merger of public service districts and their facilities, personnel or
18 administration;

19 (b) To petition the appropriate circuit court for the removal of a public service district board
20 member or members; and

21 (c) To create by general order a separate division within the Public Service Commission to
22 provide assistance to public service districts in technological, operational, financial and regulatory
23 matters, including, upon written request of the public service board, assistance to the board in
24 deliberations regarding a proposed rate change or project.

25 **§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and
26 sewer connections; lien for delinquent fees.**

27 (a) (1) The board may make, enact and enforce all needful rules in connection with the
28 acquisition, construction, improvement, extension, management, maintenance, operation, care,

1 protection and the use of any public service properties owned or controlled by the district. The board
2 shall establish, in accordance with this article, rates, fees and charges for the services and facilities
3 it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law
4 or laws, to pay the cost of maintenance, operation and depreciation of the public service properties
5 and principal of and interest on all bonds issued, other obligations incurred under the provisions of
6 this article and all reserve or other payments provided for in the proceedings which authorized the
7 issuance of any bonds under this article. The schedule of the rates, fees and charges may be based
8 upon:

9 (A) The consumption of water or gas on premises connected with the facilities, taking into
10 consideration domestic, commercial, industrial and public use of water and gas;

11 (B) The number and kind of fixtures connected with the facilities located on the various
12 premises;

13 (C) The number of persons served by the facilities;

14 (D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

15 (E) May be determined on any other basis or classification which the board may determine
16 to be fair and reasonable, taking into consideration the location of the premises served and the nature
17 and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater
18 services may be assessed against highways, road and drainage easements or stormwater facilities
19 constructed, owned or operated by the West Virginia Division of Highways.

20 (2) The board of a public service district with at least four thousand five hundred customers
21 and annual combined gross revenue of \$3 million or more from its separate or combined services
22 may make, enact and enforce all needful rules in connection with the enactment or amendment of
23 rates, fees and charges of the district. At a minimum, these rules shall provide for:

24 (A) Adequate prior public notice of the contemplated rates, fees and charges by causing a
25 notice of intent to effect such a change to be specified on the monthly billing statement of the
26 customers of the district for the month next preceding the month in which the contemplated change
27 is to be before the board on first reading.

28 (B) Adequate prior public notice of the contemplated rates, fees and charges by causing to

1 be published as a Class I legal advertisement of the proposed action, in compliance with the
2 provisions of article three, chapter fifty-nine of the code. The publication area for publication shall
3 be all territory served by the district. If the district provides service in more than one county,
4 publication shall be made in a newspaper of general circulation in each county that the district
5 provides service.

6 (C) The public notice of the proposed action shall state the current rates, fees and charges and
7 the proposed changes to said rates, fees and charges; the date, time and place of both a public hearing
8 on the proposal and the proposed final vote on adoption; and the place or places within the district
9 where the proposed rates, fees and charges may be inspected by the public. A reasonable number of
10 copies of the proposal shall be kept at the place or places and be made available for public
11 inspection. The notice shall also advise that interested parties may appear at the public hearing before
12 the board and be heard with respect to the proposed rates, fees and charges.

13 (D) The proposed rates, fees and charges shall be read at two meetings of the board with at
14 least two weeks intervening between each meeting. The public hearing may be conducted with or
15 following the second reading.

16 (E) Rates, fees and charges approved by an affirmative vote of the board shall be forwarded
17 in writing to the county commission appointing the approving board. The county commission shall
18 publish notice of the proposed rates, fees and charges by a Class 1 legal advertisement in compliance
19 with the provisions of article three, chapter fifty-nine of the code. Within forty-five days of receipt
20 of the proposed rates, fees and charges, the county commission shall take action to approve or reject
21 the proposed rates, fees and charges. After forty-five days, the proposed rates, fees and charges shall
22 be effective with no further action by the board or county commission. In any event, this 45-day
23 period shall be mandatory unless extended by the official action of both the board proposing the
24 rates, fees and charges, and the appointing county commission.

25 (F) Enactment of the proposed rates, fees and charges shall follow an affirmative vote by the
26 county commission and shall be effective no sooner than forty-five days following action. The 45-
27 day waiting period may be waived by public vote of the county commission only if the commission
28 finds and declares the district to be in financial distress such that the 45-day waiting period would

1 be detrimental to the ability of the district to deliver continued and compliant public services.

2 (3) Where water, sewer, stormwater or gas services, or any combination thereof, are all
3 furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate
4 of the charges. The board shall require all users of services and facilities furnished by the district to
5 designate on every application for service whether the applicant is a tenant or an owner of the
6 premises to be served. If the applicant is a tenant, he or she shall state the name and address of the
7 owner or owners of the premises to be served by the district. Notwithstanding the provisions of
8 section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for
9 service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the
10 applicant's specific customer class or \$50, with the district to secure the payment of service rates,
11 fees and charges in the event they become delinquent as provided in this section. If a district provides
12 both water and sewer service, all new applicants for service shall deposit the greater of a sum equal
13 to two twelfths of the average annual usage for water service or \$50 and the greater of a sum equal
14 to two twelfths of the average annual usage for wastewater service of the applicant's specific
15 customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees and charges
16 which were delinquent at the time of disconnection or termination of service, no reconnection or
17 reinstatement of service may be made by the district until another deposit equal to the greater of a
18 sum equal to two twelfths of the average usage for the applicant's specific customer class or \$50 has
19 been remitted to the district. After twelve months of prompt payment history, the district shall return
20 the deposit to the customer or credit the customer's account at a rate as the Public Service
21 Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not
22 required to return the deposit until the time the tenant discontinues service with the district.
23 Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a
24 period of twenty days after the same become due and payable, the user of the services and facilities
25 provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The
26 board may, under reasonable rules promulgated by the Public Service Commission, shut off and
27 discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten
28 days after the water or gas services become delinquent: *Provided, however*, That nothing contained

1 within the rules of the Public Service Commission shall be deemed to require any agents or
2 employees of the board to accept payment at the customer's premises in lieu of discontinuing service
3 for a delinquent bill.

4 (b) In the event that any publicly or privately owned utility, city, incorporated town, other
5 municipal corporation or other public service district included within the district owns and operates
6 separately water facilities, sewer facilities or stormwater facilities and the district owns and operates
7 another kind of facility, either water or sewer, or both, as the case may be, then the district and the
8 publicly or privately owned utility, city, incorporated town or other municipal corporation or other
9 public service district shall covenant and contract with each other to shut off and discontinue the
10 supplying of water service for the nonpayment of sewer or stormwater service fees and charges:

11 *Provided*, That any contracts entered into by a public service district pursuant to this section shall
12 be submitted to the Public Service Commission for approval. Any public service district which
13 provides water and sewer service, water and stormwater service or water, sewer and stormwater
14 service has the right to terminate water service for delinquency in payment of water, sewer or
15 stormwater bills. Where one public service district is providing sewer service and another public
16 service district or a municipality included within the boundaries of the sewer or stormwater district
17 is providing water service and the district providing sewer or stormwater service experiences a
18 delinquency in payment, the district or the municipality included within the boundaries of the sewer
19 or stormwater district that is providing water service, upon the request of the district providing sewer
20 or stormwater service to the delinquent account, shall terminate its water service to the customer
21 having the delinquent sewer or stormwater account: *Provided, however*, That any termination of
22 water service must comply with all rules and orders of the Public Service Commission: *Provided*
23 *further*, That nothing contained within the rules of the Public Service Commission shall be deemed
24 to require any agents or employees of the public service districts to accept payment at the customer's
25 premises in lieu of discontinuing service for a delinquent bill.

26 (c) Any district furnishing sewer facilities within the district may require or may, by petition
27 to the circuit court of the county in which the property is located, compel or may require the Division
28 of Health to compel all owners, tenants or occupants of any houses, dwellings and buildings located

1 near any sewer facilities where sewage will flow by gravity or be transported by other methods
2 approved by the Division of Health, including, but not limited to, vacuum and pressure systems,
3 approved under the provisions of section nine, article one, chapter sixteen of this code, from the
4 houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities
5 and to cease the use of all other means for the collection, treatment and disposal of sewage and waste
6 matters from the houses, dwellings and buildings where there is gravity flow or transportation by any
7 other methods approved by the Division of Health, including, but not limited to, vacuum and
8 pressure systems, approved under the provisions of section nine, article one of this chapter and the
9 houses, dwellings and buildings can be adequately served by the sewer facilities of the district and
10 it is declared that the mandatory use of the sewer facilities provided for in this subsection is
11 necessary and essential for the health and welfare of the inhabitants and residents of the districts and
12 of the state. If the public service district requires the property owner to connect with the sewer
13 facilities even when sewage from dwellings may not flow to the main line by gravity and the
14 property owner incurs costs for any changes in the existing dwellings' exterior plumbing in order to
15 connect to the main sewer line, the public service district board shall authorize the district to pay all
16 reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation,
17 operation, maintenance and purchase of a pump or any other method approved by the Division of
18 Health. Maintenance and operation costs for the extra installation should be reflected in the users
19 charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits
20 of the petition by summary hearing to be held not later than thirty days after service of petition to the
21 appropriate owners, tenants or occupants.

22 (d) Whenever any district has made available sewer facilities to any owner, tenant or
23 occupant of any house, dwelling or building located near the sewer facility and the engineer for the
24 district has certified that the sewer facilities are available to and are adequate to serve the owner,
25 tenant or occupant and sewage will flow by gravity or be transported by other methods approved by
26 the Division of Health from the house, dwelling or building into the sewer facilities, the district may
27 charge, and the owner, tenant or occupant shall pay, the rates and charges for services established
28 under this article only after thirty days' notice of the availability of the facilities has been received

1 by the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual
2 water consumption or the average monthly water consumption based upon the owner's, tenant's or
3 occupant's specific customer class.

4 (e) The owner, tenant or occupant of any real property may be determined and declared to
5 be served by a stormwater system only after each of the following conditions is met: (1) The district
6 has been designated by the Environmental Protection Agency as an entity to serve a West Virginia
7 Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the district's
8 authority has been properly expanded to operate and maintain a stormwater system; (3) the district
9 has made available a stormwater system where stormwater from the real property affects or drains
10 into the stormwater system; and (4) the real property is located in the Municipal Separate Storm
11 Sewer System's designated service area. It is further hereby found, determined and declared that the
12 mandatory use of the stormwater system is necessary and essential for the health and welfare of the
13 inhabitants and residents of the district and of the state. The district may charge and the owner,
14 tenant or occupant shall pay the rates, fees and charges for stormwater services established under this
15 article only after thirty days' notice of the availability of the stormwater system has been received
16 by the owner. An entity providing stormwater service shall provide a tenant a report of the
17 stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be
18 assessed to the tenant.

19 (f) All delinquent fees, rates and charges of the district for either water facilities, sewer
20 facilities, gas facilities or stormwater systems or stormwater management programs are liens on the
21 premises served of equal dignity, rank and priority with the lien on the premises of state, county,
22 school and municipal taxes. Nothing contained within the rules of the Public Service Commission
23 shall be deemed to require any agents or employees of the public service districts to accept payment
24 at the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the
25 other remedies provided in this section, public service districts are granted a deferral of filing fees
26 or other fees and costs incidental to the bringing and maintenance of an action in magistrate court
27 for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the
28 delinquent account, plus reasonable costs, from its customer or other responsible party, the district

1 shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred.
2 In addition, each public service district may exchange with other public service districts a list of
3 delinquent accounts: *Provided*, That an owner of real property may not be held liable for the
4 delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real
5 property for the reason of delinquent rates or charges for services or facilities of a tenant of the real
6 property unless the owner has contracted directly with the public service district to purchase the
7 services or facilities.

8 (g) Anything in this section to the contrary notwithstanding, any establishment, as defined
9 in section three, article eleven, chapter twenty-two of this code, now or hereafter operating its own
10 sewage disposal system pursuant to a permit issued by the Department of Environmental Protection,
11 as prescribed by section eleven of said article, is exempt from the provisions of this section.

12 (h) A public service district which has been designated by the Environmental Protection
13 Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare
14 an annual report detailing the collection and expenditure of rates, fees or charges and make it
15 available for public review at the place of business of the governing body and the stormwater utility
16 main office.

17 **§16-13A-25. Borrowing and bond issuance; procedure.**

18 A public service district has plenary power to borrow money, enter into contracts for the
19 provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or
20 exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of
21 this article. Upon written request of the public service board contemplating such transaction or
22 project, the Public Service Commission shall provide technical support to the public service board,
23 including, but not limited to, engineering, design and financial analysis of the proposed transaction
24 or project.

25 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

26 **ARTICLE 1. GENERAL PROVISIONS.**

27 **§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of**
28 **plan as rule; cooperation with Joint Committee on Government and Finance.**

1 (a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the
2 Public Service Commission of this state the authority and duty to enforce and regulate the practices,
3 services and rates of public utilities in order to:

4 (1) Ensure fair and prompt regulation of public utilities in the interest of the using and
5 consuming public;

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

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

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

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

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

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

24 (c) The Legislature directs the Public Service Commission to identify, explore and consider
25 the potential benefits or risks associated with emerging and state-of-the-art concepts in utility
26 management, rate design and conservation. The commission may conduct inquiries and hold
27 hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other
28 interested persons the opportunity to comment and shall report to the Governor and the Legislature

1 regarding its findings and policies to each of these areas not later than the first day of the regular
2 session of the Legislature in the year 1985, and every two years thereafter.

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

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

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

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

14 (4) Other information considered by the commission to be important including
15 recommendations for statutory reform and the reasons for such recommendations.

16 (e) In addition to any other studies and reports required to be conducted and made by the
17 Public Service Commission pursuant to any other provision of this section, the commission shall
18 study and initially report to the Legislature no later than the first day of the regular session of the
19 Legislature in the year 1980 upon:

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

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

1 (3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this
2 subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia. In
3 carrying out the provisions of this section the commission shall have jurisdiction over such persons,
4 whether public utilities or not, as may be in the opinion of the commission necessary to the exercise
5 of its mandate and may compel attendance before it, take testimony under oath and compel the
6 production of papers or other documents. Upon reasonable request by the commission, all other state
7 agencies shall cooperate with the commission in carrying out the provisions and requirements of this
8 subsection.

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

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

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

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

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

28 (5) Which members of the staff of the Public Service Commission shall be exempted from

1 the salary schedules or pay plan adopted by the Civil Service Commission and identify such staff
2 members by job classification or designation, together with the salary or salary ranges for each such
3 job classification or designation;

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

9 Such plan shall be based on the concept that each of the divisions mentioned in subdivisions
10 (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage
11 ex parte communications between them by such means as the commission shall direct, including,
12 but not limited to, separate clerical and professional staffing for each division. Further, the Public
13 Service Commission is directed to incorporate within the said plan to the fullest extent possible the
14 recommendations presented to the subcommittee on the Public Service Commission of the Joint
15 Committee on Government and Finance in a final report dated February, 1979, and entitled A Plan
16 for Regulatory Reform and Management Improvement.

17 The commission shall, before January 5, 1980, adopt said plan by order, which order shall
18 promulgate the same as a rule of the commission to be effective upon the date specified in said order,
19 which date shall be no later than December 31, 1980. Certified copies of such order and rule shall
20 be filed on the first day of the 1980 regular session of the Legislature, by the chairman of the
21 commission with the clerk of each house of the Legislature, the Governor and the Secretary of State.
22 The chairman of the commission shall also file with the office of the Secretary of State the receipt
23 of the clerk of each house and of the Governor, which receipt shall evidence compliance with this
24 section.

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

28 Within the limits of funds appropriated therefor, the rule of the Public Service Commission

1 shall be effective upon the date specified in the order of the commission promulgating it unless an
2 alternative plan be adopted by general law or unless the rule is disapproved by a concurrent
3 resolution of the Legislature adopted prior to adjournment sine die of the regular session of the
4 Legislature to be held in the year 1980: *Provided*, That if such rule is approved in part and
5 disapproved in part by a concurrent resolution of the Legislature adopted prior to such adjournment,
6 such rule shall be effective to the extent and only to the extent that the same is approved by such
7 concurrent resolution.

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

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

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

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

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

28 (i) The Legislature further finds that transactions between utilities and affiliates are a

1 contributing factor to the increase in natural gas and electricity prices and tend to confuse
2 consideration of a proper rate of return calculation. The Legislature therefore finds that it is
3 imperative that the Public Service Commission have the opportunity to properly study the issue of
4 proper rate of return for lengthy periods of time and to limit the return of a utility to a proper level
5 when compared to return or profit that affiliates earn on transactions with sister utilities.

6 (j) The Legislature further finds that water and sewer utilities that are political subdivisions
7 of the state providing separate or combined services and having at least four thousand five hundred
8 customers and annual gross revenues of \$3 million or more are most fairly and effectively regulated
9 by the local governing body with respect to rates, borrowing and capital projects. Therefore,
10 notwithstanding any contrary provisions of this section, the jurisdiction of the Public Service
11 Commission over water and sewer utilities that are political subdivisions of the state is limited to that
12 granted specifically in this code.

13 (k) The Legislature further finds that an adequate cash working capital fund is essential
14 to allow water and sewer utilities that are political subdivisions of the state to deliver continuous and
15 compliant service. Therefore, these utilities shall maintain a working capital reserve in an amount
16 of no less than one eighth of actual annual operation and maintenance expense. This reserve shall
17 be separate and distinct from and in addition to any repair and replacement fund that may be required
18 by bond covenants.

19 **§24-1-1b. Supplemental rule for reorganization.**

20 The Public Service Commission shall, by general order, create a division within its staff
21 which shall, upon written request of the governing body of a political subdivision that operates a
22 water, sewer and/or stormwater utility, provide legal, operational, engineering, financial, ratemaking
23 and accounting advice and assistance to water, sewer and/or stormwater utilities that are political
24 subdivisions of the state and may perform or participate in the studies required under section one-b,
25 article thirteen-a, chapter sixteen of this code.

26 **§24-1-2. Definitions.**

27 Except where a different meaning clearly appears from the context, the words "public utility",

1 when used in this chapter, shall mean and include any person or persons, or association of persons,
2 however associated, whether incorporated or not, including municipalities, engaged in any business,
3 whether herein enumerated or not, which is, or shall hereafter be held to be, a public service.
4 Whenever in this chapter the words "commission" or "Public Service Commission" occur, such word
5 or words shall, unless a different intent clearly appears from the context, be taken to mean the Public
6 Service Commission of West Virginia. Whenever used in this chapter, "customer" shall mean and
7 include any person, firm, corporation, municipality, public service district or any other entity who
8 purchases a product or services of any utility and shall include any such person, firm, corporation,
9 municipality, public service district or any other entity who purchases such services or product for
10 resale. Whenever in this chapter the words "governing body" occur, such word or words shall,
11 unless a different intent clearly appears from the context, be taken to mean the municipal body
12 charged with the authority and responsibility of enacting ordinances of the municipality, as defined
13 in section two, article one, chapter eight of this code, or a public service board of a public service
14 district, as defined in section three, article thirteen-a, chapter sixteen of this code.

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

16 **§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

17 (a) The jurisdiction of the commission shall extend to all public utilities in this state and shall
18 include any utility engaged in any of the following public services:

19 Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or
20 otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or
21 air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all
22 mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car
23 services; transmission of messages by telephone, telegraph or radio; generation and transmission of
24 electrical energy by hydroelectric or other utilities for service to the public, whether directly or
25 through a distributing utility; supplying water, gas or electricity by municipalities or others; sewer
26 systems servicing twenty-five or more persons or firms other than the owner of the sewer systems:
27 *Provided*, That if a public utility other than a political subdivision intends to provide sewer service
28 by an innovative, alternative method, as defined by the federal Environmental Protection Agency,

1 the innovative, alternative method is a public utility function and subject to the jurisdiction of the
2 Public Service Commission regardless of the number of customers served by the innovative,
3 alternative method; any public service district created under the provisions of article thirteen-a,
4 chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities; and any other public
5 service: *Provided, however,* That natural gas producers who provide natural gas service to not more
6 than twenty-five residential customers are exempt from the jurisdiction of the commission with
7 regard to the provisions of such residential service: *Provided further,* That upon request of any of
8 the customers of such natural gas producers, the commission may, upon good cause being shown,
9 exercise such authority as the commission may deem appropriate over the operation, rates and
10 charges of such producer and for such length of time as the commission may consider to be proper.

11 (b) The jurisdiction of the commission over political subdivisions of this state providing
12 separate or combined services and having at least four thousand five hundred customers and annual
13 combined gross revenues of \$3 million or more that are political subdivisions of the state is limited
14 to:

15 (1) General supervision of public utilities, as granted and described in section five of this
16 article;

17 (2) Regulation of measurements, practices, acts or services, as granted and described in
18 section seven of this article;

19 (3) Regulation of a system of accounts to be kept by a public utility that is a political
20 subdivision of the state, as granted and described in section eight of this article;

21 (4) Submission of information to the commission regarding rates, tolls, charges or practices,
22 as granted and described in section nine of this article;

23 (5) Authority to subpoena witnesses, take testimony and administer oaths to any witness in
24 any proceeding before or conducted by the commission, as granted and described in section ten of
25 this article; and

26 (6) Investigation and resolution of disputes involving political subdivisions of the state
27 regarding inter-utility agreements, rates, fees and charges, service areas and contested utility
28 combinations.

1 (7) Customers of water and sewer utilities operated by a political subdivision of the state and
2 customers of stormwater utilities operated by a public service district may bring formal or informal
3 complaints regarding the commission's exercise of the powers enumerated in this section and the
4 commission shall resolve these complaints.

5 (8) In the event that a political subdivision has a deficiency in either its bond revenue or bond
6 reserve accounts, or is otherwise in breach of a bond covenant, the bond holder may petition the
7 Public Service Commission for such redress as will bring the accounts to current status or otherwise
8 resolve the breached covenant, and the commission shall have jurisdiction to fully resolve the alleged
9 deficiency or breach.

10 (c) The commission may, upon application, waive its jurisdiction and allow a utility operating
11 in an adjoining state to provide service in West Virginia when:

12 (1) An area of West Virginia cannot be practicably and economically served by a utility
13 licensed to operate within the State of West Virginia;

14 (2) Said area can be provided with utility service by a utility which operates in a state
15 adjoining West Virginia;

16 (3) The utility operating in the adjoining state is regulated by a regulatory agency or
17 commission of the adjoining state; and

18 (4) The number of customers to be served is not substantial. The rates the out-of-state utility
19 charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge
20 in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver
21 of jurisdiction for good cause.

22 (d) Any other provisions of this chapter to the contrary notwithstanding:

23 (1) An owner or operator of an electric generating facility located or to be located in this state
24 that has been designated as an exempt wholesale generator under applicable federal law, or will be
25 so designated prior to commercial operation of the facility, and for which such facility the owner or
26 operator holds a certificate of public convenience and necessity issued by the commission on or
27 before July 1, 2003, shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this
28 article as if the certificate of public convenience and necessity for such facility were a siting

1 certificate issued under said section and shall not otherwise be subject to the jurisdiction of the
2 commission or to the provisions of this chapter with respect to such facility except for the making
3 or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

4 (2) Any person, corporation or other entity that intends to construct or construct and operate
5 an electric generating facility to be located in this state that has been designated as an exempt
6 wholesale generator under applicable federal law, or will be so designated prior to commercial
7 operation of the facility, and for which facility the owner or operator does not hold a certificate of
8 public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior
9 to commencement of construction of the facility, obtain a siting certificate from the commission
10 pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public
11 convenience and necessity pursuant to the provisions of section eleven of this article. An owner or
12 operator of an electric generating facility as is described in this subdivision for which a siting
13 certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and
14 (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the
15 commission or to the provisions of this chapter with respect to such facility except for the making
16 or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

17 (3) An owner or operator of an electric generating facility located in this state that had not
18 been designated as an exempt wholesale generator under applicable federal law prior to commercial
19 operation of the facility that generates electric energy solely for sale at retail outside this state or
20 solely for sale at wholesale in accordance with any applicable federal law that preempts state law or
21 solely for both such sales at retail and such sales at wholesale and that had been constructed and had
22 engaged in commercial operation on or before July 1, 2003, shall not be subject to the jurisdiction
23 of the commission or to the provisions of this chapter with respect to such facility, regardless of
24 whether such facility subsequent to its construction has been or will be designated as an exempt
25 wholesale generator under applicable federal law: *Provided*, That such owner or operator shall be
26 subject to subdivision (5) of this subsection if a material modification of such facility is made or
27 constructed.

28 (4) Any person, corporation or other entity that intends to construct or construct and operate

1 an electric generating facility to be located in this state that has not been or will not be designated
2 as an exempt wholesale generator under applicable federal law prior to commercial operation of the
3 facility that will generate electric energy solely for sale at retail outside this state or solely for sale
4 at wholesale in accordance with any applicable federal law that preempts state law or solely for both
5 such sales at retail and such sales at wholesale and that had not been constructed and had not been
6 engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of
7 construction of the facility, obtain a siting certificate from the commission pursuant to the provisions
8 of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant
9 to the provisions of section eleven of this article. An owner or operator of an electric generating
10 facility as is described in this subdivision for which a siting certificate has been issued by the
11 commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article
12 and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this
13 chapter with respect to such facility except for the making or constructing of a material modification
14 thereof as provided in subdivision (5) of this subsection.

15 (5) An owner or operator of an electric generating facility described in this subsection shall,
16 before making or constructing a material modification of the facility that is not within the terms of
17 any certificate of public convenience and necessity or siting certificate previously issued for the
18 facility or an earlier material modification thereof, obtain a siting certificate for the modification
19 from the commission pursuant to the provisions of section eleven-c of this article in lieu of a
20 certificate of public convenience and necessity for the modification pursuant to the provisions of
21 section eleven of this article and, except for the provisions of section eleven-c of this article, shall
22 not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter
23 with respect to such modification.

24 (6) The commission shall consider an application for a certificate of public convenience and
25 necessity filed pursuant to section eleven of this article to construct an electric generating facility
26 described in this subsection or to make or construct a material modification of such electric
27 generating facility as an application for a siting certificate pursuant to section eleven-c of this article
28 if the application for the certificate of public convenience and necessity was filed with the

1 commission prior to July 1, 2003, and if the commission has not issued a final order thereon as of
2 that date.

3 (7) The limitations on the jurisdiction of the commission over, and on the applicability of the
4 provisions of this chapter to, the owner or operator of an electric generating facility as imposed by
5 and described in this subsection shall not be deemed to affect or limit the commission's jurisdiction
6 over contracts or arrangements between the owner or operator of such facility and any affiliated
7 public utility subject to the provisions of this chapter.

8 **§24-2-2. General power of commission to regulate public utilities.**

9 (a) The commission is hereby given power to investigate all rates, methods and practices of
10 public utilities subject to the provisions of this chapter; to require them to conform to the laws of this
11 state and to all rules, regulations and orders of the commission not contrary to law; and to require
12 copies of all reports, rates, classifications, schedules and timetables in effect and used by the public
13 utility or other person to be filed with the commission, and all other information desired by the
14 commission relating to the investigation and requirements, including inventories of all property in
15 such form and detail as the commission may prescribe. The commission may compel obedience to
16 its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in
17 any circuit court having jurisdiction of the parties or of the subject matter, or the Supreme Court of
18 Appeals directly, and the proceedings shall have priority over all pending cases. The commission
19 may change any intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge
20 with respect to matters of a purely local nature which have not been regulated by or pursuant to an
21 act of Congress and may prescribe a rate, charge or toll that is just and reasonable, and change or
22 prohibit any practice, device or method of service in order to prevent undue discrimination or
23 favoritism between persons and between localities and between commodities for a like and
24 contemporaneous service. But in no case shall the rate, toll or charge be more than the service is
25 reasonably worth, considering the cost of the service. Every order entered by the commission shall
26 continue in force until the expiration of the time, if any, named by the commission in the order, or
27 until revoked or modified by the commission, unless the order is suspended, modified or revoked
28 by order or decree of a court of competent jurisdiction: *Provided*, That in the case of utilities used

1 by emergency shelter providers, the commission shall prescribe such rates, charges or tolls that are
2 the lowest available. "Emergency shelter provider" means any nonprofit entity which provides
3 temporary emergency housing and services to the homeless or to victims of domestic violence or
4 other abuse.

5 (b) Notwithstanding any other provision of this code to the contrary, rates are not
6 discriminatory if, when considering the debt costs associated with a future water or sewer project
7 which would not benefit existing customers, the commission establishes rates which ensure that the
8 future customers to be served by the new project are solely responsible for the debt costs associated
9 with the project.

10 (c) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
11 commission over water and/or sewer utilities that are political subdivisions of the state providing a
12 separate or combined services and having at least four thousand five hundred customers and annual
13 combined gross revenues of \$3 million or more shall be limited to those powers enumerated in
14 subsection (b), section one of this article.

15 **§24-2-3. General power of commission with respect to rates.**

16 (a) The commission shall have power to enforce, originate, establish, change and promulgate
17 tariffs, rates, joint rates, tolls and schedules for all public utilities except for water and/or sewer
18 utilities that are political subdivisions of this state providing a separate or combined services and
19 having at least four thousand five hundred customers and annual combined gross revenues of \$3
20 million or more: *Provided*, That the commission may exercise such rate authority over municipally
21 owned electric or natural gas utilities or a municipally owned water and/or sewer utility having less
22 than four thousand five hundred customers and \$3 million dollars annual combined gross revenues,
23 only under the circumstances and limitations set forth in section four-b of this article. And whenever
24 the commission shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules
25 enacted or maintained by a utility regulated under the provisions of this section to be unjust,
26 unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions
27 of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls or

1 schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient
2 or unjustly discriminatory or otherwise in violation of any provisions of law, and the said
3 commission, in fixing the rate of any railroad company, may fix a fair, reasonable and just rate to be
4 charged on any branch line thereof, independent of the rate charged on the main line of such railroad.

5 (b) In determining just and reasonable rates, the commission may audit and investigate
6 management practices and policies, or have performed an audit and investigation of such practices
7 and policies, in order to determine whether the utility is operating with efficiency and is utilizing
8 sound management practices. The commission shall adopt rules and regulations setting forth the
9 scope, frequency and application of such audits and investigations to the various utilities subject to
10 its jurisdiction. The commission may include the cost of conducting the management audit in the cost
11 of service of the utility.

12 (c) In determining just and reasonable rates, the commission shall investigate and review
13 transactions between utilities and affiliates. The commission shall limit the total return of the utility
14 to a level which, when considered with the level of profit or return the affiliate earns on transactions
15 with the utility, is just and reasonable.

16 **§24-2-4a. Procedure for changing rates after June 30, 1981.**

17 (a) After June 30, 1981, no public utility subject to this chapter, except for water and/or sewer
18 utilities that are political subdivisions of the state providing separate or combined services and having
19 at least four thousand five hundred customers and annual gross revenue of \$3 million or more from
20 its separate or combined services, shall change, suspend or annul any rate, joint rate, charge, rental
21 or classification except after thirty days' notice to the commission and the public, which notice shall
22 plainly state the changes proposed to be made in the schedule then in force and the time when the
23 changed rates or charges shall go into effect; but the commission may enter an order suspending the
24 proposed rate as hereinafter provided. The proposed changes shall be shown by printing new
25 schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to
26 public inspection: *Provided*, That the commission may, in its discretion, and for good cause shown,
27 allow changes upon less time than the notice herein specified, or may modify the requirements of this

1 section in respect to publishing, posting and filing of tariffs, either by particular instructions or by
2 general order.

3 (b) Whenever there shall be filed with the commission any schedule stating a change in the
4 rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint
5 classification or any new individual or joint regulation or practice affecting any rate or charge, the
6 commission may, either upon complaint or upon its own initiative without complaint, enter upon a
7 hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the
8 commission so orders, it may proceed without answer or other form of pleading by the interested
9 parties, but upon reasonable notice, and, pending such hearing and the decisions thereon, the
10 commission, upon filing with such schedule and delivering to the public utility affected thereby a
11 statement in writing of its reasons for such suspension, may suspend the operation of such schedule
12 and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period
13 than two hundred seventy days beyond the time when such rate, charge, classification, regulation or
14 practice would otherwise go into effect; and after full hearing, whether completed before or after the
15 rate, charge, classification, regulation or practice goes into effect, the commission may make such
16 order in reference to such rate, charge, classification, regulation or practice as would be proper in a
17 proceeding initiated after the rate, charge, classification, regulation or practice had become effective:
18 *Provided*, That in the case of a public utility having two thousand five hundred customers or less and
19 which is not a political subdivision and which is not principally owned by any other public utility
20 corporation or public utility holding corporation, the commission may suspend the operation of such
21 schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a
22 longer period than one hundred twenty days beyond the time when such rate, charge, classification,
23 regulation or practice would otherwise go into effect; and in the case of a public utility having more
24 than two thousand five hundred customers, but not more than five thousand customers, and which is
25 not a political subdivision and which is not principally owned by any other public utility corporation
26 or public utility holding corporation, the commission may suspend the operation of such schedule and
27 defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than
28 one hundred fifty days beyond the time when such rate, charge, classification, regulation or practice

1 would otherwise go into effect; and in the case of a public utility having more than five thousand
2 customers, but not more than seven thousand five hundred customers, and which is not a political
3 subdivision and which is not principally owned by any other public utility corporation or public utility
4 holding corporation, the commission may suspend the operation of such schedule and defer the use
5 of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred
6 eighty days beyond the time when such rate, charge, classification, regulation or practice would
7 otherwise go into effect; and after full hearing, whether completed before or after the rate, charge,
8 classification, regulation or practice goes into effect, the commission may make such order in
9 reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding
10 initiated after the rate, charge, classification, regulation or practice had become effective: *Provided*,
11 *however*, That, in the case of rates established or proposed that increase by less than twenty-five
12 percent of the gross revenue of the regulated public service district, there shall be no suspension
13 period in the case of rates established by a public service district pursuant to section nine, article
14 thirteen-a, chapter sixteen of this code and the proposed rates of public service districts shall go into
15 effect upon the date of filing with the commission, subject to refund modification at the conclusion
16 of the commission proceeding. In the case of rates established or proposed that increase by more than
17 twenty-five percent of the gross revenue of the public service district, the district may apply for, and
18 the commission may grant, a waiver of the suspension period and allow rates to be effective upon the
19 date of filing with the commission. The public service district shall provide notice by Class 1 legal
20 advertisement in a newspaper of general circulation in its service territory of the percentage increase
21 in rates at least fourteen days prior to the effective date of the increased rates. Any refund determined
22 to be determined to be due and owing as a result of any difference between any final rates approved
23 by the commission and the rates placed into effect subject to refund shall be refunded by the public
24 service district as a credit against each customer's account for a period of up to six months after entry
25 of the commission's final order. Any remaining balance which is not fully credited by credit within
26 six months after entry of the commission's final order shall be directly refunded to the customer by
27 check: *Provided further*, That if any such hearing and decision thereon is not concluded within the
28 periods of suspension, as above stated, such rate, charge, classification, regulation or practice shall

1 go into effect at the end of such period not subject to refund: *And provided further*, That if any such
2 rate, charge, classification, regulation or practice goes into effect because of the failure of the
3 commission to reach a decision, the same shall not preclude the commission from rendering a
4 decision with respect thereto which would disapprove, reduce or modify any such proposed rate,
5 charge, classification, regulation or practice, in whole or in part, but any such disapproval, reduction
6 or modification shall not be deemed to require a refund to the customers of such utility as to any rate,
7 charge, classification, regulation or practice so disapproved, reduced or modified. The fact of any rate,
8 charge, classification, regulation or practice going into effect by reason of the commission's failure
9 to act thereon shall not affect the commission's power and authority to subsequently act with respect
10 to any such application or change in any rate, charge, classification, regulation or practice. Any rate,
11 charge, classification, regulation or practice which shall be approved, disapproved, modified or
12 changed, in whole or in part, by decision of the commission shall remain in effect as so approved,
13 disapproved, modified or changed during the period or pendency of any subsequent hearing thereon
14 or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations
15 or practices which have gone into effect automatically at the end of the of the suspension period are
16 prospective in effect.

17 (c) At any hearing involving a rate sought to be increased or involving the change of any rate,
18 charge, classification, regulation or practice, the burden of proof to show the justness and
19 reasonableness of the increased rate or proposed increased rate, or the proposed change of rate,
20 charge, classification, regulation or practice shall be upon the public utility making application for
21 such change. The commission shall, whenever practicable and within budgetary constraints, conduct
22 one or more public hearings within the area served by the public utility making application for such
23 increase or change, for the purpose of obtaining comments and evidence on the matter from local
24 ratepayers.

25 (d) Each public utility subject to the provisions of this section shall be required to establish,
26 in a written report which shall be incorporated into each general rate case application, that it has
27 thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility
28 management, rate design and conservation as reported by the commission under subsection (c),

1 section one, article one of this chapter as alternatives to, or in mitigation of, any rate increase. The
2 utility report shall contain as to each concept considered the reasons for adoption or rejection of each.
3 When in any case pending before the commission all evidence shall have been taken and the hearing
4 completed, the commission shall render a decision in such case. The failure of the commission to
5 render a decision with respect to any such proposed change in any such rate, charge, classification,
6 regulation or practice within the various time periods specified in this section after the application
7 therefor shall constitute neglect of duty on the part of the commission and each member thereof.

8 (e) Where more than twenty members of the public are affected by a proposed change in rates,
9 it shall be a sufficient notice to the public within the meaning of this section if such notice is
10 published as a Class II legal advertisement in compliance with the provisions of article three, chapter
11 fifty-nine of this code and the publication area for such publication shall be the community where the
12 majority of the resident members of the public affected by such change reside or, in case of
13 nonresidents, have their principal place of business within this state.

14 (f) The commission may order rates into effect subject to refund, plus interest in the discretion
15 of the commission, in cases in which the commission determines that a temporary or interim rate
16 increase is necessary for the utility to avoid financial distress, or in which the costs upon which these
17 rates are based are subject to modification by the commission or another regulatory commission and
18 to refund to the public utility. In such case the commission may require such public utility to enter
19 into a bond in an amount deemed by the commission to be reasonable and conditioned upon the
20 refund to the persons or parties entitled thereto of the amount of the excess if such rates so put into
21 effect are subsequently determined to be higher than those finally fixed for such utility.

22 (g) No utility regulated under the provisions of this section may make application for a general
23 rate increase while another general rate application is pending before the commission and not finally
24 acted upon, except pursuant to the provisions of subsection (f) of this section. The provisions of this
25 subsection shall not be construed so as to prohibit any such rate application from being made while
26 a previous application which has been finally acted upon by the commission is pending before or
27 upon appeal to the West Virginia Supreme Court of Appeals.

28 **§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local**

1 **exchange services of telephone cooperatives and municipally operated public**
2 **utilities.**

3 (a) The rates and charges of electric cooperatives, natural gas cooperatives and municipal
4 water and/or sewer utilities that are political subdivisions of the state with at least four thousand five
5 hundred customers and annual combined gross revenue of less than \$3 million dollars, except for
6 municipally operated commercial solid waste facilities as defined in section two, article fifteen,
7 chapter twenty-two of this code, and the rates and charges for local exchange services provided by
8 telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this
9 article, but are subject to the limited rate provisions of this section.

10 (b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally
11 operated public utilities that are political subdivisions of the state providing water, sewer, electric and
12 natural gas services and all rates and charges for local exchange services set by telephone cooperatives
13 shall be just, reasonable, applied without unjust discrimination between or preference for any
14 customer or class of customer and based primarily on the costs of providing these services. All rates
15 and charges shall be based upon the measured or reasonably estimated cost of service and the
16 equitable sharing of those costs between customers based upon the cost of providing the service
17 received by the customer, including a reasonable plant-in-service depreciation expense. The rates and
18 charges shall be adopted by the electric, natural gas, telephone cooperative or political subdivision's
19 governing board or body and, in the case of the municipally operated public utility, by municipal
20 ordinance to be effective not sooner than forty-five days after adoption. The 45-day waiting period
21 may be waived by public vote of the governing body if that body finds and declares the public utility
22 that is a political subdivision of the state to be in financial distress such that the 45-day waiting period
23 would be detrimental to the ability of the utility to deliver continued and compliant public services:
24 *Provided*, That notice of intent to effect a rate change shall be specified on the monthly billing
25 statement of the customers of the utility for the month next preceding the month in which the rate
26 change is to become effective and the utility governing body shall give its customers and, in the case
27 of a cooperative, its customers, members and stockholders, other reasonable notices as will allow
28 filing of timely objections to the proposed rate change and full participation in municipal rate

1 legislation through the provision of a public forum in which customers may comment upon the
2 proposed rate change prior to an enactment vote. The rates and charges or ordinance shall be filed
3 with the commission, together with any information showing the basis of the rates and charges and
4 other information as the commission considers necessary. Any change in the rates and charges with
5 updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2)
6 or (3), subsection (c) of this section, is received and the electric cooperative, natural gas cooperative
7 or telephone cooperative or municipality has failed to file with the commission the rates and charges
8 with information showing the basis of rates and charges and other information as the commission
9 considers necessary, the suspension period limitation of one hundred twenty days and the one
10 hundred-day period limitation for issuance of an order by a hearing examiner, as contained in
11 subsections (d) and (e) of this section, is tolled until the necessary information is filed. The electric
12 cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when
13 any new rate or charge is to go into effect.

14 (c) The commission shall review and approve or modify the rates and charges of electric
15 cooperatives, natural gas cooperatives, telephone cooperatives, or municipal electric or natural gas
16 utilities and municipally owned water and/or sewer utilities that are political subdivisions of the state
17 and having less than four thousand five hundred customers and \$3 million dollars of annual combined
18 gross revenues upon the filing of a petition within thirty days of the adoption of the ordinance or
19 resolution changing the rates or charges by:

20 (1) Any customer aggrieved by the changed rates or charges who presents to the commission
21 a petition signed by not less than twenty-five percent of the customers served by the municipally
22 operated electric or natural gas public utility or municipally owned water and/or sewer utility having
23 less than four thousand five hundred customers and \$3 million dollars annual combined gross
24 revenues or twenty-five percent of the membership of the electric, natural gas or telephone
25 cooperative residing within the state;

26 (2) Any customer who is served by a municipally owned electric or natural gas public utility
27 and who resides outside the corporate limits and who is affected by the change in the rates or charges
28 and who presents to the commission a petition alleging discrimination between customers within and

1 without the municipal boundaries. The petition shall be accompanied by evidence of discrimination;
2 or

3 (3) Any customer or group of customers of the municipally owned electric or natural gas
4 public utility who is affected by the change in rates who reside within the municipal boundaries and
5 who present a petition to the commission alleging discrimination between a customer or group of
6 customers and other customers of the municipal utility. The petition shall be accompanied by
7 evidence of discrimination.

8 (d) (1) The filing of a petition with the commission signed by not less than twenty-five percent
9 of the customers served by the municipally owned electric or natural gas public utility or a
10 municipally owned water and/or sewer utility having less than four thousand five hundred customers
11 or \$3 million dollars annual combined gross revenues or twenty-five percent of the membership of
12 the electric, natural gas or telephone cooperative residing within the state under subsection (c) of this
13 section shall suspend the adoption of the rate change contained in the ordinance or resolution for a
14 period of one hundred twenty days from the date the rates or charges would otherwise go into effect
15 or until an order is issued as provided herein.

16 (2) Upon sufficient showing of discrimination by customers outside the municipal boundaries
17 or a customer or a group of customers within the municipal boundaries under a petition filed under
18 subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of
19 the rate change contained in the ordinance for a period of one hundred twenty days from the date the
20 rates or charges would otherwise go into effect or until an order is issued as provided herein. A
21 municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter or
22 state code that establishes or proposes a rate increase that results in an increase of less than twenty-
23 five percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed to
24 go into effect, subject to refund, upon the date stated in that ordinance. In the case of rates established
25 or proposed that increase by more than twenty-five percent of the gross revenue of the municipally
26 operated public utility, the utility may apply for, and the commission may grant, a waiver of the
27 suspension period and allow rates to be effective upon enactment.

28 (e) The commission shall forthwith appoint a hearing examiner from its staff to review the

1 grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and shall,
2 within one hundred days from the date the rates or charges would otherwise go into effect, unless
3 otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving
4 or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas or telephone
5 cooperative or by the municipally operated public utility pursuant to this section.

6 (f) Upon receipt of a petition for review of the rates under the provisions of subsection (c) of
7 this section, the commission may exercise the power granted to it under the provisions of section three
8 of this article, consistent with the applicable rate provisions of section twenty, article ten, chapter
9 eight of this code, section four, article nineteen of said chapter and section sixteen, article thirteen,
10 chapter sixteen of this code. The commission may determine the method by which the rates are
11 reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural
12 gas or telephone cooperative or municipality requests a hearing.

13 (g) The commission may, upon petition by an electric, natural gas or telephone cooperative
14 or municipal electric or natural gas public utility or a municipally owned water and/or sewer utility
15 having less than four thousand five hundred customers and \$3 million dollars annual combined gross
16 revenues, allow an interim or emergency rate to take effect, subject to refund or future modification,
17 if it is determined that the interim or emergency rate is necessary to protect the municipality from
18 financial hardship attributable to the purchase of the utility commodity sold, or the commission
19 determines that a temporary or interim rate increase is necessary for the utility to avoid financial
20 distress. In such cases, the commission shall waive the 45-day waiting period provided for in
21 subsection (b) of this section and the one hundred twenty-day suspension period provided for in
22 subsection (d) of this section.

23 (h) The commission shall, upon written request of the governing body of a political
24 subdivision, provide technical assistance to the governing body in its deliberations regarding a
25 proposed rate increase.

26 (i) Notwithstanding any other provision, the commission has no authority or responsibility
27 with regard to the regulation of rates, income, services or contracts by municipally operated public
28 utilities for services which are transmitted and sold outside of the State of West Virginia.

1 (j) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
2 commission over water and/or sewer utilities that are political subdivisions of the state and having
3 at least four thousand five hundred customers and annual gross combined revenues of \$3 million or
4 more shall be limited to those powers enumerated in subsection (b), section one of this article.

5 **§24-2-7. Unreasonable, etc., regulations, practices and services; receivership; procedures**
6 **respecting receivership; appointment and compensation of receiver; liquidation.**

7 (a) Whenever, under the provisions of this chapter, the commission shall find any regulations,
8 measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly
9 discriminatory, or otherwise in violation of any provisions of this chapter, or shall find that any
10 service is inadequate, or that any service which is demanded cannot be reasonably obtained, the
11 commission shall determine and declare, and by order fix reasonable measurement, regulations, acts,
12 practices or services, to be furnished, imposed, observed and followed in the state in lieu of those
13 found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise in
14 violation of this chapter, and shall make such other order respecting the same as shall be just and
15 reasonable.

16 (b) If the Public Service Commission shall determine that any utility is unable or unwilling
17 to adequately serve its customers or has been actually or effectively abandoned by its owners, or that
18 its management is grossly and willfully inefficient, irresponsible or unresponsive to the needs of its
19 customers, the commission may petition to the circuit court of any county wherein the utility does
20 business for an order attaching the assets of the utility and placing such utility under the sole control
21 and responsibility of a receiver. If the court determines that the petition is proper in all respects and
22 finds, after a hearing thereon, that the allegations contained in the petition are true, it shall grant the
23 same and shall order that the utility be placed in receivership. The court, in its discretion and in
24 consideration of the recommendation of the commission, shall appoint a receiver who shall be a
25 responsible individual, partnership or corporation knowledgeable in public utility affairs and who
26 shall maintain control and responsibility for the running and management of the affairs of the utility.
27 In so doing, the receiver shall operate the utility so as to preserve the assets of the utility and to serve
28 the best interests of its customers. The receiver shall be compensated from the assets of said utility

1 in an amount to be determined by the court.

2 (c) Control of and responsibility for said utility shall remain in the receiver until the same can,
3 in the best interest of the customers, be returned to the owners, transferred to other owners or assumed
4 by another utility or public service corporation: *Provided*, That if the court after hearing, determines
5 that control of and responsibility for the affairs of the utility should not, in the best interests of its
6 customers, be returned to the legal owners thereof, the receiver shall proceed to liquidate the assets
7 of the utility in the manner provided by law.

8 (d) The laws generally applicable to receivership shall govern receiverships created pursuant
9 to this section.

10 **§24-2-11. Requirements for certificate of public convenience and necessity.**

11 (a) A public utility, person or corporation other than a political subdivision of the state
12 providing water, sewer and/or stormwater services and having at least four thousand five hundred
13 customers and annual gross combined revenues of \$3 million dollars or more may not begin the
14 construction of any plant, equipment, property or facility for furnishing to the public any of the
15 services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise,
16 license or permit from any municipality or other governmental agency, except ordinary extensions
17 of existing systems in the usual course of business, unless and until it shall obtain from the Public
18 Service Commission a certificate of public convenience and necessity authorizing such construction
19 franchise, license or permit.

20 (b) Upon the filing of any application for the certificate, and after hearing, the commission
21 may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of
22 convenience and necessity: *Provided*, That the commission, after it gives proper notice and if no
23 substantial protest is received within thirty days after the notice is given, may waive formal hearing
24 on the application. Notice shall be given by publication which shall state that a formal hearing may
25 be waived in the absence of substantial protest, made within thirty days, to the application. The notice
26 shall be published as a Class I legal advertisement in compliance with the provisions of article three,
27 chapter fifty-nine of this code. The publication area shall be the proposed area of operation.

1 (c) Any public utility, person or corporation subject to the provisions of this section other than
2 a political subdivision of the state providing water and/or sewer services having at least four thousand
3 five hundred customers and combined annual gross revenue of \$3 million dollars or more shall give
4 the commission at least thirty days' notice of the filing of any application for a certificate of public
5 convenience and necessity under this section: *Provided*, That the commission may modify or waive
6 the thirty-day notice requirement and shall waive the thirty-day notice requirement for projects
7 approved by the Infrastructure and Jobs Development Council.

8 (d) The commission shall render its final decision on any application filed under the
9 provisions of this section or section eleven-a of this article within two hundred seventy days of the
10 filing of the application and within ninety days after final submission of any such application for
11 decision following a hearing: *Provided*, That if the application is for authority to construct a water
12 and sewer project and the projected total cost is less than \$10 million, the commission shall render
13 its final decision within two hundred twenty-five days of the filing of the application.

14 (e) The commission shall render its final decision on any application filed under the provisions
15 of this section that has received the approval of the Infrastructure and Jobs Development Council
16 pursuant to article fifteen-a, chapter thirty-one of this code within one hundred eighty days after filing
17 of the application: *Provided*, That if a substantial protest is received within thirty days after the notice
18 is provided pursuant to subsection (b) of this section, the commission shall render its final decision
19 within two hundred seventy days or two hundred twenty-five days of the filing of the application,
20 whichever is applicable as determined in subsection (d) of this section.

21 (f) If the projected total cost of a project which is the subject of an application filed pursuant
22 to this section or section eleven-a of this article is greater than \$50 million, the commission shall
23 render its final decision on any such application filed under the provisions of this section or section
24 eleven-a of this article within four hundred days of the filing of the application and within ninety days
25 after final submission of any such application for decision after a hearing.

26 (g) If a decision is not rendered within the time frames established in this section, the
27 commission shall issue a certificate of convenience and necessity as applied for in the application.

28 (h) The commission shall prescribe rules as it may deem proper for the enforcement of the

1 provisions of this section; and, in establishing that public convenience and necessity do exist, the
2 burden of proof shall be upon the applicant.

3 (i) Pursuant to the requirements of this section, the commission may issue a certificate of
4 public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution
5 company for the transportation in intrastate commerce of natural gas used by any person for one or
6 more uses, as defined by rule, by the commission in the case of:

7 (1) Natural gas sold by a producer, pipeline or other seller to the person; or

8 (2) Natural gas produced by the person.

9 (j) A public utility, including a public service district, which has received a certificate of
10 public convenience and necessity after July 8, 2005, from the commission and has been approved by
11 the Infrastructure and Jobs Development Council is not required to, and cannot be compelled to,
12 reopen the proceeding if the cost of the project changes but the change does not affect the rates
13 established for the project.

14 (k) Any public utility, person or corporation proposing any electric power project that requires
15 a certificate under this section is not required to obtain such certificate before applying for or
16 obtaining any franchise, license or permit from any municipality or other governmental agency.

17 (l) Water, sewer and/or stormwater utilities that are political subdivisions of the state and
18 having at least four thousand five hundred customers and combined gross revenues of \$3 million
19 dollars or more desiring to pursue construction projects that are not in the ordinary course of business
20 shall provide notice to both current customers and those citizens who will be affected by the proposed
21 construction as follows:

22 (1) Adequate prior public notice of the contemplated construction by causing a notice of intent
23 to pursue a project that is not in the ordinary course of business to be specified on the monthly billing
24 statement of the customers of the utility for the month next preceding the month in which the
25 contemplated construction is to be before the governing body on first reading.

26 (2) Adequate prior public notice of the contemplated construction by causing to be published
27 as a Class I legal advertisement of the proposed action, in compliance with the provisions of article
28 three, chapter fifty-nine of the code. The publication area for publication shall be all territory served

1 by the district. If the political subdivision provides service in more than one county, publication shall
2 be made in a newspaper of general circulation in each county that the political subdivision provides
3 service.

4 (3) The public notice of the proposed construction shall state the scope of the proposed
5 construction, the current rates, fees and charges, the proposed changes to said rates, fees and charges;
6 the date, time and place of both a public hearing on the proposal and the proposed final vote on
7 adoption; and the place or places within the political subdivision where the proposed construction and
8 the rates, fees and charges may be inspected by the public. A reasonable number of copies of the
9 proposal shall be kept at the place or places and be made available for public inspection. The notice
10 shall also advise that interested parties may appear at the public hearing before the political
11 subdivision and be heard with respect to the proposed construction and the proposed rates, fees and
12 charges.

13 (4) The proposed construction and the proposed rates, fees and charges shall be read at two
14 meetings of the governing body with at least two weeks intervening between each meeting. The public
15 hearing may be conducted with or following the second reading.

16 (5) Enactment of the proposed construction and the proposed rates, fees and charges shall
17 follow an affirmative vote of the governing body and shall be effective no sooner than forty-five days
18 following the action of the governing body. If the political subdivision proposes rates that will go into
19 effect prior than the completion of construction of the proposed project, the 45-day waiting period
20 may be waived by public vote of the governing body only if the political subdivision finds and
21 declares the political subdivision to be in financial distress such that the 45-day waiting period would
22 be detrimental to the ability of the political subdivision to deliver continued and compliant public
23 services: *Provided*, That in no event shall the rate become effective prior to the date that the county
24 commission has entered an order approving the action of the public service district board.

25 (6) Rates, fees and charges approved by an affirmative vote of the public services district
26 board shall be forwarded in writing to the county commission appointing the approving board. The
27 county commission shall, within forty-five days of receipt of the proposed rates, fees and charges,
28 take action to approve or reject the proposed rates, fees and charges. After forty-five days, and absent

1 action by the county commission, the proposed rates, fees and charges shall be effective with no
2 further action by the board or county commission. In any event this 45-day period may be extended
3 by official action of both the board proposing the rates, fees and charges and the appointing county
4 commission.

5 (7) The county commission shall provide notice to the public by a Class I legal advertisement
6 of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of this
7 code, of the meeting where it shall consider the proposed increases in rates, fees and charges no later
8 than one week prior to the meeting date.

9 **ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO**
10 **REGULATIONS OF COMMISSION.**

11 **§24-3-5. Schedule of rates to be filed with commission.**

12 Every public utility shall file with the commission, and keep open to public inspection,
13 schedules showing all the rates, charges and tolls for service to be rendered by it or by other persons,
14 firms or corporations in connection with it: *Provided*, That the reports and tariffs filed by interstate
15 carriers with the Public Service Commission may be copies of its reports and tariffs filed with the
16 Interstate Commerce Commission; but nothing herein shall preclude the Public Service Commission
17 from requiring interstate carriers to furnish information bearing upon any complaint or question
18 pending before said Public Service Commission and with which it has a right to deal.