

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 10

BY SENATORS SYPOLT, CLEMENTS, RUCKER, SMITH,
MARONEY, CLINE, AND GAUNCH

[Originating in the Committee on Government
Organization; Reported on January 26, 2018]

1 A BILL to amend and reenact §8-19-2 of the Code of West Virginia, 1931, as amended; to amend
2 said code by adding thereto two new sections, designated §8-19-2a and §8-19-2b; and to
3 amend and reenact §24-2-1, §24-2-2, §24-2-3, and §24-2-4b of said code, all relating
4 generally to the jurisdiction of the Public Service Commission; excluding the setting and
5 adjustment of rates, fees, and charges of municipal power systems from the jurisdiction of
6 the Public Service Commission; providing for a right of appeal by customers; and clarifying
7 the commission's jurisdiction as modified by chapters 161 and 209, Acts of the Legislature,
8 regular session, 2017, over Internet protocol-enabled service, voice-over Internet
9 protocol-enabled service, storm water services by a public service district, political
10 subdivisions providing separate or combined water and/or sewer services, and certain
11 telephone company transactions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

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

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

1 (a) For the purposes of this section:

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

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

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

12 (b) In addition to the general authority to purchase electricity on a wholesale basis for
13 resale to its customers, any municipality that owns and operates an electric power system under
14 the provisions of this article may enter into a contract with any other party for the purchase of
15 electricity from one or more projects located in the United States that provides that the contracting
16 municipality is obligated to make payments required by the contract whether or not a project is
17 completed, operable, or operating and notwithstanding the suspension, interruption, interference,
18 reduction, or curtailment of the output of a project or the power and energy contracted for, and
19 that the payments shall not be subject to any reduction, whether by offset or otherwise, and shall
20 not be conditioned upon performance or nonperformance by any other party. The contract may
21 provide that, in the event of a default by the municipality or any other party to the contract in the
22 performance of each entity's obligations under the contract, any nondefaulting municipality or any
23 other party to the contract shall on a pro rata basis succeed to the rights and interests of, and
24 assume the obligations of, the defaulting party.

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

31 (d) A contract under §8-19-2(b) of this code may provide that payments by the municipality
32 are made solely from and may be secured by a pledge of and lien upon revenues derived by the
33 municipality from ownership and operation and that payments shall constitute an operating

34 expense of the electric power system. No obligation under the contract shall constitute a legal or
35 equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any
36 of its income, receipts, or revenues, except the revenues of the municipality's electric power
37 system. Neither the faith and credit nor the taxing power of the municipality shall be pledged for
38 the payment of any obligation under the contract.

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

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

1 All rates, fees, and charges set by municipal electric power systems shall be just,
2 reasonable, applied without unjust discrimination between or preference for any customer or class
3 of customer, and based primarily on the costs of providing these services. All rates and charges
4 shall be based upon the measured or reasonably estimated cost of service and the equitable
5 sharing of those costs between customers based upon the cost of providing the service received
6 by the customer, including a reasonable slant-in-service depreciation expense. The rates and
7 charges shall be adopted by the power system's governing board by municipal ordinance to be
8 effective not sooner than 45 days after adoption. The 45-day waiting period may be waived by

9 public vote of the governing body if that body finds and declares the public utility that is a political
10 subdivision of the state to be in financial distress, such that the 45-day waiting period would be
11 detrimental to the ability of the utility to deliver continued and compliant public services: *Provided,*
12 That notice of intent to effect a rate change shall be specified on the monthly billing statement of
13 the customers of the utility for the month next preceding the month in which the rate change is to
14 become effective, and the governing body shall give its customers other reasonable notices as
15 will allow filing of timely objections to the proposed rate change and full participation in municipal
16 rate legislation through the provision of a public forum in which customers may comment upon
17 the proposed rate change prior to an enactment vote. Notwithstanding the exclusion of municipal
18 power systems' rates, fees, charges, and rate-making process from the jurisdiction of the Public
19 Service Commission, municipal power systems shall submit information regarding their rates,
20 fees, and charges to the commission as set forth in §24-2-9 of this code.

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

1 Customers may appeal a rate increase to the circuit court of the county in which the
2 municipality is located on the grounds that the rate ordinance or its passage does not comply with
3 the provisions of this article by filing a petition, signed by at least 750 customers or 25 percent of
4 the customers served by the municipal electric utility, whichever is fewer. Any petition challenging
5 the ordinance must be filed within 30 days following the adoption of the rate ordinance.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

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

1 ~~(a) The jurisdiction of the commission shall extend to all public utilities in this state and~~
2 ~~shall include any utility engaged in any of the following public services:~~
3 ~~Common carriage of passengers or goods, whether by air, railroad, street railroad, motor~~
4 ~~or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water~~

5 ~~or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and~~
6 ~~all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor~~
7 ~~car services; transmission of messages by telephone, telegraph or radio; generation and~~
8 ~~transmission of electrical energy by hydroelectric or other utilities for service to the public, whether~~
9 ~~directly or through a distributing utility; supplying water, gas or electricity by municipalities or~~
10 ~~others; sewer systems servicing twenty-five or more persons or firms other than the owner of the~~
11 ~~sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide~~
12 ~~sewer service by an innovative, alternative method, as defined by the federal Environmental~~
13 ~~Protection Agency, the innovative, alternative method is a public utility function and subject to the~~
14 ~~jurisdiction of the Public Service Commission regardless of the number of customers served by~~
15 ~~the innovative, alternative method; any public service district created under the provisions of~~
16 ~~article thirteen-a, chapter sixteen of this code, except that the Public Service Commission will~~
17 ~~have no jurisdiction over the provision of stormwater services by a public service district; toll~~
18 ~~bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*,~~
19 ~~That natural gas producers who provide natural gas service to not more than twenty-five~~
20 ~~residential customers are exempt from the jurisdiction of the commission with regard to the~~
21 ~~provisions of such residential service: *Provided further*, That upon request of any of the customers~~
22 ~~of such natural gas producers, the commission may, upon good cause being shown, exercise~~
23 ~~such authority as the commission may deem appropriate over the operation, rates and charges~~
24 ~~of such producer and for such length of time as the commission may consider to be proper.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

82 ~~except for the making or constructing of a material modification thereof as provided in subdivision~~
83 ~~(5) of this subsection.~~

84 ~~(2) Any person, corporation or other entity that intends to construct or construct and~~
85 ~~operate an electric generating facility to be located in this state that has been designated as an~~
86 ~~exempt wholesale generator under applicable federal law, or will be so designated prior to~~
87 ~~commercial operation of the facility, and for which facility the owner or operator does not hold a~~
88 ~~certificate of public convenience and necessity issued by the commission on or before July 1,~~
89 ~~2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from~~
90 ~~the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate~~
91 ~~of public convenience and necessity pursuant to the provisions of section eleven of this article.~~
92 ~~An owner or operator of an electric generating facility as is described in this subdivision for which~~
93 ~~a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g),~~
94 ~~(h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction~~
95 ~~of the commission or to the provisions of this chapter with respect to such facility except for the~~
96 ~~making or constructing of a material modification thereof as provided in subdivision (5) of this~~
97 ~~subsection.~~

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

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

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

134 ~~(6) The commission shall consider an application for a certificate of public convenience~~
135 ~~and necessity filed pursuant to section eleven of this article to construct an electric generating~~

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

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

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

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

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

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

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

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

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

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

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

187 (b) The jurisdiction of the commission over political subdivisions of this state providing
188 separate or combined water and/or sewer services and having at least 4,500 customers and

189 annual combined gross revenues of \$3 million or more that are political subdivisions of the state
190 is limited to:

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

192 (2) Regulation of measurements, practices, acts or services, as granted and described in
193 §24-2-7 of this code;

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

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

198 (5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness
199 in any proceeding before, or conducted by, the commission, as granted and described in §24-2-
200 10 of this code; and

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

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

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

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

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

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

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

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

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

235 (1) An owner or operator of an electric generating facility located or to be located in this
236 state that has been designated as an exempt wholesale generator under applicable federal law,
237 or will be so designated prior to commercial operation of the facility, and for which such facility
238 the owner or operator holds a certificate of public convenience and necessity issued by the
239 commission on or before July 1, 2003, shall be subject to §24-2-11c(e) through §24-2-11c(j) of

240 this code as if the certificate of public convenience and necessity for such facility were a siting
241 certificate issued under §24-2-11c(e) through §24-2-11c(i) of this code and shall not otherwise be
242 subject to the jurisdiction of the commission or to the provisions of this chapter with respect to
243 such facility except for the making or constructing of a material modification thereof as provided
244 in §24-2-1(d)(5) of this code.

245 (2) Any person, corporation, or other entity that intends to construct or construct and
246 operate an electric generating facility to be located in this state that has been designated as an
247 exempt wholesale generator under applicable federal law, or will be so designated prior to
248 commercial operation of the facility, and for which facility the owner or operator does not hold a
249 certificate of public convenience and necessity issued by the commission on or before July 1,
250 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
251 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
252 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
253 operator of an electric generating facility as is described in this subdivision for which a siting
254 certificate has been issued by the commission shall be subject to §24-2-11c(e) through §24-2-
255 11c(j) of this code and shall not otherwise be subject to the jurisdiction of the commission or to
256 the provisions of this chapter with respect to such facility except for the making or constructing of
257 a material modification thereof as provided in §24-2-1(d)(5) of this code.

258 (3) An owner or operator of an electric generating facility located in this state that had not
259 been designated as an exempt wholesale generator under applicable federal law prior to
260 commercial operation of the facility that generates electric energy solely for sale at retail outside
261 this state or solely for sale at wholesale in accordance with any applicable federal law that
262 preempts state law or solely for both such sales at retail and such sales at wholesale and that
263 had been constructed and had engaged in commercial operation on or before July 1, 2003, shall
264 not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect
265 to such facility, regardless of whether such facility subsequent to its construction has been or will

266 be designated as an exempt wholesale generator under applicable federal law: *Provided*, That
267 such owner or operator shall be subject to §24-2-1-(d)(5) of this code if a material modification of
268 such facility is made or constructed.

269 (4) Any person, corporation, or other entity that intends to construct or construct and
270 operate an electric generating facility to be located in this state that has not been or will not be
271 designated as an exempt wholesale generator under applicable federal law prior to commercial
272 operation of the facility that will generate electric energy solely for sale at retail outside this state
273 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
274 law or solely for both such sales at retail and such sales at wholesale and that had not been
275 constructed and had not been engaged in commercial operation on or before July 1, 2003, shall,
276 prior to commencement of construction of the facility, obtain a siting certificate from the
277 commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
278 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
279 operator of an electric generating facility as is described in this subdivision for which a siting
280 certificate has been issued by the commission shall be subject to §24-2-11c(e) through §24-2-
281 11c(j) of this code and shall not otherwise be subject to the jurisdiction of the commission or to
282 the provisions of this chapter with respect to such facility except for the making or constructing of
283 a material modification thereof as provided in §24-2-1(d)(5) of this code.

284 (5) An owner or operator of an electric generating facility described in this subsection shall,
285 before making or constructing a material modification of the facility that is not within the terms of
286 any certificate of public convenience and necessity or siting certificate previously issued for the
287 facility or an earlier material modification thereof, obtain a siting certificate for the modification
288 from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of
289 public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of
290 this code and, except for the provisions of §24-2-11c of this code, shall not otherwise be subject
291 to the jurisdiction of the commission or to the provisions of this chapter with respect to such
292 modification.

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

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

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

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

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

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

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

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

317 (f) Notwithstanding any other provisions of this article, the commission shall not have
318 jurisdiction to review or approve any transaction involving a telephone company otherwise subject

319 to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under common
320 ownership.

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

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

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

18 the cost of the service. Every order entered by the commission shall continue in force until the
19 expiration of the time, if any, named by the commission in the order, or until revoked or modified
20 by the commission, unless the order is suspended, modified, or revoked by order or decree of a
21 court of competent jurisdiction: *Provided*, That in the case of utilities used by emergency shelter
22 providers, the commission shall prescribe ~~such~~ rates, charges, or tolls that are the lowest
23 available. "Emergency shelter provider" means any nonprofit entity which provides temporary
24 emergency housing and services to the homeless or to victims of domestic violence or other
25 abuse.

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

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

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

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

1 (a) The commission ~~shall have power to~~ may enforce, originate, establish, change, and
2 promulgate tariffs, rates, joint rates, tolls, and schedules for all public utilities except for municipal
3 power systems and water and/or sewer utilities that are political subdivisions of this state providing

4 a separate or combined services and having at least 4,500 customers and annual combined gross
5 revenues of \$3 million or more: *Provided*, That the commission may exercise such rate authority
6 over municipally owned ~~electric or~~ natural gas utilities or a municipally owned water and/or sewer
7 utility having less than 4,500 customers or annual combined gross revenues of less than \$3
8 million, only under the circumstances and limitations set forth in §24-2-4b of this code, and subject
9 to the provisions set forth in §24-2-3(b) of this code. And whenever the commission, ~~shall~~ after
10 hearing, ~~find~~ finds any existing rates, tolls, tariffs, joint rates, or schedules enacted or maintained
11 by a utility regulated under the provisions of this section to be unjust, unreasonable, insufficient,
12 or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the
13 commission shall, by an order, fix reasonable rates, joint rates, tariffs, tolls, or schedules to be
14 followed in the future in lieu of those found to be unjust, unreasonable, insufficient, or unjustly
15 discriminatory or otherwise in violation of any provisions of law, and the ~~said~~ commission, in fixing
16 the rate of any railroad company, may fix a fair, reasonable and just rate to be charged on any
17 branch line thereof, independent of the rate charged on the main line of ~~such~~ the railroad.

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

30 collected during the pendency of the complaint proceeding unless the rates, fees, or charges so
31 enacted by the governing body were enacted subject to refund under the provisions of §24-2-4b
32 (d)(2) or §24-2-4b(g) of this code.

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

40 (d) In determining just and reasonable rates, the commission shall investigate and review
41 transactions between utilities and affiliates. The commission shall limit the total return of the utility
42 to a level which, when considered with the level of profit or return the affiliate earns on transactions
43 with the utility, is just and reasonable.

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

1 (a) The rates and charges of electric cooperatives, natural gas cooperatives and municipal
2 water and/or sewer utilities that are political subdivisions of the state having less than 4,500
3 customers or annual combined gross revenues of less than \$3 million, except for municipally
4 operated commercial solid waste facilities as defined in §22-15-2 of this code, and the rates and
5 charges for local exchange services provided by telephone cooperatives are not subject to the
6 rate approval provisions of §24-2-4 or §24-2-4a of this code, but are subject to the limited rate
7 provisions of this section.

8 (b) All rates and charges set by electric cooperatives, natural gas cooperatives and
9 municipally operated public utilities that are political subdivisions of the state providing water,
10 sewer, ~~electric~~ and/or natural gas services that are subject to the provisions of this section and all
11 rates and charges for local exchange services set by telephone cooperatives shall be just,
12 reasonable, applied without unjust discrimination between or preference for any customer or class
13 of customer, and based primarily on the costs of providing these services. All rates and charges
14 shall be based upon the measured or reasonably estimated cost of service and the equitable
15 sharing of those costs between customers based upon the cost of providing the service received
16 by the customer, including a reasonable plant-in-service depreciation expense. The rates and
17 charges shall be adopted by the electric, natural gas, telephone cooperative, or political
18 subdivision's governing board or body and, in the case of the municipally operated public utility,
19 by municipal ordinance to be effective not sooner than 45 days after adoption. The 45-day waiting
20 period may be waived by public vote of the governing body if that body finds and declares the
21 public utility that is a political subdivision of the state to be in financial distress such that the 45-
22 day waiting period would be detrimental to the ability of the utility to deliver continued and
23 compliant public services: *Provided*, That notice of intent to effect a rate change shall be specified
24 on the monthly billing statement of the customers of the utility for the month next preceding the
25 month in which the rate change is to become effective and the utility governing body shall give its
26 customers and, in the case of a cooperative, its customers, members and stockholders, other
27 reasonable notices as will allow filing of timely objections to the proposed rate change and full
28 participation in municipal rate legislation through the provision of a public forum in which
29 customers may comment upon the proposed rate change prior to an enactment vote. The rates
30 and charges or ordinance shall be filed with the commission, together with any information
31 showing the basis of the rates and charges and other information as the commission considers
32 necessary. Any change in the rates and charges with updated information shall be filed with the
33 commission. If a petition, as set out in §24-2-4b(c)(1), §24-2-4b(c)(2), or §24-2-4b(c)(3) of this

34 code, is received and the electric cooperative, natural gas cooperative, or telephone cooperative
35 or municipality has failed to file with the commission the rates and charges with information
36 showing the basis of rates and charges and other information as the commission considers
37 necessary, the suspension period limitation of 120 days and the 100-day period limitation for
38 issuance of an order by a hearing examiner, as contained in §24-2-4b(d) and §24-2-4b(e) of this
39 code, is tolled until the necessary information is filed. The electric cooperative, natural gas
40 cooperative, telephone cooperative or municipality shall set the date when any new rate or charge
41 is to go into effect.

42 (c) The commission shall review and approve or modify the rates and charges of electric
43 cooperatives, natural gas cooperatives, telephone cooperatives, or municipal ~~electric or natural~~
44 gas utilities and municipally owned water and/or sewer utilities that are political subdivisions of
45 the state and having less than 4,500 customers or annual combined revenues of less than \$3
46 million upon the filing of a petition within 30 days of the adoption of the ordinance or resolution
47 changing the rates or charges by:

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

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

58 (3) Any customer or group of customers of the municipally owned ~~electric or natural gas~~
59 public utility who is affected by the change in rates who reside within the municipal boundaries

60 and who present a petition to the commission alleging discrimination between a customer or group
61 of customers and other customers of the municipal utility. The petition shall be accompanied by
62 evidence of discrimination.

63 (d) (1) The filing of a petition with the commission signed by not less than 25 percent of
64 the customers served by the municipally owned ~~electric or~~ natural gas public utility or a municipally
65 owned water and/or sewer utility having less than 4,500 customers or annual combined gross
66 revenues of less than \$3 million or 25 percent of the membership of the electric, natural gas or
67 telephone cooperative residing within the state under §24-2-4b(c) of this code shall suspend the
68 adoption of the rate change contained in the ordinance or resolution for a period of 120 days from
69 the date the rates or charges would otherwise go into effect or until an order is issued as provided
70 herein.

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

86 municipally operated public utility, the utility may apply for, and the commission may grant, a
87 waiver of the suspension period and allow rates to be effective upon enactment.

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

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

100 (g) The commission may, upon petition by an electric, natural gas or telephone
101 cooperative or municipal ~~electric or~~ natural gas public utility or a municipally owned water and/or
102 sewer utility having less than 4,500 customers or annual combined gross revenues of less than
103 \$3 million, allow an interim or emergency rate to take effect, subject to refund or future
104 modification, if it is determined that the interim or emergency rate is necessary to protect the
105 municipality from financial hardship attributable to the purchase of the utility commodity sold, or
106 the commission determines that a temporary or interim rate increase is necessary for the utility to
107 avoid financial distress. In such cases, the commission shall waive the 45-day waiting period
108 provided for in §24-2-4b(b) of this code and the 120-day suspension period provided for in §24-
109 2-4b(d) of this code.

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

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

116 (j) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
117 commission over water and/or sewer utilities that are political subdivisions of the state and having
118 at least 4,500 customers and annual gross combined revenues of \$3 million or more shall be
119 limited to those powers enumerated in §24-2-1(b) of this code.

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