

Senate Bill No. 576

(By Senators Blair, Walters, Williams,
Leonhardt, Facemire, Maynard,
Yost, Snyder, Ferns, Miller, Gaunch,
Mullins, Palumbo and Boso)

[Originating in the Committee on
Government Organization;
reported February 26, 2015.]

A BILL to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating to internet protocol-enabled service and voice over internet protocol-enabled service; prohibiting Public Service Commission jurisdiction of internet protocol-enabled service and voice over internet protocol-enabled service; and limiting Public Service Commission jurisdiction of certain telephone company transactions.

Be it enacted by the Legislature of West Virginia:

That §24-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted 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 public utilities in this state and shall
2 include any utility engaged in any of the following public services:
3 Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or

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1 otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or
2 air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all
3 mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car
4 services; transmission of messages by telephone, telegraph or radio; generation and transmission of
5 electrical energy by hydroelectric or other utilities for service to the public, whether directly or
6 through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer
7 systems servicing twenty-five or more persons or firms other than the owner of the sewer systems:
8 *Provided*, That if a public utility intends to provide sewer service by an innovative, alternative
9 method, as defined by the Federal Environmental Protection Agency, the innovative, alternative
10 method is a public utility function and subject to the jurisdiction of the Public Service Commission
11 regardless of the number of customers served by the innovative, alternative method; any public
12 service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll
13 bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*,
14 That natural gas producers who provide natural gas service to not more than twenty-five residential
15 customers are exempt from the jurisdiction of the commission with regard to the provisions of such
16 residential service: *Provided further*, That upon request of any of the customers of such natural gas
17 producers, the commission may, upon good cause being shown, exercise such authority as the
18 commission may deem appropriate over the operation, rates and charges of such producer and for
19 such length of time as the commission may consider to be proper: *And provided further*, That the
20 jurisdiction the commission may exercise over the rates and charges of municipally operated public
21 utilities is limited to that authority granted the commission in section four-b of this article: *And*

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1 *provided further*, That the decision-making authority granted to the commission in sections four and
2 four-a of this article shall, in respect to an application filed by a public service district, be delegated
3 to a single hearing examiner appointed from the commission staff, which hearing examiner shall be
4 authorized to carry out all decision-making duties assigned to the commission by said sections, and
5 to issue orders having the full force and effect of orders of the commission.

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

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

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

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

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

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

19 (1) An owner or operator of an electric generating facility located or to be located in this state
20 that has been designated as an exempt wholesale generator under applicable federal law, or will be
21 so designated prior to commercial operation of the facility, and for which such facility the owner or

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1 operator holds a certificate of public convenience and necessity issued by the commission on or
2 before July 1, 2003, shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this
3 article as if the certificate of public convenience and necessity for such facility were a siting
4 certificate issued under said section and shall not otherwise be subject to the jurisdiction of the
5 commission or to the provisions of this chapter with respect to such facility except for the making
6 or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

7 (2) Any person, corporation or other entity that intends to construct or construct and operate
8 an electric generating facility to be located in this state that has been designated as an exempt
9 wholesale generator under applicable federal law, or will be so designated prior to commercial
10 operation of the facility, and for which facility the owner or operator does not hold a certificate of
11 public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior
12 to commencement of construction of the facility, obtain a siting certificate from the commission
13 pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public
14 convenience and necessity pursuant to the provisions of section eleven of this article. An owner or
15 operator of an electric generating facility as is described in this subdivision for which a siting
16 certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and
17 (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the
18 commission or to the provisions of this chapter with respect to such facility except for the making
19 or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

20 (3) An owner or operator of an electric generating facility located in this state that had not
21 been designated as an exempt wholesale generator under applicable federal law prior to commercial

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1 operation of the facility, that generates electric energy solely for sale at retail outside this state or
2 solely for sale at wholesale in accordance with any applicable federal law that preempts state law or
3 solely for both such sales at retail and such sales at wholesale, and that had been constructed and had
4 engaged in commercial operation on or before July 1, 2003, shall not be subject to the jurisdiction
5 of the commission or to the provisions of this chapter with respect to such facility, regardless of
6 whether such facility subsequent to its construction has been or will be designated as an exempt
7 wholesale generator under applicable federal law: *Provided*, That such owner or operator shall be
8 subject to subdivision (5) of this subsection if a material modification of such facility is made or
9 constructed.

10 (4) Any person, corporation or other entity that intends to construct or construct and operate
11 an electric generating facility to be located in this state that has not been or will not be designated
12 as an exempt wholesale generator under applicable federal law prior to commercial operation of the
13 facility, that will generate electric energy solely for sale at retail outside this state or solely for sale
14 at wholesale in accordance with any applicable federal law that preempts state law or solely for both
15 such sales at retail and such sales at wholesale and that had not been constructed and had not been
16 engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of
17 construction of the facility, obtain a siting certificate from the commission pursuant to the provisions
18 of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant
19 to the provisions of section eleven of this article. An owner or operator of an electric generating
20 facility as is described in this subdivision for which a siting certificate has been issued by the
21 commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article

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1 and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this
2 chapter with respect to such facility except for the making or constructing of a material modification
3 thereof as provided in subdivision (5) of this subsection.

4 (5) An owner or operator of an electric generating facility described in this subsection shall,
5 before making or constructing a material modification of the facility that is not within the terms of
6 any certificate of public convenience and necessity or siting certificate previously issued for the
7 facility or an earlier material modification thereof, obtain a siting certificate for the modification
8 from the commission pursuant to the provisions of section eleven-c of this article in lieu of a
9 certificate of public convenience and necessity for the modification pursuant to the provisions of
10 section eleven of this article and, except for the provisions of section eleven-c of this article, shall
11 not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter
12 with respect to such modification.

13 (6) The commission shall consider an application for a certificate of public convenience and
14 necessity filed pursuant to section eleven of this article to construct an electric generating facility
15 described in this subsection or to make or construct a material modification of such electric
16 generating facility as an application for a siting certificate pursuant to section eleven-c of this article
17 if the application for the certificate of public convenience and necessity was filed with the
18 commission prior to July 1, 2003, and if the commission has not issued a final order thereon as of
19 that date.

20 (7) The limitations on the jurisdiction of the commission over, and on the applicability of the
21 provisions of this chapter to, the owner or operator of an electric generating facility as imposed by,

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1 and described in this subsection, shall not be deemed to affect or limit the commission's jurisdiction
2 over contracts or arrangements between the owner or operator of such facility and any affiliated
3 public utility subject to the provisions of this chapter.

4 (d) The commission shall not have jurisdiction of internet protocol-enabled service or voice
5 over internet protocol-enabled service. As used in this subsection:

6 (1) "Internet protocol-enabled service" means any service, capability, functionality or
7 application provided using internet protocol, or any successor protocol, that enables an end user to
8 send or receive a communication in internet protocol format, or any successor format, regardless of
9 whether the communication is voice, data or video.

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

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

13 (ii) Uses a broadband connection from the user's location.

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

17 (e) Notwithstanding any other provisions of this article, the commission shall not have
18 jurisdiction to review or approve any transaction involving a telephone company otherwise subject
19 to sections twelve and twelve-a, article two, chapter twenty-four of this code if all entities involved
20 in the transaction are under common ownership.

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(NOTE: The purpose of this bill is to preempt Public Service Commission jurisdiction over internet protocol-enabled service or voice over internet protocol-enabled service and transactions involving telephone company entities under common ownership.)