

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 583

SENATORS RUCKER, BLAIR, SMITH, WELD, CLINE,
MARONEY, ROBERTS, AND PALUMBO, *original sponsors*

[Passed March 5, 2020; in effect 90 days from
passage]

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LEGISLATIVE SERVICE

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SB583

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OFFICE OF THE CLERK
WEST VIRGINIA LEGISLATURE
2000 MARKET STREET
MARTINSBURG, WV 26101

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FILED

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §24-2-10, relating to creating a program to further the development of
3 renewable energy resources and renewable energy facilities for solar energy by modifying
4 the powers and duties of the Public Service Commission; providing for legislative findings
5 and declarations; providing for definitions; providing for an application process and
6 program for multiyear comprehensive renewable energy facilities for electric utilities, as
7 defined, to plan, design, construct, purchase, own, and operate renewable energy-
8 generating facilities, energy-storage resources, or both, under specified conditions,
9 requirements, and limitations; providing that solar energy output is to be offered for sale
10 or sold to residential, commercial, or industrial customers under renewable special
11 contracts or renewable tariffs; providing for commission review and approval of said
12 programs; allowing cost recovery for said programs; providing for requirements for said
13 programs; providing for application requirements and contents in lieu of applications for
14 certificates of public convenience and necessity; providing for public notice at the direction
15 of the commission for anticipated rates and rate increases in interested counties; providing
16 for a hearing on applications within 90 days of notice; defining circumstances when a
17 hearing can be waived for lack of opposition; defining a time period of 150 days within
18 which the commission shall issue a final order after the application date; requiring the
19 commission to find the programs as in the public interest; requiring the commission, after
20 notice and hearing, to approve applications and allow cost recovery for just and
21 reasonable expenditures; establishing accounting methods, practices, rates of return,
22 calculations, dates, and procedures relevant for cost recovery; requiring a utility to place
23 in effect commission-approved rates that include cost recovery with certain defined items;
24 defining "concurrent cost recovery"; requiring yearly application filings by the utility with
25 the commission regarding cost recovery; defining when a project is to be considered used
26 and useful; limiting cost recovery from any one customer to a maximum increase of \$1000

27 per month; providing for siting certificates for exempt wholesale solar-generation facilities
28 to be processed in 150 days by the Public Service Commission; providing that no provision
29 shall displace current levels of coal-fired generation capacity; and providing for a sunset
30 date under conditions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1o. Renewable energy facilities program.

1 (a) The Legislature finds and declares that:

2 (1) West Virginia is rich in energy resources, which provide many advantages to the state,
3 its economy and its citizens;

4 (2) West Virginia's abundant mineral reserves have created, and will continue to create,
5 many benefits to the state and its citizens, including thousands of jobs, a strong tax base and a
6 low-cost, reliable source of electricity;

7 (3) Coal-fired plants currently supply over 90 percent of electricity generation to the
8 citizens and businesses of this state;

9 (4) Businesses that may otherwise locate or expand facilities in this state often require
10 that a portion of the electricity that they purchase be generated via renewable sources;

11 (5) Creating a program for the development of certain renewable sources of electricity by
12 electric utilities will result in increased economic development opportunities in the state, create
13 jobs, and enhance the use of the state's electricity generation; and

14 (6) Creating a program to authorize electric utilities to provide a portion of the state's
15 electricity needs through a process that allows them to plan, design, construct, purchase, own
16 and operate renewable electric-generating facilities, energy storage resources, or both, pursuant
17 to this section is in the public interest of the state.

18 (b) *Definitions.* – For the purpose of the section:

19 “Capital investments” include, but are not limited to, costs related to the planning, design,
20 construction, purchase, and ownership of renewable electric-generating facilities, energy storage
21 resources, and interconnections with transmission and distribution facilities.

22 “Commission” or “Public Service Commission” means the Public Service Commission of
23 West Virginia.

24 “Electric utility” means any electric distribution company that sells electricity to retail
25 customers in this state under rates regulated by the commission. Unless specifically provided for
26 otherwise, for the purposes of this section, the term “electric utility” may not include rural electric
27 cooperatives, municipally owned electric facilities or utilities serving less than 30,000 residential
28 electric customers in West Virginia.

29 “Eligible site” means any site in this state that has been previously used in electric
30 generation, industrial, manufacturing or mining operations, including, but not limited to,
31 brownfields, closed landfills, hazardous waste sites, former industrial sites, and former mining
32 sites. In the event that there is no available site that has been previously used in electric
33 generation, industrial, manufacturing, or mining operations in the area to be served by a
34 renewable electric facilities program, an eligible site may include any suitable site in this state
35 approved for use in connection with a renewable electric facilities program by the Secretary of the
36 Department of Commerce.

37 “Energy storage resource” means infrastructure located on an eligible site that allows for
38 the energy absorption and release of electrical energy into the electric grid.

39 “Renewable electric facilities program” means a program proposed by an electric utility to
40 plan, design, construct, purchase, own, and operate renewable electric-generating facilities,
41 energy storage resources, or both, pursuant to this section: *Provided*, That a renewable electric
42 facilities program may not consist solely of energy storage resources.

43 “Renewable electric-generating facility” means infrastructure located on an eligible site
44 that generates electricity solely through solar photovoltaic methods or other solar methods.

45 (c) Electric utilities may file with the commission an application for a multiyear
46 comprehensive renewable energy facilities program that complies with the provisions of this
47 section for planning, designing, constructing, purchasing, owning, and operating renewable
48 electric-generating facilities, energy storage resources, or both, by the electric utility. Subject to
49 commission review and approval, a renewable energy facilities program may be amended and
50 updated by the electric utility. The recovery of costs in support of the renewable energy facilities
51 program shall be allowed in the manner set forth in this section.

52 (d) Any renewable energy facilities program shall comply with the following requirements:

53 (1) An electric utility may purchase each renewable electric-generating facility and each
54 energy storage resource from a developer of renewable electric-generating facilities or energy
55 storage resources or construct such facilities on its own, as applicable. Any purchase of a
56 renewable electric-generating facility or energy storage resources shall be subject to a
57 competitive procurement administered by the electric utility. An electric utility may select to
58 purchase a renewable electric-generating facility, energy storage resource, or both, based on a
59 myriad of factors, including, but not limited to, price and nonprice criteria, which shall include, but
60 not be limited to, geographic distribution of generating capacity, areas of higher employment, or
61 regional economic development.

62 (2) An electric utility may elect to petition the commission, outside of a base rate case
63 proceeding, at any time for a prudency determination with respect to the purchase, construction,
64 and ownership by the electric utility of one or more renewable electric-generating facilities, energy
65 storage resources, or both. The commission's final order regarding any such petition shall be
66 entered by the commission within 150 days after the date of the filing of such petition.

67 (3) No renewable electric-generating facility shall have a generating capacity greater than
68 50 megawatts until such time as 85 percent of that renewable electric-generating facility's annual
69 energy output is being sold or is contracted to be sold to residential, commercial, or industrial
70 customers pursuant to a renewable special contract or renewable tariff, and, thereafter, any

71 expansion of that or another renewable energy-generating facility's generating capacity shall
72 proceed in increments of up to 50 megawatts each until such time as 85 percent or more of all
73 renewable energy-generating facility's aggregate, annual energy output is being sold or is
74 contracted to be sold to customers pursuant to a renewable special contract or renewable tariff;

75 (4) No single renewable electric-generating facility shall have a generating capacity
76 greater than 200 megawatts;

77 (5) The cumulative generating capacity of all renewable electric-generating facilities
78 operating at any given time, and for which rate recovery is provided by the commission under this
79 section, shall not exceed 400 megawatts among all investor-owned electric utilities in this state:
80 *Provided*, That the cumulative generating capacity of all renewable electric-generating facilities
81 operating at any one time, and for which rate recovery is provided by the commission under this
82 section, shall not exceed 200 megawatts for all electric utilities within the state owned by the same
83 corporate parent company;

84 (6) The calculation of maximum megawatts of generating capacity for renewable electric-
85 generating facilities established in this subsection shall not include the storage capacity of energy
86 storage resources;

87 (7) As part of the renewable energy facilities program, the electric utilities must offer the
88 energy output for sale to customers from all classes of service.

89 (e) Applications made under this section are in lieu of an application for a certificate of
90 public convenience and necessity pursuant to §24-2-11 of this code and shall contain the
91 following:

92 (1) A description of the renewable electric-generating facilities, energy storage resources,
93 or both, in such detail as the commission prescribes, including, but not limited to, the generating
94 capacity and location of the facilities and a description of the competitive purchase procurement
95 process administered by the electric utility that is required under this section;

96 (2) A proposed concurrent cost-recovery mechanism for actual and projected capital
97 investments in the renewable electric-generating facilities, energy storage resources, or both, and
98 for operation and maintenance expenses and taxes associated with such facilities; and

99 (3) Other information that the applicant considers relevant or the commission requires.

100 (f) Upon filing of an application, the applicant shall publish, in the form the commission
101 directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate
102 increase under the proposal, by average percentage and dollar amount for customers within a
103 class of service, as a Class I legal advertisement in compliance with §59-3-1 *et seq.*, of this code,
104 the publication area to be each county in which service is provided by the electric utility, a notice
105 of the filing of the application and that the commission shall hold a hearing on the application
106 within 90 days of the notice; unless no opposition to the rate change is received by the commission
107 within one week of the proposed hearing date, in which case the hearing can be waived, and the
108 commission shall issue a final order within 150 days of the application filing date.

109 (g) The planning, design, construction, purchase, ownership, and operation of renewable
110 electric-generating facilities, energy storage resources, or both, pursuant to this section is in the
111 public interest, and the commission shall so find when considering applications for renewable
112 energy facilities programs submitted by an electric utility pursuant to this section.

113 (h) Upon notice and hearing, if required by the commission, the commission shall approve
114 the applications made under this section and allow concurrent recovery of costs related to
115 the expenditures, as provided in subsection (i) of this section, if the commission finds that the
116 expenditures and the associated rate requirements are just and reasonable and that the
117 applications comply with the requirements of this section.

118 (i) Upon commission approval, electric utilities shall be authorized to implement renewable
119 electric facilities programs and to concurrently recover their costs, including a return on capital
120 investments, operation and maintenance, depreciation, and tax expenses directly attributable to
121 the renewable electric facilities program capital investments, if any, as provided in the following:

122 (1) An allowance for return shall be calculated by applying a rate of return to the
123 average planned net incremental increase to rate base attributable to the renewable electric
124 facilities program for the coming year, considering the projected amount and timing of capital
125 investments under the renewable electric facilities program plus any capital investments in
126 previous years of the program. The rate of return shall be determined by utilizing the rate of return
127 on equity and the capital structure authorized by the commission in the electric utility's most recent
128 base rate case proceeding or in the case of a settled base rate case, a rate of return on equity set
129 forth in or associated with such settlement or, if neither is set forth in or associated with such
130 settlement, a rate of return on equity and a capital structure determined by the commission to be
131 reasonable, and the projected average weighted cost of the electric utility's debt during the period
132 of the renewable electric facilities program to determine the weighted cost of capital based upon
133 the electric utility's capital structure determined as specified above.

134 (2) Income taxes applicable to the return allowed on the renewable electric facilities
135 program shall be calculated at the statutory rate for inclusion in rates.

136 (3) Incremental operation and maintenance, depreciation, and property tax expenses
137 directly attributable to the renewable electric facilities program shall be estimated for the upcoming
138 year.

139 (4) Following commission approval of its application made under this section, an electric
140 utility shall place into effect rates that include an increment for concurrent cost recovery that
141 recovers the allowance for return, related income taxes at the statutory rate, operation and
142 maintenance, depreciation, and property tax expenses associated with the electric utility's actual
143 and projected capital investments under the renewable electric facilities program for the upcoming
144 year, net of contributions to recovery of those incremental costs provided by customers who have
145 executed renewable special contracts, or who are taking power under renewable tariffs and are
146 served by the renewable electric facilities program investments, if any (incremental cost-recovery
147 increment). In each year subsequent to the order approving the renewable electric facilities

148 program and the incremental cost-recovery increment, the electric utility shall file an application
149 with the commission setting forth a new proposed incremental cost-recovery increment for
150 concurrent cost recovery of forecasted costs to be made in the subsequent year, plus any under-
151 recovery or minus any over-recovery of actual incremental costs attributable to the renewable
152 electric facilities program, for the preceding year.

153 (5) The renewable electric-generating facilities, energy storage resources, or both,
154 constructed, purchased, contracted, owned, installed, and in service pursuant to an application
155 approved by the commission shall be considered used and useful for rate recovery purposes.
156 Any concurrent cost recovery mechanism approved by the commission shall limit the amount of
157 cost to be recovered from any individual customer of the electric utility to a maximum of \$1,000
158 per month: *Provided*, That this limitation shall not impact the electric utility's ability to recover all
159 costs incurred pursuant to this section from other customers. Customers who have executed
160 renewable special contracts or are taking power under renewable tariffs pursuant to an approved
161 renewable electric facilities program are not subject to any such limits imposed by the
162 commission.

163 (6) If an electric utility serves customers in more than one jurisdiction, and a jurisdiction
164 other than this state denies the electric utility recovery of the costs incurred pursuant to a
165 renewable electric facilities program approved by the commission and allocated to that
166 jurisdiction, the electric utility shall recover all of the costs of the renewable electric facilities
167 program from its West Virginia jurisdictional customers if the commission finds that the
168 expenditures and the associated rate requirements are just and reasonable, and all attributes of
169 the renewable electric facilities program, including energy, capacity, and renewable energy credits
170 shall be assigned to this state.

171 (j) The electric utility may make any accounting accruals necessary to establish a
172 regulatory asset or liability through which actual incremental costs incurred and costs recovered
173 through the rate mechanism are tracked.

174 (k) With respect to renewable electric facilities programs, electric utilities may defer
175 incremental operation and maintenance expenses attributable to regulatory and compliance-
176 related requirements introduced after the electric utility's last base rate case proceeding and not
177 included in the electric utility's current base rates or incremental cost-recovery increment in lieu
178 of current recovery. In a future base rate case, the commission shall allow recovery of such
179 deferred costs amortized over a reasonable period of time to be determined by the commission
180 provided the commission finds that the costs were reasonable and prudently incurred and were
181 not reflected in rates in prior base rate cases.

182 (l) The provisions of this section shall expire on December 31, 2025. The expiration of this
183 section shall not affect the full and timely cost recovery associated with a renewable energy
184 facilities program for which an application has been filed with the commission pursuant to this
185 section on or before December 31, 2025, nor for any projects previously approved by the
186 commission pursuant to this section.

187 (m) Notwithstanding any provision of this article to the contrary, no provision herein this
188 section shall displace any current levels of coal-fired generation capacity.

189 (n) Notwithstanding the provisions of §24-2-11c of this code, any person or entity: (1) Who
190 is not an electric utility; (2) who intends to purchase or construct and operate an electric generating
191 facility as an exempt wholesale generator under federal law; (3) who will generate electricity solely
192 through solar photovoltaic or other solar methods; and (4) who, if desired, intends to purchase or
193 construct and operate energy storage for such electricity may file an application with the Public
194 Service Commission under this section in such detail and with such publication requirements as
195 the commission may prescribe; and the commission shall hold a hearing, unless waived, within
196 90 days of publication and issue a final order on a siting certificate or modification thereof within
197 150 days of the application filing date. No other provision of this section shall apply to these
198 exempt wholesale generators.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Paul Raymond
.....
Chairman, Senate Committee

Nose Lopez
.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

FILED
2020 MAR 25 P 2:08
OFFICE OF THE CLERK
LEGISLATIVE SERVICE

Joe Linn
.....
Clerk of the Senate

Steve Harris
.....
Clerk of the House of Delegates

Nith B. Cummings
.....
President of the Senate

Leg. Hoadley
.....
Speaker of the House of Delegates

The within *is approved* this the *25th*
Day of *March* 2020.

James Guiney
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 13 2020

Time 3:16 pm