

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 895

By Senators Hart, Smith (Mr. President), and Rose

[Introduced March 24, 2025; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating to
2 the jurisdiction of the Public Service Commission; changing a "solar photovoltaic energy
3 facility" to an "on-site energy facility"; and setting forth provisions required by the
4 commission to be in power purchase agreements between public entities and customers.

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 residential customers are
15 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, upon good cause being shown, exercise authority as the
18 commission may consider appropriate over the operation, rates, and charges of the producer and
19 for the length of time determined proper by the commission: *Provided further*, That the provision of

20 ~~a solar photovoltaic~~ an on-site energy facility located on and designed to meet only the electrical
21 needs of the premises of a retail electric customer, the output of which is subject to a power
22 purchase agreement (PPAs) with the retail electric customer, shall not constitute a public service,
23 subject to the following conditions and limitations:

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

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

28 (iii) There shall be individual customer on-site generator limits of designing ~~the photovoltaic~~
29 an on-site energy facility to meet only the electrical needs of the premises of the retail electric
30 customer and which in no case shall exceed ~~50kW~~ 25KW for residential customers, 1,000 kW for
31 commercial customers, and 2,000 kW for industrial customers;

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

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

39 (vi) No public entity may enter into a PPA unless the agreement contractually guarantees
40 the customer a total cost per kilowatt-hour which is less than that offered by the public electrical
41 utility serving the location, beginning at the onset of the agreement and continuing for each year of
42 the agreement; and

43 (vii) No public entity may enter into a PPA exceeding five years in duration. PPAs for public
44 entities may be renewed at the conclusion of a previous contract term;

45 (8) Sewer systems servicing 25 or more persons or firms other than the owner of the sewer

46 systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer
47 service by an innovative, alternative method, as defined by the federal Environmental Protection
48 Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction
49 of the Public Service Commission, regardless of the number of customers served by the
50 innovative, alternative method;

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

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

56 (11) Any other public service.

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

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

62 (2) Regulation of measurements, practices, acts, or services, as granted and described in
63 §24-2-7 of this code;

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

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

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

71 (6) Investigation and resolution of disputes between a political subdivision of the state

72 providing wholesale water and/or wastewater treatment or other services, whether by contract or
73 through a tariff, and its customer or customers, including, but not limited to, rates, fees, and
74 charges, service areas and contested utility combinations: *Provided*, That any request for an
75 investigation related to a dispute that is based on the act or omission of the political subdivision
76 shall be filed within 30 days of the act or omission of the political subdivision and the commission
77 shall resolve the dispute within 120 days of filing. The 120-day period for resolution of the dispute
78 may be tolled by the commission until the necessary information showing the basis of the rates,
79 fees, and charges or other information required by the commission is filed: *Provided, however*,
80 That the disputed rates, fees, and charges fixed by the political subdivision providing separate or
81 combined water and/or sewer services shall remain in full force and effect until set aside, altered,
82 or amended by the commission in an order to be followed in the future.

83 (7) Customers of water and sewer utilities operated by a political subdivision of the state
84 may bring formal or informal complaints regarding the commission's exercise of the powers
85 enumerated in this section and the commission shall resolve these complaints: *Provided*, That any
86 formal complaint filed under this section that is based on the act or omission of the political
87 subdivision shall be filed within 30 days of the act or omission complained of and the commission
88 shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the
89 dispute may be tolled by the commission until the necessary information showing the basis of the
90 matter complained of is filed by the political subdivision: *Provided, however*, That whenever the
91 commission finds any regulations, measurements, practices, acts, or service to be unjust,
92 unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of
93 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot
94 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable
95 measurement, regulations, acts, practices or services, to be furnished, imposed, observed, and
96 followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory,
97 inadequate, or otherwise in violation of this chapter, and shall make an order that is just and

reasonable: *Provided further*, That if the matter complained of would affect rates, fees, and charges fixed by the political subdivision providing separate or combined water and/or sewer services, the rates, fees, or charges 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.

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

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

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

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

(3) The utility operating in the adjoining state is regulated by a regulatory agency or 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

150 an exempt wholesale generator under applicable federal law: *Provided*, That the owner or
151 operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or
152 constructed.

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

168 (5) An owner or operator of an electric generating facility described in this subsection shall,
169 before making or constructing a material modification of the facility that is not within the terms of
170 any certificate of public convenience and necessity or siting certificate previously issued for the
171 facility or an earlier material modification thereof, obtain a siting certificate for the modification from
172 the commission pursuant to the provisions of §24-2-11c of this code, in lieu of a certificate of public
173 convenience and necessity for the modification pursuant to the provisions of §24-2-11 of this code
174 and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the jurisdiction
175 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 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.

(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

202 to §24-2-12 and §24-2-12a of this code, if all entities involved in the transaction are under common
203 ownership.

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

NOTE: The purpose of this bill is to change the term "solar photovoltaic energy facility" to
"an on-site energy facility"; and require power purchase agreements (PPAs) between
public entities and customers to contain certain language.

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