

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

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 provide 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 non-defaulting municipality or
23 any 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 subsection (b) of this section may extend for more than 50 years or 50
27 years 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 subsection (b) of this section may provide that payments by the
32 municipality are made solely from and may be secured by a pledge of and lien upon revenues

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

39 (e) A municipality contracting under the provisions of subsection (b) of this section is
40 obligated to fix, charge and collect rents, rates, fees, and charges for electric power and energy
41 and other services it sells, furnishes, or supplies through its electric power system in an amount
42 sufficient to provide revenues adequate to meet its obligations under the contract and to pay any
43 and all other amounts payable from or constituting a charge and lien upon the revenues, including
44 the amounts necessary to pay the principal and interest on any municipal bonds issued related to
45 its electric power system: *Provided*, That any change in the rates and charges of the municipality
46 to the customers of the electric power system under the provisions of this section are subject to
47 the 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 ratemaking 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 extends to all public utilities in this state and includes
2 any utility engaged in any of the following public services:
3 Common carriage of passengers or goods, whether by air, railroad, street railroad, motor

4 or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land,
5 water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives
6 and 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 25 or more persons or firms other than the owner of the sewer
11 systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer
12 service by an innovative, alternative method, as defined by the federal Environmental Protection
13 Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction
14 of the Public Service Commission regardless of the number of customers served by the
15 innovative, alternative method; any public service district created under the provisions of §16-
16 13A-1 *et seq.* of this code, except that the Public Service Commission has no jurisdiction over the
17 provision of storm water services by a public service district; toll bridges, wharves, ferries; solid
18 waste facilities; and any other public service: *Provided, however*, That natural gas producers who
19 provide natural gas service to not more than 25 residential customers are exempt from the
20 jurisdiction of the commission with regard to the provisions of such residential service: *Provided*
21 *further*, That upon request of any of the customers of such natural gas producers, the commission
22 may, upon good cause being shown, exercise authority the commission considers appropriate
23 over the operation, rates, and charges of the producer and for the time the commission considers
24 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 4,500 customers and
27 annual combined gross revenues of \$3 million or more that are political subdivisions of the state
28 is limited to:

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

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

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

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

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

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

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

55 (8) In the event that a political subdivision has a deficiency in either its bond revenue or

56 bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may
57 petition the Public Service Commission for such redress as will bring the accounts to current
58 status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to
59 fully resolve the alleged deficiency or breach.

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

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

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

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

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

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

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

82 (2) Any person, corporation, or other entity that intends to construct or construct and
83 operate an electric generating facility to be located in this state that has been designated as an
84 exempt wholesale generator under applicable federal law, or will be so designated prior to
85 commercial operation of the facility, and for which facility the owner or operator does not hold a
86 certificate of public convenience and necessity issued by the commission on or before July 1,
87 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
88 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
89 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
90 operator of an electric generating facility as is described in this subdivision for which a siting
91 certificate has been issued by the commission shall be subject to §24-2-11c (e), (f), (g), (h), (i)
92 and (j), of this code, and is not otherwise subject to the jurisdiction of the commission or to the
93 provisions of this chapter with respect to the facility except for the making or constructing of a
94 material modification thereof as provided in subdivision (5) of this subsection.

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

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

108 designated as an exempt wholesale generator under applicable federal law prior to commercial
109 operation of the facility that will generate electric energy solely for sale at retail outside this state
110 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
111 law or solely for both such sales at retail and such sales at wholesale and that had not been
112 constructed and had not been engaged in commercial operation on or before July 1, 2003, shall,
113 prior to commencement of construction of the facility, obtain a siting certificate from the
114 commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
115 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
116 operator of an electric generating facility as is described in this subdivision for which a siting
117 certificate has been issued by the commission is subject to §24-2-11c (e), (f), (g), (h), (i) and (j),
118 of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions
119 of this chapter with respect to the facility except for the making or constructing of a material
120 modification thereof as provided in subdivision (5) of this subsection.

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

129 (6) The commission shall consider an application for a certificate of public convenience
130 and necessity filed pursuant to §24-2-11 of this code to construct an electric generating facility
131 described in this subsection or to make or construct a material modification of such electric
132 generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the
133 application for the certificate of public convenience and necessity was filed with the commission

134 prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

135 (7) The limitations on the jurisdiction of the commission over, and on the applicability of
136 the provisions of this chapter to, the owner or operator of an electric generating facility as imposed
137 by and described in this subsection, do not affect or limit the commission's jurisdiction over
138 contracts or arrangements between the owner or operator of the facility and any affiliated public
139 utility subject to the provisions of this chapter.

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

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

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

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

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

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

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

157 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power
158 systems are most fairly and effectively regulated by the local governing body. Therefore,
159 notwithstanding any other provisions of this article, the commission shall not have jurisdiction over

160 the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the
161 jurisdiction of the Public Service Commission over municipal power systems is limited to that
162 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 a
14 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 ratemaking 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 four thousand five hundred customers and
5 annual combined gross revenues of \$3 million or more: *Provided*, That the commission may
6 exercise such rate authority over municipally owned ~~electric or~~ natural gas utilities or a municipally
7 owned water and/or sewer utility having less than 4,500 customers or annual combined gross
8 revenues of less than \$3 million, only under the circumstances and limitations set forth in §24-2-

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

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

34 (c) In determining just and reasonable rates, the commission may audit and investigate

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

41 (d) In determining just and reasonable rates, the commission shall investigate and review
42 transactions between utilities and affiliates. The commission shall limit the total return of the utility
43 to a level which, when considered with the level of profit or return the affiliate earns on transactions
44 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 subdivision (1), (2) or (3), subsection (c) of this section, is
34 received and the electric cooperative, natural gas cooperative or telephone cooperative or
35 municipality has failed to file with the commission the rates and charges with information showing
36 the basis of rates and charges and other information as the commission considers necessary, the
37 suspension period limitation of 120 days and the 100 day period limitation for issuance of an order
38 by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the
39 necessary information is filed. The electric cooperative, natural gas cooperative, telephone

40 cooperative or municipality shall set the date when any new rate or charge is to go into effect.

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

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

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

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

62 (d) (1) The filing of a petition with the commission signed by not less than 25 percent of
63 the customers served by the municipally owned ~~electric or~~ natural gas public utility or a municipally
64 owned water and/or sewer utility having less than 4,500 customers or annual combined gross
65 revenues of less than \$3 million or twenty-five percent of the membership of the electric, natural

66 gas or telephone cooperative residing within the state under subsection (c) of this section shall
67 suspend the adoption of the rate change contained in the ordinance or resolution for a period of
68 one hundred twenty days from the date the rates or charges would otherwise go into effect or until
69 an order is issued as provided herein.

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

87 (e) The commission shall forthwith appoint a hearing examiner from its staff to review the
88 grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and
89 shall, within 100 days from the date the rates or charges would otherwise go into effect, unless
90 otherwise tolled as provided in subsection (b) of this section, issue an order approving,
91 disapproving or modifying, in whole or in part, the rates or charges imposed by the electric, natural

92 gas or telephone cooperative or by the municipally operated public utility pursuant to this section.

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

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

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

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

115 (j) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the
116 commission over water and/or sewer utilities that are political subdivisions of the state and having
117 at least 4,500 customers and annual gross combined revenues of \$3 million or more shall be

118 limited to those powers enumerated in §24-2-1(b) of this code.

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

NOTE: The purpose of this bill is to allow more local review and control over the setting of rates, fees and charges for, municipal electrical power systems. The bill provides for a right of appeal by customers. It also clarifies the Public Service Commission's jurisdiction as modified by chapters one hundred sixty-one and two hundred nine, Acts of the Legislature, Regular Session, 2017 (HB3096 and SB180).

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

§24-2-1 has been rewritten; therefore, it has been completely underscored.