

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5367

By Delegate Dillon

[Introduced January 30, 2024; Referred to the
Committee on Technology and Infrastructure then the
Judiciary]

1 A BILL to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating to
 2 providing that Internet Service Providers, or "ISPs", shall be considered a
 3 telecommunications utility for regulatory purposes by the Public Service Commission.

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 extends to all public utilities in this state and includes
 2 any utility engaged in any of the following public services:

3 (1) Common carriage of passengers or goods, whether by air, railroad, street railroad,
 4 motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by
 5 land, water, or air;

6 (2) Transportation of oil, gas, or water by pipeline;

7 (3) Transportation of coal and its derivatives and all mixtures and combinations thereof
 8 with other substances by pipeline;

9 (4) Sleeping car or parlor car services;

10 (5) Transmission of messages by telephone, telegraph, or radio;

11 (6) Generation and transmission of electrical energy by hydroelectric or other utilities for
 12 service to the public, whether directly or through a distributing utility;

13 (7) Supplying water, gas, or electricity by municipalities or others: *Provided*, That natural
 14 gas producers who provide natural gas service to not more than 25 residential customers are
 15 exempt from the jurisdiction of the commission with regard to the provisions of the residential
 16 service: *Provided, however*, That upon request of any of the customers of the natural gas
 17 producers, the commission may, upon good cause being shown, exercise authority as the
 18 commission may consider appropriate over the operation, rates, and charges of the producer and
 19 for the length of time determined proper by the commission: *Provided further*, That the provision of
 20 a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the

21 premises of a retail electric customer, the output of which is subject to a power purchase
22 agreement (PPAs) with the retail electric customer, shall not constitute a public service, subject to
23 the following conditions and limitations:

24 (i) PPAs must be 11 point font or larger;

25 (ii) The aggregate of all PPAs and net metering arrangements in the state for any utility
26 shall not exceed three percent of the utility's aggregate customer peak demand in the state during
27 the previous year;

28 (iii) There shall be individual customer on-site generator limits of designing the photovoltaic
29 energy facility to meet only the electrical needs of the premises of the retail electric customer and
30 which in no case shall exceed 50kW for residential customers, 1,000 kW for commercial
31 customers, and 2,000 kW for industrial customers;

32 (iv) Customers who enter into PPAs relating to photovoltaic facilities are to notify the utility
33 of its intent to enter into a transaction. In response, the utility shall notify within 30 days if any of the
34 caps have been reached. If the utility does not respond within 30 days, the generator may proceed
35 and the caps will be presumed not to have been reached; and

36 (v) The Public Service Commission may promulgate rules to govern and implement the
37 provisions of interconnections for PPAs, except the PSC does not have authority over the power
38 rates for the arrangements between the on-site generator and the customer;

39 (8) Sewer systems servicing 25 or more persons or firms other than the owner of the sewer
40 systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer
41 service by an innovative, alternative method, as defined by the federal Environmental Protection
42 Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction
43 of the Public Service Commission, regardless of the number of customers served by the
44 innovative, alternative method;

45 (9) Any public service district created under the provisions of §16-13A-1 *et seq.* of this
46 code, except that the Public Service Commission has no jurisdiction over the provision of

47 stormwater services by a public service district;

48 (10) Toll bridges located more than five miles from a toll-free bridge which crosses the
49 same body of water or obstacle, wharves, ferries; solid waste facilities; and

50 (11) Any other public service.

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

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

56 (2) Regulation of measurements, practices, acts, or services, as granted and described in
57 §24-2-7 of this code;

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

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

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

65 (6) Investigation and resolution of disputes between a political subdivision of the state
66 providing wholesale water and/or wastewater treatment or other services, whether by contract or
67 through a tariff, and its customer or customers, including, but not limited to, rates, fees, and
68 charges, service areas and contested utility combinations: *Provided*, That any request for an
69 investigation related to a dispute that is based on the act or omission of the political subdivision
70 shall be filed within 30 days of the act or omission of the political subdivision and the commission
71 shall resolve the dispute within 120 days of filing. The 120-day period for resolution of the dispute
72 may be tolled by the commission until the necessary information showing the basis of the rates,

73 fees, and charges or other information required by the commission is filed: *Provided, however,*
74 That the disputed rates, fees, and charges fixed by the political subdivision providing separate or
75 combined water and/or sewer services shall remain in full force and effect until set aside, altered,
76 or amended by the commission in an order to be followed in the future.

77 (7) Customers of water and sewer utilities operated by a political subdivision of the state
78 may bring formal or informal complaints regarding the commission's exercise of the powers
79 enumerated in this section and the commission shall resolve these complaints: *Provided,* That any
80 formal complaint filed under this section that is based on the act or omission of the political
81 subdivision shall be filed within 30 days of the act or omission complained of and the commission
82 shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the
83 dispute may be tolled by the commission until the necessary information showing the basis of the
84 matter complained of is filed by the political subdivision: *Provided, however,* That whenever the
85 commission finds any regulations, measurements, practices, acts, or service to be unjust,
86 unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of
87 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot
88 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable
89 measurement, regulations, acts, practices or services, to be furnished, imposed, observed, and
90 followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory,
91 inadequate, or otherwise in violation of this chapter, and shall make an order that is just and
92 reasonable: *Provided further,* That if the matter complained of would affect rates, fees, and
93 charges fixed by the political subdivision providing separate or combined water and/or sewer
94 services, the rates, fees, or charges shall remain in full force and effect until set aside, altered, or
95 amended by the commission in an order to be followed in the future.

96 (8) If a political subdivision has a deficiency in either its bond revenue or bond reserve
97 accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public
98 Service Commission for any redress that will bring the accounts to current status or otherwise

99 resolve the breached covenant. The commission has jurisdiction to fully resolve the alleged
100 deficiency or breach.

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

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

105 (2) The area can be provided with utility service by a utility which operates in a state
106 adjoining West Virginia;

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

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

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

114 (1) An owner or operator of an electric generating facility located or to be located in this
115 state that has been designated as an exempt wholesale generator under applicable federal law, or
116 will be so designated prior to commercial operation of the facility, for which the facility the owner or
117 operator holds a certificate of public convenience and necessity issued by the commission on or
118 before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate
119 of public convenience and necessity for the facility were a siting certificate issued under §24-2-11c
120 of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions
121 of this chapter with respect to the facility except for the making or constructing of a material
122 modification thereof as provided in §24-2-1(d)(5) of this code.

123 (2) 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 been designated as an

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

136 (3) An owner or operator of an electric generating facility located in this state that had not
137 been designated as an exempt wholesale generator under applicable federal law prior to
138 commercial operation of the facility that generates electric energy solely for sale at retail outside
139 this state or solely for sale at wholesale in accordance with any applicable federal law that
140 preempts state law or solely for both sales at retail and sales at wholesale and that had been
141 constructed and had engaged in commercial operation on or before July 1, 2003, is not subject to
142 the jurisdiction of the commission or to the provisions of this chapter with respect to the facility,
143 regardless of whether the facility subsequent to its construction has been or will be designated as
144 an exempt wholesale generator under applicable federal law: *Provided*, That the owner or
145 operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or
146 constructed.

147 (4) Any person, corporation, or other entity that intends to construct or construct and
148 operate an electric generating facility to be located in this state that has not been or will not be
149 designated as an exempt wholesale generator under applicable federal law prior to commercial
150 operation of the facility that will generate electric energy solely for sale at retail outside this state or

151 solely for sale at wholesale in accordance with any applicable federal law that preempts state law
152 or solely for both sales at retail and sales at wholesale and that had not been constructed and had
153 not been engaged in commercial operation on or before July 1, 2003, shall, prior to
154 commencement of construction of the facility, obtain a siting certificate from the commission
155 pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience
156 and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an
157 electric generating facility as is described in this subdivision for which a siting certificate has been
158 issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code, and is not
159 otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with
160 respect to the facility except for the making or constructing of a material modification thereof as
161 provided in §24-2-1(d)(5) of this code.

162 (5) An owner or operator of an electric generating facility described in this subsection shall,
163 before making or constructing a material modification of the facility that is not within the terms of
164 any certificate of public convenience and necessity or siting certificate previously issued for the
165 facility or an earlier material modification thereof, obtain a siting certificate for the modification from
166 the commission pursuant to the provisions of §24-2-11c of this code, in lieu of a certificate of public
167 convenience and necessity for the modification pursuant to the provisions of §24-2-11 of this code
168 and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the jurisdiction
169 of the commission or to the provisions of this chapter with respect to the modification.

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

176 (7) The limitations on the jurisdiction of the commission over, and on the applicability of the

177 provisions of this chapter to, the owner or operator of an electric generating facility as imposed by
178 and described in this subsection do not affect or limit the commission's jurisdiction over contracts
179 or arrangements between the owner or operator of the facility and any affiliated public utility
180 subject to the provisions of this chapter.

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

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

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

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

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

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

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

198 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power
199 systems are most fairly and effectively regulated by the local governing body. Therefore,
200 notwithstanding any other provisions of this article, the commission does not have jurisdiction over
201 the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the
202 jurisdiction of the Public Service Commission over municipal power systems is limited to that

203 granted specifically in this code.

204 (h) The Legislature finds that reliable broadband internet is a fundamental and reasonable
205 expectation of our consumers. Broadband Internet access has become a necessity for modern
206 living standards, matching or exceeding the need for utilities such as telephone service in
207 importance, and consumers in West Virginia are already familiar with the regulatory function of the
208 Public Service Commission.

209 Internet Service Providers, or "ISPs", shall be considered a telecommunications utility for
210 regulatory purposes. The Public Service Commission shall regulate Internet Service Providers as
211 a utility, providing equivalent consumer protections and complaint investigation as with all other
212 utilities.

NOTE: The purpose of this bill is to provide that Internet Service Providers, or "ISPs", shall be considered a telecommunications utility for regulatory purposes by the Public Service Commission.

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