

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4660

(BY DELEGATE ESPINOSA)

[Originating in the Committee on Government

Organization; February 26, 2016.]

1 A BILL to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended, relating
2 to Public Service Commission certificates of convenience and necessity for water, sewer
3 and/or stormwater service projects; requiring a preliminary engineering report and
4 financial analysis of the proposed project; prohibiting the Public Service Commission from
5 requiring final design materials to be submitted in support of an application; permitting an
6 entity to pursue a further rate increase through the normal rate changing process if an
7 increase is needed exceeding fifteen percent above the rates already approved;
8 prohibiting the Public Service Commission from modifying the scope of a project to which
9 a certificate was previously granted; and prohibiting the rescinding of a previously granted
10 certificate if the rates expected to go in effect upon substantial completion of the project
11 have increased by less than fifteen percent.

Be it enacted by the Legislature of West Virginia:

12 That §24-2-11 of the Code of West Virginia, 1931, as amended, be amended and
13 reenacted to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11. Requirements for certificate of public convenience and necessity.

14 (a) A public utility, person or corporation other than a political subdivision of the state
15 providing water, sewer and/or stormwater services and having at least four thousand five hundred
16 customers and annual gross combined revenues of \$3 million ~~dollars~~ or more may not begin the
17 construction of any plant, equipment, property or facility for furnishing to the public any of the
18 services enumerated in section one, article two of this chapter, ~~nor apply for, nor obtain any~~
19 ~~franchise, license or permit from any municipality or other governmental agency,~~ except ordinary
20 extensions of existing systems in the usual course of business, unless and until it shall obtain
21 from the Public Service Commission a certificate of public convenience and necessity authorizing
22 such construction franchise, license or permit.

23 (b) For certificate application for water, sewer and/or stormwater services, the application
24 shall include a preliminary engineering report and a financial analysis of the effect of the proposed
25 project upon the rates to be charged by the applicant following substantial completion of
26 construction of the proposed project. For a project that has received the approval of the
27 Infrastructure and Jobs Development Council pursuant to article fifteen-a, chapter thirty-one of
28 this code, the applicant may satisfy in full the requirement to provide a preliminary engineering
29 report and financial analysis by including with the certificate application the same engineering
30 information and financial analysis as it filed for the project with the Infrastructure and Jobs
31 Development Council. The commission may not require certificate applications to include final
32 engineering design information or plans and specifications for the proposed project, or approvals
33 which can only be obtained by the applicant submitting final engineering design or plans and
34 specifications to an agency, including, but not limited to, binding commitment letters from funding
35 agencies. The commission may waive the requirement for an application to include a financial
36 analysis for good cause shown.

37 ~~(b)~~(c) Upon the filing of any application for the certificate, and after hearing, the
38 commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the
39 certificate of convenience and necessity: *Provided*, That the commission, after it gives proper
40 notice and if no substantial protest is received within thirty days after the notice is given, may
41 waive formal hearing on the application. Notice shall be given by publication which shall state that
42 a formal hearing may be waived in the absence of substantial protest, made within thirty days, to
43 the application. The notice shall be published as a Class I legal advertisement in compliance with
44 the provisions of article three, chapter fifty-nine of this code. The publication area shall be the
45 proposed area of operation.

46 ~~(c)~~(d) Any public utility, person or corporation subject to the provisions of this section other
47 than a political subdivision of the state providing water and/or sewer services having at least four
48 thousand five hundred customers and combined annual gross revenue of \$3 million ~~dollars~~ or

49 more shall give the commission at least thirty days' notice of the filing of any application for a
50 certificate of public convenience and necessity under this section: *Provided*, That the commission
51 may modify or waive the thirty-day notice requirement and shall waive the thirty-day notice
52 requirement for projects approved by the Infrastructure and Jobs Development Council.

53 ~~(d)~~(e) The commission shall render its final decision on any application filed under the
54 provisions of this section or section eleven-a of this article within two hundred seventy days of the
55 filing of the application and within ninety days after final submission of any such application for
56 decision following a hearing: *Provided*, That if the application is for authority to construct a water
57 and sewer project and the projected total cost is less than \$10 million, the commission shall render
58 its final decision within two hundred twenty-five days of the filing of the application.

59 ~~(e)~~(f) The commission shall render its final decision on any application filed under the
60 provisions of this section that has received the approval of the Infrastructure and Jobs
61 Development Council pursuant to article fifteen-a, chapter thirty-one of this code within one
62 hundred eighty days after filing of the application: *Provided*, That if a substantial protest is received
63 within thirty days after the notice is provided pursuant to subsection (b) of this section, the
64 commission shall render its final decision within two hundred seventy days or two hundred twenty-
65 five days of the filing of the application, whichever is applicable as determined in subsection (d)
66 of this section.

67 ~~(f)~~(g) If the projected total cost of a project which is the subject of an application filed
68 pursuant to this section or section eleven-a of this article is greater than \$50 million, the
69 commission shall render its final decision on any such application filed under the provisions of
70 this section or section eleven-a of this article within four hundred days of the filing of the
71 application and within ninety days after final submission of any such application for decision after
72 a hearing.

73 ~~(g)~~(h) If a decision is not rendered within the time frames established in this section, the
74 commission shall issue a certificate of convenience and necessity as applied for in the application.

75 ~~(h)~~(i) The commission shall prescribe rules as it may deem proper for the enforcement of
76 the provisions of this section; and, in establishing that public convenience and necessity do exist,
77 the burden of proof shall be upon the applicant.

78 (i) If, following the issuance of a certificate of convenience and necessity for a project to
79 provide water, sewer and/or stormwater services, but before construction has commenced, an
80 applicant determines that the rates approved by the commission to be in effect following
81 substantial completion of the project will not be sufficient, the applicant may pursue a further rate
82 change through the procedure appropriate to it. If the commission has jurisdiction over such a
83 rate change proceeding, the commission may not in that proceeding consider rescinding the order
84 granting the applicant a certificate of convenience and necessity, or consider on the commission's
85 initiative revising the scope of the project granted a certificate of convenience and necessity:
86 Provided, That the applicant proposes a further rate change which is no greater than a fifteen
87 percent increase over the rates previously approved by the commission in the certificate
88 proceeding.

89 ~~(j)~~(k) Pursuant to the requirements of this section, the commission may issue a certificate
90 of public convenience and necessity to any intrastate pipeline, interstate pipeline or local
91 distribution company for the transportation in intrastate commerce of natural gas used by any
92 person for one or more uses, as defined by rule, by the commission in the case of:

- 93 (1) Natural gas sold by a producer, pipeline or other seller to the person; or
94 (2) Natural gas produced by the person.

95 ~~(j)~~(l) A public utility, including a public service district, which has received a certificate of
96 public convenience and necessity after July 8, 2005, from the commission and has been approved
97 by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled
98 to, reopen the proceeding if the cost of the project changes but the change does not affect the
99 rates established for the project.

100 ~~(k)~~(m) Any public utility, person or corporation proposing any electric power project that
101 requires a certificate under this section is not required to obtain such certificate before applying
102 for or obtaining any franchise, license or permit from any municipality or other governmental
103 agency.

104 ~~(l)~~(n) Water, sewer and/or stormwater utilities that are political subdivisions of the state
105 and having at least four thousand five hundred customers and combined gross revenues of \$3
106 million ~~dollars~~ or more desiring to pursue construction projects that are not in the ordinary course
107 of business shall provide notice to both current customers and those citizens who will be affected
108 by the proposed construction as follows:

109 (1) Adequate prior public notice of the contemplated construction by causing a notice of
110 intent to pursue a project that is not in the ordinary course of business to be specified on the
111 monthly billing statement of the customers of the utility for the month next preceding the month in
112 which the contemplated construction is to be before the governing body on first reading.

113 (2) Adequate prior public notice of the contemplated construction by causing to be
114 published as a Class I legal advertisement of the proposed action, in compliance with the
115 provisions of article three, chapter fifty-nine of the code. The publication area for publication shall
116 be all territory served by the district. If the political subdivision provides service in more than one
117 county, publication shall be made in a newspaper of general circulation in each county that the
118 political subdivision provides service.

119 (3) The public notice of the proposed construction shall state the scope of the proposed
120 construction, the current rates, fees and charges, the proposed changes to said rates, fees and
121 charges; the date, time and place of both a public hearing on the proposal and the proposed final
122 vote on adoption; and the place or places within the political subdivision where the proposed
123 construction and the rates, fees and charges may be inspected by the public. A reasonable
124 number of copies of the proposal shall be kept at the place or places and be made available for
125 public inspection. The notice shall also advise that interested parties may appear at the public

126 hearing before the political subdivision and be heard with respect to the proposed construction
127 and the proposed rates, fees and charges.

128 (4) The proposed construction and the proposed rates, fees and charges shall be read at
129 two meetings of the governing body with at least two weeks intervening between each meeting.
130 The public hearing may be conducted with or following the second reading.

131 (5) Enactment of the proposed construction and the proposed rates, fees and charges
132 shall follow an affirmative vote of the governing body and shall be effective no sooner than forty-
133 five days following the action of the governing body. If the political subdivision proposes rates that
134 will go into effect prior than the completion of construction of the proposed project, the forty-five
135 day waiting period may be waived by public vote of the governing body only if the political
136 subdivision finds and declares the political subdivision to be in financial distress such that the
137 forty-five day waiting period would be detrimental to the ability of the political subdivision to deliver
138 continued and compliant public services: *Provided*, That in no event shall the rate become
139 effective prior to the date that the county commission has entered an order approving the action
140 of the public service district board.

141 (6) Rates, fees and charges approved by an affirmative vote of the public services district
142 board shall be forwarded in writing to the county commission appointing the approving board. The
143 county commission shall, within forty-five days of receipt of the proposed rates, fees and charges,
144 take action to approve or reject the proposed rates, fees and charges. After forty-five days, and
145 absent action by the county commission, the proposed rates, fees and charges shall be effective
146 with no further action by the board or county commission. In any event this forty-five day period
147 may be extended by official action of both the board proposing the rates, fees and charges and
148 the appointing county commission.

149 (7) The county commission shall provide notice to the public by a Class I legal
150 advertisement of the proposed action, in compliance with the provisions of article three, chapter
151 fifty-nine of this code, of the meeting where it shall consider the proposed increases in rates, fees
152 and charges no later than one week prior to the meeting date.

NOTE: The purpose of this bill is to enable an applicant for a certificate of convenience and necessity for a water, sewer, and/or stormwater project to file a complete application without incurring the expense of an engineer's final engineering design report, and obtaining interests in real property related to the project, and to direct an entity that has received a certificate of convenience and necessity to pursue a rate change through the appropriate process when post-project rates have increased above the rate previously approved by the Public Service Commission by 15% or less, without being at risk that in such proceeding the Public Service Commission will rescind or modify the scope of the previously granted certificate of convenience and necessity.

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