

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 467

SENATORS BOSO, ROBERTS, AND CLINE, *original*
sponsors

[Originating in the Committee on Government
Organization; Reported on February 25, 2019]

1 A BILL to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §8-16-18 of said code; to amend and reenact §8-19-4 of said code; to amend
3 and reenact §8-20-10 of said code; to amend and reenact §16-13-16 of said code; to
4 amend and reenact §16-13A-9 of said code; to amend and reenact §24-1-1 of said code;
5 to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, and §24-2-11 of
6 said code, all relating to clarifying Public Service Commission jurisdiction over water and
7 sewer utilities owned by municipalities; establishing uniformity in the class of publications
8 required by municipalities and public service districts for the revision in rates; providing a
9 time period for the filing of and resolution of complaints filed at the Public Service
10 Commission regarding actions of municipalities; cleaning up language regarding
11 reference to other sections of the code regarding notice requirements for municipal
12 utilities; and relating to the time period pertaining to the filing of appeals and the resolution
13 of appeals for rate and construction projects decided by county commissions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

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

1 In any case where a municipality owns a gas system, an electric system, a waterworks
2 system, a sewer system, or other public utility and a majority of not less than 60 percent of the
3 members of the governing body thereof ~~shall deem~~ determines it for the best interest of ~~such~~ the
4 municipality that ~~such~~ the utility be sold or leased, the governing body may so sell or lease ~~such~~
5 the gas system, electric system, waterworks system, sewer system, or other public utility upon
6 such terms and conditions as ~~said~~ the governing body in its discretion considers in the best

7 interest of the municipality: *Provided*, That ~~such~~ the sale or lease may be made only upon: (1)
8 The publication of notice of a hearing before the governing body of the municipality, as a Class I
9 legal advertisement in compliance with ~~the provisions of~~ §59-3-1 *et seq.* of this code, in a
10 newspaper published and of general circulation in the municipality, ~~such~~ the publication to be
11 made not earlier than 20 days and not later than seven days prior to the hearing; and (2) the
12 approval by the Public Service Commission of West Virginia. The governing body, upon the
13 approval of the sale or lease by a majority of its members of not less than 60 percent of the
14 members of the governing body, shall have full power and authority to proceed to execute or
15 effect ~~such~~ the sale or lease in accordance with the terms and conditions prescribed in the
16 ordinance approved as aforesaid, and shall have power to do any and all things necessary or
17 incident thereto: *Provided, however*, That if at any time after ~~such~~ the approval and before the
18 execution of the authority under the ordinance, any person should present to the governing body
19 an offer to buy ~~such~~ the public utility at a price which exceeds by at least five percent the sale
20 price which shall have been so approved and authorized or to lease the same upon terms which
21 the governing body, in its discretion, shall consider more advantageous to the municipality than
22 the terms of the lease which shall have been previously approved as aforesaid, the governing
23 body shall have the power to accept ~~such~~ the subsequent offer, and to make ~~such~~ the sale or
24 ~~such~~ the lease to the person making the offer, upon approval of the offer by a majority of not less
25 than 60 percent of the members of the governing body; but, if a sale shall have been approved
26 by the governing body as aforesaid, and the subsequent proposition be for a lease, or, if a lease
27 shall have been approved by the governing body, and the subsequent proposition shall be for a
28 sale, the governing body shall have the authority to accept the same upon approval of the offer
29 by a majority of not less than 60 percent of the members of the governing body. The person
30 making ~~such~~ the proposition shall furnish bond, with security to be approved by the governing
31 body, in a penalty of not less than 25 percent of ~~such~~ the proposed bid, conditioned to carry ~~such~~
32 the proposition into execution, if the same shall be approved by the governing body. In any case

33 where any such public utility shall be sold or leased by the governing body as hereinabove
34 provided, no part of the moneys derived from ~~such~~ the sale or lease shall ~~shall~~ may be applied to the
35 payment of current expenses of the municipality, but the proceeds of ~~such~~ the sale or lease shall
36 be applied in payment and discharge of any indebtedness created in respect to ~~such~~ the public
37 utility, and in case there be no indebtedness, the governing body, in its discretion, shall have the
38 power and authority to expend all such moneys when received for the purchase or construction
39 of firefighting equipment and buildings for housing ~~such~~ the equipment, a municipal building or
40 city hall, and the necessary land upon which to locate the same for capital investments in public
41 works projects, vehicles and equipment, and law-enforcement vehicles and equipment, for the
42 demolition of dilapidated and abandoned buildings, or for the construction of paved streets,
43 avenues, roads, alleys, ways, sidewalks, sewers, storm water systems, floodwalls, and other like
44 permanent improvements for fulfilling municipal pension and other post-employment benefit
45 obligations, or for reducing taxes, and for no other purposes. In case there be a surplus after the
46 payment of ~~such~~ the indebtedness, the surplus shall be used as aforesaid.

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

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~~ the 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~~ the works, though not yet fully completed,
20 are 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~~ may be established until after a public hearing at which all the
27 users of the works and owners of the property served, or to be served thereby, and others
28 interested, 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~~ the hearing, setting forth the proposed schedule of
31 ~~such~~ the rates, fees, or charges, shall be given by publishing the same as a ~~Class I~~ Class I legal

32 advertisement in compliance with ~~the provisions of~~ §59-3-1 *et seq.* of this code, and the
33 publication area for the publication shall be ~~such~~ the municipality or each such municipality, as
34 the case may be. ~~Said~~ The notice shall be published at least five days before the date fixed in
35 ~~such~~ the notice for the hearing, which hearing may be adjourned from time to time. No other or
36 further notice to parties in interest ~~shall~~ may be required.

37 After ~~such~~ the hearing the ordinance establishing rates, fees, or charges, either as
38 originally proposed or introduced, or as modified and amended, shall be adopted and put into
39 effect. A copy of the schedule of ~~such~~ the rates, fees, and charges so established shall be kept
40 on file in the office of the board having charge of ~~such~~ the works, and also in the office of the
41 governing body or bodies, 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~~ the rates, fees, or charges were
46 originally established as provided in this section. The aggregate of the rates, fees, or charges
47 shall always be sufficient for the expenses of repair (including replacements), maintenance, and
48 operation, and for the sinking fund payments.

49 If any rate, fee, or charge so established ~~shall not be~~ is not paid within 30 days after the
50 same is due, the amount thereof, together with a penalty of 10 percent and reasonable attorney's
51 fees, may be recovered by the board in a civil action in the name of the municipality or
52 municipalities, and in the case of rates, fees, or charges due for services rendered, ~~such~~ the rates,
53 fees, or charges, if not paid when due, may, if the governing body so provide in the ordinance
54 provided for under §8-16-7 of this code, constitute a lien upon the premises served by ~~such~~ the
55 works, which lien may be foreclosed against ~~such~~ the lot, parcel of land, or building so served, in
56 accordance with the laws relating to the foreclosure of liens on real property. Upon failure of any

57 person receiving any such service to pay for the same when due, the board may discontinue ~~such~~
58 the service without notice.

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

**§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~~ decides 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~~ the manner and upon
10 such terms as the governing body of ~~such~~ the municipality or county commission may, by
11 ordinance or order, specify. All the bonds and the interest thereon shall be exempt from all taxation
12 by this state, or any county, municipality or county commission, political subdivision, or agency
13 thereof. Notwithstanding any other provision of this code to the contrary, the real and personal
14 property which a municipality or county has acquired and constructed according to the provisions
15 of this article, and any leasehold interest therein held by other persons, shall be ~~deemed~~
16 considered public property and shall be exempt from taxation by the state, or any county,
17 municipality, or other levying body, so long as the same is owned by the municipality or county:
18 *Provided*, That with respect to electric power systems, this exemption for real and personal
19 property shall be applicable only for the real and personal property: (1) Physically situate within

20 the municipal or county boundaries of the municipality or county which acquired or constructed
21 the electric power system and there was in place prior to the effective date of the amendments to
22 this section made in the year 1992 an agreement between the municipality and the county
23 commission for payments in lieu of tax; or (2) acquired or constructed with the written agreement
24 of the county school board, county commission, and any municipal authority within whose
25 jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything
26 contained in this statute to the contrary, this exemption shall be applicable to any leasehold or
27 similar interest held by persons other than a municipality or county only if acquired or constructed
28 with the written agreement of the county school board, county commission, and any municipal
29 authority within whose jurisdiction the electric power system is or is to be physically situate:
30 *Provided, however,* That payments made to any county commission, county school board, or
31 municipality in lieu of tax pursuant to such an agreement shall be distributed as if the payments
32 resulted from ad valorem property taxation. The bonds shall bear interest at a rate per annum set
33 by the municipality or county commission, payable at such times, and shall be payable as to
34 principal at such times, not exceeding 50 years from their date, and at such place or places, within
35 or without the state, as shall be prescribed in the ordinance or order providing for their issuance.
36 Unless the governing body of the municipality or county commission shall otherwise determine,
37 the ordinance or order shall also declare that a statutory mortgage lien shall exist upon the
38 property so to be acquired, constructed, established, extended, or equipped, fix minimum rates
39 or charges for water or electricity to be collected prior to the payment of all of said bonds and shall
40 pledge the revenues derived from the waterworks or electric power system for the purpose of
41 paying the bonds and interest thereon, which pledge shall definitely fix and determine the amount
42 of revenues which shall be necessary to be set apart and applied to the payment of the principal
43 of and interest upon the bonds and the proportion of the balance of the revenues, which are to be
44 set aside as a proper and adequate depreciation account, and the remainder shall be set aside
45 for the reasonable and proper maintenance and operation thereof. The rates or charges to be

46 charged for the services from the waterworks or electric power system shall be sufficient at all
47 times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the
48 principal thereof as and when the same become due, and reasonable reserves therefor, and to
49 provide for the repair, maintenance, and operation of the waterworks or electric power system,
50 and to provide an adequate depreciation fund, and to make any other payments which shall be
51 required or provided for in the ordinance or order authorizing the issuance of said bonds: Provided
52 further, That the notice given by the municipality or county commission for a change in rates or
53 charges to be charged for the services from the waterworks or electric power system, shall be
54 provided by Class I legal advertisement in a newspaper of general circulation in its service territory
55 not less than one week prior to the public hearing of the governing body of the municipality or the
56 county commission required for the approval of the change in rates 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 that purpose. Separate deposits, rates, fees, or charges may be fixed for the water and sewer
15 services respectively and, if applicable, the stormwater services, or combined rates, fees, or for
16 the combined water and sewer services, and, if applicable, the storm water services. ~~Such~~ The
17 deposits, rates, fees, or charges, whether separate or combined, shall be sufficient at all times to
18 pay the cost of repair, maintenance, and operation of the combined system, provide an adequate
19 reserve fund, an adequate depreciation fund, and pay the principal and interest upon all revenue
20 bonds issued under this article. Deposits, rates, fees, or charges shall be established, revised,
21 and 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 or electric
25 power system, shall be provided by Class I legal advertisement in a newspaper of general
26 circulation in its service territory not less than one week prior to the public hearing of the governing
27 body of the municipality 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~~ if they become delinquent as provided in
36 this 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 may require agents or employees of the municipality or governing body to accept payment at
55 the 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~~ the premises of state, county, school,
63 and municipal taxes for the amount thereof upon the real property served. The municipality has
64 the plenary power and authority to enforce ~~such~~ the lien in a civil action to recover the money due
65 for services rendered plus court fees and costs and reasonable attorney's fees: *Provided*, That
66 an owner of real property may not be held liable for the delinquent rates, fees, or charges for
67 services or facilities of a tenant, nor shall any lien attach to real property for the reason of
68 delinquent rates, fees, or charges for services or facilities of a tenant of the real property, unless
69 the owner has contracted directly with the municipality to purchase ~~such~~ the 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~~ the delinquencies prior
80 to bringing the action. In no event shall foreclosure procedures be instituted by any municipality
81 or on its behalf unless the delinquency has been in existence or continued for a period of two
82 years 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 may enact ordinances or regulations which allow for the issuance of orders, the right to enter
87 properties and the right to impose reasonable fines and penalties regarding correction of
88 violations of municipal stormwater ordinances or regulations within the municipal watershed
89 served by the municipal stormwater system, as long as ~~such~~ the rules, regulations, fines, or acts
90 are not contrary to 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~~ the actions are not
99 contrary 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~~ the 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~~ the 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~~ the 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~~ the rates, fees, or charges from
10 time to time. However, no rates, fees, or charges for stormwater services may be assessed
11 against highways, road and drainage easements, or stormwater facilities constructed, owned, or
12 operated 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~~ may require agents or employees of the
37 governing body to accept payment at the customer's premises in lieu of discontinuing service for
38 a delinquent bill.

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

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

47 (h) After introduction of the ordinance fixing ~~such~~ the rates, fees, or charges, and before
48 the same is finally enacted, notice of ~~such~~ the hearing, setting forth the proposed schedule of
49 rates, fees, or charges, shall be given by publication as a ~~Class II-0~~ Class I legal advertisement
50 in compliance with ~~the provisions of~~ §59-3-1 *et seq.* of this code and the publication area for ~~such~~
51 the publication shall be the municipality. The first publication shall be made at least ~~ten~~ five days
52 before the date fixed in the notice for the hearing.

53 (i) After the hearing, which may be adjourned, from time to time, the ordinance establishing
54 rates, fees, or charges, either as originally introduced or as modified and amended, shall be

55 passed and put into effect. A copy of the schedule of the rates, fees, and charges shall be kept
56 on file in the office of the board having charge of the operation of ~~such~~ the works, and also in the
57 office of the clerk of the municipality, and shall be open to inspection by all parties interested. The
58 rates, fees, or charges established for any class of users or property served shall be extended to
59 cover any additional premises thereafter served which fall within the same class, without the
60 necessity of any hearing or notice.

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

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

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

80 (m) The board collecting the rates, fees, or charges shall be obligated under reasonable
81 rules to shut off and discontinue both water and sewer services to all delinquent users of water,
82 sewer or stormwater facilities and shall not restore either water facilities or sewer facilities to any
83 delinquent user of any such facilities until all delinquent rates, fees, or charges for water, sewer
84 and stormwater facilities, including reasonable interest and penalty charges, have been paid in
85 full, as long as ~~such~~ the actions are not contrary to any rules or orders of the Public Service
86 Commission: *Provided*, That nothing contained within the rules of the Public Service Commission
87 ~~shall be deemed~~ may be considered to require any agents or employees of the municipality or
88 governing body to accept payment at the customer's premises in lieu of discontinuing service for
89 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) The board of a public service district with at least 4,500 customers and annual
24 combined gross revenue of \$3 million ~~or more from its separate or combined water and sewer~~
25 ~~services~~ providing water or sewer service separately or in combination may make, enact, and
26 enforce all needful rules in connection with the enactment or amendment of rates, fees, and
27 charges of the district. At a minimum, these rules shall provide for:

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

36 (B) Adequate prior public notice of the contemplated rates, fees, and charges by causing
37 to be published, after the first reading and approval of a resolution of the board considering ~~such~~
38 the revised rates, fees, and charges but not less than one week prior to the public hearing of the

39 board on ~~such~~ the resolution, as a Class I legal advertisement, of the proposed action, in
40 compliance with the provisions of §59-3-1 *et seq.* of this code. The publication area for publication
41 shall be all territory served by the district. If the district provides service in more than one county,
42 publication shall be made in a newspaper of general circulation in each county that the district
43 provides service.

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

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

56 (E) Rates, fees, and charges approved by resolution of the board shall be forwarded in
57 writing to the county commission with the authority to appoint the members of the board. The
58 county commission shall publish notice of the proposed revised rates, fees, and charges by a
59 Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.
60 Within 45 days of receipt of the proposed rates, fees, and charges, the county commission shall
61 take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole
62 discretion. If, after 45 days, the county commission has not taken final action to approve, modify,
63 or reject the proposed rates, fees, and charges, as presented to the county commission, shall be
64 effective with no further action by the board or county commission. In any event, this 45-day period

65 shall be mandatory unless extended by the official action of both the board proposing the rates,
66 fees, and charges, and the appointing county commission.

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

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

119 (b) ~~In the event that~~ If 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 separate 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 Bureau
144 for Public 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 Bureau for Public Health, including, but not limited to, vacuum
147 and 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 Bureau for Public Health, including, but not limited to, vacuum
152 and 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 Bureau for Public
162 Health. Maintenance and operation costs for the extra installation should be reflected in the users
163 charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits
164 of the 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 Bureau for Public Health from the house, dwelling, or building into the sewer
171 facilities, the district may charge, and the owner, tenant, or occupant shall pay, the rates and
172 charges for services established under this article only after 30 days' notice of the availability of
173 the facilities has been received by the owner, tenant, or occupant. Rates and charges for sewage
174 services shall be based upon actual water consumption or the average monthly water
175 consumption based 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~~ may require any agents or employees of the public service
196 districts to accept payment at the customer's premises in lieu of discontinuing service for a
197 delinquent bill. In addition to the other remedies provided in this section, public service districts
198 are granted a deferral of filing fees or other fees and costs incidental to the bringing and
199 maintenance of an action in magistrate court for the collection of delinquent water, sewer,
200 stormwater, or gas bills. If the district collects the delinquent account, plus reasonable costs, from
201 its customer or other responsible party, the district shall pay to the magistrate the normal filing fee
202 and reasonable costs which were previously deferred. In addition, each public service district may
203 exchange with other public service districts a list of delinquent accounts: *Provided*, That an owner
204 of real property may not be held liable for the delinquent rates or charges for services or facilities
205 of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges
206 for services or facilities of a tenant of the real property unless the owner has contracted directly
207 with the public 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.

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

217 (†) (h) Notwithstanding any code provision to the contrary, a public service district may
218 accept payment for all fees and charges due, in the form of a payment by a credit or check card
219 transaction or a direct withdrawal from a bank account. The public service district may set a fee

220 to be added to each transaction equal to the charge paid by the public service district for use of
221 the credit or check card or direct withdrawal by the payor. The amount of ~~such~~ the fee shall be
222 disclosed to the payor prior to the transaction and no other fees for the use of a credit or check
223 card or direct withdrawal may be imposed upon the payor and the whole of ~~such~~ the charge or
224 convenience fee shall be borne by the payor: *Provided*, That, to the extent a public service district
225 desires to accept payments in the forms described in this subsection and does not have access
226 to the equipment or receive the services necessary to do so, the public service district shall first
227 obtain three bids for services and equipment necessary to affect the forms of transactions
228 described in this subsection and use the lowest qualified bid received. Acceptance of a credit or
229 check card or direct withdrawal as a form of payment shall comport with the rules and
230 requirements set forth by the credit or check card provider or banking institution.

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
26 consider the potential benefits or risks associated with emerging and state-of-the-art concepts in
27 utility management, rate design, and conservation. The commission may conduct inquiries and
28 hold hearings regarding such concepts in order to provide utilities subject to its jurisdiction and
29 other 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~~ the activities
39 relate 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~~ the 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~~ the wells; their probable extent of future
51 production and the reasons given and any justification for capping off or shutting in ~~such~~ the 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~~ the wells; and whether there are fixed policies by any utility or group of
55 utilities to avoid the purchase of natural gas produced in the Appalachian region of the United
56 States 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 subdivisions (1) and (2) of this
59 subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia.

60 In carrying out the provisions of this section the commission shall have jurisdiction over ~~such~~ the
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 decision making 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 subdivision (2) of this subsection shall protect the interests of each class of
77 customers and the means by which the commission will assure that ~~such~~ the division will be
78 financially and departmentally independent of the division created by subdivision (1) of this
79 subsection;

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

86 (5) Which members of the staff of the Public Service Commission shall be exempted from
87 the salary schedules or pay plan adopted by the Civil Service Commission and identify ~~such~~ the

88 staff members by job classification or designation, together with the salary or salary ranges for
89 each such job classification or designation;

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

95 ~~Such~~ The plan shall be based on the concept that each of the divisions mentioned in
96 subdivisions (1), (2), and (4) of this subsection shall exist independently of the others and the plan
97 shall discourage ex parte communications between them by such means as the commission shall
98 direct, including, but not limited to, separate clerical and professional staffing for each division.
99 Further, the Public Service Commission is directed to incorporate within the said plan to the fullest
100 extent possible the recommendations presented to the subcommittee on the Public Service
101 Commission of the Joint Committee on Government and Finance in a final report dated February,
102 1979, and entitled A Plan for Regulatory Reform and 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~~ the order
106 and rule shall be filed on the first day of the 1980 regular session of the Legislature, by the
107 chairman of the commission with the clerk of each house of the Legislature, the Governor, and
108 the Secretary of State. The chairman of the commission shall also file with the office of the
109 Secretary of State the receipt of the clerk of each house and of the Governor, which receipt shall
110 evidence compliance with this section.

111 Upon the filing of a certified copy of ~~such~~ the order and rule, the clerk of each house of
112 the Legislature shall report the same to their respective houses and the presiding officer thereof
113 shall 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~~ the rule is approved in part and
119 disapproved in part by a concurrent resolution of the Legislature adopted prior to ~~such~~ the
120 adjournment, ~~such~~ the rule shall be effective to the extent and only to the extent that the same is
121 approved by ~~such~~ the 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~~ the increases have
130 adversely affected all customer classes. The Legislature further finds that it must take action
131 necessary to 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 ~~water and sewer utilities that are political subdivisions~~
149 ~~of the state~~ public service districts providing separate or combined services water or sewer service
150 separately or in combination and having at least 4,500 customers and annual gross revenues of
151 \$3 million or more and, effective July 1, 2019, municipally owned water and sewer utilities
152 providing separate or combined services and having annual gross revenues of \$1 million or more
153 from either water or sewer services or from a combination of both water and sewer services; and,
154 effective July 1, 2021, municipally owned water and sewer utilities providing separate or combined
155 services and having annual gross revenues of \$200,000 or more from either water or sewer
156 services or from a combination of both water and sewer services; and, effective July 1, 2023, all
157 municipally owned water and sewer utilities, are most fairly and effectively regulated by the local
158 governing body with respect to rates, borrowing and capital projects. Therefore, notwithstanding
159 any contrary provisions of this section, the jurisdiction of the Public Service Commission over
160 such water and sewer utilities ~~that are political subdivisions of the state~~ is limited to that granted
161 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,
5 water, or air; transportation of oil, gas, or water by pipeline; transportation of coal and its
6 derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping
7 car or parlor car services; transmission of messages by telephone, telegraph, or radio; generation
8 and transmission of electrical energy by hydroelectric or other utilities for service to the public,
9 whether directly or through a distributing utility; supplying water, gas, or electricity by
10 municipalities or others; sewer systems servicing 25 or more persons or firms other than the
11 owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision
12 intends to provide sewer service by an innovative, alternative method, as defined by the federal
13 Environmental Protection Agency, the innovative, alternative method is a public utility function
14 and subject to the jurisdiction of the Public Service Commission regardless of the number of
15 customers served by the innovative, alternative method; any public service district created under
16 the provisions of §16-13A-1 *et seq.* 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 25 residential
20 customers are exempt from the jurisdiction of the commission with regard to the provisions of
21 ~~such~~ the residential service: *Provided further*, That upon request of any of the customers of ~~such~~
22 the natural gas producers, the commission may, upon good cause being shown, exercise such

23 authority as the commission may deem appropriate over the operation, rates, and charges of ~~such~~
24 the producer and for such length of time as the commission may consider to be proper.

25 (b) In accordance with the provisions set forth in §24-1-1(j) of this code, after July 1, 2019,
26 the jurisdiction of the commission over political subdivisions of this state providing separate or
27 combined water and/or sewer services ~~and having at least 4,500 customers and annual combined~~
28 ~~gross revenues of \$3 million or more that are political subdivisions of the state~~ is limited to:

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

30 (2) Regulation of measurements, practices, acts, or services, as granted and described in
31 §24-2-7 of this code;

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

34 (4) Submission of information to the commission regarding rates, tolls, charges, or
35 practices, as granted and described in §24-2-9 of this code;

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

39 (6) Investigation and resolution of disputes between a political subdivision of the state
40 providing wholesale water and/or wastewater treatment or other services, whether by contract or
41 through a tariff, and its customer or customers, including, but not limited to, rates, fees, and
42 charges, service areas and contested utility combinations: *Provided*, That any request for an
43 investigation related to such a dispute that is based on the act or omission of the political
44 subdivision shall be filed within 30 days of the act or omission of the political subdivision and the
45 commission shall resolve said dispute within 120 days of filing. The 120-day period for resolution
46 of the dispute may be tolled by the commission until the necessary information showing the basis
47 of the rates, fees, and charges or other information as the commission considers necessary is
48 filed: *Provided, however*, That the disputed rates, fees, and charges so fixed by the political

49 subdivision providing separate or combined water and/or sewer services shall remain in full force
50 and effect until set aside, altered, or amended by the commission in an order to be followed in the
51 future.

52 (7) Customers of water and sewer utilities operated by a political subdivision of the state
53 may bring formal or informal complaints regarding the commission's exercise of the powers
54 enumerated in this section and the commission shall resolve these complaints: Provided, That
55 any formal complaint filed under this section that is based on the act or omission of the political
56 subdivision shall be filed within 30 days of the act or omission complained of and the commission
57 shall resolve the complaint within 120 days of filing. The 120-day period for resolution of the
58 dispute may be tolled by the commission until the necessary information showing the basis of the
59 matter complained of is filed by the political subdivision: *Provided, however,* That whenever the
60 commission finds any regulations, measurements, practices, acts, or service to be unjust,
61 unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of
62 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot
63 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable
64 measurement, regulations, acts, practices, or services, to be furnished, imposed, observed, and
65 followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory,
66 inadequate or otherwise in violation of this chapter, and shall make such other order respecting
67 the same as shall be just and reasonable: *Provided further,* That if the matter complained of would
68 affect rates, fees, and charges so fixed by the political subdivision providing separate or combined
69 water and/or sewer services, the rates, fees, or charges shall remain in full force and effect until
70 set aside, altered, or amended by the commission in an order to be followed in the future.

71 (8) ~~In the event that~~ If a political subdivision has a deficiency in either its bond revenue or
72 bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may
73 petition the Public Service Commission for such redress as will bring the accounts to current

74 status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to
75 fully resolve the alleged deficiency or breach.

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

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

80 (2) ~~Said~~ The area can be provided with utility service by a utility which operates in a state
81 adjoining West Virginia;

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

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

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

89 (1) An owner or operator of an electric-generating facility located or to be located in this
90 state that has been designated as an exempt wholesale generator under applicable federal law,
91 or will be so designated prior to commercial operation of the facility, and for which such facility
92 the owner or operator holds a certificate of public convenience and necessity issued by the
93 commission on or before July 1, 2003, ~~shall be~~ is subject to §24-2-11c(e) through §24-2-11c(j) of
94 this code as if the certificate of public convenience and necessity for ~~such~~ the facility were a siting
95 certificate issued under §24-2-11c of this code and ~~shall~~ is not otherwise ~~be~~ subject to the
96 jurisdiction of the commission or to the provisions of this chapter with respect to ~~such~~ the facility
97 except for the making or constructing of a material modification thereof as provided in §24-2-
98 1(d)(5) of this code.

99 (2) Any person, corporation, or other entity that intends to construct or construct and
100 operate an electric-generating facility to be located in this state that has been designated as an
101 exempt wholesale generator under applicable federal law, or will be so designated prior to
102 commercial operation of the facility, and for which facility the owner or operator does not hold a
103 certificate of public convenience and necessity issued by the commission on or before July 1,
104 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
105 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
106 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
107 operator of an electric-generating facility as is described in this subdivision for which a siting
108 certificate has been issued by the commission ~~shall be~~ is subject to §24-2-11c(e) through §24-2-
109 11c(j) of this code and ~~shall~~ is not otherwise ~~be~~ subject to the jurisdiction of the commission or to
110 the provisions of this chapter with respect to ~~such~~ the facility except for the making or constructing
111 of a material modification thereof as provided in §24-2-1(d)(5) of this code.

112 (3) An owner or operator of an electric-generating facility located in this state that had not
113 been designated as an exempt wholesale generator under applicable federal law prior to
114 commercial operation of the facility that generates electric energy solely for sale at retail outside
115 this state or solely for sale at wholesale in accordance with any applicable federal law that
116 preempts state law or solely for both ~~such~~ sales at retail and ~~such~~ sales at wholesale and that
117 had been constructed and had engaged in commercial operation on or before July 1, 2003, ~~shall~~
118 is not ~~be~~ subject to the jurisdiction of the commission or to the provisions of this chapter with
119 respect to ~~such~~ the facility, regardless of whether ~~such~~ the facility subsequent to its construction
120 has been or will be designated as an exempt wholesale generator under applicable federal law:
121 *Provided*, That ~~such~~ the owner or operator ~~shall be~~ is subject to §24-2-1(d)(5) of this code if a
122 material modification of ~~such~~ the facility is made or constructed.

123 (4) Any person, corporation, or other entity that intends to construct or construct and
124 operate an electric-generating facility to be located in this state that has not been or will not be

125 designated as an exempt wholesale generator under applicable federal law prior to commercial
126 operation of the facility that will generate electric energy solely for sale at retail outside this state
127 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
128 law or solely for both ~~such~~ sales at retail and ~~such~~ sales at wholesale and that had not been
129 constructed and had not been engaged in commercial operation on or before July 1, 2003, shall,
130 prior to commencement of construction of the facility, obtain a siting certificate from the
131 commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
132 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
133 operator of an electric-generating facility as is described in this subdivision for which a siting
134 certificate has been issued by the commission ~~shall be~~ is subject to §24-2-11c(e) through §24-2-
135 11c(j) of this code and ~~shall~~ is not otherwise ~~be~~ subject to the jurisdiction of the commission or to
136 the provisions of this chapter with respect to ~~such~~ the facility except for the making or constructing
137 of a material modification thereof as provided in §24-2-1(d)(5) of this code.

138 (5) An owner or operator of an electric-generating facility described in this subsection shall,
139 before making or constructing a material modification of the facility that is not within the terms of
140 any certificate of public convenience and necessity or siting certificate previously issued for the
141 facility or an earlier material modification thereof, obtain a siting certificate for the modification
142 from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of
143 public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of
144 this code and, except for the provisions of §24-2-11c of this code, ~~shall~~ is not otherwise ~~be~~ subject
145 to the jurisdiction of the commission or to the provisions of this chapter with respect to ~~such~~ the
146 modification.

147 (6) The commission shall consider an application for a certificate of public convenience
148 and necessity filed pursuant to §24-2-11 of this code to construct an electric-generating facility
149 described in this subsection or to make or construct a material modification of ~~such~~ the electric-
150 generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the

151 application for the certificate of public convenience and necessity was filed with the commission
152 prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

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

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

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

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

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

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

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

171 (f) Notwithstanding any other provisions of this article, the commission ~~shall have~~ has
172 jurisdiction to review or approve any transaction involving a telephone company otherwise subject
173 to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under common
174 ownership.

175 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power
176 systems are most fairly and effectively regulated by the local governing body. Therefore,

177 notwithstanding any other provisions of this article, the commission ~~shall have~~ has jurisdiction
178 over the setting or adjustment of rates, fees, and charges of municipal power systems. Further,
179 the jurisdiction of the Public Service Commission over municipal power systems is limited to that
180 granted specifically in this code.

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

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

22 prescribe rates, charges, or tolls that are the lowest available. “Emergency shelter provider”
23 means any nonprofit entity which provides temporary emergency housing and services to the
24 homeless or to victims of domestic violence or other abuse.

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

30 (c) Notwithstanding any other provision of this code to the contrary, in accordance with the
31 provisions set forth in §24-1-1(j) of this code, effective July 1, 2019, the jurisdiction of the
32 commission over water and/or sewer utilities that are political subdivisions of the state providing
33 a separate or combined services ~~and having at least 4,500 customers and annual combined gross~~
34 ~~revenues of \$3 million or more~~ is limited to those powers enumerated in §24-2-1(b) of this code.

35 (d) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
36 commission does not extend over the setting or adjustment of rates, fees, and charges of
37 municipal power systems. The rates, fees, charges and rate-making process of municipal power
38 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) As provided in §24-1-1(j) of this code, the commission may enforce, originate,
2 establish, change, and promulgate tariffs, rates, joint rates, tolls, and schedules for all public
3 utilities except for municipal power systems and water and/or sewer utilities that are political
4 subdivisions of this state ~~providing a separate or combined services and having at least 4,500~~
5 ~~customers and annual combined gross revenues of \$3 million or more:~~ *Provided, That* as provided
6 in §24-1-1(j) of this code the commission may exercise such rate authority over municipally owned
7 natural gas utilities or a municipally owned water and/or sewer utility ~~having less than 4,500~~
8 ~~customers or annual combined gross revenues of less than \$3 million~~ only under the

9 circumstances and limitations set forth in §24-2-4b of this code, and subject to the provisions set
10 forth in §24-2-3(b) of this code. And whenever the commission, after hearing, finds any existing
11 rates, tolls, tariffs, joint rates, or schedules enacted or maintained by a utility regulated under the
12 provisions of this section to be unjust, unreasonable, insufficient, or unjustly discriminatory or
13 otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix
14 reasonable rates, joint rates, tariffs, tolls, or schedules to be followed in the future in lieu of those
15 found to be unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation
16 of any provisions of law, and the commission, in fixing the rate of any railroad company, may fix
17 a fair, reasonable, and just rate to be charged on any branch line thereof, independent of the rate
18 charged on the main line of that railroad.

19 (b) Any complaint filed with the commission by a resale or wholesale customer of a
20 municipally owned water and/or sewer utility ~~having less than 4,500 customers or annual~~
21 ~~combined gross revenue of less than \$3 million concerning rates, fees, or charges applicable to~~
22 ~~such resale or wholesale customer~~ over which the commission has jurisdiction under the
23 provisions of §24-1-1(j) of this code shall be filed within 30 days of the enactment by the governing
24 body of the political subdivision of an ordinance changing rates, fees, or charges for ~~such~~ the
25 service. The commission shall resolve said complaint within 120 days of filing. The 120-day period
26 for resolution of the complaint may be tolled by the commission until the necessary information
27 showing the basis of the rates, fees, charges, and other information as the commission considers
28 necessary is filed: *Provided*, That rates, fees, and charges so fixed by the political subdivision
29 providing separate or combined water and/or sewer services shall remain in full force and effect
30 until set aside, altered, or amended by the commission in an order to be followed in the future:
31 *Provided, however*, That the commission shall have no authority to order refunds for amounts
32 collected during the pendency of the complaint proceeding unless the rates, fees, or charges so
33 enacted by the governing body were enacted subject to refund under the provisions of §24-2-
34 4b(d)(2) or §24-2-4b(g) of this code.

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

42 (d) In determining just and reasonable rates, the commission shall investigate and review
43 transactions between utilities and affiliates. The commission shall limit the total return of the utility
44 to a level which, when considered with the level of profit or return the affiliate earns on transactions
45 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~~ A public utility subject to this chapter, except for ~~water and/or~~
2 ~~sewer utilities that are political subdivisions of the state providing separate or combined services~~
3 ~~and having at least four thousand five hundred customers and annual gross revenue of \$3 million~~
4 ~~or more from its separate or combined services,~~ shall water or sewer utilities that are political
5 subdivisions of this state as provided in §24-1-1(j) of this code may not change, suspend, or annul
6 any rate, joint rate, charge, rental, or classification except after 30 days' notice to the commission
7 and the public, which notice shall plainly state the changes proposed to be made in the schedule
8 then in force and the time when the changed rates or charges shall go into effect; but the
9 commission may enter an order suspending the proposed rate as hereinafter provided. The
10 proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon
11 the schedules in force at the time, and kept open to public inspection: *Provided*, That the
12 commission may, in its discretion, and for good cause shown, allow changes upon less time than
13 the notice herein specified, or may modify the requirements of this section in respect to publishing,
14 posting, and filing of tariffs, either by particular instructions or by general order.

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

41 when ~~such~~ the rate, charge, classification, regulation, or practice would otherwise go into effect;
42 and in the case of a public utility having more than 5,000 customers, but not more than 7,500
43 customers, and which is not a political subdivision and which is not principally owned by any other
44 public utility corporation or public utility holding corporation, the commission may suspend the
45 operation of ~~such~~ the schedule and defer the use of ~~such~~ the rate, charge, classification,
46 regulation, or practice, but not for a longer period than 180 days beyond the time when ~~such~~ the
47 rate, charge, classification, regulation, or practice would otherwise go into effect; and after full
48 hearing, whether completed before or after the rate, charge, classification, regulation, or practice
49 goes into effect, the commission may make ~~such~~ the order in reference to ~~such~~ the rate, charge,
50 classification, regulation, or practice as would be proper in a proceeding initiated after the rate,
51 charge, classification, regulation, or practice had become effective: *Provided, however,* That, in
52 the case of rates established or proposed that increase by less than 25 percent of the gross
53 revenue of the regulated public service district, there shall be no suspension period in the case of
54 rates established by a public service district pursuant to §16-13A-9 of this code and the proposed
55 rates of public service districts shall go into effect upon the date of filing with the commission,
56 subject to refund modification at the conclusion of the commission proceeding. In the case of rates
57 established or proposed that increase by more than 25 percent of the gross revenue of the public
58 service district, the district may apply for, and the commission may grant, a waiver of the
59 suspension period and allow rates to be effective upon the date of filing with the commission.
60 Notwithstanding the provisions of subsection (e) of this section, the public service district shall
61 provide notice by Class 1 legal advertisement in a newspaper of general circulation in its service
62 territory of the percentage increase in rates at least 14 days prior to the effective date of the
63 increased rates. Any refund determined to be ~~determined to be~~ due and owing as a result of any
64 difference between any final rates approved by the commission and the rates placed into effect
65 subject to refund shall be refunded by the public service district as a credit against each
66 customer's account for a period of up to six months after entry of the commission's final order.

67 Any remaining balance which is not fully credited by credit within six months after entry of the
68 commission's final order shall be directly refunded to the customer by check: *Provided further,*
69 That if any such hearing and decision thereon is not concluded within the periods of suspension,
70 as above stated, ~~such~~ the rate, charge, classification, regulation, or practice shall go into effect at
71 the end of ~~such~~ the period not subject to refund: *And provided further,* That if any such rate,
72 charge, classification, regulation, or practice goes into effect because of the failure of the
73 commission to reach a decision, the same shall not preclude the commission from rendering a
74 decision with respect thereto which would disapprove, reduce or modify any such proposed rate,
75 charge, classification, regulation, or practice, in whole or in part, but any such disapproval,
76 reduction or modification shall not be deemed to require a refund to the customers of ~~such~~ the
77 utility as to any rate, charge, classification, regulation, or practice so disapproved, reduced or
78 modified. The fact of any rate, charge, classification, regulation, or practice going into effect by
79 reason of the commission's failure to act thereon ~~shall~~ does not affect the commission's power
80 and authority to subsequently act with respect to any such application or change in any rate,
81 charge, classification, regulation, or practice. Any rate, charge, classification, regulation, or
82 practice which shall be approved, disapproved, modified, or changed, in whole or in part, by
83 decision of the commission shall remain in effect as so approved, disapproved, modified, or
84 changed during the period or pendency of any subsequent hearing thereon or appeal therefrom.
85 Orders of the commission affecting rates, charges, classifications, regulations, or practices which
86 have gone into effect automatically at the end of the of the suspension period are prospective in
87 effect.

88 (c) At any hearing involving a rate sought to be increased or involving the change of any
89 rate, charge, classification, regulation, or practice, the burden of proof to show the justness and
90 reasonableness of the increased rate or proposed increased rate, or the proposed change of rate,
91 charge, classification, regulation, or practice shall be upon the public utility making application for
92 ~~such~~ the change. The commission shall, whenever practicable and within budgetary constraints,

93 conduct one or more public hearings within the area served by the public utility making application
94 for ~~such~~ the increase or change, for the purpose of obtaining comments and evidence on the
95 matter from local ratepayers.

96 (d) Each public utility subject to the provisions of this section shall be required to establish,
97 in a written report which shall be incorporated into each general rate case application, that it has
98 thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility
99 management, rate design and conservation as reported by the commission under §24-1-1(c) of
100 this code as alternatives to, or in mitigation of, any rate increase. The utility report shall contain
101 as to each concept considered the reasons for adoption or rejection of each. When in any case
102 pending before the commission all evidence shall have been taken and the hearing completed,
103 the commission shall render a decision in ~~such~~ the case. The failure of the commission to render
104 a decision with respect to any such proposed change in any such rate, charge, classification,
105 regulation, or practice within the various time periods specified in this section after the application
106 therefor shall constitute neglect of duty on the part of the commission and each member thereof.

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

114 (f) The commission may order rates into effect subject to refund, plus interest in the
115 discretion of the commission, in cases in which the commission determines that a temporary or
116 interim rate increase is necessary for the utility to avoid financial distress, or in which the costs
117 upon which these rates are based are subject to modification by the commission or another
118 regulatory commission and to refund to the public utility. In ~~such~~ that case the commission may

119 require ~~such~~ the public utility to enter into a bond in an amount deemed by the commission to be
120 reasonable and conditioned upon the refund to the persons or parties entitled thereto of the
121 amount of the excess if ~~such~~ the rates so put into effect are subsequently determined to be higher
122 than those finally fixed for ~~such~~ the utility.

123 (g) No utility regulated under the provisions of this section may make application for a
124 general rate increase while another general rate application is pending before the commission
125 and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The
126 provisions of this subsection shall not be construed so as to prohibit any such rate application
127 from being made while a previous application which has been finally acted upon by the
128 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 4,500 customers or annual combined gross revenues~~
4 ~~of less than \$3 million,~~ except for municipally operated commercial solid waste facilities as defined
5 in §22-15-2 of this code, and the rates and charges for local exchange services provided by
6 telephone cooperatives are not subject to the rate approval provisions of §24-2-4 or §24-2-4a of
7 this code, but are subject to the limited rate provisions of this section.

8 (b) All rates and charges set by electric cooperatives, natural gas cooperatives, and
9 municipally operated public utilities that are political subdivisions of the state providing water,
10 sewer, and/or natural gas services that are subject to the provisions of this section and all rates
11 and charges for local exchange services set by telephone cooperatives shall be just, reasonable,
12 applied without unjust discrimination between or preference for any customer or class of customer
13 and based primarily on the costs of providing these services. All rates and charges shall be based

14 upon the measured or reasonably estimated cost of service and the equitable sharing of those
15 costs between customers based upon the cost of providing the service received by the customer,
16 including a reasonable plant-in-service depreciation expense. The rates and charges shall be
17 adopted by the electric, natural gas, telephone cooperative, or political subdivision's governing
18 board or body and, in the case of the municipally operated public utility, by municipal ordinance
19 to be effective not sooner than 45 days after adoption. The 45-day waiting period may be waived
20 by public vote of the governing body if that body finds and declares the public utility that is a
21 political subdivision of the state to be in financial distress such that the 45-day waiting period
22 would be detrimental to the ability of the utility to deliver continued and compliant public services:
23 *Provided*, That notice of intent to effect a rate change shall be specified on the monthly billing
24 statement of the customers of the utility for the month next preceding the month in which the rate
25 change is to become effective and the utility governing body shall give its customers and, in the
26 case of a cooperative, its customers, members, and stockholders, other reasonable notices as
27 will allow filing of timely objections to the proposed rate change and full participation in municipal
28 rate legislation through the provision of a public forum in which customers may comment upon
29 the proposed rate change prior to an enactment vote. The rates and charges or ordinance shall
30 be filed with the commission, together with any information showing the basis of the rates and
31 charges and other information as the commission considers necessary. Any change in the rates
32 and charges with updated information shall be filed with the commission. If a petition, as set out
33 in §24-2-4b(c)(1), §24-2-4b(c)(2), or §24-2-4b(c)(3) of this code, is received and the electric
34 cooperative, natural gas cooperative, or telephone cooperative or municipality has failed to file
35 with the commission the rates and charges with information showing the basis of rates and
36 charges and other information as the commission considers necessary, the suspension period
37 limitation of 120 days and the 100-day period limitation for issuance of an order by a hearing
38 examiner, as contained in §24-2-4b(d) and §24-2-4b(e) of this code, is tolled until the necessary

39 information is filed. The electric cooperative, natural gas cooperative, telephone cooperative, or
40 municipality shall set the date when any new rate or charge is to go into effect.

41 (c) The commission shall review and approve or modify the rates and charges of electric
42 cooperatives, natural gas cooperatives, telephone cooperatives, or municipal natural gas utilities
43 and municipally owned water and/or sewer utilities that are political subdivisions of the state ~~and~~
44 ~~having less than 4,500 customers or annual combined revenues of less than \$3 million~~ not subject
45 to the provisions of §24-1-1(j) of this code, upon the filing of a petition within 30 days of the
46 adoption of the ordinance or resolution changing the rates or charges by:

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

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

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

62 (d) (1) Subject to the provisions of §24-1-1(j) of this code, the filing of a petition with the
63 commission signed by not less than 25 percent of the customers served by the municipally owned
64 natural gas public utility or a municipally owned water and/or sewer utility ~~having less than 4,500~~

65 ~~customers or annual combined gross revenues of less than \$3 million~~ or 25 percent of the
66 membership of the electric, natural gas, or telephone cooperative residing within the state under
67 §24-2-4b(c) of this code shall suspend the adoption of the rate change contained in the ordinance
68 or resolution for a period of 120 days from the date the rates or charges would otherwise go into
69 effect or until an order is issued as provided herein.

70 (2) Upon sufficient showing of discrimination by customers outside the municipal
71 boundaries or a customer or a group of customers within the municipal boundaries under a petition
72 filed under §24-2-4b(c)(2) or §24-2-4b(c)(3) of this code, the commission shall suspend the
73 adoption of the rate change contained in the ordinance for a period of 120 days from the date the
74 rates or charges would otherwise go into effect or until an order is issued as provided herein. A
75 municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter
76 or state code that establishes or proposes a rate increase that results in an increase of less than
77 25 percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed
78 to go into effect, subject to refund, upon the date stated in that ordinance. Any refund determined
79 to be due and owing as a result of any difference between any final rates approved by the
80 commission and the rates placed into effect subject to refund shall be refunded as a credit against
81 each customer's account for a period of up to six months after entry of the commission's final
82 order. Any remaining balance which is not fully credited by credit within six months after entry of
83 the commission's final order shall be directly refunded to the customer by check. In the case of
84 rates established or proposed that increase by more than 25 percent of the gross revenue of the
85 municipally operated public utility, the utility may apply for, and the commission may grant, a
86 waiver of the suspension period and allow rates to be effective upon enactment.

87 (e) The commission shall forthwith appoint a hearing examiner from its staff to review the
88 grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and
89 shall, within 100 days from the date the rates or charges would otherwise go into effect, unless
90 otherwise tolled as provided in §24-2-4b(b) of this code, issue an order approving, disapproving,

91 or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas, or
92 telephone cooperative or by the municipally operated public utility pursuant to this section.

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

99 (g) Subject to the provisions of §24-1-1(j) of this code, the commission may, upon petition
100 by an electric, natural gas, or telephone cooperative or municipal natural gas public utility or a
101 municipally owned water and/or sewer utility, ~~having less than 4,500 customers or annual~~
102 ~~combined gross revenues of less than \$3 million~~ allow an interim or emergency rate to take effect,
103 subject to refund or future modification, if it is determined that the interim or emergency rate is
104 necessary to protect the municipality from financial hardship attributable to the purchase of the
105 utility commodity sold, or the commission determines that a temporary or interim rate increase is
106 necessary for the utility to avoid financial distress. In such cases, the commission shall waive the
107 45-day waiting period provided for in §24-2-4b(b) of this code and the 120-day suspension period
108 provided for in §24-2-4b(d) of this code.

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

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

115 (j) Notwithstanding any other provision of this code to the contrary, and subject to the
116 provisions of §24-1-1(j) of this code, the jurisdiction of the commission over water and/or sewer

117 utilities that are political subdivisions of the state ~~and having at least 4,500 customers and annual~~
118 ~~gross combined revenues of \$3 million or more shall be~~ is limited to those powers enumerated in
119 §24-2-1(b) of this code.

120 (k) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
121 commission does not extend over the setting and adjustment of the rates, fees, and charges of
122 municipal power systems. The rates, fees, charges, and rate-making process of municipal power
123 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) Subject to the provisions of §24-1-1(j) of this code, a public utility, person, or
2 corporation other than a political subdivision of the state providing water or sewer services ~~and~~
3 ~~having at least four thousand five hundred customers and annual gross combined revenues of \$3~~
4 ~~million dollars or more~~ may not begin the construction of any plant, equipment, property or facility
5 for furnishing to the public any of the services enumerated in §24-2-1 of this code, nor apply for,
6 nor obtain any franchise, license or permit from any municipality or other governmental agency,
7 except ordinary extensions of existing systems in the usual course of business, unless and until
8 it shall obtain from the Public Service Commission a certificate of public convenience and
9 necessity authorizing ~~such~~ the 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) Subject to the provisions of §24-1-1(j) of this code, any public utility, person, or
19 corporation subject to the provisions of this section other than a political subdivision of the state
20 providing water and/or sewer services ~~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 subsection (b) of this section, the commission shall render its final decision
37 within 270 days or 225 days of the filing of the application, whichever is applicable as determined
38 in subsection (d) of this section.

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~~ considers proper for the
47 enforcement of the provisions of this section; and, in establishing that public convenience and
48 necessity do exist, 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~~ the 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 ~~and 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~~ the 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
81 charges, if any, in compliance with ~~the provisions of~~ §59-3-1 *et seq.* of this code. The publication
82 area for publication shall be all territory served by the political subdivision. If the political
83 subdivision provides service in more than one county, publication shall be made in a newspaper
84 of general 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
88 or resolution approving the proposed construction and proposed changes to rates, fees, and
89 charges, if any; and the place or places within the political subdivision where the ordinance or
90 resolution approving the proposed construction and proposed changes to rates, fees, and
91 charges, if any, may be inspected by the public. A reasonable number of copies of the ordinance
92 or resolution shall be kept at the place or places and be made available for public inspection. The
93 notice shall also advise that interested parties may appear at the public hearing before the political

94 subdivision and be heard with respect to the proposed construction and the proposed rates, fees,
95 and charges, if any.

96 (4) The ordinance or resolution on the proposed construction and the proposed rates,
97 fees, 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~~ may 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 the~~ rates, fees, and charges, or the expiration of the 45-day period from the receipt by the
135 county commission, in writing, of the rates, fees, and charges approved by resolution of the board,
136 without final action by the county commission to approve, modify, or reject ~~such the~~ rates, fees,
137 and charges, and the circuit court shall resolve said complaint: *Provided, however*, That the rates,
138 fees, and charges so fixed by the county commission, or those adopted by the district upon which
139 the county commission failed to act, shall remain in full force and effect, until set aside, altered or
140 amended by the circuit court in an order to be followed in the future.