

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 180

BY SENATOR BLAIR

[Originating in the Committee on Government
Organization; reported on February 24, 2017]

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

Be it enacted by the Legislature of West Virginia:

1 That §24-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted
2 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
2 shall 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
4 or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water
5 or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and
6 all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor
7 car services; transmission of messages by telephone, telegraph or radio; generation and
8 transmission of electrical energy by hydroelectric or other utilities for service to the public, whether
9 directly or through a distributing utility; supplying water, gas or electricity by municipalities or
10 others; sewer systems servicing twenty-five or more persons or firms other than the owner of the
11 sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide
12 sewer service by an innovative, alternative method, as defined by the federal Environmental
13 Protection Agency, the innovative, alternative method is a public utility function and subject to the
14 jurisdiction of the Public Service Commission regardless of the number of customers served by
15 the innovative, alternative method; any public service district created under the provisions of
16 article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities;

17 and any other public service: *Provided, however,* That natural gas producers who provide natural
18 gas service to not more than twenty-five residential customers are exempt from the jurisdiction of
19 the commission with regard to the provisions of such residential service: *Provided further,* That
20 upon request of any of the customers of such natural gas producers, the commission may, upon
21 good cause being shown, exercise such authority as the commission may deem appropriate over
22 the operation, rates and charges of such producer and for such length of time as the commission
23 may consider to be proper.

24 (b) The jurisdiction of the commission over political subdivisions of this state providing
25 separate or combined services and having at least four thousand five hundred customers and
26 annual combined gross revenues of \$3 million or more that are political subdivisions of the state
27 is limited to:

28 (1) General supervision of public utilities, as granted and described in section five of this
29 article;

30 (2) Regulation of measurements, practices, acts or services, as granted and described in
31 section seven of this article;

32 (3) Regulation of a system of accounts to be kept by a public utility that is a political
33 subdivision of the state, as granted and described in section eight of this article;

34 (4) Submission of information to the commission regarding rates, tolls, charges or
35 practices, as granted and described in section nine of this article;

36 (5) Authority to subpoena witnesses, take testimony and administer oaths to any witness
37 in any proceeding before, or conducted by, the commission, as granted and described in section
38 ten of this article; and

39 (6) Investigation and resolution of disputes involving political subdivisions of the state
40 regarding inter-utility agreements, rates, fees and charges, service areas and contested utility
41 combinations.

42 (7) Customers of water and sewer utilities operated by a political subdivision of the state

43 and customers of stormwater utilities operated by a public service district may bring formal or
44 informal complaints regarding the commission's exercise of the powers enumerated in this section
45 and the commission shall resolve these complaints.

46 (8) In the event that a political subdivision has a deficiency in either its bond revenue or
47 bond reserve accounts, or is otherwise in breach of a bond covenant, the bond holder may petition
48 the Public Service Commission for such redress as will bring the accounts to current status or
49 otherwise resolve the breached covenant, and the commission shall have jurisdiction to fully
50 resolve the alleged deficiency or breach.

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

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

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

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

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

63 (d) Any other provisions of this chapter to the contrary notwithstanding:

64 (1) An owner or operator of an electric-generating facility located, or to be located, in this
65 state that has been designated as an exempt wholesale generator under applicable federal law,
66 or will be so designated prior to commercial operation of the facility, and for which such facility
67 the owner or operator holds a certificate of public convenience and necessity issued by the
68 commission on or before July 1, 2003, shall be subject to subsections (e), (f), (g), (h), (i) and (j),

69 section eleven-c of this article as if the certificate of public convenience and necessity for such
70 facility were a siting certificate issued under said section and shall not otherwise be subject to the
71 jurisdiction of the commission or to the provisions of this chapter with respect to such facility
72 except for the making or constructing of a material modification thereof as provided in subdivision
73 (5) of this subsection.

74 (2) Any person, corporation or other entity that intends to construct, or construct and
75 operate, an electric-generating facility to be located in this state that has been designated as an
76 exempt wholesale generator under applicable federal law, or will be so designated prior to
77 commercial operation of the facility, and for which facility the owner or operator does not hold a
78 certificate of public convenience and necessity issued by the commission on or before July 1,
79 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
80 the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate
81 of public convenience and necessity pursuant to the provisions of section eleven of this article.
82 An owner or operator of an electric-generating facility as is described in this subdivision for which
83 a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g),
84 (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction
85 of the commission or to the provisions of this chapter with respect to such facility except for the
86 making or constructing of a material modification thereof as provided in subdivision (5) of this
87 subsection.

88 (3) An owner or operator of an electric-generating facility located in this state that has not
89 been designated as an exempt wholesale generator under applicable federal law prior to
90 commercial operation of the facility that generates electric energy solely for sale at retail outside
91 this state or solely for sale at wholesale in accordance with any applicable federal law that
92 preempts state law or solely for both such sales at retail and such sales at wholesale and that
93 had been constructed and had engaged in commercial operation on or before July 1, 2003, shall
94 not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect

95 to such facility, regardless of whether such facility subsequent to its construction has been or will
96 be designated as an exempt wholesale generator under applicable federal law: *Provided*, That
97 such owner or operator shall be subject to subdivision (5) of this subsection if a material
98 modification of such facility is made or constructed.

99 (4) Any person, corporation or other entity that intends to construct, or construct and
100 operate, an electric-generating facility to be located in this state that has not been or will not be
101 designated as an exempt wholesale generator under applicable federal law prior to commercial
102 operation of the facility that will generate electric energy solely for sale at retail outside this state
103 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
104 law or solely for both such sales at retail and such sales at wholesale and that had not been
105 constructed and had not been engaged in commercial operation on or before July 1, 2003, shall,
106 prior to commencement of construction of the facility, obtain a siting certificate from the
107 commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of
108 public convenience and necessity pursuant to the provisions of section eleven of this article. An
109 owner or operator of an electric-generating facility as is described in this subdivision for which a
110 siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g),
111 (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction
112 of the commission or to the provisions of this chapter with respect to such facility except for the
113 making or constructing of a material modification thereof as provided in subdivision (5) of this
114 subsection.

115 (5) An owner or operator of an electric-generating facility described in this subsection shall,
116 before making or constructing a material modification of the facility that is not within the terms of
117 any certificate of public convenience and necessity or siting certificate previously issued for the
118 facility or an earlier material modification thereof, obtain a siting certificate for the modification
119 from the commission pursuant to the provisions of section eleven-c of this article in lieu of a
120 certificate of public convenience and necessity for the modification pursuant to the provisions of

121 section eleven of this article and, except for the provisions of section eleven-c of this article, shall
122 not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter
123 with respect to such modification.

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

131 (7) The limitations on the jurisdiction of the commission over, and on the applicability of
132 the provisions of this chapter to, the owner or operator of an electric-generating facility as imposed
133 by and described in this subsection shall not be deemed to affect or limit the commission's
134 jurisdiction over contracts or arrangements between the owner or operator of such facility and any
135 affiliated public utility subject to the provisions of this chapter.

136 (e) The commission shall not have jurisdiction of Internet protocol-enabled service or
137 voice-over Internet protocol-enabled service. As used in this subsection:

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

142 (2) "Voice-over Internet protocol service" means any service that:

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

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

146 (3) The term "voice-over Internet protocol service" includes any service that permits users

147 to receive calls that originate on the public-switched telephone network and to terminate calls on
148 the public-switched telephone network.

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

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

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