

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2637**

BY DELEGATE HOWELL, JENNINGS, SYPOLT, WORRELL,  
TONEY, WAXMAN, HANSHAW (MR. SPEAKER), FOSTER,  
HAMRICK, KESSINGER AND PACK

[Introduced January 24, 2019; Referred  
to the Committee on Energy.]

1 A BILL to amend and reenact §24-1-1 of the Code of West Virginia, 1931, as amended, relating  
2 to excluding electric generating facilities designated as an exempt wholesale generator  
3 from being regulated by the commission; requiring electric generating facilities owners or  
4 operators not designated an exempt wholesale generator to obtain a siting certificate from  
5 the commissioner prior to construction; requiring persons, entities, or corporations  
6 constructing or constructing and operating an electric generating facility not designated an  
7 exempt wholesale generator to obtain a siting certificate from the commissioner prior to  
8 construction; and, excluding electric generating facilities from siting requirements to make  
9 material modifications to facilities.

*Be it enacted by the Legislature of West Virginia:*

## **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, except as provided  
2 in §24-2-1(d) of this code, in this state and shall include any utility engaged in any of the following  
3 public services:

4 Common carriage of passengers or goods, whether by air, railroad, street railroad, motor,  
5 or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land,  
6 water, or air; transportation of oil, gas, or water by pipeline; transportation of coal and its  
7 derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping  
8 car or parlor car services; transmission of messages by telephone, telegraph, or radio; generation  
9 and transmission of electrical energy by hydroelectric or other utilities for service to the public,  
10 whether directly or through a distributing utility; supplying water, gas, or electricity by  
11 municipalities or others; sewer systems servicing 25 or more persons or firms other than the  
12 owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision  
13 intends to provide sewer service by an innovative, alternative method, as defined by the federal  
14 Environmental Protection Agency, the innovative, alternative method is a public utility function

15 and subject to the jurisdiction of the Public Service Commission regardless of the number of  
16 customers served by the innovative, alternative method; any public service district created under  
17 the provisions of §16-13A-1, *et seq.* of this code, except that the Public Service Commission will  
18 have no jurisdiction over the provision of stormwater services by a public service district; toll  
19 bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however,*  
20 That natural gas producers who provide natural gas service to not more than 25 residential  
21 customers are exempt from the jurisdiction of the commission with regard to the provisions of  
22 such residential service: *Provided further,* That upon request of any of the customers of such  
23 natural gas producers, the commission may, upon good cause being shown, exercise such  
24 authority as the commission may deem appropriate over the operation, rates, and charges of such  
25 producer and for such length of time as the commission may consider to be proper.

26 (b) The jurisdiction of the commission over political subdivisions of this state providing  
27 separate or combined water and/or sewer services and having at least 4,500 customers and  
28 annual combined gross revenues of \$3 million or more that are political subdivisions of the state  
29 is limited to:

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

31 (2) Regulation of measurements, practices, acts, or services, as granted and described in  
32 §24-2-7 of this code;

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

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

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

40 (6) Investigation and resolution of disputes between a political subdivision of the state

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

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

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

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

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

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

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

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

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

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

83 (2) Any person, corporation, or other entity that intends to construct or construct and  
84 operate an electric generating facility to be located in this state that has been designated as an  
85 exempt wholesale generator under applicable federal law ~~or will be so designated prior to~~  
86 ~~commercial operation of the facility, and for which facility the owner or operator does not hold a~~  
87 ~~certificate of public convenience and necessity issued by the commission on or before July 1,~~  
88 ~~2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from~~  
89 ~~the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public~~  
90 ~~convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or~~  
91 ~~operator of an electric generating facility as is described in this subdivision for which a siting~~  
92 ~~certificate has been issued by the commission shall be subject to §24-2-11c(e) through §24-2-~~

93 ~~11c(j) of this code and~~ shall not otherwise be subject to the jurisdiction of the commission or to  
94 the provisions of this chapter with respect to such facility. ~~except for the making or constructing~~  
95 ~~of a material modification thereof as provided in §24-2-1(d)(5) of this code~~

96 (3) An owner or operator of an electric generating facility located in this state that ~~had~~ has  
97 not been designated as an exempt wholesale generator under applicable federal law ~~prior to~~  
98 ~~commercial operation of the facility~~ that generates electric energy solely for sale at retail outside  
99 this state, inside this state, or solely for sale at wholesale in accordance with any applicable  
100 federal law that preempts state law or solely for both such sales at retail and such sales at  
101 wholesale shall, prior to commencement of construction of the facility, obtain a siting certificate  
102 from the commission pursuant to the provisions of §24-2-11c of this code; ~~and that had been~~  
103 ~~constructed and had engaged in commercial operation on or before July 1, 2003~~ Provided, That  
104 the owner or operator described in this subdivision shall not be subject to the jurisdiction of the  
105 commission or to the provisions of this chapter with respect to such facility after obtaining a siting  
106 certificate from the commission, ~~regardless of whether such facility subsequent to its construction~~  
107 ~~has been or will be designated as an exempt wholesale generator under applicable federal law;~~  
108 ~~Provided, That such owner or operator shall be subject to §24-2-1(d)(5) of this code if a material~~  
109 ~~modification of such facility is made or constructed~~

110 (4) Any person, corporation, or other entity that intends to construct or construct and  
111 operate an electric generating facility to be located in this state that ~~has not been or will not be~~ is  
112 not designated as an exempt wholesale generator under applicable federal law ~~prior to~~  
113 ~~commercial operation of the facility~~ and that will generate electric energy solely for sale at retail  
114 outside this state, inside this state, or solely for sale at wholesale in accordance with any  
115 applicable federal law that preempts state law or solely for both such sales at retail and such sales  
116 at wholesale ~~and that had not been constructed and had not been engaged in commercial~~  
117 ~~operation on or before July 1, 2003~~ shall, prior to commencement of construction of the facility,  
118 obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this

119 ~~code. in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-~~  
120 ~~2-11 of this code~~ An owner or operator of an electric generating facility as is described in this  
121 subdivision for which a siting certificate has been issued by the commission ~~shall be subject to~~  
122 ~~§24-2-11c(e) through §24-2-11c(j) of this code~~ and shall not otherwise be subject to the  
123 jurisdiction of the commission or to the provisions of this chapter with respect to such facility.  
124 ~~except for the making or constructing of a material modification thereof as provided in §24-2-~~  
125 ~~1(d)(5) of this code~~

126 (5) An owner or operator of an electric generating facility described in this subsection shall  
127 not be required to obtain a siting certificate before making or constructing a material modification  
128 of the facility. ~~that is not within the terms of any certificate of public convenience and necessity or~~  
129 ~~siting certificate previously issued for the facility or an earlier material modification thereof, obtain~~  
130 ~~a siting certificate for the modification from the commission pursuant to the provisions of §24-2-~~  
131 ~~11c of this code in lieu of a certificate of public convenience and necessity for the modification~~  
132 ~~pursuant to the provisions of §24-2-11 of this code and, except for the provisions of §24-2-11c of~~  
133 ~~this code, shall not otherwise be subject to the jurisdiction of the commission or to the provisions~~  
134 ~~of this chapter with respect to such modification~~

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

141 (7) (6) The limitations on the jurisdiction of the commission over, and on the applicability of  
142 the provisions of this chapter to, the owner or operator of an electric generating facility as imposed  
143 by and described in this subsection shall not be deemed to affect or limit the commission's  
144 jurisdiction over contracts or arrangements between the owner or operator of such facility and any

145 affiliated public utility subject to the provisions of this chapter.

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

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to exclude electric generating facilities designated as an



exempt wholesale generator from being regulated by the commission; requires electric generating facilities owners, operators, or constructors, intending to generate electricity for sale not designated an exempt wholesale generator to only be subject to the commission to obtain a siting certificate prior to construction; and to exclude electric generating facilities from siting requirements to make modifications to facilities.

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