

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2830

By Delegate Hansen

[Introduced January 19, 2023; Referred to the
Committee on Energy and Manufacturing then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §24-2-22, relating to the Modern Jobs Act, providing for solar energy
 3 production on formerly mined land and access to third party co-generation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-22. Solar Energy on Formerly Mined Land and Access to Third-Party Co-generation.

1 (a) Legislative findings. —

2 (1) It is in the public interest to encourage development of solar energy on formerly mined
 3 land in West Virginia and to facilitate the procurement of solar energy and third-party co-
 4 generation energy supplies by energy-intensive businesses located or locating within West
 5 Virginia in order to create economic opportunities and jobs;

6 (2) The competitive advantage formerly held by West Virginia due to its historically low-
 7 cost electricity rates for residential, business, industrial, higher education, and nonprofit
 8 organization customers has significantly eroded in recent years;

9 (3) Energy-intensive commercial, industrial, and manufacturing, and higher education and
 10 nonprofit, consumers of electricity create jobs, provide a substantial tax base, and enhance the
 11 productive capacity, competitiveness, and economic opportunities for West Virginia and its
 12 citizens;

13 (4) Nationwide, numerous large commercial, industrial, and manufacturing companies,
 14 and institutions of higher education and nonprofit organizations, have established corporate or
 15 institutional sustainability goals and guidelines, primarily geared toward the reduction of carbon
 16 dioxide and other greenhouse gas emissions through the implementation of energy efficiency
 17 measures and the deployment of renewable energy sources including solar energy;

18 (5) Because more than 90 percent of West Virginia’s electric power is generated from fossil
 19 fuels and construction of large-scale renewable energy generation facilities is constrained in West
 20 Virginia’s electricity market, West Virginia is unable to attract large commercial, industrial, and

21 manufacturing companies with corporate sustainability goals and guidelines;

22 (6) The development of large-scale solar energy projects requires a significant amount of
23 land;

24 (7) According to a 2011 analysis, West Virginia had more than 550 square miles of formerly
25 surface-mined land, and less than two percent of this land had been put into productive use;

26 (8) According to a 2017 analysis, West Virginia had 219 square miles of formerly mined
27 land and other degraded land that is viable for large-scale solar energy production based on a
28 number of factors including site size, proximity to electricity infrastructure, and solar irradiance
29 levels;

30 (9) According to a 2018 analysis, the competitive advantage once provided to West
31 Virginia by low electricity rates has significantly eroded in the last decade, resulting in a
32 deterioration of West Virginia's nationwide position as a provider of low-cost electric service and a
33 substantial increase in rates for large commercial, industrial, and manufacturing customers and
34 institutions of higher education and nonprofit organizations;

35 (10) Allowing owners or operators, or both, of solar energy facilities sited on formerly mined
36 land to sell electricity to commercial, industrial, and manufacturing facilities and institutions of
37 higher education and nonprofit organizations, without being regulated as a public utility, will put
38 this undeveloped land into productive economic use and create jobs and tax revenues; and

39 (11) Allowing large commercial, industrial, and manufacturing facilities and institutions of
40 higher education and nonprofit organizations to purchase electricity generated at solar energy
41 facilities sited on formerly mined land or generated by other third-party co-generation projects in
42 West Virginia will permit these large commercial, industrial, and manufacturing facilities and
43 institutions of higher education and nonprofit organizations to remain economically competitive
44 and retain important jobs and economic contributions in West Virginia.

45 (b) Definitions. — As used in this section:

46 "Eligible land" means land within West Virginia for which a permit has been issued under

47 the West Virginia Surface Coal Mining and Reclamation Act pursuant to §22-3-1 et seq. of this
48 code or land listed on the Office of Surface Mining Reclamation and Enforcement's Abandoned
49 Mine Land Inventory System;

50 "Eligible solar project" means a solar photovoltaic array having a nameplate capacity of up
51 to 200 megawatts that is installed upon eligible land and that can be interconnected with a
52 transmitting utility's transmission or distribution system;

53 "Entity" means any business entity, including, but not limited to, a corporation, partnership,
54 limited liability company, or sole proprietorship;

55 "Large energy consumer" means a commercial, industrial, or manufacturing entity or an
56 institution of higher education or a nonprofit organization located or to be located in West Virginia
57 that has a normal maximum electrical requirement of one megawatt or more per month of actual
58 demand in the past 12 months, or projected normal maximum electrical requirements of one
59 megawatt or more per month, of electric power at its West Virginia facilities;

60 "Power purchase agreement" means a contractual arrangement under which the owner or
61 operator of an eligible solar project sells the electrical output of the project to a large energy
62 consumer;

63 "Third-party co-generation project" means an industrial or manufacturing co-generation
64 project, regardless of fuel source, with a nameplate capacity up to 100 megawatts that is located
65 within West Virginia, owned and operated by a nonutility entity including a third-party nonutility
66 entity, that provides electric service from the co-generation project directly to a single large energy
67 consumer, or to no more than five large energy consumers located on the same or immediately
68 adjacent property;

69 "Transmitting utility" means an electric utility that owns and operates transmission and
70 distribution lines within West Virginia and that is regulated as a public utility by the Public Service
71 Commission; and

72 "Wheeling agreement" means an agreement between the owner or operator of an eligible

73 solar project and one or more transmitting utilities within West Virginia under which electricity
74 generated at the eligible solar project is transmitted for delivery to a large energy consumer served
75 by the transmitting utility or utilities.

76 (c) Authorizing wheeling agreements. —

77 (1) Upon procurement of the electrical output of an eligible solar project by a large energy
78 consumer, either through ownership of the solar project by the large energy consumer or through a
79 power purchase agreement between the large energy consumer and the owner or operator of the
80 eligible solar project or third-party co-generation project, the large energy consumer is entitled,
81 upon request, to have the electrical output transmitted or wheeled over the transmission and/or
82 distribution system of one or more transmitting utilities between: (A) The point of interconnection
83 between a transmitting utility's transmission or distribution system and the eligible solar project;
84 and (B) the point of delivery at facilities of the large energy consumer located within West Virginia,
85 as designated by the large energy consumer.

86 (2) The wheeling agreement may include one or both of the following, as applicable:

87 (A) The rate set forth in the utility's Open Access Transmission Tariff (OATT) on file with the
88 Federal Energy Regulatory Commission to the extent the utility's transmission facilities are used,

89 (B) a wheeling rate to be determined by the Public Service Commission to the extent the utility's
90 distribution facilities are used. The Public Service Commission, following a rate proceeding

91 pursuant to §24-2-1 et seq. of this code, shall determine the wheeling rate for a transmitting utility,
92 and the rates, terms and conditions applicable to the wheeling service shall be set forth in a tariff

93 sheet upon approval of the rates, terms and conditions by the Public Service Commission. Further,

94 the Public Service Commission shall establish the rates, terms, and conditions applicable to the
95 eligible solar or third-party co-generation project for any standby service that may be required.

96 (d) Restriction on Cost Assignment and Recovery.--

97 (1) No electric utility may assign to, or recover from, its retail ratepayers any amount of
98 revenues actually or notionally lost as a result of the provision of service to large energy

99 consumers pursuant to this section through a surcharge mechanism or any other alternative or
100 extraordinary rate mechanism; such changes in revenues shall be addressed for recovery in the
101 electric utility's next full base rate proceeding under Public Service Commission rules.

102 (2) No electric utility may assign to, or recover from, its retail ratepayers any costs incurred
103 by the electric utility for investment required to accommodate the provision of transmission,
104 distribution, or wheeling of power pursuant to this section; such costs must be recovered from the
105 owner or operator of the eligible solar or third-party co-generation project.

106 (e) Not a public utility. —

107 (1) The sale of the electrical output of an eligible solar project or third-party co-generation
108 project to a large energy consumer shall not be considered the provision of electric service to the
109 public, retail electric service, or retail supply of electricity by the owner or operator of an eligible
110 solar project or third-party co-generation project, and neither the large energy consumer nor the
111 owner or operator of an eligible solar project or third-party co-generation project shall be
112 considered an electric supplier within the meaning of this chapter or in violation of exclusive
113 electric service rights arising therein.

114 (2) Except as explicitly provided in subdivision (1), subsection (c), subdivision (1),
115 subsection (d), and subdivision (1), subsection (e) of this section, nothing in this section shall be
116 construed as modifying the restrictions in this chapter on the sale, offer for sale, or distribution of
117 retail electric service in this state.

118 (f) Renewable energy certificates. — Each eligible solar project under this section shall be
119 entitled to issue renewable energy certificates for each megawatt-hour of renewable electricity
120 generated by the project. The Public Service Commission shall promulgate rules to administer the
121 issuance, tracking, auditing, and other matters necessary for such certificates. Rules promulgated
122 under this authority are exempt from the legislative rule-making review procedures established in
123 §29A-3-1 et seq. of this code.

124 (g) Rule-making authority. — The Public Service Commission may promulgate rules, as

125 necessary, to implement the provisions of this section. Rules promulgated under this authority are
126 exempt from the legislative rule-making review procedures established in §29A-3-1 et seq. of this
127 code.

NOTE: The purpose of this bill is to encourage solar energy development on lands formerly used for mining and certain third-party co-generation projects, to provide electricity for commercial, industrial and manufacturing businesses or institutions of higher education or nonprofit organizations that are located in or will locate operations in West Virginia; authorizing the Public Service Commission to regulate the use of transmission and distribution lines to transport power from these facilities; providing that the solar operations and third-party co-generation projects are not regulated as a utility for providing electricity to these businesses; and authorizing the issuance of renewable energy certificates for renewable energy generated by eligible solar projects.

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