

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 583

SENATORS RUCKER, BLAIR, SMITH, WELD, CLINE,
MARONEY, ROBERTS, AND PALUMBO, *original sponsors*
[Originating in the Committee on Energy, Industry,
and Mining; reported on February 7, 2020]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §24-2-1o, relating to creating a program to further the development of
3 renewable energy resources and renewable energy facilities for solar energy by modifying
4 the powers and duties of the Public Service Commission; providing for legislative findings
5 and declarations; providing for definitions; providing for an application process and
6 program for multiyear comprehensive renewable energy facilities for electric utilities, as
7 defined, to plan, design, construct, purchase, own, and operate renewable energy-
8 generating facilities, energy-storage resources, or both; providing for commission review
9 and approval of said programs; allowing cost recovery for said programs; providing for
10 requirements for said programs; providing for application requirements and contents in
11 lieu of applications for certificates of public convenience and necessity; providing for public
12 notice at the direction of the commission for anticipated rates and rate increases in
13 interested counties; providing for a hearing on applications within 90 days of notice;
14 defining circumstances when a hearing can be waived for lack of opposition; defining a
15 time period of 150 days within which the commission shall issue a final order after the
16 application date; requiring the commission to find the programs as in the public interest;
17 requiring the commission, after notice and hearing, to approve applications and allow cost
18 recovery for just and reasonable expenditures; establishing accounting methods,
19 practices, rates of return, calculations, dates, and procedures relevant for cost recovery;
20 requiring a utility to place in effect commission-approved rates that include cost recovery
21 with certain defined items; defining “concurrent cost recovery”; requiring yearly application
22 filings by the utility with the commission regarding cost recovery; providing for an effective
23 date on passage; and providing for a sunset date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1o. Renewable Energy Facilities Program.

1 (a) The Legislature finds and declares that:

2 (1) West Virginia is rich in energy resources, which provide many advantages to the state,
3 its economy, and its citizens;

4 (2) West Virginia's abundant mineral reserves have created, and will continue to create,
5 many benefits to the state and its citizens, including thousands of jobs, a strong tax base, and a
6 low-cost, reliable source of electricity;

7 (3) Coal-fired plants supply over 90 percent of electricity generation to the citizens and
8 businesses of this state;

9 (4) Businesses that may otherwise locate or expand facilities in this state often require
10 that a portion of the state's electricity be generated via renewable sources;

11 (5) Creating a program for the development of certain renewable sources of electricity by
12 electric utilities will result in increased economic development opportunities in the state, create
13 jobs, and enhance the use of the state's electricity generation; and

14 (6) Creating a program to authorize electric utilities to provide a portion of the state's
15 electricity needs through a process that allows them to plan, design, construct, purchase, own,
16 and operate renewable electric generating facilities, energy storage resources, or both, pursuant
17 to this section is in the public interest of the state.

18 (b) Definitions. – For the purpose of the section:

19 "Capital investments" include, but are not limited to, costs related to the planning, design,
20 construction, purchase, and ownership of renewable electric generating facilities, energy storage
21 resources, and interconnections with transmission and distribution facilities.

22 "Commission" or "Public Service Commission" means the Public Service Commission of
23 West Virginia.

24 "Electric utility" means any electric distribution company that sells electricity to retail
25 customers in this state under rates regulated by the commission. Unless specifically provided for
26 otherwise, for the purposes of this section, the term "electric utility" may not include rural electric

27 cooperatives, municipally owned electric facilities, or utilities serving less than 30,000 residential
28 electric customers in West Virginia.

29 “Eligible site” means any site in this state that has been previously used in electric
30 generation or industrial, manufacturing, or mining operations, including, but not limited to,
31 brownfields, closed landfills, hazardous waste sites, former industrial sites, and former mining
32 sites. In the event that there is no available site that has been previously used in electric
33 generation or industrial, manufacturing, or mining operations in the area to be served by a
34 renewable electric facilities program, an eligible site may include any suitable site in this state
35 approved for use in connection with a renewable electric facilities program by the Secretary of the
36 Department of Commerce.

37 “Energy storage resource” means infrastructure located on an eligible site that allows for
38 the energy absorption and release of electrical energy into the electric grid.

39 “Renewable electric facilities program” means a program proposed by an electric utility to
40 plan, design, construct, purchase, own, and operate renewable electric generating facilities,
41 energy storage resources, or both, pursuant to this section.

42 “Renewable electric generating facility” means infrastructure located on an eligible site
43 that generates electricity solely through solar photovoltaic methods or other solar methods.

44 (c) Electric utilities may file with the commission an application for a multiyear,
45 comprehensive renewable energy facilities program that complies with the provisions of this
46 section for planning, designing, constructing, purchasing, owning, and operating renewable
47 electric generating facilities, energy storage resources, or both, by the electric utility. Subject to
48 commission review and approval, a renewable energy facilities program may be amended and
49 updated by the electric utility. The recovery of costs in support of the renewable energy facilities
50 program shall be allowed in the manner set forth in this section.

51 (d) Any renewable energy facilities program shall comply with the following requirements:

52 (1) An electric utility may purchase each renewable electric generating facility and each
53 energy storage resource from a developer of renewable electric generating facilities or energy
54 storage resources or construct such facilities on its own, as applicable. Any purchase of a
55 renewable electric generating facility or energy storage resources shall be subject to a competitive
56 procurement administered by the electric utility. An electric utility may select to purchase a
57 renewable electric generating facility, energy storage resource, or both, based on a myriad of
58 factors, including, but not limited to, price and nonprice criteria, which shall include, but not be
59 limited to, geographic distribution of generating capacity, areas of higher employment, or regional
60 economic development.

61 (2) An electric utility may elect to petition the commission, outside of a base rate case
62 proceeding, at any time for a prudence determination with respect to the purchase, construction,
63 and ownership by the electric utility of one or more renewable electric generating facilities, energy
64 storage resources, or both. The commission's final order regarding any such petition shall be
65 entered by the commission within 150 days after the date of the filing of such petition.

66 (3) No renewable electric generating facility shall have a generating capacity greater than
67 50 megawatts until such time as 85 percent of that renewable electric generating facility's annual
68 energy output is being sold or is contracted to be sold to customers pursuant to a renewable
69 special contract or renewable tariff, and, thereafter, any expansion of that or another renewable
70 energy generating facility's generating capacity shall proceed in increments of up to 50 megawatts
71 each until such time as 85 percent or more of that renewable energy generating facility's
72 aggregate, annual energy output is being sold or is contracted to be sold to customers pursuant
73 to a renewable special contract or renewable tariff;

74 (4) No single renewable electric generating facility shall have a generating capacity greater
75 than 200 megawatts;

76 (5) The cumulative generating capacity of all renewable electric generating facilities
77 operating at any given time, and for which rate recovery is provided by the commission under this

78 section, shall not exceed 400 megawatts among all investor-owned electric utilities in this state:
79 Provided, That the cumulative generating capacity of all renewable electric generating facilities
80 operating at any one time, and for which rate recovery is provided by the commission under this
81 section, shall not exceed 200 megawatts for all electric utilities within the state owned by the same
82 corporate parent company;

83 (e) Applications made under this section are in lieu of an application for a certificate of
84 public convenience and necessity pursuant to §24-2-11 of this code and shall contain the
85 following:

86 (1) A description of the renewable electric generating facilities, energy storage resources,
87 or both, in such detail as the commission prescribes, including, but not limited to, the generating
88 capacity and location of the facilities;

89 (2) A proposed concurrent cost-recovery mechanism for actual and projected capital
90 investments in the renewable electric generating facilities, energy storage resources, or both, and
91 for operation and maintenance expenses and taxes associated with such facilities; and

92 (3) Other information that the applicant considers relevant or the commission requires.

93 (f) Upon filing of an application, the applicant shall publish, in the form the commission
94 directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate
95 increase under the proposal, by average percentage and dollar amount for customers within a
96 class of service, as a Class I legal advertisement in compliance with §59-3-1 et seq. of this code,
97 the publication area to be each county in which service is provided by the electric utility, a notice
98 of the filing of the application and that the commission shall hold a hearing on the application
99 within 90 days of the notice; unless no opposition to the rate change is received by the commission
100 within one week of the proposed hearing date, in which case the hearing can be waived, and the
101 commission shall issue a final order within 150 days of the application filing date.

102 (g) The planning, design, construction, purchase, ownership, and operation of renewable
103 electric generating facilities, energy storage resources, or both, pursuant to this section is in the

104 public interest, and the commission shall so find when considering applications for renewable
105 energy facilities programs submitted by an electric utility pursuant to this section.

106 (h) Upon notice and hearing, if required by the commission, the commission shall approve
107 the applications made under this section and allow concurrent recovery of costs related to
108 the expenditures, as provided in subsection (i) of this section, if the commission finds that the
109 expenditures and the associated rate requirements are just and reasonable.

110 (i) Upon commission approval, electric utilities shall be authorized to implement renewable
111 electric facilities programs and to concurrently recover their costs, including a return on capital
112 investments, operation and maintenance, depreciation, and tax expenses directly attributable to
113 the renewable electric facilities program capital investments, if any, as provided in the following:

114 (1) An allowance for return shall be calculated by applying a rate of return to the
115 average planned net incremental increase to rate base attributable to the renewable electric
116 facilities program for the coming year, considering the projected amount and timing of capital
117 investments under the renewable electric facilities program plus any capital investments in
118 previous years of the program. The rate of return shall be determined by utilizing the rate of return
119 on equity authorized by the commission in the electric utility's most recent base rate case
120 proceeding or in the case of a settled base rate case, a rate of return on equity set forth in such
121 settlement or, if none is set forth in such settlement, the last commission authorized rate of return
122 on equity from a previous base rate case proceeding, and the projected cost of the electric utility's
123 debt during the period of the renewable electric facilities program to determine the weighted cost
124 of capital based upon the electric utility's capital structure.

125 (2) Income taxes applicable to the return allowed on the renewable electric facilities
126 program shall be calculated at the statutory rate for inclusion in rates.

127 (3) Incremental operation and maintenance, depreciation, and property tax expenses
128 directly attributable to the renewable electric facilities program shall be estimated for the upcoming
129 year.

130 (4) Following commission approval of its application made under this section, an electric
131 utility shall place into effect rates that include an increment for concurrent cost recovery that
132 recovers the allowance for return, related income taxes at the statutory rate, operation and
133 maintenance, depreciation, and property tax expenses associated with the electric utility's actual
134 and projected capital investments under the renewable electric facilities program for the upcoming
135 year, net of contributions to recovery of those incremental costs provided by customers who have
136 executed renewable special contracts, or who are taking power under renewable tariffs and are
137 served by the renewable electric facilities program investments, if any ("incremental cost-recovery
138 increment"). In each year subsequent to the order approving the renewable electric facilities
139 program and the incremental cost-recovery increment, the electric utility shall file an
140 application with the commission setting forth a new proposed incremental cost-
141 recovery increment for concurrent cost recovery of forecasted costs to be made in the subsequent
142 year, plus any under-recovery or minus any over-recovery of actual incremental costs attributable
143 to the renewable electric facilities program, for the preceding year.

144 (5) The renewable electric generating facilities, energy storage resources, or both,
145 constructed, purchased, contracted, owned, and installed pursuant to an application approved by
146 the commission shall be considered used and useful for rate recovery purposes as of the earliest
147 date consideration is paid for construction, purchases, contracts, ownerships, or installation.

148 (6) If an electric utility serves customers in more than one jurisdiction, and a jurisdiction
149 other than this state denies the electric utility recovery of the costs incurred pursuant to a
150 renewable electric facilities program approved by the commission and allocated to that
151 jurisdiction, the electric utility shall recover all of the costs of the renewable electric facilities
152 program from its West Virginia jurisdictional customers, and all attributes of the renewable electric
153 facilities program, including energy and capacity, shall be assigned to this state.

154 (j) The electric utility may make any accounting accruals necessary to establish a
155 regulatory asset or liability through which actual incremental costs incurred and costs recovered
156 through the rate mechanism are tracked.

157 (k) With respect to renewable electric facilities programs, electric utilities may defer
158 incremental operation and maintenance expenses attributable to regulatory and compliance-
159 related requirements introduced after the electric utility's last base rate case proceeding and not
160 included in the electric utility's current base rates in lieu of current recovery. In a future base rate
161 case, the commission shall allow recovery of such deferred costs amortized over a reasonable
162 period of time, to be determined by the commission, provided the commission finds that the costs
163 were reasonable and prudently incurred and were not reflected in rates in prior base rate cases.

164 (l) The provisions of this section shall expire on December 31, 2025. The expiration of
165 this section shall not affect the full and timely cost recovery associated with a renewable energy
166 facilities program for which an application has been filed with the commission pursuant to this
167 section on or before December 31, 2025, nor for any projects previously approved by the
168 commission pursuant to this section.

169 (m) The provisions of this section are effective on passage.

NOTE: The purpose of this bill is to create a program to further the development of renewable energy resources in this state for economic development.

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