

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

House Bill 3310

BY DELEGATES CAPITO, QUEEN, LOVEJOY AND GARCIA

[Passed April 9, 2021; in effect from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §24-1-1c; to amend and reenact §24-1-2 of said code; and to amend and
3 reenact §24-2-1 of said code; all generally relating to jurisdiction of the Public Service
4 Commission; making legislative findings; defining terms; creating exception to the term
5 public utility for certain solar photovoltaic energy facilities on the premises of a retail
6 electric customer, the output of which is subject to solar power purchase agreements;
7 providing for rulemaking; and limiting jurisdiction of the Public Service Commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1c. Legislative findings.

1 The Legislature finds:

2 (1) Helping retail electric customers invest in and install solar photovoltaic energy facilities
3 of their choice on their properties is in the public interest;

4 (2) Free-market financing may provide more customers with opportunities to install solar
5 photovoltaic energy facilities;

6 (3) Installation of solar photovoltaic energy facilities will stabilize long-term energy costs
7 making the state more attractive for industry and commercial investment;

8 (4) Financing arrangements, including those in which payments are based on the
9 performance and output of the solar photovoltaic energy facility installed on the property of a retail
10 electric customer, will help reduce or eliminate upfront costs involved in the investments and
11 installation by the customers; and

12 (5) Individuals and entities which offer or receive these types of financing arrangements
13 should not be considered or treated as public utilities.

§24-1-2. Definitions.

1 Except where a different meaning clearly appears from the context, the following words
2 when used in this chapter, shall mean:

3 “Commission” or “Public Service Commission” means the Public Service Commission of
4 West Virginia.

5 “Customer” means any person, firm, corporation, municipality, public service district, or
6 any other entity who purchases a product or services of any utility and shall include any person,
7 firm, corporation, municipality, public service district, or any other entity who purchases the
8 services or product for resale.

9 “Governing body” means the municipal body charged with the authority and responsibility
10 of enacting ordinances of the municipality, as defined in §8-1-2 of this code, or a public service
11 board of a public service district, as defined in §16-13A-3 of this code.

12 “Public utility” means any person or persons, or association of persons, however
13 associated, whether incorporated or not, including municipalities, engaged in any business,
14 whether herein enumerated or not, which is, or shall hereafter be held to be, a public service:
15 *Provided*, That “public utility” does not include individuals or entities owning a solar photovoltaic
16 energy facility located on and designed to meet only the electrical needs of the premises of a
17 retail electric customer, the output of which is subject to a power purchase agreement with the
18 retail electric customer, subject to §24-2-1(a) of this code.

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 extends to all public utilities in this state and includes
2 any utility engaged in any of the following public services:

3 (1) Common carriage of passengers or goods, whether by air, railroad, street railroad,
4 motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by
5 land, water, or air;

6 (2) Transportation of oil, gas, or water by pipeline;

7 (3) Transportation of coal and its derivatives and all mixtures and combinations thereof
8 with other substances by pipeline;

9 (4) Sleeping car or parlor car services;

10 (5) Transmission of messages by telephone, telegraph, or radio;

11 (6) Generation and transmission of electrical energy by hydroelectric or other utilities for
12 service to the public, whether directly or through a distributing utility;

13 (7) Supplying water, gas, or electricity by municipalities or others: (A) *Provided*, That
14 natural gas producers who provide natural gas service to not more than 25 residential customers
15 are exempt from the jurisdiction of the commission with regard to the provisions of the residential
16 service; (B) *Provided however*, That upon request of any of the customers of the natural gas
17 producers, the commission may, upon good cause being shown, exercise authority as the
18 commission may consider appropriate over the operation, rates, and charges of the producer and
19 for the length of time determined proper by the commission; (C) *Provided further*, That the
20 provision of a solar photovoltaic energy facility located on and designed to meet only the electrical
21 needs of the premises of a retail electric customer, the output of which is subject to a power
22 purchase agreement (PPAs) with the retail electric customer, shall not constitute a public service,
23 subject to the following conditions and limitations:

24 (i) PPAs must be 11 point font or larger.

25 (ii) The aggregate of all PPAs and net metering arrangements in the state for any utility
26 shall not exceed three percent (3%) of the utility's aggregate customer peak demand in the state
27 during the previous year;

28 (iii) There shall be individual customer on-site generator limits of designing the
29 photovoltaic energy facility to meet only the electrical needs of the premises of the retail electric
30 customer and which in no case shall exceed 25kW for residential customers, 500 kW for
31 commercial customers, and 2,000 kW for industrial customers;

32 (iv) Customers who enter into PPAs relating to photovoltaic facilities are to notify the utility
33 of its intent to enter into a transaction. In response, the utility shall notify within 30 days if any of

34 the caps have been reached. If the utility does not respond within 30 days, the generator may
35 proceed and the caps will be presumed not to have been reached; and

36 (v) The Public Service Commission may promulgate rules to govern and implement the
37 provisions of interconnections for PPAs, except the PSC does not have authority over the power
38 rates for the arrangements between the on-site generator and the customer;

39 (8) Sewer systems servicing 25 or more persons or firms other than the owner of the sewer
40 systems; *Provided*, That if a public utility other than a political subdivision intends to provide sewer
41 service by an innovative, alternative method, as defined by the federal Environmental Protection
42 Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction
43 of the Public Service Commission, regardless of the number of customers served by the
44 innovative, alternative method;

45 (9) Any public service district created under the provisions of §16-13A-1 *et seq.* of this
46 code, except that the Public Service Commission has no jurisdiction over the provision of
47 stormwater services by a public service district;

48 (10) Toll bridges located more than five miles from a toll-free bridge which crosses the
49 same body of water or obstacle, wharves, ferries; solid waste facilities; and

50 (11) Any other public service.

51 (b) The jurisdiction of the commission over political subdivisions of this state providing
52 separate or combined water and/or sewer services and having at least 4,500 customers and
53 annual combined gross revenues of \$3 million or more that are political subdivisions of the state
54 is limited to:

55 (1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

56 (2) Regulation of measurements, practices, acts, or services, as granted and described in
57 §24-2-7 of this code;

58 (3) Regulation of a system of accounts to be kept by a public utility that is a political
59 subdivision of the state, as granted and described in §24-2-8 of this code;

60 (4) Submission of information to the commission regarding rates, tolls, charges, or
61 practices, as granted and described in §24-2-9 of this code;

62 (5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness
63 in any proceeding before or conducted by the commission, as granted and described in §24-2-10
64 of this code; and

65 (6) Investigation and resolution of disputes between a political subdivision of the state
66 providing wholesale water and/or wastewater treatment or other services, whether by contract or
67 through a tariff, and its customer or customers, including, but not limited to, rates, fees, and
68 charges, service areas and contested utility combinations: *Provided*, That any request for an
69 investigation related to a dispute that is based on the act or omission of the political subdivision
70 shall be filed within 30 days of the act or omission of the political subdivision and the commission
71 shall resolve the dispute within 120 days of filing. The 120-day period for resolution of the dispute
72 may be tolled by the commission until the necessary information showing the basis of the rates,
73 fees, and charges or other information required by the commission is filed: *Provided, however*,
74 That the disputed rates, fees, and charges fixed by the political subdivision providing separate or
75 combined water and/or sewer services shall remain in full force and effect until set aside, altered
76 or, amended by the commission in an order to be followed in the future.

77 (7) Customers of water and sewer utilities operated by a political subdivision of the state
78 may bring formal or informal complaints regarding the commission's exercise of the powers
79 enumerated in this section and the commission shall resolve these complaints: *Provided*, That
80 any formal complaint filed under this section that is based on the act or omission of the political
81 subdivision shall be filed within 30 days of the act or omission complained of and the commission
82 shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the
83 dispute may be tolled by the commission until the necessary information showing the basis of the
84 matter complained of is filed by the political subdivision: *Provided, however*, That whenever the
85 commission finds any regulations, measurements, practices, acts, or service to be unjust,

86 unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of
87 this chapter, or finds that any service is inadequate, or that any service which is demanded cannot
88 be reasonably obtained, the commission shall determine and declare, and by order fix reasonable
89 measurement, regulations, acts, practices or services, to be furnished, imposed, observed, and
90 followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory,
91 inadequate, or otherwise in violation of this chapter, and shall make an order that is just and
92 reasonable: *Provided further*, That if the matter complained of would affect rates, fees, and
93 charges fixed by the political subdivision providing separate or combined water and/or sewer
94 services, the rates, fees, or charges shall remain in full force and effect until set aside, altered, or
95 amended by the commission in an order to be followed in the future.

96 (8) If a political subdivision has a deficiency in either its bond revenue or bond reserve
97 accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public
98 Service Commission for any redress that will bring the accounts to current status or otherwise
99 resolve the breached covenant. The commission has jurisdiction to fully resolve the alleged
100 deficiency or breach.

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

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

105 (2) The area can be provided with utility service by a utility which operates in a state
106 adjoining West Virginia;

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

109 (4) The number of customers to be served is not substantial. The rates the out-of-state
110 utility charges West Virginia customers shall be the same as the rate the utility may charge in the

111 adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of
112 jurisdiction for good cause.

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

114 (1) An owner or operator of an electric generating facility located or to be located in this
115 state that has been designated as an exempt wholesale generator under applicable federal law,
116 or will be so designated prior to commercial operation of the facility, for which the facility the owner
117 or operator holds a certificate of public convenience and necessity issued by the commission on
118 or before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the
119 certificate of public convenience and necessity for the facility were a siting certificate issued under
120 §24-2-11c of this code, and is not otherwise subject to the jurisdiction of the commission or to the
121 provisions of this chapter with respect to the facility except for the making or constructing of a
122 material modification thereof as provided in §24-2-1(d)(5) of this code.

123 (2) Any person, corporation, or other entity that intends to construct or construct and
124 operate an electric generating facility to be located in this state that has been designated as an
125 exempt wholesale generator under applicable federal law, or will be designated prior to
126 commercial operation of the facility, for which facility the owner or operator does not hold a
127 certificate of public convenience and necessity issued by the commission on or before July 1,
128 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from
129 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public
130 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or
131 operator of an electric generating facility as is described in this subdivision for which a siting
132 certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of
133 this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of
134 this chapter with respect to the facility except for the making or constructing of a material
135 modification thereof as provided in §24-2-1(d)(5) of this code.

136 (3) An owner or operator of an electric generating facility located in this state that had not
137 been designated as an exempt wholesale generator under applicable federal law prior to
138 commercial operation of the facility that generates electric energy solely for sale at retail outside
139 this state or solely for sale at wholesale in accordance with any applicable federal law that
140 preempts state law or solely for both sales at retail and sales at wholesale and that had been
141 constructed and had engaged in commercial operation on or before July 1, 2003, is not subject
142 to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility,
143 regardless of whether the facility subsequent to its construction has been or will be designated as
144 an exempt wholesale generator under applicable federal law: *Provided*, That the owner or
145 operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or
146 constructed.

147 (4) Any person, corporation, or other entity that intends to construct or construct and
148 operate an electric generating facility to be located in this state that has not been or will not be
149 designated as an exempt wholesale generator under applicable federal law prior to commercial
150 operation of the facility that will generate electric energy solely for sale at retail outside this state
151 or solely for sale at wholesale in accordance with any applicable federal law that preempts state
152 law or solely for both sales at retail and sales at wholesale and that had not been constructed and
153 had not been engaged in commercial operation on or before July 1, 2003, shall, prior to
154 commencement of construction of the facility, obtain a siting certificate from the commission
155 pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience
156 and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an
157 electric generating facility as is described in this subdivision for which a siting certificate has been
158 issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code, and is not
159 otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with
160 respect to the facility except for the making or constructing of a material modification thereof as
161 provided in §24-2-1(d)(5) of this code.

162 (5) An owner or operator of an electric generating facility described in this subsection shall,
163 before making or constructing a material modification of the facility that is not within the terms of
164 any certificate of public convenience and necessity or siting certificate previously issued for the
165 facility or an earlier material modification thereof, obtain a siting certificate for the modification
166 from the commission pursuant to the provisions of §24-2-11c of this code, in lieu of a certificate
167 of public convenience and necessity for the modification pursuant to the provisions of §24-2-11
168 of this code and, except for the provisions of §24-2-11c of this code, is not otherwise subject to
169 the jurisdiction of the commission or to the provisions of this chapter with respect to the
170 modification.

171 (6) The commission shall consider an application for a certificate of public convenience
172 and necessity filed pursuant to §24-2-11 of this code, to construct an electric generating facility
173 described in this subsection or to make or construct a material modification of the electric
174 generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the
175 application for the certificate of public convenience and necessity was filed with the commission
176 prior to July 1, 2003, and if the commission has not issued a final order as of that date.

177 (7) The limitations on the jurisdiction of the commission over, and on the applicability of
178 the provisions of this chapter to, the owner or operator of an electric generating facility as imposed
179 by and described in this subsection do not affect or limit the commission's jurisdiction over
180 contracts or arrangements between the owner or operator of the facility and any affiliated public
181 utility subject to the provisions of this chapter.

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

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

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

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

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

192 (3) The term "voice-over Internet protocol service" includes any service that permits users
193 to receive calls that originate on the public-switched telephone network and to terminate calls on
194 the public-switched telephone network.

195 (f) Notwithstanding any other provisions of this article, the commission does not have
196 jurisdiction to review or approve any transaction involving a telephone company otherwise subject
197 to §24-2-12 and §24-2-12a of this code, if all entities involved in the transaction are under common
198 ownership.

199 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power
200 systems are most fairly and effectively regulated by the local governing body. Therefore,
201 notwithstanding any other provisions of this article, the commission does not have jurisdiction
202 over the setting or adjustment of rates, fees, and charges of municipal power systems. Further,
203 the jurisdiction of the Public Service Commission over municipal power systems is limited to that
204 granted specifically in this code.

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2021.

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Governor