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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2003



ENROLLED

House Bill No. 2870

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]



Passed March 5, 2003

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 2870

(BY MR. SPEAKER, MR. KISS, AND DELEGATE TRUMP)
[BY REQUEST OF THE EXECUTIVE]

[Passed March 5, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact section one, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven-c, all relating to specifying the jurisdiction of the public service commission over, and the application of said chapter twenty-four to, owners or operators of, and persons, corporations or other entities that intend to construct or construct and operate, certain described electric generating facilities, the output of which is not sold directly to retail customers in West Virginia; and requiring persons, corporations and other entities that intend to construct or construct and operate such electric generating facilities, or that intend to make or construct a material modification thereof, to obtain from the public service commission a siting certificate, in lieu of a certificate of public convenience and necessity, for each such facility or material modification thereof pursuant and subject to certain new provisions and requirements which, among other things, allow the public service commission, under specified circumstances, to seek the imposition of civil or criminal penalties, or both such civil and criminal penalties; and providing that

the public service commission may promulgate rules relating to siting certificates.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section eleven-c, all to read as follows:

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
2 public utilities in this state, and shall include any utility engaged
3 in any of the following public services:

4 Common carriage of passengers or goods, whether by air,
5 railroad, street railroad, motor or otherwise, by express or
6 otherwise, by land, water or air, whether wholly or partly by
7 land, water or air; transportation of oil, gas or water by pipeline;
8 transportation of coal and its derivatives and all mixtures and
9 combinations thereof with other substances by pipeline; sleeping
10 car or parlor car services; transmission of messages by tele-
11 phone, telegraph or radio; generation and transmission of
12 electrical energy by hydroelectric or other utilities for service to
13 the public, whether directly or through a distributing utility;
14 supplying water, gas or electricity, by municipalities or others;
15 sewer systems servicing twenty-five or more persons or firms
16 other than the owner of the sewer systems; any public service
17 district created under the provisions of article thirteen-a, chapter
18 sixteen of this code; toll bridges, wharves, ferries; solid waste
19 facilities; and any other public service: *Provided*, That natural
20 gas producers who provide natural gas service to not more than
21 twenty-five residential customers are exempt from the jurisdic-
22 tion of the commission with regard to the provisions of such
23 residential service: *Provided, however*, That upon request of any

24 of the customers of such natural gas producers, the commission
25 may, upon good cause being shown, exercise such authority as
26 the commission may deem appropriate over the operation, rates
27 and charges of such producer and for such length of time as the
28 commission may consider to be proper: *Provided further*, That
29 the jurisdiction the commission may exercise over the rates and
30 charges of municipally operated public utilities is limited to that
31 authority granted the commission in section four-b of this
32 article: *And provided further*, That the decision-making author-
33 ity granted to the commission in sections four and four-a of this
34 article shall, in respect to an application filed by a public service
35 district, be delegated to a single hearing examiner appointed
36 from the commission staff, which hearing examiner shall be
37 authorized to carry out all decision-making duties assigned to
38 the commission by said sections, and to issue orders having the
39 full force and effect of orders of the commission.

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

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

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

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

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

57 (c) Any other provisions of this chapter to the contrary
58 notwithstanding:

59 (1) An owner or operator of an electric generating facility
60 located or to be located in this state that has been designated as
61 an exempt wholesale generator under applicable federal law, or
62 will be so designated prior to commercial operation of the
63 facility, and for which such facility the owner or operator holds
64 a certificate of public convenience and necessity issued by the
65 commission on or before the first day of July, two thousand
66 three, shall be subject to subsections (e), (f), (g), (h), (i) and (j),
67 section eleven-c of this article as if the certificate of public
68 convenience and necessity for such facility were a siting
69 certificate issued under said section eleven-c and shall not
70 otherwise be subject to the jurisdiction of the commission or to
71 the provisions of this chapter with respect to such facility except
72 for the making or constructing of a material modification thereof
73 as provided in subdivision (5) of this subsection.

74 (2) Any person, corporation or other entity that intends to
75 construct or construct and operate an electric generating facility
76 to be located in this state that has been designated as an exempt
77 wholesale generator under applicable federal law, or will be so
78 designated prior to commercial operation of the facility, and for
79 which facility the owner or operator does not hold a certificate
80 of public convenience and necessity issued by the commission
81 on or before the first day of July, two thousand three, shall, prior
82 to commencement of construction of the facility, obtain a siting
83 certificate from the commission pursuant to the provisions of
84 section eleven-c of this article in lieu of a certificate of public
85 convenience and necessity pursuant to the provisions of section
86 eleven of this article. An owner or operator of an electric
87 generating facility as is described in this subdivision for which
88 a siting certificate has been issued by the commission shall be
89 subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-
90 c of this article and shall not otherwise be subject to the jurisdic-
91 tion of the commission or to the provisions of this chapter with
92 respect to such facility except for the making or constructing of

93 a material modification thereof as provided in subdivision (5) of
94 this subsection.

95 (3) An owner or operator of an electric generating facility
96 located in this state that had not been designated as an exempt
97 wholesale generator under applicable federal law prior to
98 commercial operation of the facility, that generates electric
99 energy solely for sale at retail outside this state or solely for sale
100 at wholesale in accordance with any applicable federal law that
101 preempts state law or solely for both such sales at retail and
102 such sales at wholesale, and that had been constructed and had
103 engaged in commercial operation on or before the first day of
104 July, two thousand three, shall not be subject to the jurisdiction
105 of the commission or to the provisions of this chapter with
106 respect to such facility, regardless of whether such facility
107 subsequent to its construction has been or will be designated as
108 an exempt wholesale generator under applicable federal law:
109 *Provided*, That such owner or operator shall be subject to
110 subdivision (5) of this subsection if a material modification of
111 such facility is made or constructed.

112 (4) Any person, corporation or other entity that intends to
113 construct or construct and operate an electric generating facility
114 to be located in this state that has not been or will not be
115 designated as an exempt wholesale generator under applicable
116 federal law prior to commercial operation of the facility, that
117 will generate electric energy solely for sale at retail outside this
118 state or solely for sale at wholesale in accordance with any
119 applicable federal law that preempts state law or solely for both
120 such sales at retail and such sales at wholesale, and that had not
121 been constructed and had not been engaged in commercial
122 operation on or before the first day of July, two thousand three,
123 shall, prior to commencement of construction of the facility,
124 obtain a siting certificate from the commission pursuant to the
125 provisions of section eleven-c of this article in lieu of a certifi-
126 cate of public convenience and necessity pursuant to the
127 provisions of section eleven of this article. An owner or operator
128 of an electric generating facility as is described in this subdivi-

129 sion for which a siting certificate has been issued by the
130 commission shall be subject to subsections (e), (f), (g), (h), (i)
131 and (j), section eleven-c of this article and shall not otherwise be
132 subject to the jurisdiction of the commission or to the provisions
133 of this chapter with respect to such facility except for the
134 making or constructing of a material modification thereof as
135 provided in subdivision (5) of this subsection.

136 (5) An owner or operator of an electric generating facility
137 described in this subsection shall, before making or constructing
138 a material modification of the facility that is not within the terms
139 of any certificate of public convenience and necessity or siting
140 certificate previously issued for the facility or an earlier material
141 modification thereof, obtain a siting certificate for the modifica-
142 tion from the commission pursuant to the provisions of section
143 eleven-c of this article in lieu of a certificate of public conve-
144 nience and necessity for the modification pursuant to the
145 provisions of section eleven of this article and, except for the
146 provisions of section eleven-c of this article, shall not otherwise
147 be subject to the jurisdiction of the commission or to the
148 provisions of this chapter with respect to such modification.

149 (6) The commission shall consider an application for a
150 certificate of public convenience and necessity filed pursuant to
151 section eleven of this article to construct an electric generating
152 facility described in this subsection or to make or construct a
153 material modification of such electric generating facility as an
154 application for a siting certificate pursuant to section eleven-c
155 of this article if the application for the certificate of public
156 convenience and necessity was filed with the commission prior
157 to the first day of July, two thousand three, and if the commis-
158 sion has not issued a final order thereon as of that date.

159 (7) The limitations on the jurisdiction of the commission
160 over, and on the applicability of the provisions of this chapter
161 to, the owner or operator of an electric generating facility as
162 imposed by, and described in this subsection, shall not be
163 deemed to affect or limit the commission's jurisdiction over
164 contracts or arrangements between the owner or operator of

165 such facility and any affiliated public utility subject to the
166 provisions of this chapter.

§24-2-11c. Siting certificates for certain electric generating facilities or material modifications thereof.

1 (a) Notice of an application for a siting certificate required
2 under the provisions of subdivisions (1), (2), (3), (4) and (5),
3 subsection (c), section one of this article shall be given as a
4 Class I legal advertisement in compliance with the provisions of
5 article three, chapter fifty-nine of this code, with the publication
6 area being each county in which all or a portion of the facility
7 is located or to be located. Such notice shall also be published
8 as a Class I legal advertisement in a newspaper published each
9 weekday in Kanawha County and circulated both within and
10 outside of Kanawha County. If no substantial protest is received
11 within thirty days after the publication of notice, the commis-
12 sion may waive formal hearing on the application.

13 (b) The commission shall render its decision within three
14 hundred days of the date of filing of an application for a siting
15 certificate or within four hundred days of the filing of an
16 application for a certificate of public convenience and necessity
17 pursuant to section eleven of this article if the application is
18 considered as an application for a siting certificate pursuant to
19 this section as provided in subdivision (6), subsection (c),
20 section one of this article. If no decision is rendered within such
21 time period, the commission shall issue a siting certificate as
22 applied for.

23 (c) In deciding whether to issue, refuse to issue, or issue in
24 part and refuse to issue in part a siting certificate, the commis-
25 sion shall appraise and balance the interests of the public, the
26 general interests of the state and local economy, and the
27 interests of the applicant. The commission may issue a siting
28 certificate only if it determines that the terms and conditions of
29 any public funding or any agreement relating to the abatement
30 of property taxes do not offend the public interest, and the
31 construction of the facility or material modification of the

32 facility will result in a substantial positive impact on the local
33 economy and local employment. The commission shall issue an
34 order that includes appropriate findings of fact and conclusions
35 of law that address each factor specified in this subsection. All
36 material terms, conditions and limitations applicable to the
37 construction and operation of the proposed facility or material
38 modification of the facility shall be specifically set forth in the
39 commission order.

40 (d) The commission may require an applicant for a siting
41 certificate to provide such documents and other information as
42 the commission deems necessary for its consideration of the
43 application.

44 (e) If the commission issues the siting certificate, the
45 commission shall have continuing jurisdiction over the holder
46 of the siting certificate for the limited purposes of: (1) Consider-
47 ing future requests by the holder for modifications of or
48 amendments to the siting certificate; (2) considering and
49 resolving complaints related to the holder's compliance with the
50 material terms and conditions of the commission order issuing
51 the siting certificate, whether or not the complainant was a party
52 to the case in which the siting certificate was issued, which
53 complaints shall be filed, answered, and resolved in accordance
54 with the commission's procedures for resolving formal com-
55 plaints; and (3) enforcing the material terms and conditions of
56 a commission order as provided in subsection (f) of this section.

57 (f) If the commission determines, in a proceeding instituted
58 on its own motion or on the motion of any person, that the
59 holder of a siting certificate has failed without reasonable
60 justification to comply with any of the material terms and
61 conditions of a commission order issuing a siting certificate,
62 modifying or amending a siting certificate, or resolving a
63 complaint related to compliance of the holder with the material
64 terms and conditions of a siting certificate, the commission may
65 enforce the material terms and conditions of the commission
66 order: (1) By requiring the holder to show cause why it should

67 not be required so to comply; (2) through a proceeding seeking
68 the imposition of a civil penalty not to exceed five thousand
69 dollars or criminal penalties as provided in section four, article
70 four of this chapter, or both such civil and criminal penalties,
71 and the imposition of either or both such civil penalty and
72 criminal penalties shall be subject to the provisions of section
73 eight, article four, of this chapter; (3) by mandamus or injunc-
74 tion as provided in section two of this article; or (4) prior to the
75 completion of construction of the proposed facility or prior to
76 the completion of construction of a material modification of the
77 facility, by the suspension or revocation of the siting certificate,
78 including the preliminary suspension of the siting certificate
79 under the standards applicable to circuit courts of this state for
80 the issuance of preliminary injunctions.

81 (g) Any person may seek to compel compliance with the
82 material terms and conditions of a commission order issuing,
83 modifying or amending a siting certificate, or resolving a
84 complaint related to the holder's compliance with the material
85 terms and conditions a siting certificate through appropriate
86 proceedings in any circuit court having jurisdiction.

87 (h) The material terms and conditions of a commission
88 order issuing, modifying or amending a siting certificate or
89 resolving a complaint related to the holder's compliance with
90 the material terms and conditions of a commission order issuing
91 a siting certificate shall continue to apply to any transferee of
92 the siting certificate or to any transferee of all or a portion of the
93 ownership interest in an electric generating facility for which a
94 siting certificate has been issued. In either case, the transferee or
95 original holder of the siting certificate shall be subject to the
96 continuing jurisdiction of the commission to the extent provided
97 in subsections (e) and (f) of this section.

98 (i) Any party feeling aggrieved by a final order of the
99 commission under this section may petition for a review thereof
100 by the supreme court of appeals pursuant to section one, article
101 five of this chapter.

102 (j) The commission may prescribe such rules as may be
103 necessary to carry out the provisions of this section in accor-
104 dance with the provisions of section seven, article one of this
105 chapter. Such rules may include and provide for an application
106 fee to be charged an applicant for a siting certificate, or for a
107 modification of, or amendment to, a siting certificate previously
108 issued, under the provisions of this section, which fee shall be
109 paid into the state treasury and kept in a special fund designated
110 public service commission fund as established in subsection (a),
111 section six, article three of this chapter, to be used for the
112 purposes set forth in that subsection.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Carly Ann

Chairman Senate Committee

Sharon Spencer

Chairman House Committee

Originating in the House.

In effect ninety days from passage

Russell E. Glavin

Clerk of the Senate

Gregory B. Gray

Clerk of the House of Delegates

Carl Roy Tomblin

President of the Senate

[Signature]

Speaker of the House of Delegates

The within *is approved* this the *18th*
day of *March*, 2003.

Bob Wise

Governor

PRESENTED TO THE
GOVERNOR

Date 3/12/03

Time 11:10 am