

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5411

By Delegate Leavitt

[Introduced February 10, 2026; referred to the
Committee on Energy and Public Works]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
 2 designated §24-9-1, §24-9-2, §24-9-3, §24-9-4, §24-9-5, §24-9-6, §24-9-7, §24-9-8, and
 3 §24-9-9, relating to establishing the Energy Freedom and Fairness Act; providing a short
 4 title and legislative findings; defining terms; permitting retail freedom and competition for
 5 the purchase and sale of electric power for certain non-residential retail customers;
 6 providing procedures for the commission to establish eligible load capacity allowance;
 7 providing for the establishment of a subscription queue; providing notice requirements;
 8 providing utility rate transparency requirements for electric utilities; requiring the licensing
 9 of competitive service providers; requiring the commission prohibit unreasonable shifting
 10 of costs to ratepayers; requiring additional commission oversight measures; providing the
 11 commission rulemaking authority; establishing annual reporting requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. ENERGY FREEDOM AND FAIRNESS ACT.

§24-9-1. Short title; legislative findings.

- 1 (a) This article shall be known and cited as the "Energy Freedom and Fairness Act."
- 2 (b) The Legislature hereby finds that:
- 3 (1) Reliable and affordable electricity is essential to the prosperity, retention of
 4 manufacturing and jobs, economic growth, and well-being of the citizens of West Virginia;
- 5 (2) Electric demand is increasing rapidly due to the growth of data centers, industrial
 6 expansion, and the transition to a more electrified economy;
- 7 (3) Over the last several years, regulated electric rates for non-residential retail customers
 8 in West Virginia have increased significantly and harmed the competitiveness of West Virginia
 9 business and industry;
- 10 (4) Over the last two decades, there have been few investments by electric utilities in
 11 baseload power generation, significant resources are scheduled for retirement, and the state does
 12 not have sufficient generation to meet significant new load growth now projected;

13 (5) Utility ratepayers in West Virginia fund the development of new power generation
14 projects, exposing households and businesses to significant and escalating electricity costs to
15 replace the retirement of power generation and to meet increases in demand;

16 (6) Allowing certain large electricity users the option to procure their own electric supply will
17 shift the risk of building new generation, thereby lowering overall system costs for the regulated
18 electric utilities and relieving financial burdens on all ratepayers;

19 (7) By providing certain large customers the option to procure power freely from a
20 competitive market while maintaining the utilities' obligation to provide reliable transmission and
21 distribution service, this act provides a balanced framework that secures the retention of business
22 and industry, promotes economic development, supports resource adequacy, and protects
23 households and small businesses from disproportionate cost increases;

24 (8) The avoided utility incurred generation power purchase and development costs
25 resulting from this act represent a direct savings to ratepayers and an important step toward
26 ensuring the long-term affordability, reliability, and competitiveness of the state's electric system;
27 and

28 (9) It is therefore the purpose of this act to establish a process for limited retail access and
29 third-party procurement by certain large consumers, to provide for commission oversight, and to
30 ensure that all ratepayers benefit from a more efficient, transparent, and sustainable electric
31 system.

§24-9-2.

Definitions.

1 As used in this article, or in the administration of this article, the following terms shall have
2 the meanings ascribed to them by this section, unless a different meaning is clearly required by the
3 context in which the term is used:

4 (1) "Aggregation program" means a grouping of non-residential retail customers into a
5 buying group to purchase energy generation services in bulk from a competitive service provider;

6 (2) "Commission" means the Public Service Commission of West Virginia;

5 market via a competitive service provider or other eligible third-party supplier: *Provided*, That non-
6 residential retail customers procuring electric power pursuant to this section shall be subject to the
7 limitations and requirements contained herein this article.

8 (b) One or more non-residential retail customers may meet the peak demand threshold of
9 this section by aggregating loads at contiguous or non-contiguous sites located within the state.
10 Individual non-residential retail customers may form an aggregation program to procure bulk
11 power as a group. For purposes of qualification, the 1-megawatt threshold for the aggregated
12 group of accounts may utilize the sum of each account's annual non-coincident peak demand.

13 (c) Nothing within this article shall be interpreted to prohibit or limit the rights of a person or
14 entity to self-generate or co-locate electric power, nor to impose a transition, implementation, exit
15 fee, or any other similar charge on self-generation. A person or entity using self-generated or co-
16 located power is not a competitive service provider, electric utility, nor a person conducting an
17 electric utility business jurisdictional to the commission.

§24-9-4. Limitation on eligible load capacity; subscription queue.

1 (a) The commission shall establish a load capacity allowance for each electric utility for
2 non-residential retail customers eligible to purchase electric power and capacity services outside
3 of the electric utility as provided for in §24-9-3 of this code. The total amount of electric power that
4 may be purchased by non-residential retail customers outside of an electric utility may not exceed
5 the load capacity allowances set by the commission.

6 (b) The capacity allowances shall be published by order and shall be incremental to
7 existing loads served by licensed competitive service providers and third parties, and shall be
8 based on a percentage of each electric utility's weather-adjusted retail sales from the previous
9 calendar year, with consideration for any incremental demand growth. Such capacity allowance
10 shall be no less than 20 percent of the total weather-adjusted retail sales for the preceding
11 calendar year for each utility and shall remain in effect until replaced by a new order, at which time
12 the cap may increase but shall not decrease.

13 (c) The commission shall issue an order establishing the subscription cap allowance within
14 nine months of the effective date of this section. If the commission fails to issue such an order
15 within the required timeframe, an automatic minimum cap of 20 percent shall take effect and
16 remain in force until a new order is published. The previously published cap shall have effect until
17 the publication of such new order.

18 (d) The commission shall establish a queue process for non-residential retail customers
19 eligible to purchase electric power and capacity services outside of the electric utility. If an electric
20 utility's load capacity allowance is fully subscribed, a new customer will be placed in the
21 subscription queue.

22 (e) If a utility's subscription capacity allowance is fully subscribed for two consecutive
23 years, the commission shall conduct a hearing to review such capacity allowance and may expand
24 such cap allowance if (i) there is a subscription queue for unserved customers or (ii) additional
25 evidence of sustained or accelerated load growth is presented. If either of the conditions of this
26 subsection are satisfied, then the commission shall issue an order adjusting the capacity
27 allowance within 12 months of a request to do so.

28 (1) If the utility's subscription cap allowance is fully subscribed for two consecutive years
29 and the commission has not completed the hearing required by this subsection, then the cap shall
30 automatically increase annually by a minimum of 10 percent.

31 (2) Every two years thereafter the hearing required by this subsection, the commission
32 shall conduct a proceeding to review such subscription cap allowance and consider expanding or
33 removing the cap allowance based on subscription queue load, projected utility load growth, and
34 other market factors that the commission deems relevant.

35 (f) A non-residential retail customer that is already procuring electric power pursuant to
36 §24-9-3 of this code and is seeking to expand usage at a facility shall be permitted to purchase
37 electric power from a licensed competitive service provider for both the existing and any expanded
38 load at such facility, as well as any new facility constructed or acquired by the customer that is

39 similar in nature, if the customer owns more than 50 percent of the new facility. The owner of such
 40 a new facility may purchase electric power from a third party regardless of whether the sales
 41 exceed the subscription capacity allowance established by this section, provided that such load is
 42 considered incremental in the calculation of the subsequent adjustments to the capacity
 43 allowance.

§24-9-5. Notice requirements.

1 (a) Any non-residential retail customer intending to procure electric power from outside an
 2 electric utility pursuant to §24-9-3 of this code must provide written notice to the electric utility at
 3 least 30 days prior to the termination of utility supply service date.

4 (b) A non-residential retail customer procuring electric power pursuant to §24-9-3 of this
 5 code may discontinue direct market purchases of electric power and resume purchasing standard
 6 generation electric service from an electric utility as set forth in the electric utility's tariff if the
 7 electric utility has sufficient capacity to serve the customer's needs: *Provided*, That any such
 8 customer must provide notice of the customer's desire to receive service to the electric utility,
 9 subject to the following:

10 (1) Customers whose peak demand was one to 25 megawatts during the most recent
 11 calendar year must provide written notice to the electric utility at least 30 days prior to the return to
 12 utility supply service date.

13 (2) Customers whose peak demand was greater than 25 megawatts during the most
 14 recent calendar year must provide written notice to the electric utility at least six months prior to the
 15 return to service date.

16 (c) Non-residential retail customers who wish to return to service with an electric utility prior
 17 to the notice requirements of this section may be placed on market-based hourly prices for the
 18 charges of electric supply from the electric utility until the notice period is complete and shall
 19 otherwise be subject to pay any other costs that are caused to receive such service.

§24-9-6. Utility rate transparency.

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(a) Each electric utility shall take appropriate operational measures to separate internal costs to accurately reflect the associated costs charged to non-residential ratepayers for each of the service functions described below. All electric utility customer bills shall contain sufficient information to enable non-residential customers to determine the basis for charges and information necessary to compare offers in the competitive market.

(b) Beginning on or before July 1, 2027, electric utilities shall delineate charge information on all eligible customer bills according to service, defining the following charges as separate line items:

(1) Distribution;

(2) Transmission;

(3) Generation and supply, including the associated cost per kWh and per kW or any other pertinent billing unit determinants;

(4) Individual program charges, including but not limited to energy efficiency, low-income assistance programs, demand response programs, and any other programs outside of the delivery of basic service;

(5) Credits;

(6) Taxes;

(7) Account management and billing fees; and

(8) Any other charges and surcharges clearly defined, including non-by-passable charges.

(c) A record of the individual program and service costs provided for in subsection (b) shall be published and made available in an electric utility's tariff. Any proposed changes to each category shall be included in all ratemaking cases and the electric utility's integrated resource plans.

§24-9-7. Licensing of competitive service providers.

(a) Any entity providing electric power supply to a non-residential retail customer pursuant

2 to the provisions of this article shall be licensed as a competitive service provider by the
3 commission. To ensure adequate service to customers in this state, the commission shall require
4 that a competitive service provider submit an application establishing that it has the necessary
5 financial, managerial, and technical capabilities. The commission shall act upon such application
6 within 90 days of filing or it shall be presumptively approved.

7 (b) The commission shall require competitive service providers to maintain and submit
8 records that the commission considers necessary, including:

9 (1) Reasonable financial security requirements to ensure the financial responsibility of the
10 retail electric supplier;

11 (2) Confirmation that electric supply services to retail customers will be provided in
12 accordance with acceptable contracts, agreements, or arrangements; and

13 (3) The payment of all required applicable state taxes.

14 (c) Each entity that applies for a competitive service provider license shall pay an annual
15 licensing fee of \$10,000 to the commission and execute and maintain a bond or other financial
16 surety instrument of no less than \$1 million issued by a qualifying surety, insurance company, or
17 other financial institution authorized to transact business in the state. The cost of the surety shall
18 be paid by the applicant. The applicant shall file a copy of this surety, with a notarized verification
19 page from the issuer as part of its license application.

§24-9-8. Commission oversight; prohibiting cost shifting to ratepayers; rulemaking.

1 (a) The commission shall ensure that the provisions of this article do not create an
2 unreasonable shifting of costs to ratepayers who are not participating in the retail purchase of
3 electricity pursuant to §24-9-3 of this code. The commission shall consider the avoided generation
4 and market purchase costs to ratepayers by relieving the electric utility of the obligation to acquire
5 energy and capacity, while maintaining transmission and distribution services to customers that
6 procure their own supply outside of the electric utility. These avoided costs must be balanced
7 against any potential incurred costs of relieving the utility of the obligation to serve eligible

8 customers that participate.

9 (b) An electric utility shall not increase its rates and charges or alter, change, or amend any
10 rate or rate schedules, the effect of which will be to increase the cost of services to its customers
11 related to this bill, without first receiving commission approval as provided in this section. The
12 utility shall place in evidence facts relied upon to support the utility's petition or application to
13 increase its rates and charges, or to alter, change, or amend any rate or rate schedules.

14 (c) The commission shall ensure that, in all integrated resource plans and cost recovery
15 proceedings, no incumbent electric utility is improperly incorporating the loads of competitive
16 service supply customers into its forecasts or load projections.

17 (d) Within six months of the effective date of this article, the commission shall open a
18 proceeding for stakeholder input on the capacity allowance, management of the queue, the
19 process for licensing of competitive service providers, and any additional issues related to the
20 implementation of this article deemed necessary by the commission.

21 (e) Within nine months of the effective date of this article, and subject to the proceeding
22 described in subsection (d), the commission shall promulgate rules necessary to implement the
23 provisions of this article. The commission may amend and update such rules as they determine
24 necessary.

§24-9-9.

Reporting.

1 On or before December 30 of each year, the commission shall submit a report to the
2 Governor and the Joint Committee on Government and Finance, which provides a summary of
3 proceedings and actions relevant to the competitive bid process and retail market participation,
4 including, but not limited to:

5 (1) Total collected licensing and application fees;

6 (2) Current cap totals for each utility service territory, and number of customers and
7 associated megawatts participating in each service territory;

8 (3) A rank-ordered list of customers in the queue for service, if any, including the number of

- 9 customers and load size; and
- 10 (4) Total megawatts procuring electricity from a third party, rather than the utility, to
- 11 demonstrate total avoided generation to serve that load.

NOTE: The purpose of this bill is to establish the Energy Freedom and Fairness Act, permitting retail competition for the purchase and sale of electric power for certain non-residential retail customers.

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