

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 763

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PHILLIPS, ROSE, AND TAYLOR

[Reported March 25, 2025, from the Committee on

Energy, Industry, and Mining]

1 A BILL to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating
2 to the creation of the Public Electrical Savings Act.

Be it enacted by the Legislature of West Virginia:

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 (1) Common carriage of passengers or goods, whether by air, railroad, street railroad,
4 motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by
5 land, water, or air;

6 (2) Transportation of oil, gas, or water by pipeline;

7 (3) Transportation of coal and its derivatives, and all mixtures and combinations thereof
8 with other substances, by pipeline;

9 (4) Sleeping car or parlor car services;

10 (5) Transmission of messages by telephone, telegraph, or radio;

11 (6) Generation and transmission of electrical energy by hydroelectric or other utilities for
12 service to the public, whether directly or through a distributing utility;

13 (7) Supplying water, gas, or electricity by municipalities or others. ~~Provided, That~~ Natural
14 gas producers who provide natural gas service to ~~not more than 25~~ or fewer residential customers
15 are exempt from the jurisdiction of the commission with regard to the provisions of the residential
16 service. ~~Provided, however, That~~ Upon request of any of the customers of the natural gas
17 producers, ~~the commission may~~ and upon good cause ~~being~~ shown, the commission may
18 exercise authority as ~~the commission may consider~~ it considers appropriate over the operation,
19 rates, and charges of the producer and for the length of time determined proper by the
20 commission. ~~Provided further, That the provision of a solar photovoltaic~~ An on-site energy facility
21 located on and designed to meet only the electrical needs of the premises of a retail electric

customer, the output of which is subject to a power purchase agreement (~~PPAs~~ PPA) with the retail electric customer, ~~shall~~ does not constitute a public service, subject to the following conditions and limitations:

(i) PPAs must be 11-point font or larger;

(ii) The aggregate of all PPAs and net metering arrangements in the state for any utility ~~shall~~ may not exceed three percent of the utility's aggregate customer peak demand in the state during the previous year;

(iii) There shall be individual customer on-site generator limits of designing the ~~photovoltaic-on-site~~ energy facility to meet only the electrical needs of the premises of the retail electric customer and which in ~~no case shall~~ any case do not exceed 50kW for residential customers, 1,000 kW for commercial customers, and 2,000 kW for industrial customers;

(iv) Customers who enter into PPAs relating to ~~photovoltaic-on-site~~ facilities ~~are to~~ shall notify the utility of ~~its~~ their intent to enter into a transaction. In response, the utility shall notify within 30 days if any of the caps have been reached. If the utility does not respond within 30 days, the generator may proceed and the caps will be presumed not to have been reached; ~~and~~

(v) The ~~Public Service~~ commission may promulgate rules to govern and implement the provisions of interconnections for PPAs, except the ~~PSC~~ commission does not have authority over the power rates for the arrangements between the on-site generator and the customer;

(vi) A public entity may not enter into a PPA unless the agreement contractually guarantees the customer a total cost per kilowatt-hour which is less than that offered by the public electrical utility serving the location, beginning at the onset of the agreement and continuing for each year of the agreement;

(vii) A public entity may not enter into a PPA exceeding five years in duration, but a PPA for public entities may be renewed at the conclusion of a previous contract term;

(viii) A public entity may not enter into a PPA unless the quote and subsequent agreement include provisions for on-site power storage sufficient to provide a backup source of electricity

capable of meeting the power demands of the facility for a minimum of 48 hours in the event of utility power outage or a disruption or temporary decline in on-site generation; and

(ix) The public utility shall engage a third party to inspect the meters implemented in PPA agreements at the onset of the agreement and not less than once per each three-year period thereafter and shall report the findings, including usage and cost per wattage, to the customer.

(8) Sewer systems servicing 25 or more persons or firms other than the owner of the sewer systems. ~~Provided, That~~ If a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the ~~Public Service~~ commission, regardless of the number of customers served by the innovative, alternative method;

(9) Any public service district created under the provisions of §16-13A-1 *et seq.* of this code, except that the ~~Public Service~~ commission has no jurisdiction over the provision of stormwater services by a public service district;

(10) Toll bridges located more than five miles from a toll-free bridge which crosses the same body of water or obstacle, wharves, ferries;

(11) Solid waste facilities; and

~~(11)~~ (12) Any other public service.

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

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

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

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

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

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

(6) Investigation and resolution of disputes between a political subdivision of the state providing wholesale water and/or wastewater treatment or other services, whether by contract or through a tariff, and its customer or customers, including, but not limited to, rates, fees, and charges, service areas, and contested utility combinations. ~~Provided, That~~ Any request for an investigation related to a dispute that is based on the an act or omission of the political subdivision shall be filed within 30 days of the act or omission. ~~of the political subdivision and~~ The commission shall resolve the dispute within 120 days of filing. The 120-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the rates, fees, and charges or other necessary information ~~required by the commission~~ is filed. ~~Provided,~~ ~~however, That~~ The disputed rates, fees, and charges fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force and effect until set aside, altered, or amended by the commission in an order to be followed in the future;

(7) Customers of water and sewer utilities operated by a political subdivision of the state may bring formal or informal complaints regarding the commission's exercise of the powers enumerated in this section and the commission shall resolve these complaints. ~~Provided, That~~ Any formal complaint ~~filed under this section~~ that is based on the an act or omission of the political subdivision shall be filed within 30 days of the act or omission complained of and the commission shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the ~~dispute~~ complaint may be tolled by the commission until the necessary information showing the

99 basis of the matter complained of is filed by the political subdivision. ~~Provided, however, That~~
100 Whenever the commission finds any regulations, measurements, practices, acts, or service to be
101 unjust, unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any
102 provisions of this chapter, or finds that any service is inadequate, or that any service which is
103 demanded cannot be reasonably obtained, the commission shall determine and declare, and by
104 order fix reasonable measurement, regulations, acts, practices or services, to be furnished,
105 imposed, observed, and followed in lieu of those found to be unjust, unreasonable, insufficient, or
106 unjustly discriminatory, inadequate, or otherwise in violation of this chapter, and shall make an
107 order that is just and reasonable. ~~Provided further, That~~ If the matter complained of would affect
108 rates, fees, and charges fixed by the political subdivision providing separate or combined water
109 and/or sewer services, the rates, fees, or charges shall remain in full force and effect until set
110 aside, altered, or amended by the commission in an order to be followed in the future;

111 (8) If a political subdivision has a deficiency in either its bond revenue or bond reserve
112 accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public
113 Service Commission for any redress that will bring the accounts to current status or otherwise
114 resolve the breached covenant. The commission has jurisdiction to fully resolve the alleged
115 deficiency or breach.

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

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

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

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

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

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

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, for which the facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate of public convenience and necessity for the facility were a siting certificate issued under §24-2-11c of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(2) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be designated prior to commercial operation of the facility, for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of

this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

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

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

respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

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

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

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

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

(1) "Internet protocol-enabled service" means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables an end user

to send or receive a communication in internet protocol format, or any successor format, regardless of whether the communication is voice, data, or video;

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

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

(ii) Uses a broadband connection from the user's location; and

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

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

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