

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Originating

House Bill 3310

BY DELEGATES CAPITO, QUEEN, LOVEJOY AND GARCIA

[Originating in the Committee on Judiciary; reported

on March 26, 2021]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §24-1-1c; to amend and reenact §24-1-2 of said code; and to amend and
3 reenact §24-2-1 of said code; all generally relating to jurisdiction of the Public Service
4 Commission; making legislative findings; defining terms; creating exception to the term
5 public utility; limiting jurisdiction of the Public Service Commission; and providing for
6 rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1c. Legislative findings.

1 The Legislature finds:

2 (1) It is in the public interest to facilitate retail electric customers to invest in and install
3 solar photovoltaic energy facilities of their choice on their properties;

4 (2) Free-market financing may provide more customers with opportunities to install such
5 solar photovoltaic energy facilities;

6 (3) Installation of such solar photovoltaic energy facilities will stabilize long term energy
7 costs to make the state more attractive for industry and commercial investment;

8 (4) Financing arrangements, including those in which payments are based on the
9 performance and output of the solar photovoltaic energy facility installed on the property of a retail
10 electric customer, will help reduce or eliminate upfront costs involved in the investments and
11 installation by such customers; and

12 (5) Individuals and entities which offer or receive these types of financing arrangements
13 should not be considered or treated as public utilities.

§24-1-2. Definitions.

1 Except where a different meaning clearly appears from the context, the words “public
2 utility”, when used in this chapter, shall mean and include any person or persons, or association
3 of persons, however associated, whether incorporated or not, including municipalities, engaged

4 in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a
5 public service: Provided, That “public utility” does not include individuals or entities owning a solar
6 photovoltaic energy facility located on and designed to meet only the electrical needs of the
7 premises of a retail electric customer (1) that is leased to such retail electric customer; or (2) the
8 output of which is subject to a power purchase agreement with such retail electric customer,
9 subject to §24-2-1(a) of this code. Whenever in this chapter the words “commission” or “Public
10 Service Commission” occur, such word or words shall, unless a different intent clearly appears
11 from the context, be taken to mean the Public Service Commission of West Virginia. Whenever
12 used in this chapter, “customer” shall mean and include any person, firm, corporation,
13 municipality, public service district or any other entity who purchases a product or services of any
14 utility and shall include any such person, firm, corporation, municipality, public service district or
15 any other entity who purchases such services or product for resale. Whenever in this chapter the
16 words “governing body” occur, such word or words shall, unless a different intent clearly appears
17 from the context, be taken to mean the municipal body charged with the authority and
18 responsibility of enacting ordinances of the municipality, as defined in ~~section two, article one,~~
19 ~~chapter eight~~ §8-1-2 of this code, or a public service board of a public service district, as defined
20 in ~~section three, article thirteen a, chapter sixteen~~ §16-13A-3 of this code.

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,
5 water, or air; transportation of oil, gas, or water by pipeline; transportation of coal and its
6 derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping
7 car or parlor car services; transmission of messages by telephone, telegraph, or radio; generation

8 and transmission of electrical energy by hydroelectric or other utilities for service to the public,
9 whether directly or through a distributing utility; supplying water, gas, or electricity by
10 municipalities or others; sewer systems servicing 25 or more persons or firms other than the
11 owner of the sewer systems: Provided, That the provision of a solar photovoltaic energy facility
12 located on and designed to meet only the electrical needs of the premises of a retail electric
13 customer (1) that is leased to the retail electric customer; or (2) the output of which is subject to
14 a power purchase agreement (PPAs) with the retail electric customer, shall not constitute a public
15 service, subject to the following conditions and limitations, to wit: (a) the aggregate of all leasing,
16 PPAs, and net metering arrangements in the state for any utility shall not exceed three percent
17 (3%) of such utility's aggregate customer peak demand in the state during the previous year; (b)
18 there shall be individual customer on-site generator limits of designing the photovoltaic energy
19 facility to meet only the electrical needs of the premises of the retail electric customer and which
20 in no case shall exceed 25kW for residential customers, 500 kW for commercial customers, and
21 2,000 kW for industrial customers; (c) customers who enter into PPAs or leases of photovoltaic
22 facilities are to notify the utility of its intent to enter into such a transaction, which the utility will
23 respond within 30 days whether any of the caps have been reached. If the utility does not respond
24 within 30 days, the generator may proceed and the caps will be presumed not to have been
25 reached; and (d) the Public Service Commission shall have rulemaking authority to govern and
26 implement the provisions of interconnections for these PPAs and leasing arrangements, except
27 the PSC shall not have authority over the power rates for such arrangements between the on-site
28 generator and the customer; Provided, however, That if a public utility other than a political
29 subdivision intends to provide sewer service by an innovative, alternative method, as defined by
30 the federal Environmental Protection Agency, the innovative, alternative method is a public utility
31 function and subject to the jurisdiction of the Public Service Commission regardless of the number
32 of customers served by the innovative, alternative method; any public service district created
33 under the provisions of §16-13A-1 et seq. of this code, except that the Public Service Commission

34 will have no jurisdiction over the provision of stormwater services by a public service district; toll
35 bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*
36 *further*, That natural gas producers who provide natural gas service to not more than 25 residential
37 customers are exempt from the jurisdiction of the commission with regard to the provisions of the
38 residential service: *And provided further*, That upon request of any of the customers of the natural
39 gas producers, the commission may, upon good cause being shown, exercise such authority as
40 the commission may deem appropriate over the operation, rates, and charges of the producer
41 and for such length of time as the commission may consider to be proper.

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

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

47 (2) Regulation of measurements, practices, acts, or services, as granted and described in
48 §24-2-7 of this code;

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

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

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

56 (6) Investigation and resolution of disputes between a political subdivision of the state
57 providing wholesale water and/or wastewater treatment or other services, whether by contract or
58 through a tariff, and its customer or customers, including, but not limited to, rates, fees, and
59 charges, service areas and contested utility combinations: *Provided*, That any request for an

60 investigation related to such a dispute that is based on the act or omission of the political
61 subdivision shall be filed within 30 days of the act or omission of the political subdivision and the
62 commission shall resolve said dispute within 120 days of filing. The 120-day period for resolution
63 of the dispute may be tolled by the commission until the necessary information showing the basis
64 of the rates, fees, and charges or other information as the commission considers necessary is
65 filed: *Provided, however,* That the disputed rates, fees, and charges so fixed by the political
66 subdivision providing separate or combined water and/or sewer services shall remain in full force
67 and effect until set aside, altered or, amended by the commission in an order to be followed in the
68 future.

69 (7) Customers of water and sewer utilities operated by a political subdivision of the state
70 may bring formal or informal complaints regarding the commission's exercise of the powers
71 enumerated in this section and the commission shall resolve these complaints: *Provided,* That
72 any formal complaint filed under this section that is based on the act or omission of the political
73 subdivision shall be filed within 30 days of the act or omission complained of and the commission
74 shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the
75 dispute may be tolled by the commission until the necessary information showing the basis of the
76 matter complained of is filed by the political subdivision: *Provided, however,* That whenever the
77 commission finds any regulations, measurements, practices, acts or service to be unjust,
78 unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of
79 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot
80 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable
81 measurement, regulations, acts, practices or services, to be furnished, imposed, observed and
82 followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory,
83 inadequate or otherwise in violation of this chapter, and shall make such other order respecting
84 the same as shall be just and reasonable: *Provided further,* That if the matter complained of would
85 affect rates, fees, and charges so fixed by the political subdivision providing separate or combined

86 water and/or sewer services, the rates, fees, or charges shall remain in full force and effect until
87 set aside, altered or amended by the commission in an order to be followed in the future.

88 (8) If a political subdivision has a deficiency in either its bond revenue or bond reserve
89 accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public
90 Service Commission for such redress as will bring the accounts to current status or otherwise
91 resolve the breached covenant, and the commission shall have jurisdiction to fully resolve the
92 alleged deficiency or breach.

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

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

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

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

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

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

106 (1) An owner or operator of an electric generating facility located or to be located in this
107 state that has been designated as an exempt wholesale generator under applicable federal law,
108 or will be so designated prior to commercial operation of the facility, and for which such facility
109 the owner or operator holds a certificate of public convenience and necessity issued by the
110 commission on or before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code
111 as if the certificate of public convenience and necessity for the facility were a siting certificate

112 issued under §24-2-11c of this code and is not otherwise subject to the jurisdiction of the
113 commission or to the provisions of this chapter with respect to the facility except for the making
114 or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

115 (2) Any person, corporation, or other entity that intends to construct or construct and
116 operate an electric generating facility to be located in this state that has been designated as an
117 exempt wholesale generator under applicable federal law, or will be so designated prior to
118 commercial operation of the facility, and for which facility the owner or operator does not hold a
119 certificate of public convenience and necessity issued by the commission on or before July 1,
120 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
121 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
122 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
123 operator of an electric generating facility as is described in this subdivision for which a siting
124 certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of
125 this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of
126 this chapter with respect to the facility except for the making or constructing of a material
127 modification thereof as provided in §24-2-1(d)(5) of this code.

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

138 constructed.

139 (4) Any person, corporation, or other entity that intends to construct or construct and
140 operate an electric generating facility to be located in this state that has not been or will not be
141 designated as an exempt wholesale generator under applicable federal law prior to commercial
142 operation of the facility that will generate electric energy solely for sale at retail outside this state
143 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
144 law or solely for both sales at retail and sales at wholesale and that had not been constructed and
145 had not been engaged in commercial operation on or before July 1, 2003, shall, prior to
146 commencement of construction of the facility, obtain a siting certificate from the commission
147 pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience
148 and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an
149 electric generating facility as is described in this subdivision for which a siting certificate has been
150 issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not
151 otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with
152 respect to the facility except for the making or constructing of a material modification thereof as
153 provided in §24-2-1(d)(5) of this code.

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

162 (6) The commission shall consider an application for a certificate of public convenience
163 and necessity filed pursuant to §24-2-11 of this code to construct an electric generating facility

164 described in this subsection or to make or construct a material modification of the electric
165 generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the
166 application for the certificate of public convenience and necessity was filed with the commission
167 prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

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

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

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

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

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

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

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

186 (f) Notwithstanding any other provisions of this article, the commission has jurisdiction to
187 review or approve any transaction involving a telephone company otherwise subject to §24-2-12
188 and §24-2-12a of this code if all entities involved in the transaction are under common ownership.

189 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power

190 systems are most fairly and effectively regulated by the local governing body. Therefore,
191 notwithstanding any other provisions of this article, the commission has jurisdiction over the
192 setting or adjustment of rates, fees, and charges of municipal power systems. Further, the
193 jurisdiction of the Public Service Commission over municipal power systems is limited to that
194 granted specifically in this code.