

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Committee Substitute

for

Senate Bill 515

BY SENATORS GAUNCH, STOLLINGS, BOSO, AND CLINE

[Originating in the Committee on Government

Organization; Reported on February 22, 2018]

1 A BILL to amend and reenact §8-16-18 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §8-19-2 and §8-19-4 of said code; to amend said code by adding thereto two
3 new sections, designated §8-19-2a and §8-19-2b; to amend and reenact §8-20-10 of said
4 code; to amend and reenact §16-13-16 of said code; to amend and reenact §16-13A-9 of
5 said code; to amend and reenact §24-1-1 of said code; and to amend and reenact §24-2-
6 1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, and §24-2-11 of said code, all relating to the
7 Public Service Commission's jurisdiction over the rates, fees, and charges of municipal
8 utilities; establishing uniformity in the class of publications required by municipalities and
9 public service districts for the revision in rates; updating internal code references;
10 excluding the setting and adjustment of rates, fees, and charges of municipal power
11 systems from the jurisdiction of the Public Service Commission; providing for a right of
12 appeal by customers; providing a time period for the filing of and resolution of complaints
13 filed at the Public Service Commission regarding actions of municipalities; clarifying
14 language regarding rate changes and notice requirements for municipal utilities; clarifying
15 the commission's jurisdiction as modified by chapters 161 and 209, Acts of the Legislature,
16 regular session, 2017, over internet protocol-enabled service, voice-over internet protocol-
17 enabled service, stormwater services by a public service district, political subdivisions
18 providing separate or combined water and/or sewer services, and certain telephone
19 company transactions; and establishing the time period pertaining to the filing of appeals
20 and the resolution of appeals of rate and construction projects decided by county
21 commissions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

PART VI. IMPOSITION OF RATES, FEES, OR CHARGES.

§8-16-18. Rates, fees, or charges for services rendered by works.

1 The governing body shall have plenary power and authority and it shall be its duty, by
2 ordinance, to establish and maintain just and equitable rates, fees, or charges for the use and
3 services rendered, or the improvement or protection of property, not to include highways, road,
4 and drainage easements, and/or stormwater facilities constructed, owned and/or operated by the
5 West Virginia Division of Highways, provided or afforded, by such works, to be paid by the person
6 using the same, receiving the services thereof, or owning the property improved or protected
7 thereby, and may readjust rates, fees, or charges from time to time.

8 When two or more municipalities take joint action under the provisions of this article, the
9 rates, fees, or charges shall be established by each participating municipality, with the
10 concurrence of the other participating municipality or municipalities as to the amount of the rates,
11 fees, or charges, and such rates, fees, or charges may be the same with respect to each
12 municipality, or they may be different.

13 Rates, fees, or charges heretofore or hereafter established and maintained for the
14 improvement or protection of property, not to include highways, road, and drainage easements,
15 and/or stormwater facilities constructed, owned and/or operated by the West Virginia Division of
16 Highways, provided or afforded by a municipal flood control system or flood walls, to be paid by
17 the person owning the property improved or protected thereby, shall be collectible and
18 enforceable from the time provided in any such ordinance, any provision of this or any other law
19 to the contrary notwithstanding, if, at such time, such works, though not yet fully completed, are
20 nearing completion and the governing body is reasonably assured that the works will be
21 completed and placed in operation without unreasonable delay.

22 All rates, fees, or charges shall be sufficient in each year for the payment of the proper
23 and reasonable expenses of repair (including replacements), maintenance and operation of the
24 works, and for the payment of the sums herein required to be paid into the sinking fund. Revenues
25 collected pursuant to the provisions of this section are considered the revenues of the works. No

26 such rates, fees, or charges shall be established until after a public hearing at which all the users
27 of the works and owners of the property served, or to be served thereby, and others interested,
28 shall have an opportunity to be heard concerning the proposed rates, fees, or charges.

29 After introduction of the proposed ordinance fixing the rates, fees, or charges and before
30 the same is finally adopted, notice of such hearing, setting forth the proposed schedule of such
31 rates, fees, or charges, shall be given by publishing the same as a Class I-θ legal advertisement
32 in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for the
33 publication shall be such municipality or each such municipality, as the case may be. Said notice
34 shall be published at least five days before the date fixed in such notice for the hearing, which
35 hearing may be adjourned from time to time. No other or further notice to parties in interest shall
36 be required.

37 After such hearing the ordinance establishing rates, fees, or charges, either as originally
38 proposed or introduced, or as modified and amended, shall be adopted and put into effect. A copy
39 of the schedule of such rates, fees and charges so established shall be kept on file in the office
40 of the board having charge of such works, and also in the office of the governing body or bodies,
41 and shall be open to inspection by all parties in interest.

42 The rates, fees, or charges so established for any class of users or property served shall
43 be extended to cover any additional class of users or property thereafter served which fall within
44 the same class, without the necessity of any hearing or notice. Any change or adjustment of rates,
45 fees, or charges may be made in the same manner as such rates, fees, or charges were originally
46 established as provided in this section. The aggregate of the rates, fees, or charges shall always
47 be sufficient for the expenses of repair (including replacements), maintenance and operation, and
48 for the sinking fund payments.

49 If any rate, fee or charge so established shall not be paid within 30 days after the same is
50 due, the amount thereof, together with a penalty of ten percent and reasonable attorney's fees,
51 may be recovered by the board in a civil action in the name of the municipality or municipalities,

52 and in the case of rates, fees, or charges due for services rendered, such rates, fees, or charges,
53 if not paid when due, may, if the governing body so provide in the ordinance provided for under
54 §8-16-7 of this code, constitute a lien upon the premises served by such works, which lien may
55 be foreclosed against such lot, parcel of land or building so served, in accordance with the laws
56 relating to the foreclosure of liens on real property. Upon failure of any person receiving any such
57 service to pay for the same when due, the board may discontinue such service without notice.

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

PART II. LIMITATIONS ON SALE OR LEASE OF CERTAIN MUNICIPAL WATERWORKS.

**§8-19-2. Contracts for purchase of electric power or energy by a municipality; definitions;
requirements; payments; rates and charges.**

1 (a) For the purposes of this section:

2 (1) "Contract" means an agreement entered into by a municipality with any other party for
3 the purchase of electric output, capacity, or energy from a project as defined herein;

4 (2) "Any other party" means any other legal entity, including, but not limited to, another
5 municipality, political subdivision, public authority, agency, or instrumentality of any state or the
6 United States, a partnership, a limited partnership, a limited liability company, a corporation, an
7 electric cooperative, or an investor-owned utility existing under the laws of any state; and

8 (3) "Project" or "projects" means systems or facilities owned by another party and used for
9 the generation, transmission, transformation, or supply of electric power, or any interest in them,
10 whether an undivided interest as a tenant in common or otherwise, or any right to the output,
11 capacity, or services thereof.

12 (b) In addition to the general authority to purchase electricity on a wholesale basis for
13 resale to its customers, any municipality that owns and operates an electric power system under
14 the provisions of this article may enter into a contract with any other party for the purchase of

15 electricity from one or more projects located in the United States that provides that the contracting
16 municipality is obligated to make payments required by the contract whether or not a project is
17 completed, operable, or operating and notwithstanding the suspension, interruption, interference,
18 reduction, or curtailment of the output of a project or the power and energy contracted for, and
19 that the payments shall not be subject to any reduction, whether by offset or otherwise, and shall
20 not be conditioned upon performance or nonperformance by any other party. The contract may
21 provide that, in the event of a default by the municipality or any other party to the contract in the
22 performance of each entity's obligations under the contract, any nondefaulting municipality or any
23 other party to the contract shall on a pro rata basis succeed to the rights and interests of, and
24 assume the obligations of, the defaulting party.

25 (c) Notwithstanding any other provisions of law, ordinance or charter provision to the
26 contrary, a contract under §8-19-2(b) of this code may extend for more than 50 years or 50 years
27 from the date a project is estimated to be placed into normal continuous operation and the
28 execution and effectiveness of the contract is not subject to any authorizations or approvals by
29 the state or any agency, commission, instrumentality, or political subdivision thereof except as
30 otherwise specifically required by law.

31 (d) A contract §8-19-2(b) of this code may provide that payments by the municipality are
32 made solely from and may be secured by a pledge of and lien upon revenues derived by the
33 municipality from ownership and operation and that payments shall constitute an operating
34 expense of the electric power system. No obligation under the contract shall constitute a legal or
35 equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any
36 of its income, receipts, or revenues, except the revenues of the municipality's electric power
37 system. Neither the faith and credit nor the taxing power of the municipality shall be pledged for
38 the payment of any obligation under the contract.

39 (e) A municipality contracting under the provisions of §8-19-2(b) of this code is obligated
40 to fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other

41 services it sells, furnishes, or supplies through its electric power system in an amount sufficient
42 to provide revenues adequate to meet its obligations under the contract and to pay any and all
43 other amounts payable from or constituting a charge and lien upon the revenues, including the
44 amounts necessary to pay the principal and interest on any municipal bonds issued related to its
45 electric power system: *Provided*, That any change in the rates and charges of the municipality to
46 the customers of the electric power system under the provisions of this section are subject to the
47 provisions and requirements of ~~section four b, article two, chapter twenty-four~~ §8-19-2a of this
48 code and the obligations of the municipality under the contract are costs of providing electric
49 service within the meaning of that section.

§8-19-2a. Procedure for changing rates of municipal electric power systems; legislative findings.

1 All rates, fees, and charges set by municipal electric power systems shall be just,
2 reasonable, applied without unjust discrimination between or preference for any customer or class
3 of customer, and based primarily on the costs of providing these services. All rates and charges
4 shall be based upon the measured or reasonably estimated cost of service and the equitable
5 sharing of those costs between customers based upon the cost of providing the service received
6 by the customer, including a reasonable slant-in-service depreciation expense. The rates and
7 charges shall be adopted by the power system's governing board by municipal ordinance to be
8 effective not sooner than 45 days after adoption. The 45-day waiting period may be waived by
9 public vote of the governing body if that body finds and declares the public utility that is a political
10 subdivision of the state to be in financial distress, such that the 45-day waiting period would be
11 detrimental to the ability of the utility to deliver continued and compliant public services: *Provided*,
12 That notice of intent to effect a rate change shall be specified on the monthly billing statement of
13 the customers of the utility for the month next preceding the month in which the rate change is to
14 become effective, and the governing body shall give its customers other reasonable notices as
15 will allow filing of timely objections to the proposed rate change and full participation in municipal

16 rate legislation through the provision of a public forum in which customers may comment upon
17 the proposed rate change prior to an enactment vote. Notwithstanding the exclusion of municipal
18 power systems' rates, fees, charges, and rate-making process from the jurisdiction of the Public
19 Service Commission, municipal power systems shall submit information regarding their rates,
20 fees, and charges to the commission as set forth in §24-2-9 of this code.

§8-19-2b. Right of appeal by customers.

1 Customers may appeal a rate increase to the circuit court of the county in which the
2 municipality is located on the grounds that the rate ordinance or its passage does not comply with
3 the provisions of this article by filing a petition, signed by at least 25 percent of the customers
4 served by the municipal electric utility. Any petition challenging the ordinance must be filed within
5 30 days following the adoption of the rate ordinance.

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

1 Whenever a municipality or county commission shall, under the provisions of this article,
2 determine to acquire, by purchase or otherwise, construct, establish, extend, or equip a
3 waterworks system or an electric power system, or to construct any additions, betterments, or
4 improvements to any waterworks or electric power system, it shall cause an estimate to be made
5 of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds
6 under the provisions of this article, which ordinance or order shall set forth a brief description of
7 the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest,
8 the time and place of payment and other details in connection with the issuance of the bonds.
9 The bonds shall be in such form and shall be negotiated and sold in such manner and upon such
10 terms as the governing body of such municipality or county commission may, by ordinance or
11 order, specify. All the bonds and the interest thereon shall be exempt from all taxation by this
12 state, or any county, municipality, or county commission, political subdivision or agency thereof.
13 Notwithstanding any other provision of this code to the contrary, the real and personal property

14 which a municipality or county has acquired and constructed according to the provisions of this
15 article, and any leasehold interest therein held by other persons, shall be deemed public property
16 and shall be exempt from taxation by the state, or any county, municipality, or other levying body,
17 so long as the same is owned by the municipality or county: *Provided*, That with respect to electric
18 power systems, this exemption for real and personal property shall be applicable only for the real
19 and personal property: (1) Physically situate within the municipal or county boundaries of the
20 municipality or county which acquired or constructed the electric power system and there was in
21 place prior to the effective date of the amendments to this section made in the year 1992 an
22 agreement between the municipality and the county commission for payments in lieu of tax; or (2)
23 acquired or constructed with the written agreement of the county school board, county
24 commission, and any municipal authority within whose jurisdiction the electric power system is or
25 is to be physically situate. Notwithstanding anything contained in this statute to the contrary, this
26 exemption shall be applicable to any leasehold or similar interest held by persons other than a
27 municipality or county only if acquired or constructed with the written agreement of the county
28 school board, county commission, and any municipal authority within whose jurisdiction the
29 electric power system is or is to be physically situate: *Provided, however*, That payments made
30 to any county commission, county school board, or municipality in lieu of tax pursuant to such an
31 agreement shall be distributed as if the payments resulted from ad valorem property taxation. The
32 bonds shall bear interest at a rate per annum set by the municipality or county commission,
33 payable at such times, and shall be payable as to principal at such times, not exceeding 50 years
34 from their date, and at such place or places, within or without the state, as shall be prescribed in
35 the ordinance or order providing for their issuance. Unless the governing body of the municipality
36 or county commission shall otherwise determine, the ordinance or order shall also declare that a
37 statutory mortgage lien shall exist upon the property so to be acquired, constructed, established,
38 extended, or equipped, fix minimum rates or charges for water or electricity to be collected prior
39 to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or

40 electric power system for the purpose of paying the bonds and interest thereon, which pledge
41 shall definitely fix and determine the amount of revenues which shall be necessary to be set apart
42 and applied to the payment of the principal of and interest upon the bonds and the proportion of
43 the balance of the revenues, which are to be set aside as a proper and adequate depreciation
44 account, and the remainder shall be set aside for the reasonable and proper maintenance and
45 operation thereof. The rates or charges to be charged for the services from the waterworks or
46 electric power system shall be sufficient at all times to provide for the payment of interest upon all
47 bonds and to create a sinking fund to pay the principal thereof as and when the same become
48 due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation
49 of the waterworks or electric power system, and to provide an adequate depreciation fund, and to
50 make any other payments which shall be required or provided for in the ordinance or order
51 authorizing the issuance of said bonds: Provided further, That, the notice given by the municipality
52 or county commission for a change in rates or charges to be charged for the services from the
53 waterworks, shall be provided by a Class I legal advertisement in a newspaper of general
54 circulation in its service territory not less than one week prior to the public hearing of the governing
55 body of the municipality or the county commission required for the approval of the change in rates
56 or charges.

ARTICLE 20. COMBINED SYSTEMS.

§8-20-10. Power and authority of municipality to enact ordinances and make rules and fix rates, fees, or charges; deposit required for new customers; change in rates, fees, or charges; failure to cure delinquency; delinquent rates, discontinuance of service; reconnecting deposit; return of deposit; fees or charges as liens; civil action for recovery thereof; deferral of filing fees and costs in magistrate court action; limitations with respect to foreclosure.

1 (a)(1) The governing body of a municipality availing itself of the provisions of this article
2 shall have plenary power and authority to make, enact and enforce all necessary rules for the

3 repair, maintenance, operation, and management of the combined system of the municipality and
4 for the use thereof. The governing body of a municipality also has the plenary power and authority
5 to make, enact and enforce all necessary rules and ordinances for the care and protection of any
6 such system for the health, comfort, and convenience of the public, to provide a clean water
7 supply, to provide properly treated sewage insofar as it is reasonably possible to do and, if
8 applicable, to properly collecting and controlling the stormwater as is reasonably possible to do:
9 *Provided*, That no municipality may make, enact, or enforce any rule, regulation or ordinance
10 regulating any highways, road, or drainage easements or storm water facilities constructed,
11 owned, or operated by the West Virginia Division of Highways.

12 (2) A municipality has the plenary power and authority to charge the users for the use and
13 service of a combined system and to establish required deposits, rates, fees, or charges for such
14 purpose. Separate deposits, rates, fees, or charges may be fixed for the water and sewer services
15 respectively and, if applicable, the stormwater services, or combined rates, fees or for the
16 combined water and sewer services, and, if applicable, the storm water services. Such deposits,
17 rates, fees, or charges, whether separate or combined, shall be sufficient at all times to pay the
18 cost of repair, maintenance, and operation of the combined system, provide an adequate reserve
19 fund, an adequate depreciation fund, and pay the principal and interest upon all revenue bonds
20 issued under this article. Deposits, rates, fees, or charges shall be established, revised, and
21 maintained by ordinance and become payable as the governing body may determine by
22 ordinance. The rates, fees, or charges shall be changed, from time to time, as necessary,
23 consistent with the provisions of this article: *Provided*, That the notice given by the municipality
24 for a change in rates or charges to be charged for the services from the waterworks, shall be
25 provided by a Class I legal advertisement in the a newspaper of general circulation in its service
26 territory not less than one week prior to the public hearing of the governing body of the municipality
27 required for the approval of the change in rates or charges.

28 (3) All new applicants for service shall indicate to the municipality or governing body

29 whether they are an owner or tenant with respect to the service location. An entity providing
30 stormwater service shall provide a tenant a report of the stormwater fee charged for the entire
31 property and, if appropriate, that portion of the fee to be assessed to the tenant.

32 (4) The municipality or governing body, but only one of them, may collect from all new
33 applicants for service a deposit of \$100 or two twelfths of the average annual usage of the
34 applicant's specific customer class, whichever is greater, to secure the payment of water and
35 sewage service rates, fees and charges in the event they become delinquent as provided in this
36 section. In any case where a deposit is forfeited to pay service rates, fees and charges which
37 were delinquent and the user's service is disconnected or terminated, service may not be
38 reconnected or reinstated by the municipality or governing body until another deposit equal to
39 \$100 or a sum equal to two twelfths of the average usage for the applicant's specific customer
40 class, whichever is greater, is remitted to the municipality or governing body. After 12 months of
41 prompt payment history, the municipality or governing body shall return the deposit to the
42 customer or credit the customer's account with interest at a rate to be set by the Public Service
43 Commission: *Provided*, That where the customer is a tenant, the municipality or governing body
44 is not required to return the deposit until the time the tenant discontinues service with the
45 municipality governing body. Whenever any rates, fees, rentals, or charges for services or
46 facilities furnished remain unpaid for a period of 20 days after they become due, the user of the
47 services and facilities provided is delinquent and the user is liable at law until all rates, fees and
48 charges are fully paid. The municipality or governing body may terminate water services to a
49 delinquent user of either water or sewage facilities, or both, 10 days after the water or sewage
50 services become delinquent regardless of whether the governing body utilizes the security deposit
51 to satisfy any delinquent payments: *Provided, however*, That any termination of water service
52 must comply with all rules and orders of the Public Service Commission: *Provided further*, That
53 nothing contained within the rules of the Public Service Commission shall be deemed to require
54 any agents or employees of the municipality or governing body to accept payment at the

55 customer's premises in lieu of discontinuing service for a delinquent bill.

56 (b) Whenever any rates, fees, or charges for services or facilities furnished remain unpaid
57 for a period of 20 days after they become due, the user of the services and facilities provided shall
58 be delinquent and the municipality or governing body may apply any deposit against any
59 delinquent fee. The user is liable until such time as all rates, fees and charges are fully paid.

60 (c) All rates, fees, or charges for water service, sewer service and, if applicable,
61 stormwater service, whenever delinquent, as provided by ordinance of the municipality, shall be
62 liens of equal dignity, rank and priority with the lien on such premises of state, county, school and
63 municipal taxes for the amount thereof upon the real property served. The municipality has the
64 plenary power and authority to enforce such lien in a civil action to recover the money due for
65 services rendered plus court fees and costs and reasonable attorney's fees: *Provided*, That an
66 owner of real property may not be held liable for the delinquent rates, fees, or charges for services
67 or facilities of a tenant, nor shall any lien attach to real property for the reason of delinquent rates,
68 fees, or charges for services or facilities of a tenant of the real property, unless the owner has
69 contracted directly with the municipality to purchase such services or facilities.

70 (d) Municipalities are hereby granted a deferral of filing fees or other fees and costs
71 incidental to filing an action in magistrate court for collection of the delinquent rates and charges.
72 If the municipality collects the delinquent account, plus fees and costs, from its customer or other
73 responsible party, the municipality shall pay to the magistrate court the filing fees or other fees
74 and costs which were previously deferred.

75 (e) No municipality may foreclose upon the premises served by it for delinquent rates,
76 fees, or charges for which a lien is authorized by this section except through a civil action in the
77 circuit court of the county wherein the municipality lies. In every such action, the court shall be
78 required to make a finding based upon the evidence and facts presented that the municipality has
79 exhausted all other remedies for collection of debts with respect to such delinquencies prior to
80 bringing the action. In no event shall foreclosure procedures be instituted by any municipality or

81 on its behalf unless the delinquency has been in existence or continued for a period of two years
82 from the date of the first delinquency for which foreclosure is being sought.

83 (f) Notwithstanding any other provision contained in this article, a municipality which has
84 been designated by the Environmental Protection Agency as an entity to serve a West Virginia
85 Separate Storm Sewer System community, as defined in 40 C.F.R. §122.26, has the authority to
86 enact ordinances or regulations which allow for the issuance of orders, the right to enter properties
87 and the right to impose reasonable fines and penalties regarding correction of violations of
88 municipal stormwater ordinances or regulations within the municipal watershed served by the
89 municipal stormwater system, as long as such rules, regulations, fines, or acts are not contrary to
90 any rules or orders of the Public Service Commission.

91 (g) Notice of a violation of a municipal stormwater ordinance or regulation shall be served
92 in person to the alleged violator or by certified mail, return receipt requested. The notice shall
93 state the nature of the violation, the potential penalty, the action required to correct the violation
94 and the time limit for making the correction. Should a person, after receipt of proper notice, fail to
95 correct violation of the municipal stormwater ordinance or regulation, the municipality may correct
96 or have the corrections of the violation made and bring the party into compliance with the
97 applicable stormwater ordinance or regulation. The municipality may collect the costs of correcting
98 the violation from the person by instituting a civil action, as long as such actions are not contrary
99 to any rules or orders of the Public Service Commission.

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

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant’s deposit; change or readjustment; hearing; lien and recovery; discontinuance of services.

1 A governing body has the power and duty, by ordinance, to establish and maintain just
2 and equitable rates, fees, or charges for the use of and the service rendered by:

3 (a) Sewerage works, to be paid by the owner of each and every lot, parcel of real estate,
4 or building that is connected with and uses such works by or through any part of the sewerage
5 system of the municipality or that in any way uses or is served by such works; and

6 (b) Stormwater works, to be paid by the owner of each and every lot, parcel of real estate,
7 or building that in any way uses or is served by such stormwater works or whose property is
8 improved or protected by the stormwater works or any user of such stormwater works.

9 (c) The governing body may change and readjust such rates, fees, or charges from time
10 to time. However, no rates, fees, or charges for stormwater services may be assessed against
11 highways, road and drainage easements or stormwater facilities constructed, owned, or operated
12 by the West Virginia Division of Highways.

13 (d) All new applicants for service shall indicate to the governing body whether they are an
14 owner or tenant with respect to the service location. An entity providing stormwater service shall
15 provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate,
16 that portion of the fee to be assessed to the tenant.

17 (e) The governing body may collect from all new applicants for service a deposit of \$50 or
18 two twelfths of the average annual usage of the applicant’s specific customer class, whichever is
19 greater, to secure the payment of service rates, fees and charges in the event they become
20 delinquent as provided in this section. In any case where a deposit is forfeited to pay service
21 rates, fees and charges which were delinquent at the time of disconnection or termination of

22 service, service may not be reconnected or reinstated by the governing body until another deposit
23 equal to \$50 or a sum equal to two twelfths of the average usage for the applicant's specific
24 customer class, whichever is greater, is remitted to the governing body. After 12 months of prompt
25 payment history, the governing body shall return the deposit to the customer or credit the
26 customer's account with interest at a rate as the Public Service Commission may prescribe:
27 *Provided*, That where the customer is a tenant, the governing body is not required to return the
28 deposit until the time the tenant discontinues service with the governing body. Whenever any
29 rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of 20
30 days after they become due, the user of the services and facilities provided is delinquent. The
31 user is liable until all rates, fees and charges are fully paid. The governing body may, under
32 reasonable rules promulgated by the Public Service Commission, shut off and discontinue water
33 services to a delinquent user of sewer facilities 10 days after the sewer services become
34 delinquent regardless of whether the governing body utilizes the security deposit to satisfy any
35 delinquent payments: *Provided, however*, That nothing contained within the rules of the Public
36 Service Commission shall be deemed to require any agents or employees of the governing body
37 to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

38 (f) Such rates, fees, or charges shall be sufficient in each year for the payment of the
39 proper and reasonable expense of operation, repair, replacements, and maintenance of the works
40 and for the payment of the sums herein required to be paid into the sinking fund. Revenues
41 collected pursuant to this section shall be considered the revenues of the works.

42 (g) No such rates, fees, or charges shall be established until after a public hearing, at
43 which all the users of the works and owners of property served or to be served thereby and others
44 interested shall have an opportunity to be heard concerning the proposed rates, fees, or charges.

45 (h) After introduction of the ordinance fixing such rates, fees, or charges, and before the
46 same is finally enacted, notice of such hearing, setting forth the proposed schedule of rates, fees,
47 or charges, shall be given by publication as a Class H-1-0 legal advertisement in compliance with

48 the provisions of §59-3-1 *et seq.* of this code and the publication area for such publication shall
49 be the municipality. The first publication shall be made at least ~~ten~~ five days before the date fixed
50 in the notice for the hearing.

51 (i) After the hearing, which may be adjourned, from time to time, the ordinance establishing
52 rates, fees, or charges, either as originally introduced or as modified and amended, shall be
53 passed and put into effect. A copy of the schedule of the rates, fees and charges shall be kept on
54 file in the office of the board having charge of the operation of such works, and also in the office
55 of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates,
56 fees, or charges established for any class of users or property served shall be extended to cover
57 any additional premises thereafter served which fall within the same class, without the necessity
58 of any hearing or notice.

59 (j) Any change or readjustment of such rates, fees, or charges may be made in the same
60 manner as the rates, fees, or charges were originally established as hereinbefore provided:
61 *Provided*, That if a change or readjustment be made substantially pro rata, as to all classes of
62 service, no hearing or notice shall be required. The aggregate of the rates, fees, or charges shall
63 always be sufficient for the expense of operation, repair and maintenance and for the sinking fund
64 payments.

65 (k) All rates, fees, or charges, if not paid when due, shall constitute a lien upon the
66 premises served by such works. If any service rate, fees or charge is not paid within 20 days after
67 it is due, the amount thereof, together with a penalty of 10 percent and a reasonable attorney's
68 fee, may be recovered by the board in a civil action in the name of the municipality. The lien may
69 be foreclosed against such lot, parcel of land, or building in accordance with the laws relating
70 thereto. Where both water and sewer services are furnished by any municipality to any premises,
71 the schedule of charges may be billed as a single amount or individually itemized and billed for
72 the aggregate thereof.

73 (l) Whenever any rates, rentals, fees or charges for services or facilities furnished shall

74 remain unpaid for a period of 20 days after they become due, the property and the owner thereof,
75 as well as the user of the services and facilities shall be delinquent until such time as all rates,
76 fees and charges are fully paid. When any payment for rates, rentals, fees or charges becomes
77 delinquent, the governing body may use the security deposit to satisfy the delinquent payment.

78 (m) The board collecting the rates, fees, or charges shall be obligated under reasonable
79 rules to shut off and discontinue both water and sewer services to all delinquent users of water,
80 sewer or stormwater facilities and shall not restore either water facilities or sewer facilities to any
81 delinquent user of any such facilities until all delinquent rates, fees, or charges for water, sewer
82 and stormwater facilities, including reasonable interest and penalty charges, have been paid in
83 full, as long as such actions are not contrary to any rules or orders of the Public Service
84 Commission: *Provided*, That nothing contained within the rules of the Public Service Commission
85 shall be deemed to require any agents or employees of the municipality or governing body to
86 accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

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

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

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

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

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

16 (D) Any combination of §16-13A-9(a)(1)(A), §16-13A-9(a)(1)(B), and §16-13A-9(a)(1)(C)
17 of this code; or

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

23 (2) In accordance with the provisions set forth in §24-1-1(j) of this code, after July 1, 2018,
24 the board of a public service district providing water or sewer service separately or in combination
25 with at least four thousand five hundred customers and annual combined gross revenue of \$3
26 million or more from its separate or combined water and sewer services may make, enact, and
27 enforce all needful rules in connection with the enactment or amendment of rates, fees and
28 charges of the district. At a minimum, these rules shall provide for:

29 (A) Adequate prior public notice of the contemplated rates, fees and charges by causing
30 a notice of intent to effect such a change to be provided to the customers of the district for the
31 month immediately preceding the month in which the contemplated change is to be considered
32 at a hearing by the board. Such notice shall include a statement that a change in rates, fees and
33 charges is being considered, the time, date, and location of the hearing of the board at which the
34 change will be considered and that the proposed rates, fees and charges are on file at the office
35 of the district for review during regular business hours. Such notice shall be printed on, or mailed
36 with, the monthly billing statement, or provided in a separate mailing.

37 (B) Adequate prior public notice of the contemplated rates, fees and charges by causing
38 to be published, after the first reading and approval of a resolution of the board considering such
39 revised rates, fees and charges but not less than one week prior to the public hearing of the board
40 on such resolution, as a Class I legal advertisement, of the proposed action, in compliance with
41 the provisions of §59-3-1 *et seq.* of the code. The publication area for publication shall be all
42 territory served by the district. If the district provides service in more than one county, publication
43 shall be made in a newspaper of general circulation in each county that the district provides
44 service.

45 (C) The public notice of the proposed action shall summarize the current rates, fees and
46 charges and the proposed changes to said rates, fees and charges; the date, time and place of
47 the public hearing on the resolution approving such revised rates, fees and charges; and the place
48 or places within the district where the proposed resolution approving the revised rates, fees and
49 charges may be inspected by the public. A reasonable number of copies of the proposed
50 resolution shall be kept at the place or places and be made available for public inspection. The
51 notice shall also advise that interested parties may appear at the public hearing before the board
52 and be heard with respect to the proposed revised rates, fees and charges.

53 (D) The resolution proposing the revised rates, fees and charges shall be read at two
54 meetings of the board with at least two weeks intervening between each meeting. The public
55 hearing may be conducted by the board prior to, or at, the meeting at which the resolution is
56 considered for adoption on the second reading.

57 (E) Rates, fees and charges approved by resolution of the board shall be forwarded in
58 writing to the county commission with the authority to appoint the members of the board. The
59 county commission shall publish notice of the proposed revised rates, fees and charges by a
60 Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of the code. Within
61 45 days of receipt of the proposed rates, fees and charges, the county commission shall take
62 action to approve, modify, or reject the proposed rates, fees and charges, in its sole discretion. If,

63 after 45 days, the county commission has not taken final action to approve, modify, or reject the
64 proposed rates, fees and charges, as presented to the county commission, shall be effective with
65 no further action by the board or county commission. In any event, this 45-day period shall be
66 mandatory unless extended by the official action of both the board proposing the rates, fees and
67 charges, and the appointing county commission.

68 (F) Enactment of the proposed or modified rates, fees and charges shall follow an
69 affirmative vote by the county commission and shall be effective no sooner than 45 days following
70 action. The 45-day waiting period may be waived by public vote of the county commission only if
71 the commission finds and declares the district to be in financial distress such that the 45-day
72 waiting period would be detrimental to the ability of the district to deliver continued and compliant
73 public services.

74 (G) The public service district, or a customer aggrieved by the changed rates or charges
75 who presents to the circuit court a petition signed by ~~at least 750 customers or~~ 25 percent of the
76 customers served by the public service district ~~whichever is fewer~~ when dissatisfied by the
77 approval, modification, or rejection by the county commission of the proposed rates, fees and
78 charges under the provisions of this subdivision may file a complaint regarding the rates, fees and
79 charges resulting from the action of, or failure to act by, the county commission in the circuit court
80 of the county in which the county commission sits: *Provided*, That any complaint or petition filed
81 hereunder shall be filed within 30 days of the county commission's final action approving,
82 modifying or rejecting such rates, fees and charges, or the expiration of the 45-day period from
83 the receipt by the county commission, in writing, of the rates, fees and charges approved by
84 resolution of the board, without final action by the county commission to approve, modify, or reject
85 such rates, fees and charges, and the circuit court shall resolve said complaint: *Provided*,
86 *however*, That the rates, fees and charges so fixed by the county commission, or those adopted
87 by the district upon which the county commission failed to act, shall remain in full force and effect,
88 until set aside, altered or amended by the circuit court in an order to be followed in the future.

89 (3) Where water, sewer, stormwater or gas services, or any combination thereof, are all
90 furnished to any premises, the schedule of charges may be billed as a single amount for the
91 aggregate of the charges. The board shall require all users of services and facilities furnished by
92 the district to designate on every application for service whether the applicant is a tenant or an
93 owner of the premises to be served. If the applicant is a tenant, he or she shall state the name
94 and address of the owner or owners of the premises to be served by the district. Notwithstanding
95 the provisions of §24-3-8 or this code to the contrary, all new applicants for service shall deposit
96 the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific
97 customer class or \$50, with the district to secure the payment of service rates, fees and charges
98 in the event they become delinquent as provided in this section. If a district provides both water
99 and sewer service, all new applicants for service shall deposit the greater of a sum equal to two
100 twelfths of the average annual usage for water service or \$50 and the greater of a sum equal to
101 two twelfths of the average annual usage for wastewater service of the applicant's specific
102 customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees and
103 charges which were delinquent at the time of disconnection or termination of service, no
104 reconnection or reinstatement of service may be made by the district until another deposit equal
105 to the greater of a sum equal to two twelfths of the average usage for the applicant's specific
106 customer class or \$50 has been remitted to the district. After 12 months of prompt payment
107 history, the district shall return the deposit to the customer or credit the customer's account at a
108 rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a
109 tenant, the district is not required to return the deposit until the time the tenant discontinues service
110 with the district. Whenever any rates, fees, rentals, or charges for services or facilities furnished
111 remain unpaid for a period of 20 days after the same become due and payable, the user of the
112 services and facilities provided is delinquent and the user is liable at law until all rates, fees and
113 charges are fully paid. The board may, under reasonable rules promulgated by the Public Service
114 Commission, shut off and discontinue water or gas services to all delinquent users of either water

115 or gas facilities, or both, 10 days after the water or gas services become delinquent: *Provided,*
116 *however,* That nothing contained within the rules of the Public Service Commission shall be
117 deemed to require any agents or employees of the board to accept payment at the customer's
118 premises in lieu of discontinuing service for a delinquent bill.

119 (b) In the event that any publicly or privately owned utility, city, incorporated town, other
120 municipal corporation or other public service district included within the district owns and operates
121 separately water facilities, sewer facilities or stormwater facilities and the district owns and
122 operates another kind of facility, either water or sewer, or both, as the case may be, then the
123 district and the publicly or privately owned utility, city, incorporated town, or other municipal
124 corporation or other public service district shall covenant and contract with each other to shut off
125 and discontinue the supplying of water service for the nonpayment of sewer or stormwater service
126 fees and charges: *Provided,* That any contracts entered into by a public service district pursuant
127 to this section shall be submitted to the Public Service Commission for approval. Any public
128 service district which provides water and sewer service, water and stormwater service or water,
129 sewer, and stormwater service has the right to terminate water service for delinquency in payment
130 of water, sewer or stormwater bills. Where one public service district is providing sewer service
131 and another public service district or a municipality included within the boundaries of the sewer
132 or stormwater district is providing water service and the district providing sewer or stormwater
133 service experiences a delinquency in payment, the district or the municipality included within the
134 boundaries of the sewer or stormwater district that is providing water service, upon the request of
135 the district providing sewer or stormwater service to the delinquent account, shall terminate its
136 water service to the customer having the delinquent sewer or stormwater account: *Provided,*
137 *however,* That any termination of water service must comply with all rules and orders of the Public
138 Service Commission: *Provided further,* That nothing contained within the rules of the Public
139 Service Commission shall be deemed to require any agents or employees of the public service
140 districts to accept payment at the customer's premises in lieu of discontinuing service for a

141 delinquent bill.

142 (c) Any district furnishing sewer facilities within the district may require or may, by petition
143 to the circuit court of the county in which the property is located, compel or may require the
144 Division of Health to compel all owners, tenants, or occupants of any houses, dwellings, and
145 buildings located near any sewer facilities where sewage will flow by gravity or be transported by
146 other methods approved by the Division of Health, including, but not limited to, vacuum and
147 pressure systems, approved under the provisions of §16-1-9 of this code, from the houses,
148 dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to
149 cease the use of all other means for the collection, treatment and disposal of sewage and waste
150 matters from the houses, dwellings and buildings where there is gravity flow or transportation by
151 any other methods approved by the Division of Health, including, but not limited to, vacuum and
152 pressure systems, approved under the provisions of §16-1-9 of this code and the houses,
153 dwellings, and buildings can be adequately served by the sewer facilities of the district and it is
154 declared that the mandatory use of the sewer facilities provided for in this subsection is necessary
155 and essential for the health and welfare of the inhabitants and residents of the districts and of the
156 state. If the public service district requires the property owner to connect with the sewer facilities
157 even when sewage from dwellings may not flow to the main line by gravity and the property owner
158 incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the
159 main sewer line, the public service district board shall authorize the district to pay all reasonable
160 costs for the changes in the exterior plumbing, including, but not limited to, installation, operation,
161 maintenance and purchase of a pump or any other method approved by the Division of Health.
162 Maintenance and operation costs for the extra installation should be reflected in the users charge
163 for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the
164 petition by summary hearing to be held not later than 30 days after service of petition to the
165 appropriate owners, tenants, or occupants.

166 (d) Whenever any district has made available sewer facilities to any owner, tenant, or

167 occupant of any house, dwelling, or building located near the sewer facility and the engineer for
168 the district has certified that the sewer facilities are available to and are adequate to serve the
169 owner, tenant, or occupant and sewage will flow by gravity or be transported by other methods
170 approved by the Division of Health from the house, dwelling, or building into the sewer facilities,
171 the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for
172 services established under this article only after 30 days' notice of the availability of the facilities
173 has been received by the owner, tenant, or occupant. Rates and charges for sewage services
174 shall be based upon actual water consumption or the average monthly water consumption based
175 upon the owner's, tenant's or occupant's specific customer class.

176 (e) The owner, tenant, or occupant of any real property may be determined and declared
177 to be served by a stormwater system only after each of the following conditions is met: (1) The
178 district has been designated by the Environmental Protection Agency as an entity to serve a West
179 Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the
180 district's authority has been properly expanded to operate and maintain a stormwater system; (3)
181 the district has made available a stormwater system where stormwater from the real property
182 affects or drains into the stormwater system; and (4) the real property is located in the Municipal
183 Separate Storm Sewer System's designated service area. It is further hereby found, determined
184 and declared that the mandatory use of the stormwater system is necessary and essential for the
185 health and welfare of the inhabitants and residents of the district and of the state. The district may
186 charge and the owner, tenant, or occupant shall pay the rates, fees and charges for stormwater
187 services established under this article only after 30 days' notice of the availability of the
188 stormwater system has been received by the owner. An entity providing stormwater service shall
189 provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate,
190 that portion of the fee to be assessed to the tenant.

191 (f) All delinquent fees, rates and charges of the district for either water facilities, sewer
192 facilities, gas facilities, or stormwater systems or stormwater management programs are liens on

193 the premises served of equal dignity, rank, and priority with the lien on the premises of state,
194 county, school and municipal taxes. Nothing contained within the rules of the Public Service
195 Commission shall be deemed to require any agents or employees of the public service districts
196 to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.
197 In addition to the other remedies provided in this section, public service districts are granted a
198 deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an
199 action in magistrate court for the collection of delinquent water, sewer, stormwater, or gas bills. If
200 the district collects the delinquent account, plus reasonable costs, from its customer or other
201 responsible party, the district shall pay to the magistrate the normal filing fee and reasonable
202 costs which were previously deferred. In addition, each public service district may exchange with
203 other public service districts a list of delinquent accounts: *Provided*, That an owner of real property
204 may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor
205 may any lien attach to real property for the reason of delinquent rates or charges for services or
206 facilities of a tenant of the real property unless the owner has contracted directly with the public
207 service district to purchase the services or facilities.

208 (g) Anything in this section to the contrary notwithstanding, any establishment, as defined
209 in §22-11-3 of this code, now or hereafter operating its own sewage disposal system pursuant to
210 a permit issued by the Department of Environmental Protection, as prescribed by §22-11-11 of
211 this code, is exempt from the provisions of this section.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

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

1 (a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon
2 the Public Service Commission of this state the authority and duty to enforce and regulate the

3 practices, 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
9 with state needs and in ways consistent with the productive use of the state's energy resources,
10 such as 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 §24-2A-1 *et seq.* of this code and based primarily on the costs of providing these
14 services;

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

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

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

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

29 interested persons the opportunity to comment and shall report to the Governor and the
30 Legislature regarding its findings and policies to each of these areas not later than the first day of
31 the regular session of the Legislature in the year 1985, and every two years thereafter.

32 (d) It is legislative policy to ensure that the Legislature and the general public become
33 better informed regarding the regulation of public utilities in this state and the conduct of the
34 business of the Public Service Commission. To aid in the achievement of this policy, the Public
35 Service Commission annually shall present to the Joint Committee on Government and Finance,
36 created by §4-3-1 *et seq.* of this code, or a subcommittee designated by the joint committee, a
37 management summary report which describes in a concise manner:

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

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

41 (3) The current balance of supply and demand for natural gas and electric utility services
42 in the state and forecast of the probable balance for the next 10 years; and

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

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

49 (1) The extent to which natural gas wells or wells heretofore supplying gas utilities in this
50 state have been capped off or shut in; the number of such wells; their probable extent of future
51 production and the reasons given and any justification for capping off or shutting in such wells;
52 the reasons, if any, why persons engaged or heretofore engaged in the development of gas wells
53 in this state or the Appalachian areas have been discouraged from drilling, developing, or selling
54 the production of such wells; and whether there are fixed policies by any utility or group of utilities

55 to avoid the purchase of natural gas produced in the Appalachian region of the United States
56 generally and in West Virginia specifically.

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

58 (3) The cumulative effect of the practices mentioned in §24-1-1(e)(1) and §24-1-1(e)(2) of
59 this code upon rates theretofore and hereafter charged gas utility customers in West Virginia. In
60 carrying out the provisions of this section the commission shall have jurisdiction over such
61 persons, whether public utilities or not, as may be in the opinion of the commission necessary to
62 the exercise of its mandate and may compel attendance before it, take testimony under oath and
63 compel the production of papers or other documents. Upon reasonable request by the
64 commission, all other state agencies shall cooperate with the commission in carrying out the
65 provisions and requirements of this subsection.

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

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

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

75 (3) The means and procedures by which the division to be created pursuant to the
76 provisions of §24-1-1(f)(2) of this code shall protect the interests of each class of customers and
77 the means by which the commission will assure that such division will be financially and
78 departmentally independent of the division created by §24-1-1(f)(1) of this code;

79 (4) The creation of a division within the Public Service Commission which shall assume
80 the duties and responsibilities now charged to the commissioners with regard to motor carriers

81 which division shall exist separately from those divisions set out in §24-1-1(f)(1) and §24-1-1(f)(2)
82 of this code and which shall relieve the commissioners of all except minimal administrative
83 responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve
84 the commissioners from hearing motor carrier cases;

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

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

94 Such plan shall be based on the concept that each of the divisions mentioned in
95 subdivisions §24-1-1(f)(1), §24-1-1(f)(2) and §24-1-1(f)(4) of this code shall exist independently
96 of the others and the plan shall discourage ex parte communications between them by such
97 means as the commission shall direct, including, but not limited to, separate clerical and
98 professional staffing for each division. Further, the Public Service Commission is directed to
99 incorporate within the said plan to the fullest extent possible the recommendations presented to
100 the subcommittee on the Public Service Commission of the Joint Committee on Government and
101 Finance in a final report dated February 1979, and entitled A Plan for Regulatory Reform and
102 Management Improvement.

103 The commission shall, before January 5, 1980, adopt said plan by order, which order shall
104 promulgate the same as a rule of the commission to be effective upon the date specified in said
105 order, which date shall be no later than December 31, 1980. Certified copies of such order and
106 rule shall be filed on the first day of the 1980 regular session of the Legislature, by the chairman

107 of the commission with the clerk of each house of the Legislature, the Governor and the Secretary
108 of State. The chairman of the commission shall also file with the office of the Secretary of State
109 the receipt of the clerk of each house and of the Governor, which receipt shall evidence
110 compliance with this section.

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

114 Within the limits of funds appropriated therefor, the rule of the Public Service Commission
115 shall be effective upon the date specified in the order of the commission promulgating it unless
116 an alternative plan be adopted by general law or unless the rule is disapproved by a concurrent
117 resolution of the Legislature adopted prior to adjournment sine die of the regular session of the
118 Legislature to be held in the year 1980: *Provided*, That if such rule is approved in part and
119 disapproved in part by a concurrent resolution of the Legislature adopted prior to such
120 adjournment, such rule shall be effective to the extent and only to the extent that the same is
121 approved by such concurrent resolution.

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

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

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

132 (2) The Legislature further finds that the practices of natural gas utilities in purchasing

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

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

142 (i) The Legislature further finds that transactions between utilities and affiliates are a
143 contributing factor to the increase in natural gas and electricity prices and tend to confuse
144 consideration of a proper rate of return calculation. The Legislature therefore finds that it is
145 imperative that the Public Service Commission have the opportunity to properly study the issue
146 of proper rate of return for lengthy periods of time and to limit the return of a utility to a proper
147 level when compared to return or profit that affiliates earn on transactions with sister utilities.

148 (j) The Legislature further finds that, effective July 1, 2018, water and sewer utilities that
149 are political subdivisions of the state providing separate or combined services and having annual
150 gross revenues of \$1 million or more from either water or sewer services or from a combination
151 of both water and sewer services; and, effective July 1, 2020, water and sewer utilities that are
152 political subdivisions of the state providing separate or combined services and having annual
153 gross revenues of \$200,000 or more from either water or sewer services or from a combination
154 of both water and sewer services; and, effective July 1, 2022, all water and sewer utilities that are
155 political subdivisions of the state ~~water and sewer utilities that are political subdivisions of the~~
156 ~~state providing separate or combined services and having at least four thousand five hundred~~
157 ~~customers and annual gross revenues of \$3 million or more~~ are most fairly and effectively
158 regulated by the local governing body with respect to rates, borrowing and capital projects.

159 Therefore, notwithstanding any contrary provisions of this section, the jurisdiction of the Public
160 Service Commission over water and sewer utilities that are political subdivisions of the state is
161 limited to that granted specifically in this code.

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

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

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

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

3 ~~Common carriage of passengers or goods, whether by air, railroad, street railroad, motor~~
4 ~~or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water~~
5 ~~or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and~~
6 ~~all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor~~
7 ~~car services; transmission of messages by telephone, telegraph or radio; generation and~~
8 ~~transmission of electrical energy by hydroelectric or other utilities for service to the public, whether~~
9 ~~directly or through a distributing utility; supplying water, gas or electricity by municipalities or~~
10 ~~others; sewer systems servicing twenty-five or more persons or firms other than the owner of the~~
11 ~~sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide~~
12 ~~sewer service by an innovative, alternative method, as defined by the federal Environmental~~
13 ~~Protection Agency, the innovative, alternative method is a public utility function and subject to the~~
14 ~~jurisdiction of the Public Service Commission regardless of the number of customers served by~~
15 ~~the innovative, alternative method; any public service district created under the provisions of~~

16 ~~article thirteen-a, chapter sixteen of this code, except that the Public Service Commission will~~
17 ~~have no jurisdiction over the provision of stormwater services by a public service district; toll~~
18 ~~bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however,*~~
19 ~~That natural gas producers who provide natural gas service to not more than twenty-five~~
20 ~~residential customers are exempt from the jurisdiction of the commission with regard to the~~
21 ~~provisions of such residential service: *Provided further,* That upon request of any of the customers~~
22 ~~of such natural gas producers, the commission may, upon good cause being shown, exercise~~
23 ~~such authority as the commission may deem appropriate over the operation, rates and charges~~
24 ~~of such producer and for such length of time as the commission may consider to be proper.~~

25 ~~(b) The jurisdiction of the commission over political subdivisions of this state providing~~
26 ~~separate or combined water and/or sewer services and having at least four thousand five hundred~~
27 ~~customers and annual combined gross revenues of \$3 million or more that are political~~
28 ~~subdivisions of the state is limited to:~~

29 ~~(1) General supervision of public utilities, as granted and described in section five of this~~
30 ~~article;~~

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

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

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

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

40 ~~(6) Investigation and resolution of disputes between a political subdivision of the state~~
41 ~~providing wholesale water and/or wastewater treatment or other services, whether by contract or~~

42 through a tariff, and its customer or customers, including, but not limited to, rates, fees and
43 charges, service areas and contested utility combinations. Provided, that any request for an
44 investigation related to such a dispute that is based on the act or omission of the political
45 subdivision shall be filed within 30 days of the act or omission of the political subdivision and the
46 commission shall resolve said dispute within 120 days of filing. The one hundred twenty day
47 period for resolution of the dispute may be tolled by the Commission until the necessary
48 information showing the basis of the rates, fees and charges or other information as the
49 commission considers necessary is filed. Provided further, the disputed rates, fees and charges
50 so fixed by the political subdivision providing separate or combined water and/or sewer services
51 shall remain in full force and effect until set aside, altered or amended by the commission in an
52 order to be followed in the future.

53 (7) Customers of water and sewer utilities operated by a political subdivision of the state
54 may bring formal or informal complaints regarding the commission's exercise of the powers
55 enumerated in this section and the commission shall resolve these complaints

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

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

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

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

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

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

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

74 ~~(1) An owner or operator of an electric generating facility located or to be located in this~~
75 ~~state that has been designated as an exempt wholesale generator under applicable federal law,~~
76 ~~or will be so designated prior to commercial operation of the facility, and for which such facility~~
77 ~~the owner or operator holds a certificate of public convenience and necessity issued by the~~
78 ~~commission on or before July 1, 2003, shall be subject to subsections (e), (f), (g), (h), (i) and (j),~~
79 ~~section eleven-c of this article as if the certificate of public convenience and necessity for such~~
80 ~~facility were a siting certificate issued under said section and shall not otherwise be subject to the~~
81 ~~jurisdiction of the commission or to the provisions of this chapter with respect to such facility~~
82 ~~except for the making or constructing of a material modification thereof as provided in subdivision~~
83 ~~(5) of this subsection.~~

84 ~~(2) Any person, corporation or other entity that intends to construct or construct and~~
85 ~~operate an electric generating facility to be located in this state that has been designated as an~~
86 ~~exempt wholesale generator under applicable federal law, or will be so designated prior to~~
87 ~~commercial operation of the facility, and for which facility the owner or operator does not hold a~~
88 ~~certificate of public convenience and necessity issued by the commission on or before July 1,~~
89 ~~2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from~~
90 ~~the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate~~
91 ~~of public convenience and necessity pursuant to the provisions of section eleven of this article.~~
92 ~~An owner or operator of an electric generating facility as is described in this subdivision for which~~

93 a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g),
94 (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction
95 of the commission or to the provisions of this chapter with respect to such facility except for the
96 making or constructing of a material modification thereof as provided in subdivision (5) of this
97 subsection.

98 ~~(3) An owner or operator of an electric generating facility located in this state that had not~~
99 ~~been designated as an exempt wholesale generator under applicable federal law prior to~~
100 ~~commercial operation of the facility that generates electric energy solely for sale at retail outside~~
101 ~~this state or solely for sale at wholesale in accordance with any applicable federal law that~~
102 ~~preempts state law or solely for both such sales at retail and such sales at wholesale and that~~
103 ~~had been constructed and had engaged in commercial operation on or before July 1, 2003, shall~~
104 ~~not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect~~
105 ~~to such facility, regardless of whether such facility subsequent to its construction has been or will~~
106 ~~be designated as an exempt wholesale generator under applicable federal law: *Provided, That*~~
107 ~~such owner or operator shall be subject to subdivision (5) of this subsection if a material~~
108 ~~modification of such facility is made or constructed.~~

109 ~~(4) Any person, corporation or other entity that intends to construct or construct and~~
110 ~~operate an electric generating facility to be located in this state that has not been or will not be~~
111 ~~designated as an exempt wholesale generator under applicable federal law prior to commercial~~
112 ~~operation of the facility that will generate electric energy solely for sale at retail outside this state~~
113 ~~or solely for sale at wholesale in accordance with any applicable federal law that preempts state~~
114 ~~law or solely for both such sales at retail and such sales at wholesale and that had not been~~
115 ~~constructed and had not been engaged in commercial operation on or before July 1, 2003, shall,~~
116 ~~prior to commencement of construction of the facility, obtain a siting certificate from the~~
117 ~~commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of~~
118 ~~public convenience and necessity pursuant to the provisions of section eleven of this article. An~~

119 owner or operator of an electric generating facility as is described in this subdivision for which a
120 siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g),
121 (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction
122 of the commission or to the provisions of this chapter with respect to such facility except for the
123 making or constructing of a material modification thereof as provided in subdivision (5) of this
124 subsection.

125 (5) An owner or operator of an electric generating facility described in this subsection shall,
126 before making or constructing a material modification of the facility that is not within the terms of
127 any certificate of public convenience and necessity or siting certificate previously issued for the
128 facility or an earlier material modification thereof, obtain a siting certificate for the modification
129 from the commission pursuant to the provisions of section eleven-c of this article in lieu of a
130 certificate of public convenience and necessity for the modification pursuant to the provisions of
131 section eleven of this article and, except for the provisions of section eleven-c of this article, shall
132 not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter
133 with respect to such modification.

134 (6) The commission shall consider an application for a certificate of public convenience
135 and necessity filed pursuant to section eleven of this article to construct an electric generating
136 facility described in this subsection or to make or construct a material modification of such electric
137 generating facility as an application for a siting certificate pursuant to section eleven-c of this
138 article if the application for the certificate of public convenience and necessity was filed with the
139 commission prior to July 1, 2003, and if the commission has not issued a final order thereon as
140 of that date.

141 (7) The limitations on the jurisdiction of the commission over, and on the applicability of
142 the provisions of this chapter to, the owner or operator of an electric generating facility as imposed
143 by and described in this subsection shall not be deemed to affect or limit the commission's

144 jurisdiction over contracts or arrangements between the owner or operator of such facility and any
145 affiliated public utility subject to the provisions of this chapter.

146 ~~(e) The commission shall not have jurisdiction of Internet protocol-enabled service or~~
147 ~~voice-over Internet protocol-enabled service. As used in this subsection:~~

148 ~~(1) "Internet protocol-enabled service" means any service, capability, functionality or~~
149 ~~application provided using Internet protocol, or any successor protocol, that enables an end user~~
150 ~~to send or receive a communication in Internet protocol format, or any successor format,~~
151 ~~regardless of whether the communication is voice, data or video.~~

152 ~~(2) "Voice-over Internet protocol service" means any service that:~~

153 ~~(i) Enables real-time two-way voice communications that originate or terminate from the~~
154 ~~user's location using Internet protocol or a successor protocol; and~~

155 ~~(ii) Uses a broadband connection from the user's location.~~

156 ~~(3) The term "voice-over Internet protocol service" includes any service that permits users~~
157 ~~to receive calls that originate on the public-switched telephone network and to terminate calls on~~
158 ~~the public-switched telephone network.~~

159 ~~(f) Notwithstanding any other provisions of this article, the commission shall not have~~
160 ~~jurisdiction to review or approve any transaction involving a telephone company otherwise subject~~
161 ~~to sections twelve and twelve-a, article two, chapter twenty-four of this code if all entities involved~~
162 ~~in the transaction are under common ownership.~~

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

165 Common carriage of passengers or goods, whether by air, railroad, street railroad, motor,
166 or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water
167 or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and
168 all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor
169 car services; transmission of messages by telephone, telegraph, or radio; generation and

170 transmission of electrical energy by hydroelectric or other utilities for service to the public, whether
171 directly or through a distributing utility; supplying water, gas, or electricity by municipalities or
172 others; sewer systems servicing 25 or more persons or firms other than the owner of the sewer
173 systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer
174 service by an innovative, alternative method, as defined by the federal Environmental Protection
175 Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction
176 of the Public Service Commission regardless of the number of customers served by the
177 innovative, alternative method; any public service district created under the provisions of §16-
178 13A-1 *et seq.* of this code, except that the Public Service Commission will have no jurisdiction
179 over the provision of stormwater services by a public service district; toll bridges, wharves, ferries;
180 solid waste facilities; and any other public service: *Provided, however*, That natural gas producers
181 who provide natural gas service to not more than 25 residential customers are exempt from the
182 jurisdiction of the commission with regard to the provisions of such residential service: *Provided*
183 *further*, That upon request of any of the customers of such natural gas producers, the commission
184 may, upon good cause being shown, exercise such authority as the commission may deem
185 appropriate over the operation, rates and charges of such producer and for such length of time
186 as the commission may consider to be proper.

187 (b) In accordance with the provisions set forth in §24-1-1(j) of this code, after July 1, 2018,
188 the jurisdiction of the commission over political subdivisions of this state providing separate or
189 combined water and/or sewer services is limited to:

190 (1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

191 (2) Regulation of measurements, practices, acts or services, as granted and described in
192 §24-2-7 of this code;

193 (3) Regulation of a system of accounts to be kept by a public utility that is a political
194 subdivision of the state, as granted and described in §24-2-8 of this code;

195 (4) Submission of information to the commission regarding rates, tolls, charges, or

196 practices, as granted and described in §24-2-9 of this code;

197 (5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness
198 in any proceeding before, or conducted by, the commission, as granted and described in §24-2-
199 10 of this code; and

200 (6) Investigation and resolution of disputes between a political subdivision of the state
201 providing wholesale water and/or wastewater treatment or other services, whether by contract or
202 through a tariff, and its customer or customers, including, but not limited to, rates, fees and
203 charges, service areas and contested utility combinations: *Provided*, That any request for an
204 investigation related to such a dispute that is based on the act or omission of the political
205 subdivision shall be filed within 30 days of the act or omission of the political subdivision and the
206 commission shall resolve said dispute within 120 days of filing. The 120-day period for resolution
207 of the dispute may be tolled by the commission until the necessary information showing the basis
208 of the rates, fees and charges or other information as the commission considers necessary is
209 filed: *Provided, however*, That the disputed rates, fees, and charges so fixed by the political
210 subdivision providing separate or combined water and/or sewer services shall remain in full force
211 and effect until set aside, altered, or amended by the commission in an order to be followed in the
212 future.

213 (7) Customers of water and sewer utilities operated by a political subdivision of the state
214 may bring formal or informal complaints regarding the commission's exercise of the powers
215 enumerated in this section and the commission shall resolve these complaints: *Provided*, That
216 any formal complaint filed under this section after the amendments made to this section in the
217 2018 regular session of the Legislature that is based on the act or omission of the political
218 subdivision shall be filed within 30 days of the act or omission complained of and the commission
219 shall resolve said complaint within 120 days of filing. The 120-day period for resolution of the
220 dispute may be tolled by the commission until the necessary information showing the basis of the
221 matter complained of is filed by the political subdivision: *Provided, however*, That whenever the

222 commission shall find any regulations, measurements, practices, acts, or service to be unjust,
223 unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of
224 this chapter, or shall find that any service is inadequate, or that any service which is demanded
225 cannot be reasonably obtained, the commission shall determine and declare, and by order fix
226 reasonable measurement, regulations, acts, practices or services, to be furnished, imposed,
227 observed and followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly
228 discriminatory, inadequate, or otherwise in violation of this chapter, and shall make such other
229 order respecting the same as shall be just and reasonable: *Provided further,* That with respect to
230 matters affecting rates, fees and charges so fixed by the political subdivision providing separate
231 or combined water and/or sewer services, and for which a complaint was filed after the effective
232 date of the amendments made to this section made during the 2018 regular session of the
233 Legislature, such rates fees or charges shall remain in full force and effect until set aside, altered,
234 or amended by the commission in an order to be followed in the future.

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

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

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

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

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

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

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

253 (1) An owner or operator of an electric generating facility located or to be located in this
254 state that has been designated as an exempt wholesale generator under applicable federal law,
255 or will be so designated prior to commercial operation of the facility, and for which such facility
256 the owner or operator holds a certificate of public convenience and necessity issued by the
257 commission on or before July 1, 2003, shall be subject to §24-2-11c(e) through §24-2-11c(j) of
258 this code as if the certificate of public convenience and necessity for such facility were a siting
259 certificate issued under §24-2-11c(e) through §24-2-11c(j) of this code and shall not otherwise be
260 subject to the jurisdiction of the commission or to the provisions of this chapter with respect to
261 such facility except for the making or constructing of a material modification thereof as provided
262 in §24-2-1(d)(5) of this code.

263 (2) Any person, corporation, or other entity that intends to construct or construct and
264 operate an electric generating facility to be located in this state that has been designated as an
265 exempt wholesale generator under applicable federal law, or will be so designated prior to
266 commercial operation of the facility, and for which facility the owner or operator does not hold a
267 certificate of public convenience and necessity issued by the commission on or before July 1,
268 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
269 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
270 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
271 operator of an electric generating facility as is described in this subdivision for which a siting
272 certificate has been issued by the commission shall be subject to §24-2-11c(e) through §24-2-
273 11c(j) of this code and shall not otherwise be subject to the jurisdiction of the commission or to

274 the provisions of this chapter with respect to such facility except for the making or constructing of
275 a material modification thereof as provided in §24-2-1(d)(5) of this code.

276 (3) An owner or operator of an electric generating facility located in this state that had not
277 been designated as an exempt wholesale generator under applicable federal law prior to
278 commercial operation of the facility that generates electric energy solely for sale at retail outside
279 this state or solely for sale at wholesale in accordance with any applicable federal law that
280 preempts state law or solely for both such sales at retail and such sales at wholesale and that
281 had been constructed and had engaged in commercial operation on or before July 1, 2003, shall
282 not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect
283 to such facility, regardless of whether such facility subsequent to its construction has been or will
284 be designated as an exempt wholesale generator under applicable federal law: *Provided*, That
285 such owner or operator shall be subject to §24-2-1-(d)(5) of this code if a material modification of
286 such facility is made or constructed.

287 (4) Any person, corporation, or other entity that intends to construct or construct and
288 operate an electric generating facility to be located in this state that has not been or will not be
289 designated as an exempt wholesale generator under applicable federal law prior to commercial
290 operation of the facility that will generate electric energy solely for sale at retail outside this state
291 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
292 law or solely for both such sales at retail and such sales at wholesale and that had not been
293 constructed and had not been engaged in commercial operation on or before July 1, 2003, shall,
294 prior to commencement of construction of the facility, obtain a siting certificate from the
295 commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
296 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
297 operator of an electric generating facility as is described in this subdivision for which a siting
298 certificate has been issued by the commission shall be subject to §24-2-11c(e) through §24-2-
299 11c(j) of this code and shall not otherwise be subject to the jurisdiction of the commission or to

300 the provisions of this chapter with respect to such facility except for the making or constructing of
301 a material modification thereof as provided in §24-2-1(d)(5) of this code.

302 (5) An owner or operator of an electric generating facility described in this subsection shall,
303 before making or constructing a material modification of the facility that is not within the terms of
304 any certificate of public convenience and necessity or siting certificate previously issued for the
305 facility or an earlier material modification thereof, obtain a siting certificate for the modification
306 from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of
307 public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of
308 this code and, except for the provisions of §24-2-11c of this code, shall not otherwise be subject
309 to the jurisdiction of the commission or to the provisions of this chapter with respect to such
310 modification.

311 (6) The commission shall consider an application for a certificate of public convenience
312 and necessity filed pursuant to §24-2-11 of this code to construct an electric generating facility
313 described in this subsection or to make or construct a material modification of such electric
314 generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the
315 application for the certificate of public convenience and necessity was filed with the commission
316 prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

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

322 (e) The commission shall not have jurisdiction of Internet protocol-enabled service or
323 voice-over Internet protocol-enabled service. As used in this subsection:

324 (1) "Internet protocol-enabled service" means any service, capability, functionality, or
325 application provided using Internet protocol, or any successor protocol, that enables an end user

326 to send or receive a communication in Internet protocol format, or any successor format,
327 regardless of whether the communication is voice, data, or video.

328 (2) "Voice-over Internet protocol service" means any service that:

329 (i) Enables real-time two-way voice communications that originate or terminate from the
330 user's location using Internet protocol or a successor protocol; and

331 (ii) Uses a broadband connection from the user's location.

332 (3) The term "voice-over Internet protocol service" includes any service that permits users
333 to receive calls that originate on the public-switched telephone network and to terminate calls on
334 the public-switched telephone network.

335 (f) Notwithstanding any other provisions of this article, the commission shall not have
336 jurisdiction to review or approve any transaction involving a telephone company otherwise subject
337 to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under common
338 ownership.

339 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power
340 systems are most fairly and effectively regulated by the local governing body. Therefore,
341 notwithstanding any other provisions of this article, the commission shall not have jurisdiction over
342 the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the
343 jurisdiction of the Public Service Commission over municipal power systems is limited to that
344 granted specifically in this code.

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

1 (a) The commission ~~is hereby given power to~~ may investigate all rates, methods, and
2 practices of public utilities subject to the provisions of this chapter; to require them to conform to
3 the laws of this state and to all rules, regulations, and orders of the commission not contrary to
4 law; and to require copies of all reports, rates, classifications, schedules, and timetables in effect
5 and used by the public utility or other person to be filed with the commission, and all other
6 information desired by the commission relating to the investigation and requirements, including

7 inventories of all property in ~~such~~ the form and detail as the commission ~~may prescribe~~ prescribes.
8 The commission may compel obedience to its lawful orders by mandamus or injunction or other
9 proper proceedings in the name of the state in any circuit court having jurisdiction of the parties
10 or of the subject matter, or the Supreme Court of Appeals directly, and the proceedings shall have
11 priority over all pending cases. The commission may change any intrastate rate, charge, or toll
12 which is unjust or unreasonable or any interstate charge with respect to matters of a purely local
13 nature which have not been regulated by or pursuant to an act of Congress and may prescribe a
14 rate, charge or toll that is just and reasonable, and change or prohibit any practice, device, or
15 method of service in order to prevent undue discrimination or favoritism between persons and
16 between localities and between commodities for a like and contemporaneous service. But in no
17 case ~~shall~~ may the rate, toll, or charge be more than the service is reasonably worth, considering
18 the cost of the service. Every order entered by the commission shall continue in force until the
19 expiration of the time, if any, named by the commission in the order, or until revoked or modified
20 by the commission, unless the order is suspended, modified or revoked by order or decree of a
21 court of competent jurisdiction: *Provided*, That in the case of utilities used by emergency shelter
22 providers, the commission shall prescribe such rates, charges, or tolls that are the lowest
23 available. "Emergency shelter provider" means any nonprofit entity which provides temporary
24 emergency housing and services to the homeless or to victims of domestic violence or other
25 abuse.

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

31 (c) Notwithstanding any other provision of this code to the contrary, in accordance with the
32 provisions set forth in §24-1-1(j) of this code, effective July 1, 2018, the jurisdiction of the

33 commission over water and/or sewer utilities that are political subdivisions of the state providing
34 a separate or combined services ~~and having at least four thousand five hundred customers and~~
35 ~~annual combined gross revenues of \$3 million or more shall be~~ is limited to those powers
36 enumerated in §24-2-1(b) of this code.

37 (d) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
38 commission does not extend over the setting or adjustment of rates, fees, and charges of
39 municipal power systems. The rates, fees, charges and rate-making process of municipal power
40 systems is governed by the provisions of §8-19-2a of this code.

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

1 (a) The commission ~~shall have power to~~ may enforce, originate, establish, change, and
2 promulgate tariffs, rates, joint rates, tolls, and schedules for all public utilities except for municipal
3 power systems and water and/or sewer utilities that are political subdivisions of this state as
4 provided in §24-1-1(j) of this code: ~~providing a separate or combined services and having at least~~
5 ~~four thousand five hundred customers and annual combined gross revenues of \$3 million or more~~
6 *Provided*, That the commission may exercise such rate authority over municipally owned electric
7 or natural gas utilities or a municipally owned water and/or sewer utility as provided in §24-1-1(j)
8 of this code ~~having less than four thousand five hundred customers or annual combined gross~~
9 ~~revenues of less than \$3 million dollars~~ only under the circumstances and limitations set forth in
10 §24-2-4b of this code, and subject to the provisions set forth in §24-2-3(b) of this code. And
11 whenever the commission ~~shall~~, after hearing, ~~find~~ finds any existing rates, tolls, tariffs, joint rates
12 or schedules enacted or maintained by a utility regulated under the provisions of this section to
13 be unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any of
14 the provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates,
15 tariffs, tolls, or schedules to be followed in the future in lieu of those found to be unjust,
16 unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of any provisions of
17 law, and the ~~said~~ the commission, in fixing the rate of any railroad company, may fix a fair,

18 reasonable and just rate to be charged on any branch line thereof, independent of the rate
19 charged on the main line of ~~such~~ the railroad.

20 (b) Any complaint filed with the commission by a resale or wholesale customer of a
21 municipally owned water and/or sewer utility over which the commission has jurisdiction under
22 the provisions of §24-1-1(j) of this code ~~having less than four thousand five hundred customers~~
23 ~~or annual combined gross revenue of less than \$3 million dollars concerning rates, fees, or~~
24 ~~charges applicable to such resale or wholesale customer~~ shall be filed within 30 days of the
25 enactment by the governing body of the political subdivision of an ordinance changing rates, fees,
26 or charges for such service. The commission shall resolve said complaint within 120 days of filing.
27 The 120-day period for resolution of the complaint may be tolled by the commission until the
28 necessary information showing the basis of the rates, fees, charges, and other information as the
29 commission considers necessary is filed: *Provided*, That rates, fees, and charges so fixed by the
30 political subdivision providing separate or combined water and/or sewer services shall remain in
31 full force and effect until set aside, altered, or amended by the commission in an order to be
32 followed in the future: *Provided, however*, That the commission shall have no authority to order
33 refunds for amounts collected during the pendency of the complaint proceeding unless the rates,
34 fees, or charges so enacted by the governing body were enacted subject to refund under the
35 provisions of §24-2-4b(d)(2) or §24-2-4b(g) of this code.

36 (c) In determining just and reasonable rates, the commission may audit and investigate
37 management practices and policies, or have performed an audit and investigation of such
38 practices and policies, in order to determine whether the utility is operating with efficiency and is
39 utilizing sound management practices. The commission shall adopt rules and regulations setting
40 forth the scope, frequency, and application of such audits and investigations to the various utilities
41 subject to its jurisdiction. The commission may include the cost of conducting the management
42 audit in the cost of service of the utility.

43 (d) In determining just and reasonable rates, the commission shall investigate and review

44 transactions between utilities and affiliates. The commission shall limit the total return of the utility
45 to a level which, when considered with the level of profit or return the affiliate earns on transactions
46 with the utility, is just and reasonable.

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

1 (a) After June 30, 1981, no public utility subject to this chapter, except for water or sewer
2 utilities that are political subdivisions of this state as provided in §24-1-1(j) of this code, water
3 ~~and/or sewer utilities that are political subdivisions of the state providing separate or combined~~
4 ~~services and having at least four thousand five hundred customers and annual gross revenue of~~
5 ~~\$3 million or more from its separate or combined services~~ shall change, suspend or annul any
6 rate, joint rate, charge, rental or classification except after 30 days' notice to the commission and
7 the public, which notice shall plainly state the changes proposed to be made in the schedule then
8 in force and the time when the changed rates or charges shall go into effect; but the commission
9 may enter an order suspending the proposed rate as hereinafter provided. The proposed changes
10 shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in
11 force at the time, and kept open to public inspection: *Provided*, That the commission may, in its
12 discretion, and for good cause shown, allow changes upon less time than the notice herein
13 specified, or may modify the requirements of this section in respect to publishing, posting and
14 filing of tariffs, either by particular instructions or by general order.

15 (b) Whenever there shall be filed with the commission any schedule stating a change in
16 the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge
17 or joint classification or any new individual or joint regulation or practice affecting any rate or
18 charge, the commission may, either upon complaint or upon its own initiative without complaint,
19 enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or
20 practice; and, if the commission so orders, it may proceed without answer or other form of
21 pleading by the interested parties, but upon reasonable notice, and, pending such hearing and
22 the decisions thereon, the commission, upon filing with such schedule and delivering to the public

23 utility affected thereby a statement in writing of its reasons for such suspension, may suspend the
24 operation of such schedule and defer the use of such rate, charge, classification, regulation or
25 practice, but not for a longer period than 270 days beyond the time when such rate, charge,
26 classification, regulation or practice would otherwise go into effect; and after full hearing, whether
27 completed before or after the rate, charge, classification, regulation or practice goes into effect,
28 the commission may make such order in reference to such rate, charge, classification, regulation
29 or practice as would be proper in a proceeding initiated after the rate, charge, classification,
30 regulation or practice had become effective: *Provided*, That in the case of a public utility having
31 2,500 customers or less and which is not a political subdivision and which is not principally owned
32 by any other public utility corporation or public utility holding corporation, the commission may
33 suspend the operation of such schedule and defer the use of such rate, charge, classification,
34 regulation or practice, but not for a longer period than 120 days beyond the time when such rate,
35 charge, classification, regulation or practice would otherwise go into effect; and in the case of a
36 public utility having more than 2,500 customers, but not more than 5,000 customers, and which
37 is not a political subdivision and which is not principally owned by any other public utility
38 corporation or public utility holding corporation, the commission may suspend the operation of
39 such schedule and defer the use of such rate, charge, classification, regulation, or practice, but
40 not for a longer period than 150 days beyond the time when such rate, charge, classification,
41 regulation, or practice would otherwise go into effect; and in the case of a public utility having
42 more than 5,000 customers, but not more than 7,500 customers, and which is not a political
43 subdivision and which is not principally owned by any other public utility corporation or public
44 utility holding corporation, the commission may suspend the operation of such schedule and defer
45 the use of such rate, charge, classification, regulation, or practice, but not for a longer period than
46 180 days beyond the time when such rate, charge, classification, regulation, or practice would
47 otherwise go into effect; and after full hearing, whether completed before or after the rate, charge,
48 classification, regulation, or practice goes into effect, the commission may make such order in

49 reference to such rate, charge, classification, regulation, or practice as would be proper in a
50 proceeding initiated after the rate, charge, classification, regulation, or practice had become
51 effective: *Provided, however,* That, in the case of rates established or proposed that increase by
52 less than 25 percent of the gross revenue of the regulated public service district, there shall be
53 no suspension period in the case of rates established by a public service district pursuant to §16-
54 13A-9 of this code and the proposed rates of public service districts shall go into effect upon the
55 date of filing with the commission, subject to refund modification at the conclusion of the
56 commission proceeding. In the case of rates established or proposed that increase by more than
57 25 percent of the gross revenue of the public service district, the district may apply for, and the
58 commission may grant, a waiver of the suspension period and allow rates to be effective upon
59 the date of filing with the commission. Notwithstanding the provisions of §24-2-4a(e) of this code,
60 ~~The~~ public service districts shall provide notice by a Class I legal advertisement in a newspaper
61 of general circulation in its service territory of the percentage increase in rates at least 14 days
62 prior to the effective date of the increased rates. Any refund determined to be ~~determined to be~~
63 due and owing as a result of any difference between any final rates approved by the commission
64 and the rates placed into effect subject to refund shall be refunded by the public service district
65 as a credit against each customer's account for a period of up to six months after entry of the
66 commission's final order. Any remaining balance which is not fully credited by credit within six
67 months after entry of the commission's final order shall be directly refunded to the customer by
68 check: *Provided further,* That if any such hearing and decision thereon is not concluded within the
69 periods of suspension, as above stated, such rate, charge, classification, regulation or practice
70 shall go into effect at the end of such period not subject to refund: *And provided further,* That if
71 any such rate, charge, classification, regulation or practice goes into effect because of the failure
72 of the commission to reach a decision, the same shall not preclude the commission from rendering
73 a decision with respect thereto which would disapprove, reduce or modify any such proposed
74 rate, charge, classification, regulation or practice, in whole or in part, but any such disapproval,

75 reduction or modification shall not be deemed to require a refund to the customers of such utility
76 as to any rate, charge, classification, regulation or practice so disapproved, reduced or modified.
77 The fact of any rate, charge, classification, regulation, or practice going into effect by reason of
78 the commission's failure to act thereon shall not affect the commission's power and authority to
79 subsequently act with respect to any such application or change in any rate, charge, classification,
80 regulation or practice. Any rate, charge, classification, regulation, or practice which shall be
81 approved, disapproved, modified or changed, in whole or in part, by decision of the commission
82 shall remain in effect as so approved, disapproved, modified, or changed during the period or
83 pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission
84 affecting rates, charges, classifications, regulations or practices which have gone into effect
85 automatically at the end of the of the suspension period are prospective in effect.

86 (c) At any hearing involving a rate sought to be increased or involving the change of any
87 rate, charge, classification, regulation, or practice, the burden of proof to show the justness and
88 reasonableness of the increased rate or proposed increased rate, or the proposed change of rate,
89 charge, classification, regulation, or practice shall be upon the public utility making application for
90 such change. The commission shall, whenever practicable and within budgetary constraints,
91 conduct one or more public hearings within the area served by the public utility making application
92 for such increase or change, for the purpose of obtaining comments and evidence on the matter
93 from local ratepayers.

94 (d) Each public utility subject to the provisions of this section shall be required to establish,
95 in a written report which shall be incorporated into each general rate case application, that it has
96 thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility
97 management, rate design and conservation as reported by the commission under §24-1-1(c) of
98 this code as alternatives to, or in mitigation of, any rate increase. The utility report shall contain
99 as to each concept considered the reasons for adoption or rejection of each. When in any case
100 pending before the commission all evidence shall have been taken and the hearing completed,

101 the commission shall render a decision in such case. The failure of the commission to render a
102 decision with respect to any such proposed change in any such rate, charge, classification,
103 regulation or practice within the various time periods specified in this section after the application
104 therefor shall constitute neglect of duty on the part of the commission and each member thereof.

105 (e) Other than as provided in §24-2-4a(b) of this code relating to public service districts,
106 where more than 20 members of the public are affected by a proposed change in rates, it shall
107 be a sufficient notice to the public within the meaning of this section if such notice is published as
108 a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code
109 and the publication area for such publication shall be the community where the majority of the
110 resident members of the public affected by such change reside or, in case of nonresidents, have
111 their principal place of business within this state.

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

121 (g) No utility regulated under the provisions of this section may make application for a
122 general rate increase while another general rate application is pending before the commission
123 and not finally acted upon, except pursuant to the provisions of §24-2-4a(f) of this code. The
124 provisions of this subsection shall not be construed so as to prohibit any such rate application
125 from being made while a previous application which has been finally acted upon by the
126 commission is pending before or upon appeal to the West Virginia Supreme Court of Appeals.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives, and municipally operated public utilities.

1 (a) Subject to the provisions of §24-1-1(j) of this code, the rates and charges of electric
2 cooperatives, natural gas cooperatives and municipal water and/or sewer utilities that are political
3 subdivisions of the state ~~having less than four thousand five hundred customers or annual~~
4 ~~combined gross revenues of less than \$3 million dollars,~~ except for municipally operated
5 commercial solid waste facilities as defined in §22-15-2 of this code, and the rates and charges
6 for local exchange services provided by telephone cooperatives are not subject to the rate
7 approval provisions of 24-2-4 or §24-2-4a of this code, but are subject to the limited rate provisions
8 of this section.

9 (b) All rates and charges set by electric cooperatives, natural gas cooperatives, and
10 municipally operated public utilities that are political subdivisions of the state providing water,
11 sewer, ~~electric~~ and/or natural gas services that are subject to the provisions of this section and all
12 rates and charges for local exchange services set by telephone cooperatives shall be just,
13 reasonable, applied without unjust discrimination between or preference for any customer or class
14 of customer and based primarily on the costs of providing these services. All rates and charges
15 shall be based upon the measured or reasonably estimated cost of service and the equitable
16 sharing of those costs between customers based upon the cost of providing the service received
17 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
19 subdivision's governing board or body and, in the case of the municipally operated public utility,
20 by municipal ordinance to be effective not sooner than 45 days after adoption. The 45-day waiting
21 period may be waived by public vote of the governing body if that body finds and declares the
22 public utility that is a political subdivision of the state to be in financial distress such that the 45-
23 day waiting period would be detrimental to the ability of the utility to deliver continued and

24 compliant public services: *Provided*, That notice of intent to effect a rate change shall be specified
25 on the monthly billing statement of the customers of the utility for the month next preceding the
26 month in which the rate change is to become effective and the utility governing body shall give its
27 customers and, in the case of a cooperative, its customers, members, and stockholders, other
28 reasonable notices as will allow filing of timely objections to the proposed rate change and full
29 participation in municipal rate legislation through the provision of a public forum in which
30 customers may comment upon the proposed rate change prior to an enactment vote. The rates
31 and charges or ordinance shall be filed with the commission, together with any information
32 showing the basis of the rates and charges and other information as the commission considers
33 necessary. Any change in the rates and charges with updated information shall be filed with the
34 commission. If a petition, as set out in §24-2-4b(c)(1), §24-2-4b(c)(2), or §24-2-4b(c)(3) of this
35 code, is received and the electric cooperative, natural gas cooperative or telephone cooperative
36 or municipality has failed to file with the commission the rates and charges with information
37 showing the basis of rates and charges and other information as the commission considers
38 necessary, the suspension period limitation of 120 days and the 100-day period limitation for
39 issuance of an order by a hearing examiner, as contained in §24-2-4b(d) and §24-2-4b(e) of this
40 code, is tolled until the necessary information is filed. The electric cooperative, natural gas
41 cooperative, telephone cooperative or municipality shall set the date when any new rate or charge
42 is to go into effect.

43 (c) The commission shall review and approve or modify the rates and charges of electric
44 cooperatives, natural gas cooperatives, telephone cooperatives, or municipal ~~electric or natural~~
45 gas utilities and municipally owned water and/or sewer utilities that are political subdivisions of
46 the state not subject to the provisions of §24-1-1(j) of this code and having less than four thousand
47 ~~five hundred customers or annual combined revenues of less than \$3 million dollars~~ upon the
48 filing of a petition within 30 days of the adoption of the ordinance or resolution changing the rates
49 or charges by:

50 (1) Any customer aggrieved by the changed rates or charges who presents to the
51 commission a petition signed by not less than 25 percent of the customers served by the
52 municipally operated ~~electric or~~ natural gas public utility or municipally owned water and/or sewer
53 utility or 25 percent of the membership of the electric, natural gas or telephone cooperative
54 residing within the state;

55 (2) Any customer who is served by a municipally owned ~~electric or~~ natural gas public
56 utility and who resides outside the corporate limits and who is affected by the change in the rates
57 or charges and who presents to the commission a petition alleging discrimination between
58 customers within and without the municipal boundaries. The petition shall be accompanied by
59 evidence of discrimination; or

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

65 (d) (1) Subject to the provisions of §24-1-1(j) of this code, the filing of a petition with the
66 commission signed by not less than 25 percent of the customers served by the municipally owned
67 ~~electric or~~ natural gas public utility or a municipally owned water and/or sewer utility ~~having less~~
68 ~~than four thousand five hundred customers or annual combined gross revenues of less than \$3~~
69 ~~million dollars~~ or 25 percent of the membership of the electric, natural gas, or telephone
70 cooperative residing within the state under §24-2-4b(c) of this code shall suspend the adoption of
71 the rate change contained in the ordinance or resolution for a period of 120 days from the date
72 the rates or charges would otherwise go into effect or until an order is issued as provided herein.

73 (2) Upon sufficient showing of discrimination by customers outside the municipal
74 boundaries or a customer or a group of customers within the municipal boundaries under a petition
75 filed under §24-2-4b(c)(2) or §24-2-4b(c)(3) of this code, the commission shall suspend the

76 adoption of the rate change contained in the ordinance for a period of 120 days from the date the
77 rates or charges would otherwise go into effect or until an order is issued as provided herein. A
78 municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter
79 or state code that establishes or proposes a rate increase that results in an increase of less than
80 25 percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed
81 to go into effect, subject to refund, upon the date stated in that ordinance. Any refund determined
82 to be due and owing as a result of any difference between any final rates approved by the
83 commission and the rates placed into effect subject to refund shall be refunded as a credit against
84 each customer's account for a period of up to six months after entry of the commission's final
85 order. Any remaining balance which is not fully credited by credit within six months after entry of
86 the commission's final order shall be directly refunded to the customer by check. In the case of
87 rates established or proposed that increase by more than 25 percent of the gross revenue of the
88 municipally operated public utility, the utility may apply for, and the commission may grant, a
89 waiver of the suspension period and allow rates to be effective upon enactment.

90 (e) The commission shall forthwith appoint a hearing examiner from its staff to review the
91 grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and
92 shall, within 100 days from the date the rates or charges would otherwise go into effect, unless
93 otherwise tolled as provided in §24-2-4b(b) of this code, issue an order approving, disapproving,
94 or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas or
95 telephone cooperative or by the municipally operated public utility pursuant to this section.

96 (f) Upon receipt of a petition for review of the rates under the provisions of §24-2-4b(c) of
97 this code, the commission may exercise the power granted to it under the provisions of §24-2-3
98 of this code, consistent with the applicable rate provisions of §8-10-20 of this code, §8-19-4 of
99 this code, and §16-13-16 of this code. The commission may determine the method by which the
100 rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer,
101 electric, natural gas, or telephone cooperative or municipality requests a hearing.

102 (g) Subject to the provisions of §24-1-1(j) of this code, the commission may, upon petition
103 by an electric, natural gas or telephone cooperative or municipal ~~electric or natural gas public~~
104 utility or a municipally owned water and/or sewer utility, ~~having less than four thousand five~~
105 ~~hundred customers or annual combined gross revenues of less than \$3 million dollars~~ allow an
106 interim or emergency rate to take effect, subject to refund or future modification, if it is determined
107 that the interim or emergency rate is necessary to protect the municipality from financial hardship
108 attributable to the purchase of the utility commodity sold, or the commission determines that a
109 temporary or interim rate increase is necessary for the utility to avoid financial distress. In such
110 cases, the commission shall waive the 45-day waiting period provided for in §24-2-4b(b) of this
111 code and the 120-day suspension period provided for in §24-2-4b(d) of this code.

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

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

118 (j) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
119 commission over water and/or sewer utilities that are political subdivisions of the state and subject
120 to the provisions of §24-1-1(j) of this code ~~having at least four thousand five hundred customers~~
121 ~~and annual gross combined revenues of \$3 million or more~~ shall be limited to those powers
122 enumerated in §24-2-1(b) of this code.

123 (k) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
124 commission does not extend over the setting and adjustment of the rates, fees, and charges of
125 municipal power systems. The rates, fees, charges and ratemaking process of municipal power
126 systems shall be governed by the provisions of §8-19-2a of this code.

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

1 (a) A public utility, person, or corporation other than a political subdivision of the state
2 providing water or sewer services and subject to the provisions of §24-1-1(j) of this code having
3 ~~at least four thousand five hundred customers and annual gross combined revenues of \$3 million~~
4 ~~dollars or more~~ may not begin the construction of any plant, equipment, property, or facility for
5 furnishing to the public any of the services enumerated in §24-2-1 et seq. of this code, nor apply
6 for, nor obtain any franchise, license or permit from any municipality or other governmental
7 agency, except ordinary extensions of existing systems in the usual course of business, unless
8 and until it shall obtain from the Public Service Commission a certificate of public convenience
9 and necessity authorizing such construction franchise, license or permit.

10 (b) Upon the filing of any application for the certificate, and after hearing, the commission
11 may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of
12 convenience and necessity: *Provided*, That the commission, after it gives proper notice and if no
13 substantial protest is received within 30 days after the notice is given, may waive formal hearing
14 on the application. Notice shall be given by publication which shall state that a formal hearing may
15 be waived in the absence of substantial protest, made within 30 days, to the application. The
16 notice shall be published as a Class I legal advertisement in compliance with the provisions of
17 §59-3-1 *et seq.* of this code. The publication area shall be the proposed area of operation.

18 (c) Any public utility, person or corporation subject to the provisions of this section other
19 than a political subdivision of the state providing water and/or sewer services subject to the
20 provisions of §24-1-1(j) of this code ~~having at least four thousand five hundred customers and~~
21 ~~combined annual gross revenue of \$3 million dollars or more~~ shall give the commission at least
22 30 days' notice of the filing of any application for a certificate of public convenience and necessity
23 under this section: *Provided*, That the commission may modify or waive the 30-day notice
24 requirement and shall waive the 30-day notice requirement for projects approved by the
25 Infrastructure and Jobs Development Council.

26 (d) The commission shall render its final decision on any application filed under the

27 provisions of this section or §24-2-11a of this code within 270 days of the filing of the application
28 and within 90 days after final submission of any such application for decision following a hearing:
29 *Provided*, That if the application is for authority to construct a water and sewer project and the
30 projected total cost is less than \$10 million, the commission shall render its final decision within
31 225 days of the filing of the application.

32 (e) The commission shall render its final decision on any application filed under the
33 provisions of this section that has received the approval of the Infrastructure and Jobs
34 Development Council pursuant to §31-15A-1 *et seq.* of this code within 180 days after filing of the
35 application: *Provided*, That if a substantial protest is received within 30 days after the notice is
36 provided pursuant to §24-2-11(b) of this code, the commission shall render its final decision within
37 270 days or 225 days of the filing of the application, whichever is applicable as determined in §24-
38 2-11(d) of this code.

39 (f) If the projected total cost of a project which is the subject of an application filed pursuant
40 to this section or §24-2-11a of this code is greater than \$50 million, the commission shall render
41 its final decision on any such application filed under the provisions of this section or §24-2-11a of
42 this code within 400 days of the filing of the application and within 90 days after final submission
43 of any such application for decision after a hearing.

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

46 (h) The commission shall prescribe rules as it may deem proper for the enforcement of
47 the provisions of this section; and, in establishing that public convenience and necessity do exist,
48 the burden of proof shall be upon the applicant.

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

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

54 (2) Natural gas produced by the person.

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

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

64 (l) Subject to the provisions of §24-1-1(j) of this code, water or sewer utilities that are
65 political subdivisions of the state ~~having at least four thousand five hundred customers and~~
66 ~~combined gross revenues of \$3 million dollars or more~~ desiring to pursue construction projects
67 that are not in the ordinary course of business shall provide adequate prior public notice of the
68 contemplated construction and proposed changes to rates, fees and charges, if any, as a result
69 of such construction to both current customers and those persons who will be affected by the
70 proposed construction as follows:

71 (1) Adequate prior public notice of the contemplated construction by causing a notice of
72 intent to pursue a project that is not in the ordinary course of business to be specified on the
73 monthly billing statement of the customers of the utility for the month immediately preceding the
74 month in which an ordinance or resolution approving the proposed construction and proposed
75 changes to rates, fees and charges, if any, is to be before the governing body for the public
76 hearing on the ordinance or resolution approving the proposed construction and proposed
77 changes to rates, fees and charges, if any.

78 (2) Adequate prior public notice of the contemplated construction by causing to be

79 published as a Class I legal advertisement of the proposed public hearing on the ordinance or
80 resolution approving the proposed construction and proposed changes to rates, fees and charges,
81 if any, in compliance with the provisions of §59-3-1 *et seq.* of the code. The publication area for
82 publication shall be all territory served by the political subdivision. If the political subdivision
83 provides service in more than one county, publication shall be made in a newspaper of general
84 circulation in each county that the political subdivision provides service.

85 (3) The public notice of the proposed construction shall state the scope of the proposed
86 construction; a summary of the current rates, fees and charges, and proposed changes to said
87 rates, fees and charges, if any; the date, time and place of the public hearing on the ordinance or
88 resolution approving the proposed construction and proposed changes to rates, fees and charges,
89 if any; and the place or places within the political subdivision where the ordinance or resolution
90 approving the proposed construction and proposed changes to rates, fees and charges, if any,
91 may be inspected by the public. A reasonable number of copies of the ordinance or resolution
92 shall be kept at the place or places and be made available for public inspection. The notice shall
93 also advise that interested parties may appear at the public hearing before the political subdivision
94 and be heard with respect to the proposed construction and the proposed rates, fees and charges,
95 if any.

96 (4) The ordinance or resolution on the proposed construction and the proposed rates, fees
97 and charges shall be read at two meetings of the governing body with at least two weeks
98 intervening between each meeting. The public hearing may be conducted prior to, or at, the
99 meeting of the governing body at which the ordinance or resolution approving the proposed
100 construction is considered on second reading.

101 (5) Enactment or adoption of the ordinance or resolution approving the proposed
102 construction and the proposed rates, fees and charges shall follow an affirmative vote of the
103 governing body and the approved rates shall go into effect no sooner than 45 days following the
104 action of the governing body. If the political subdivision proposes rates that will go into effect prior

105 to the completion of construction of the proposed project, the 45-day waiting period may be waived
106 by public vote of the governing body only if the political subdivision finds and declares the political
107 subdivision to be in financial distress such that the 45-day waiting period would be detrimental to
108 the ability of the political subdivision to deliver continued and compliant public services: *Provided,*
109 That, if the political subdivision is a public service district, in no event shall the rate become
110 effective prior to the date that the county commission has entered an order approving or modifying
111 the action of the public service district board.

112 (6) Rates, fees and charges approved by an affirmative vote of the public service district
113 board shall be forwarded in writing to the county commission with the authority to appoint the
114 members of the public service board of the public service district. The county commission shall,
115 within 45 days of receipt of the proposed rates, fees and charges, take action to approve, modify,
116 or reject the proposed rates, fees and charges, in its sole discretion. If, after 45 days, the county
117 commission has not taken final action to approve, modify, or reject the proposed rates, fees and
118 charges, the proposed rates, fees and charges, as presented to the county commission, shall be
119 effective with no further action by the board or county commission. In any event this 45-day period
120 may be extended by official action of both the board proposing the rates, fees and charges and
121 the appointing county commission.

122 (7) The county commission shall provide notice to the public by a Class I legal
123 advertisement of the proposed action, in compliance with the provisions of §59-3-1 *et seq.* of this
124 code, of the meeting where it shall consider the proposed increases in rates, fees and charges
125 no later than one week prior to the meeting date.

126 (8) A public service district, or a customer aggrieved by the changed rates or charges who
127 presents to the circuit court a petition signed by ~~at least 750 or~~ 25 percent of the customers served
128 by the public service district, ~~whichever is fewer,~~ when dissatisfied by the approval, modification,
129 or rejection by the county commission of the proposed rates, fees and charges under the
130 provisions of this subsection may file a complaint regarding the rates, fees and charges resulting

131 from the action of, or failure to act by, the county commission in the circuit court of the county in
132 which the county commission sits: *Provided*, That any complaint or petition filed hereunder shall
133 be filed within 30 days of the county commission's final action approving, modifying or rejecting
134 such rates, fees and charges, or the expiration of the 45 day period from the receipt by the county
135 commission, in writing, of the rates, fees and charges approved by resolution of the board, without
136 final action by the county commission to approve, modify or reject such rates, fees and charges,
137 and the circuit court shall resolve said complaint: *Provided, however*, That the rates, fees and
138 charges so fixed by the county commission, or those adopted by the district upon which the county
139 commission failed to act, shall remain in full force and effect, until set aside, altered or amended
140 by the circuit court in an order to be followed in the future.

NOTE: The purpose of this bill is to clarify Public Service Commission jurisdiction over water and sewer utilities owned by political subdivisions. The bill allows more local review and control over the setting of rates, fees, and charges for municipal electric power systems. The bill provides for a right of appeal by customers. The bill establishes uniformity in the class of publications required by municipalities and public service districts for the revision in rates; to provide a time period for the filing of and resolution of complaints filed at the Public Service Commission regarding actions of municipalities; to clarify language in code §24-2-4b regarding reference to other sections of the code regarding notice requirements for municipal utilities; and, regarding the time period pertaining to the filing of appeals and the resolution of such appeals of rate and construction projects decided by county commissions.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.