

ENGROSSED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 234

(By Senators Trump, M. Hall,
Blair and Plymale)

[Originating in the Committee on
Government Organization;
reported February 19, 2015.]

A BILL to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-19 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §16-13A-1a, §16-13A-9 and §16-13A-25 of said code; to amend and reenact §24-1-1, §24-1-1b and §24-1-2 of said code; to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code; and to amend and reenact §24-3-5 of said code, all relating to modifying the jurisdiction of the Public Service Commission as it pertains to certain water and sewer utilities owned or operated by political subdivisions of the state; relating to the authority of bondholders to petition the Public Service Commission for redress when there is a deficiency in bond revenue or bond reserve accounts or is otherwise in breach of bond covenants; expanding jurisdiction of the Public Service Commission to provide assistance to public service districts and municipal corporations regarding proposed rate changes; providing for a working capital allowance; expanding powers of certain public service boards; providing mechanism for Public Service Commission to address deficiencies in the measurements, practices acts or services provided by certain public utility that is a political subdivision of the state; and providing mechanisms for various functions of political subdivisions related to water and sewer services.

Be it enacted by the Legislature of West Virginia:

That §8-12-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted;

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that §8-16-19 of said code be amended and reenacted; that §8-19-4 of said code be amended and reenacted; that §16-13A-1a, §16-13A-9 and §16-13A-25 of said code be amended and reenacted; that §24-1-1, §24-1-1b and 24-1-2 of said code be amended and reenacted; that §24-2-1, §24-2-2, §24-2-3, §24-2- 4a, §24-2-4b, §24-2-7 and §24-2-11 of said code be amended and reenacted; and that §24-3-5 of said code be amended and reenacted, all to read as follows:

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 system,
2 a sewer system or other public utility, and a majority of not less than sixty percent of the members
3 of the governing body deem it for the best interest of such municipality that such utility be sold or
4 leased, the governing body may so sell or lease such gas system, electric system, waterworks system,
5 sewer system or other public utility upon such terms and conditions as said governing body, in its
6 discretion, considers in the best interest of the municipality: *Provided*, That such sale or lease may
7 be made only upon: (1) The publication of notice of a hearing before the governing body of the
8 municipality, as a Class I legal advertisement in compliance with the provisions of article three,
9 chapter fifty-nine of this code, in a newspaper published and of general circulation in the
10 municipality, such publication to be made not earlier than twenty days and not later than seven days
11 prior to the hearing; and (2) the approval by the Public Service Commission of West Virginia. The
12 governing body, upon the approval of the sale or lease by a majority of its members of not less than
13 sixty percent of the members of the governing body, shall have full power and authority to proceed
14 to execute or effect such sale or lease in accordance with the terms and conditions approved as
15 aforesaid, and shall have power to do any and all things necessary or incident thereto: *Provided*,
16 *however*, That if at any time after such approval and before the execution of the authority, any person

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

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

1 **§8-16-19. Appeal to Public Service Commission from rates fixed.**

2 If any party in interest is dissatisfied with the rates fixed under the provisions of ~~the~~
3 ~~immediately preceding section of this article~~ section eighteen, article sixteen, chapter eight of this
4 code, such party shall have the right to appeal to the Public Service Commission at any time within
5 thirty days after the fixing of such rates by the governing body, but the rates so fixed by the
6 governing body shall remain in full force and effect, until set aside, altered or amended by the Public
7 Service Commission.

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

10 **§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on**
11 **bonds; rates for services; exemption from taxation.**

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

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

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

8 **CHAPTER 16. PUBLIC HEALTH.**

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

10 **§16-13A-1a. Jurisdiction of the Public Service Commission.**

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

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

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

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

23 **§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and**
24 **sewer connections; lien for delinquent fees.**

25 (a) (1) The board may make, enact and enforce all needful rules in connection with the
26 acquisition, construction, improvement, extension, management, maintenance, operation, care,
27 protection and the use of any public service properties owned or controlled by the district. The board

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (F) Enactment of the proposed rates, fees and charges shall follow an affirmative vote or
27 inaction by the county commission and shall be effective no sooner than forty-five days following

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1 action or inaction by the county commission. The forty-five-day waiting period may be waived by
2 public vote of the county commission only if the commission finds and declares the district to be in
3 financial distress such that the forty-five day waiting period would be detrimental to the ability of
4 the district to deliver continued and compliant public services.

5 (2) (3) Where water, sewer, stormwater or gas services, or any combination thereof, are all
6 furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate
7 of the charges. The board shall require all users of services and facilities furnished by the district to
8 designate on every application for service whether the applicant is a tenant or an owner of the
9 premises to be served. If the applicant is a tenant, he or she shall state the name and address of the
10 owner or owners of the premises to be served by the district. Notwithstanding the provisions of
11 section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for
12 service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the
13 applicant's specific customer class or \$50, with the district to secure the payment of service rates,
14 fees and charges in the event they become delinquent as provided in this section. If a district provides
15 both water and sewer service, all new applicants for service shall deposit the greater of a sum equal
16 to two twelfths of the average annual usage for water service or \$50 and the greater of a sum equal
17 to two twelfths of the average annual usage for wastewater service of the applicant's specific
18 customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees and charges
19 which were delinquent at the time of disconnection or termination of service, no reconnection or
20 reinstatement of service may be made by the district until another deposit equal to the greater of a
21 sum equal to two twelfths of the average usage for the applicant's specific customer class or \$50 has
22 been remitted to the district. After twelve months of prompt payment history, the district shall return
23 the deposit to the customer or credit the customer's account at a rate as the Public Service
24 Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not
25 required to return the deposit until the time the tenant discontinues service with the district.
26 Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a
27 period of twenty days after the same become due and payable, the user of the services and facilities

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1 provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The
2 board may, under reasonable rules promulgated by the Public Service Commission, shut off and
3 discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten
4 days after the water or gas services become delinquent: *Provided, however,* That nothing contained
5 within the rules of the Public Service Commission shall be deemed to require any agents or
6 employees of the board to accept payment at the customer's premises in lieu of discontinuing service
7 for a delinquent bill.

8 (b) In the event that any publicly or privately owned utility, city, incorporated town, other
9 municipal corporation or other public service district included within the district owns and operates
10 separately water facilities, sewer facilities or stormwater facilities and the district owns and operates
11 another kind of facility, either water or sewer, or both, as the case may be, then the district and the
12 publicly or privately owned utility, city, incorporated town or other municipal corporation or other
13 public service district shall covenant and contract with each other to shut off and discontinue the
14 supplying of water service for the nonpayment of sewer or stormwater service fees and charges:
15 *Provided,* That any contracts entered into by a public service district pursuant to this section shall
16 be submitted to the Public Service Commission for approval. Any public service district which
17 provides water and sewer service, water and stormwater service or water, sewer and stormwater
18 service has the right to terminate water service for delinquency in payment of water, sewer or
19 stormwater bills. Where one public service district is providing sewer service and another public
20 service district or a municipality included within the boundaries of the sewer or stormwater district
21 is providing water service and the district providing sewer or stormwater service experiences a
22 delinquency in payment, the district or the municipality included within the boundaries of the sewer
23 or stormwater district that is providing water service, upon the request of the district providing sewer
24 or stormwater service to the delinquent account, shall terminate its water service to the customer
25 having the delinquent sewer or stormwater account: *Provided, however,* That any termination of
26 water service must comply with all rules and orders of the Public Service Commission: *Provided*
27 *further,* That nothing contained within the rules of the Public Service Commission shall be deemed

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1 to require any agents or employees of the public service districts to accept payment at the customer's
2 premises in lieu of discontinuing service for a delinquent bill.

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

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

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1 occupant of any house, dwelling or building located near the sewer facility and the engineer for the
2 district has certified that the sewer facilities are available to and are adequate to serve the owner,
3 tenant or occupant and sewage will flow by gravity or be transported by other methods approved by
4 the Division of Health from the house, dwelling or building into the sewer facilities, the district may
5 charge, and the owner, tenant or occupant shall pay, the rates and charges for services established
6 under this article only after thirty-day notice of the availability of the facilities has been received by
7 the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual
8 water consumption or the average monthly water consumption based upon the owner's, tenant's or
9 occupant's specific customer class.

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

25 (f) All delinquent fees, rates and charges of the district for either water facilities, sewer
26 facilities, gas facilities or stormwater systems or stormwater management programs are liens on the
27 premises served of equal dignity, rank and priority with the lien on the premises of state, county,

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1 school and municipal taxes. Nothing contained within the rules of the Public Service Commission
2 shall be deemed to require any agents or employees of the public service districts to accept payment
3 at the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the
4 other remedies provided in this section, public service districts are granted a deferral of filing fees
5 or other fees and costs incidental to the bringing and maintenance of an action in magistrate court
6 for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the
7 delinquent account, plus reasonable costs, from its customer or other responsible party, the district
8 shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred.
9 In addition, each public service district may exchange with other public service districts a list of
10 delinquent accounts: *Provided*, That an owner of real property may not be held liable for the
11 delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real
12 property for the reason of delinquent rates or charges for services or facilities of a tenant of the real
13 property, unless the owner has contracted directly with the public service district to purchase the
14 services or facilities.

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

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

24 **§16-13A-25. Borrowing and bond issuance; procedure.**

25 (a) ~~Notwithstanding any other provisions of this article to the contrary, a~~ A public service
26 district ~~may not~~ has plenary power to borrow money, enter into contracts for the provision of
27 engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of

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1 the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article,
2 without the prior consent and approval of the Public Service Commission: *Provided*, That approval
3 of funding set forth in section eleven, article two, chapter twenty-four of this code or this section is
4 not required if the funding is for a project which has received a certificate of public convenience and
5 necessity after July 8, 2005, from the commission and where the cost of the project changes but the
6 change does not affect the rates established for the project. Upon written request of the public
7 service board contemplating such transaction or project, the Public Service Commission shall
8 provide technical support to the public service board, including, but not limited to, engineering,
9 design and financial analysis of the proposed transaction or project.

10 (b) ~~The Public Service Commission may waive the provision of prior consent and approval~~
11 ~~for entering into contracts for engineering, design or feasibility studies pursuant to this section for~~
12 ~~good cause shown which is evidenced by the public service district filing a request for waiver of this~~
13 ~~section stated in a letter directed to the commission with a brief description of the project, a verified~~
14 ~~statement by the board members that the public service district has complied with chapter five-g of~~
15 ~~this code, and further explanation of ability to evaluate their own engineering contract, including,~~
16 ~~but not limited to:~~

17 (b) In the event that the public service district has significant insufficiencies in either its bond
18 revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, a bondholder may
19 petition the circuit court of Kanawha County for such redress as will bring the accounts into
20 compliance with bond covenants pledged by the district.

21 (1) ~~Experience with the same engineering firm; or~~

22 (2) ~~Completion of a construction project requiring engineering services. The district shall~~
23 ~~also forward an executed copy of the engineering contract to the commission after receiving approval~~
24 ~~of the waiver.~~

25 (c) ~~An engineering contract that meets one or more of the following criteria is exempt from~~
26 ~~the waiver or approval requirements:~~

27 (1) ~~A contract with a public service district that is a Class A utility on April 1, 2003, or~~

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1 subsequently becomes a Class A utility as defined by commission rule;

2 (2) A contract with a public service district that does not require borrowing and that can be
3 paid out of existing rates;

4 (3) A contract where the payment of engineering fees are contingent upon the receipt of
5 funding, and commission approval of the funding, to construct the project which is the subject of the
6 contract; or

7 (4) A contract that does not exceed \$15,000.

8 (d) Requests for approval or waivers of engineering contracts shall be deemed granted thirty
9 days after the filing date unless the staff of the Public Service Commission or a party files an
10 objection to the request. If an objection is filed, the Public Service Commission shall issue its
11 decision within one hundred twenty days of the filing date. In the event objection is received to a
12 request for a waiver, the application shall be considered a request for waiver as well as a request for
13 approval in the event a waiver is not appropriate.

14 (e) Unless the properties to be constructed or acquired represent ordinary extensions or
15 repairs of existing systems in the usual course of business, a public service district must first obtain
16 a certificate of public convenience and necessity from the Public Service Commission in accordance
17 with the provision of chapter twenty-four of this code when a public service district is seeking to
18 acquire or construct public service property.

19 **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

20 **ARTICLE 1. GENERAL PROVISIONS.**

21 **§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of**
22 **plan as rule; cooperation with Joint Committee on Government and Finance.**

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

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

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

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

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

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

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

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

19 (c) The Legislature directs the Public Service Commission to identify, explore and consider
20 the potential benefits or risks associated with emerging and state-of-the-art concepts in utility
21 management, rate design and conservation. The commission may conduct inquiries and hold
22 hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other
23 interested persons the opportunity to comment, and shall report to the Governor and the Legislature
24 regarding its findings and policies to each of these areas not later than the first day of the regular
25 session of the Legislature in the year 1985, and every two years thereafter.

26 (d) It is legislative policy to ensure that the Legislature and the general public become better
27 informed regarding the regulation of public utilities in this state and the conduct of the business of

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1 the Public Service Commission. To aid in the achievement of this policy, the Public Service
2 Commission annually shall present to the Joint Committee on Government and Finance, created by
3 article three, chapter four of this code, or a subcommittee designated by the joint committee, a
4 management summary report which describes in a concise manner:

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

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

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

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

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

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

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

25 (3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this
26 subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia.

27 In carrying out the provisions of this section the commission shall have jurisdiction over such

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1 persons, whether public utilities or not, as may be in the opinion of the commission necessary to the
2 exercise of its mandate and may compel attendance before it, take testimony under oath and compel
3 the production of papers or other documents. Upon reasonable request by the commission, all other
4 state agencies shall cooperate with the commission in carrying out the provisions and requirements
5 of this subsection.

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

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

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

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

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

25 (5) Which members of the staff of the Public Service Commission shall be exempted from
26 the salary schedules or pay plan adopted by the civil service commission and identify such staff
27 members by job classification or designation, together with the salary or salary ranges for each such

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1 job classification or designation;

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

7 Such plan shall be based on the concept that each of the divisions mentioned in subdivisions
8 (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage
9 ex parte communications between them by such means as the commission shall direct, including,
10 but not limited to, separate clerical and professional staffing for each division. Further, the Public
11 Service Commission is directed to incorporate within the said plan to the fullest extent possible the
12 recommendations presented to the subcommittee on the Public Service Commission of the Joint
13 Committee on Government and Finance in a final report dated February, 1979, and entitled "A Plan
14 for Regulatory Reform and Management Improvement".

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

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

26 Within the limits of funds appropriated therefor, the rule of the Public Service Commission
27 shall be effective upon the date specified in the order of the commission promulgating it unless an

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

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

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

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

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

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

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

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

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

13 **§24-1-1b. Supplemental rule for reorganization.**

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

20 **§24-1-2. Definitions.**

21 Except where a different meaning clearly appears from the context, the words "public utility"
22 when used in this chapter shall mean and include any person or persons, or association of persons,
23 however associated, whether incorporated or not, including municipalities, engaged in any business,
24 whether herein enumerated or not, which is, or shall hereafter be held to be, a public service.
25 Whenever in this chapter the words "commission" or "Public Service Commission" occur, such word
26 or words shall, unless a different intent clearly appears from the context, be taken to mean the Public

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1 Service Commission of West Virginia. Whenever used in this chapter, "customer" shall mean and
2 include any person, firm, corporation, municipality, public service district or any other entity who
3 purchases a product or services of any utility and shall include any such person, firm, corporation,
4 municipality, public service district or any other entity who purchases such services or product for
5 resale. Whenever in this chapter the words "governing body" occur, such word or words shall,
6 unless a different intent clearly appears from the context, be taken to mean the municipal body
7 charged with the authority and responsibility of enacting ordinances of the municipality, as defined
8 in section two, article one, chapter eight of this code, or a public service board of a public service
9 district, as defined in section three, article thirteen-a, chapter sixteen of this code.

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

11 **§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

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

14 Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or
15 otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or
16 air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all
17 mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car
18 services; transmission of messages by telephone, telegraph or radio; generation and transmission of
19 electrical energy by hydroelectric or other utilities for service to the public, whether directly or
20 through a distributing utility; supplying water, gas or electricity by municipalities or others; sewer
21 systems servicing twenty-five or more persons or firms other than the owner of the sewer systems:
22 *Provided*, That if a public utility other than a political subdivision intends to provide sewer service
23 by an innovative, alternative method, as defined by the federal Environmental Protection Agency,
24 the innovative, alternative method is a public utility function and subject to the jurisdiction of the
25 Public Service Commission regardless of the number of customers served by the innovative,
26 alternative method; any public service district created under the provisions of article thirteen-a,
27 chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities; and any other public

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1 service: *Provided, however,* That natural gas producers who provide natural gas service to not more
2 than twenty-five residential customers are exempt from the jurisdiction of the commission with
3 regard to the provisions of such residential service: *Provided further,* That upon request of any of
4 the customers of such natural gas producers, the commission may, upon good cause being shown,
5 exercise such authority as the commission may deem appropriate over the operation, rates and
6 charges of such producer and for such length of time as the commission may consider to be proper:
7 ~~*And provided further,* That the jurisdiction the commission may exercise over the rates and charges~~
8 ~~of municipally operated public utilities is limited to that authority granted the commission in section~~
9 ~~four b of this article: *And provided further,* That the decision-making authority granted to the~~
10 ~~commission in sections four and four-a of this article shall, in respect to an application filed by a~~
11 ~~public service district, be delegated to a single hearing examiner appointed from the commission~~
12 ~~staff, which hearing examiner shall be authorized to carry out all decision-making duties assigned~~
13 ~~to the commission by said sections, and to issue orders having the full force and effect of orders of~~
14 ~~the commission.~~

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

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

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

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

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

27 (5) Authority to subpoena witnesses, take testimony and administer oaths to any witness in

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1 any proceeding before or conducted by the commission, as granted and described in section ten of
2 this article; and

3 (6) Investigation and resolution of disputes involving political subdivisions of the state
4 regarding inter-utility agreements, service areas and contested utility combinations

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (6) The commission shall consider an application for a certificate of public convenience and
26 necessity filed pursuant to section eleven of this article to construct an electric generating facility
27 described in this subsection or to make or construct a material modification of such electric

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1 generating facility as an application for a siting certificate pursuant to section eleven-c of this article
2 if the application for the certificate of public convenience and necessity was filed with the
3 commission prior to July 1, 2003, and if the commission has not issued a final order thereon as of
4 that date.

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

10 **§24-2-2. General power of commission to regulate public utilities.**

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

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1 continue in force until the expiration of the time, if any, named by the commission in the order, or
2 until revoked or modified by the commission, unless the order is suspended, modified or revoked
3 by order or decree of a court of competent jurisdiction: *Provided*, That in the case of utilities used
4 by emergency shelter providers, the commission shall prescribe such rates, charges or tolls that are
5 the lowest available. "Emergency shelter provider" means any nonprofit entity which provides
6 temporary emergency housing and services to the homeless or to victims of domestic violence or
7 other abuse.

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

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

18 **§24-2-3. General power of commission with respect to rates.**

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

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1 the provisions of this section to be unjust, unreasonable, insufficient or unjustly discriminatory or
2 otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix
3 reasonable rates, joint rates, tariffs, tolls or schedules to be followed in the future in lieu of those
4 found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of
5 any provisions of law, and the said commission, in fixing the rate of any railroad company, may fix
6 a fair, reasonable and just rate to be charged on any branch line thereof, independent of the rate
7 charged on the main line of such railroad.

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

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

19 **§24-2-4a. Procedure for changing rates after June 30, 1981.**

20 (a) After June 30, 1981, no public utility subject to this chapter, except for water and/or
21 sewer utilities that are political subdivisions of the state providing separate or combined services and
22 having at least four thousand five hundred customers and annual gross revenue of \$3 million or more
23 from its separate or combined services, shall change, suspend or annul any rate, joint rate, charge,
24 rental or classification except after thirty days' notice to the commission and the public, which notice
25 shall plainly state the changes proposed to be made in the schedule then in force and the time when
26 the changed rates or charges shall go into effect; but the commission may enter an order suspending

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1 the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new
2 schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to
3 public inspection: *Provided*, That the commission may, in its discretion, and for good cause shown,
4 allow changes upon less time than the notice herein specified, or may modify the requirements of
5 this section in respect to publishing, posting and filing of tariffs, either by particular instructions or
6 by general order.

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

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

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1 any final rates approved by the commission and the rates placed into effect subject to refund shall
2 be refunded by the public service district as a credit against each customer's account for a period of
3 up to six months after entry of the commission's final order. Any remaining balance which is not
4 fully credited by credit within six months after entry of the commission's final order shall be directly
5 refunded to the customer by check: *Provided, further,* That if any such hearing and decision thereon
6 is not concluded within the periods of suspension, as above stated, such rate, charge, classification,
7 regulation or practice shall go into effect at the end of such period not subject to refund: *And*
8 *provided further,* That if any such rate, charge, classification, regulation or practice goes into effect
9 because of the failure of the commission to reach a decision, the same shall not preclude the
10 commission from rendering a decision with respect thereto which would disapprove, reduce or
11 modify any such proposed rate, charge, classification, regulation or practice, in whole or in part, but
12 any such disapproval, reduction or modification shall not be deemed to require a refund to the
13 customers of such utility as to any rate, charge, classification, regulation or practice so disapproved,
14 reduced or modified. The fact of any rate, charge, classification, regulation or practice going into
15 effect by reason of the commission's failure to act thereon shall not affect the commission's power
16 and authority to subsequently act with respect to any such application or change in any rate, charge,
17 classification, regulation or practice. Any rate, charge, classification, regulation or practice which
18 shall be approved, disapproved, modified or changed, in whole or in part, by decision of the
19 commission shall remain in effect as so approved, disapproved, modified or changed during the
20 period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the
21 commission affecting rates, charges, classifications, regulations or practices which have gone into
22 effect automatically at the end of the suspension period are prospective in effect only.

23 (c) At any hearing involving a rate sought to be increased or involving the change of any rate,
24 charge, classification, regulation or practice, the burden of proof to show the justness and
25 reasonableness of the increased rate or proposed increased rate, or the proposed change of rate,
26 charge, classification, regulation or practice shall be upon the public utility making application for
27 such change. The commission shall, whenever practicable and within budgetary constraints, conduct

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1 one or more public hearings within the area served by the public utility making application for such
2 increase or change, for the purpose of obtaining comments and evidence on the matter from local
3 ratepayers.

4 (d) Each public utility subject to the provisions of this section shall be required to establish,
5 in a written report which shall be incorporated into each general rate case application, that it has
6 thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility
7 management, rate design and conservation as reported by the commission under subsection (c),
8 section one, article one of this chapter, as alternatives to, or in mitigation of, any rate increase. The
9 utility report shall contain as to each concept considered the reasons for adoption or rejection of each.
10 When in any case pending before the commission all evidence shall have been taken and the hearing
11 completed, the commission shall render a decision in such case. The failure of the commission to
12 render a decision with respect to any such proposed change in any such rate, charge, classification,
13 regulation or practice within the various time periods specified in this section after the application
14 therefor shall constitute neglect of duty on the part of the commission and each member thereof.

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

21 (f) The commission may order rates into effect subject to refund, plus interest in the
22 discretion of the commission, in cases in which the commission determines that a temporary or
23 interim rate increase is necessary for the utility to avoid financial distress, or in which the costs upon
24 which these rates are based are subject to modification by the commission or another regulatory
25 commission and to refund to the public utility. In such case the commission may require such public
26 utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned
27 upon the refund to the persons or parties entitled thereto of the amount of the excess if such rates so

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1 put into effect are subsequently determined to be higher than those finally fixed for such utility.

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

8 **§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local**
9 **exchange services of telephone cooperatives and municipally operated public**
10 **utilities.**

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

19 (b) All rates and charges set by electric cooperatives, natural gas cooperatives and
20 municipally operated public utilities that are political subdivisions of the state providing water,
21 sewer, electric and natural gas services and all rates and charges for local exchange services set by
22 telephone cooperatives shall be just, reasonable, applied without unjust discrimination ~~or preference~~
23 between or preference for any customer or class of customer and based primarily on the costs of
24 providing these services. All rates and charges shall be based upon the measured or reasonably
25 estimated cost of service, and the equitable sharing of those costs between customers based upon the
26 cost of providing the service received by the customer, including a reasonable plant-in-service
27 depreciation expense. The rates and charges shall be adopted by the electric, natural gas, ~~or~~

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1 telephone cooperative or political subdivision's governing board or body and, in the case of the
2 municipally operated public utility, by municipal ordinance to be effective not sooner than forty-five
3 days after adoption. The forty-five-day waiting period may be waived by public vote of the governing
4 body if that body finds and declares the public utility that is a political subdivision of the state to be
5 in financial distress such that the forty-five-day waiting period would be detrimental to the ability
6 of the utility to deliver continued and compliant public services: *Provided*, That notice of intent to
7 effect a rate change shall be specified on the monthly billing statement of the customers of the utility
8 for the month next preceding the month in which the rate change is to become effective ~~or~~ and the
9 utility governing body shall give its customers and, in the case of a cooperative, its customers,
10 members and stockholders, other reasonable notices as will allow filing of timely objections to the
11 proposed rate change or and full participation in municipal rate legislation through the provision of
12 a public forum in which customers may comment upon the proposed rate change prior to an
13 enactment vote. The rates and charges or ordinance shall be filed with the commission, together with
14 any information showing the basis of the rates and charges and other information as the commission
15 considers necessary. Any change in the rates and charges with updated information shall be filed
16 with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this
17 section, is received and the electric cooperative, natural gas cooperative or telephone cooperative or
18 municipality has failed to file with the commission the rates and charges with information showing
19 the basis of rates and charges and other information as the commission considers necessary, the
20 suspension period limitation of one hundred twenty days and the one hundred-day period limitation
21 for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section,
22 is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative,
23 telephone cooperative or municipality shall set the date when any new rate or charge is to go into
24 effect.

25 (c) The commission shall review and approve or modify the rates and charges of electric
26 cooperatives, natural gas cooperatives, telephone cooperatives, or municipal electric or natural gas
27 utilities and municipally owned water and/or sewer utilities that are political subdivisions of the state

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1 and having less than four thousand five hundred customers or \$3 million dollars of annual combined
2 gross revenues upon the filing of a petition within thirty days of the adoption of the ordinance or
3 resolution changing the rates or charges by:

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

10 (2) Any customer who is served by a municipally operated or natural gas public utility and
11 who resides outside the corporate limits and who is affected by the change in the rates or charges and
12 who presents to the commission a petition alleging discrimination between customers within and
13 without the municipal boundaries. The petition shall be accompanied by evidence of discrimination;
14 or

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

20 (d) (1) The filing of a petition with the commission signed by not less than twenty-five
21 percent of the customers served by the municipally operated electric or natural gas public utility or
22 twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing
23 within the state under ~~subdivision (1)~~ subsection (c) of this section shall suspend the adoption of the
24 rate change contained in the ordinance or resolution for a period of one hundred twenty days from
25 the date the rates or charges would otherwise go into effect or until an order is issued as provided
26 herein.

27 (2) Upon sufficient showing of discrimination by customers outside the municipal boundaries

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1 or a customer or a group of customers within the municipal boundaries under a petition filed under
2 subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of
3 the rate change contained in the ordinance for a period of one hundred twenty days from the date the
4 rates or charges would otherwise go into effect or until an order is issued as provided herein. A
5 municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter or
6 state code that establishes or proposes a rate increase that results in an increase of less than twenty-
7 five percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed to
8 go into effect, subject to refund, upon the date stated in that ordinance. In the case of rates
9 established or proposed that increase by more than twenty-five percent of the gross revenue of the
10 municipally operated public utility, the utility may apply for, and the commission may grant, a
11 waiver of the suspension period and allow rates to be effective upon enactment.

12 (e) The commission shall forthwith appoint a hearing examiner from its staff to review the
13 grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and shall,
14 within one hundred days from the date the rates or charges would otherwise go into effect, unless
15 otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving
16 or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas or
17 telephone cooperative or by the municipally operated public utility pursuant to this section.

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

25 ~~(g) A municipal utility shall be required to refund revenues collected from rates enacted that~~
26 ~~are disapproved or modified upon subsequent order of the commission entered in a proceeding under~~
27 ~~this section. Any refund determined to be due and owing as a result of any difference between the~~

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1 municipal rates placed into effect subject to refund and any final rates approved the commission shall
2 be refunded by the municipal utility as a credit against each customer's account for a period of up
3 to six months after entry of the commission's final order. Any remaining balance which is not fully
4 refunded by credit within six months after entry of the commission's final order shall be directly
5 refunded to the individual customer by check.

6 (h) (g) The commission may, upon petition by a ~~municipality or an~~ electric, natural gas or
7 telephone cooperative, or municipal electric or natural gas public utility allow an interim or
8 emergency rate to take effect, subject to refund or future modification, if it is determined that the
9 interim or emergency rate is necessary to protect the municipality from financial hardship attributable
10 to the purchase of the utility commodity sold, or the commission determines that a temporary or
11 interim rate increase is necessary for the utility to avoid financial distress. In such cases, the
12 commission shall waive the forty-five-day waiting period provided for in subsection (b) of this
13 section and the one hundred twenty-day suspension period provided for in subsection (d) of this
14 section.

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

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

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

25 **§24-2-7. Unreasonable, etc., regulations, practices and services; receivership; procedures**
26 **respecting receivership; appointment and compensation of receiver; liquidation.**

27 (a) Whenever, under the provisions of this chapter, the commission shall find any regulations,

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1 measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly
2 discriminatory, or otherwise in violation of any provisions of this chapter, or shall find that any
3 service is inadequate, or that any service which is demanded cannot be reasonably obtained, the
4 commission shall determine and declare, and by order fix reasonable measurement, regulations, acts,
5 practices or services, to be furnished, imposed, observed and followed in the state in lieu of those
6 found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise
7 in violation of this chapter, and shall make such other order respecting the same as shall be just and
8 reasonable.

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

23 (c) Control of and responsibility for said utility shall remain in the receiver until the same
24 can, in the best interest of the customers, be returned to the owners, transferred to other owners or
25 assumed by another utility or public service corporation: *Provided*, That if the court after hearing,
26 determines that control of and responsibility for the affairs of the utility should not, in the best

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1 interests of its customers, be returned to the legal owners thereof, the receiver shall proceed to
2 liquidate the assets of ~~such~~ the utility in the manner provided by law.

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

5 **§24-2-11. Requirements for certificate of public convenience and necessity.**

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

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

23 (c) Any public utility, person or corporation subject to the provisions of this section other
24 than a political subdivision of the state providing water and/or sewer services having at least four
25 thousand five hundred customers and combined annual gross revenue of \$3 million dollars or more
26 shall give the commission at least thirty days' notice of the filing of any application for a certificate
27 of public convenience and necessity under this section: *Provided*, That the commission may modify

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1 or waive the thirty-day notice requirement and shall waive the thirty-day notice requirement for
2 projects approved by the Infrastructure and Jobs Development Council.

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

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

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

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

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

26 (i) Pursuant to the requirements of this section, the commission may issue a certificate of
27 public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution

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1 company for the transportation in intrastate commerce of natural gas used by any person for one or
2 more uses, as defined by rule, by the commission in the case of:

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

4 (2) Natural gas produced by the person.

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

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

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

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

22 (2) Adequate prior public notice of the contemplated construction by causing to be published
23 as a Class I legal advertisement of the proposed action, in compliance with the provisions of article
24 three, chapter fifty-nine of the code. The publication area for publication shall be all territory served
25 by the district. If the political subdivision provides service in more than one county, publication shall
26 be made in a newspaper of general circulation in each county that the political subdivision provides
27 service.

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

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

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

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

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

4 (7) The county commission shall provide notice to the public by a Class 1 legal advertisement
5 of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of this
6 code, of the meeting where it shall consider the proposed increases in rates, fees and charges no later
7 than one week prior to the meeting date.

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

10 **§24-3-5. Schedule of rates to be filed with commission.**

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