

# **WEST VIRGINIA LEGISLATURE**

**2023 REGULAR SESSION**

**Enrolled**

**Senate Bill 544**

By Senator Queen

[Passed March 11, 2023; in effect 90 days from  
passage]

1 AN ACT to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating  
2 to increasing the power purchase agreement cap from 25 kW to 50kW for residential  
3 customers and from 500 kW to 1,000 kW for commercial customers.

*Be it enacted by the Legislature of West Virginia:*

**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: *Provided*, That natural  
14 gas producers who provide natural gas service to not more than 25 residential customers are  
15 exempt from the jurisdiction of the commission with regard to the provisions of the residential  
16 service: *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: *Provided further*, That the provision of  
20 a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the

21 premises of a retail electric customer, the output of which is subject to a power purchase  
22 agreement (PPAs) with the retail electric customer, shall not constitute a public service, subject to  
23 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 of the utility's aggregate customer peak demand in the state during  
27 the previous year;

28 (iii) There shall be individual customer on-site generator limits of designing the photovoltaic  
29 energy facility to meet only the electrical needs of the premises of the retail electric customer and  
30 which in no case shall exceed 50kW for residential customers, 1,000 kW for commercial  
31 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 the  
34 caps have been reached. If the utility does not respond within 30 days, the generator may proceed  
35 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 is  
54 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 any*  
80 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, or  
116 will be so designated prior to commercial operation of the facility, for which the facility the owner or  
117 operator holds a certificate of public convenience and necessity issued by the commission on or  
118 before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate  
119 of public convenience and necessity for the facility were a siting certificate issued under §24-2-11c  
120 of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions  
121 of this chapter with respect to the facility except for the making or constructing of a material  
122 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 to  
142 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 or  
151 solely for sale at wholesale in accordance with any applicable federal law that preempts state law  
152 or solely for both sales at retail and sales at wholesale and that had not been constructed and had  
153 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 from  
166 the commission pursuant to the provisions of §24-2-11c of this code, in lieu of a certificate of public  
167 convenience and necessity for the modification pursuant to the provisions of §24-2-11 of this code  
168 and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the jurisdiction  
169 of the commission or to the provisions of this chapter with respect to the modification.

170 (6) The commission shall consider an application for a certificate of public convenience  
171 and necessity filed pursuant to §24-2-11 of this code, to construct an electric generating facility  
172 described in this subsection or to make or construct a material modification of the electric  
173 generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the  
174 application for the certificate of public convenience and necessity was filed with the commission



175 prior to July 1, 2003, and if the commission has not issued a final order as of that date.

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

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

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

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

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

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

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

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

198 (g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power  
199 systems are most fairly and effectively regulated by the local governing body. Therefore,  
200 notwithstanding any other provisions of this article, the commission does not have jurisdiction over

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201 the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the  
202 jurisdiction of the Public Service Commission over municipal power systems is limited to that  
203 granted specifically in this code.