

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **House Bill 5004**

By Delegate Linville

[Introduced January 23, 2024; Referred to the  
Committee on Political Subdivisions then Technology  
and Infrastructure]

1 A BILL to amend and reenact §24-2-1 and §24-2-3 of the Code of West Virginia, 1931, as  
2 amended, all relating to the statutory time frames for public service commission resolution  
3 of complaints against locally rate regulated water and wastewater utilities.

*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: (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 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, 1,000kW 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. The Commission  
71 shall notify the defendant political subdivision of the complaint and require an answer and a  
72 response. The response shall include the basis of the rates, fees and charges complained of and

73 such other information specified by the commission to be required for resolution of the complaint.  
74 ~~and the~~ The commission shall resolve the dispute within 120 days of filing of the answer and the  
75 response of the defendant political subdivision. The 120-day period for resolution of the dispute  
76 may be tolled by the commission until the commission determines that the defendant political  
77 subdivision has filed the necessary information showing the basis of the rates, fees, and charges  
78 or other information required by the commission ~~is filed~~: *Provided, however,* That the disputed  
79 rates, fees, and charges fixed by the political subdivision providing separate or combined water  
80 and/or sewer services shall remain in full force and effect until set aside, altered, or amended by  
81 the commission in an order to be followed in the future.

82 (7) Customers of water and sewer utilities operated by a political subdivision of the state  
83 may bring formal or informal complaints regarding the commission's exercise of the powers  
84 enumerated in this section and the commission shall resolve these complaints: *Provided,* That any  
85 formal complaint filed under this section that is based on the act or omission of the political  
86 subdivision shall be filed within 30 days of the act or omission complained of. The commission  
87 shall notify the defendant political subdivision of the complaint and require a response, which shall  
88 include the basis of the defendant's actions regarding the matter complained of and such other  
89 information specified by the commission to be required for resolution of the complaint. ~~and the~~ The  
90 commission shall resolve the complaint within 180 days of filing of the answer and the response by  
91 the defendant political subdivision. The 180-day period for resolution of the dispute may be tolled  
92 by the commission until the commission determines that the defendant political subdivision has  
93 filed the necessary information showing the basis of the matter complained of ~~is filed by the~~  
94 ~~political subdivision~~: *Provided, however,* That whenever the commission finds any regulations,  
95 measurements, practices, acts, or service to be unjust, unreasonable, insufficient, or unjustly  
96 discriminatory, or otherwise in violation of any provisions of this chapter, or finds that any service is  
97 inadequate, or that any service which is demanded cannot be reasonably obtained, the  
98 commission shall determine and declare, and by order fix reasonable measurement, regulations,

99 acts, practices or services, to be furnished, imposed, observed, and followed in lieu of those found  
100 to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate, or otherwise in  
101 violation of this chapter, and shall make an order that is just and reasonable: *Provided further*, That  
102 if the matter complained of would affect rates, fees, and charges fixed by the political subdivision  
103 providing separate or combined water and/or sewer services, the rates, fees, or charges shall  
104 remain in full force and effect until set aside, altered, or amended by the commission in an order to  
105 be followed in the future.

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

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

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

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

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

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

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

124 (1) An owner or operator of an electric generating facility located or to be located in this

125 state that has been designated as an exempt wholesale generator under applicable federal law, or  
126 will be so designated prior to commercial operation of the facility, for which the facility the owner or  
127 operator holds a certificate of public convenience and necessity issued by the commission on or  
128 before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate  
129 of public convenience and necessity for the facility were a siting certificate issued under §24-2-11c  
130 of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions  
131 of this chapter with respect to the facility except for the making or constructing of a material  
132 modification thereof as provided in §24-2-1(d)(5) of this code.

133 (2) Any person, corporation, or other entity that intends to construct or construct and  
134 operate an electric generating facility to be located in this state that has been designated as an  
135 exempt wholesale generator under applicable federal law, or will be designated prior to  
136 commercial operation of the facility, for which facility the owner or operator does not hold a  
137 certificate of public convenience and necessity issued by the commission on or before July 1,  
138 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from  
139 the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public  
140 convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or  
141 operator of an electric generating facility as is described in this subdivision for which a siting  
142 certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of  
143 this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of  
144 this chapter with respect to the facility except for the making or constructing of a material  
145 modification thereof as provided in §24-2-1(d)(5) of this code.

146 (3) An owner or operator of an electric generating facility located in this state that had not  
147 been designated as an exempt wholesale generator under applicable federal law prior to  
148 commercial operation of the facility that generates electric energy solely for sale at retail outside  
149 this state or solely for sale at wholesale in accordance with any applicable federal law that  
150 preempts state law or solely for both sales at retail and sales at wholesale and that had been

151 constructed and had engaged in commercial operation on or before July 1, 2003, is not subject to  
152 the jurisdiction of the commission or to the provisions of this chapter with respect to the facility,  
153 regardless of whether the facility subsequent to its construction has been or will be designated as  
154 an exempt wholesale generator under applicable federal law: *Provided*, That the owner or  
155 operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or  
156 constructed.

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

172 (5) An owner or operator of an electric generating facility described in this subsection shall,  
173 before making or constructing a material modification of the facility that is not within the terms of  
174 any certificate of public convenience and necessity or siting certificate previously issued for the  
175 facility or an earlier material modification thereof, obtain a siting certificate for the modification from  
176 the commission pursuant to the provisions of §24-2-11c of this code, in lieu of a certificate of public

177 convenience and necessity for the modification pursuant to the provisions of §24-2-11 of this code  
178 and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the jurisdiction  
179 of the commission or to the provisions of this chapter with respect to the modification.

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

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

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

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

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

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

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

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

203 the public-switched telephone network.

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

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

**§24-2-3. General power of commission with respect to rates.**

1 (a) The commission may enforce, originate, establish, change, and promulgate tariffs,  
2 rates, joint rates, tolls, and schedules for all public utilities except for municipal power systems and  
3 water and/or sewer utilities that are political subdivisions of this state providing a separate or  
4 combined services and having at least 4,500 customers and annual combined gross revenues of  
5 \$3 million or more: *Provided*, That the commission may exercise such rate authority over  
6 municipally owned natural gas utilities or a municipally owned water and/or sewer utility having  
7 less than 4,500 customers or annual combined gross revenues of less than \$3 million only under  
8 the circumstances and limitations set forth in §24-2-4b of this code, and subject to the provisions  
9 set forth in §24-2-3(b) of this code. And whenever the commission, after hearing, finds any existing  
10 rates, tolls, tariffs, joint rates, or schedules enacted or maintained by a utility regulated under the  
11 provisions of this section to be unjust, unreasonable, insufficient, or unjustly discriminatory or  
12 otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix  
13 reasonable rates, joint rates, tariffs, tolls, or schedules to be followed in the future in lieu of those  
14 found to be unjust, unreasonable, insufficient, or unjustly discriminatory or otherwise in violation of

15 any provisions of law, and the commission, in fixing the rate of any railroad company, may fix a fair,  
16 reasonable, and just rate to be charged on any branch line thereof, independent of the rate  
17 charged on the main line of that railroad.

18 (b) Any complaint filed with the commission by a resale or wholesale customer of a  
19 municipally owned water and/or sewer utility having less than 4,500 customers or annual  
20 combined gross revenue of less than \$3 million concerning rates, fees, or charges applicable to  
21 such resale or wholesale customer shall be filed within 30 days of the enactment by the governing  
22 body of the political subdivision of an ordinance changing rates, fees, or charges for such service.  
23 The Commission shall notify the defendant political subdivision of the complaint and require an  
24 answer and a response. The response shall include the basis of the rates, fees and charges  
25 complained of and such other information specified by the commission to be required for  
26 resolution of the complaint. The commission shall resolve said complaint within 120 days of filing  
27 of the answer and the response by the defendant political subdivision. The 120-day period for  
28 resolution of the complaint may be tolled by the commission until the commission determines that  
29 the defendant political subdivision has filed the necessary information showing the basis of the  
30 rates, fees, charges, and other information as the commission considers necessary ~~is filed~~:  
31 *Provided*, That rates, fees, and charges so fixed by the political subdivision providing separate or  
32 combined water and/or sewer services shall remain in full force and effect until set aside, altered,  
33 or amended by the commission in an order to be followed in the future: *Provided, however*, That  
34 the commission shall have no authority to order refunds for amounts collected during the  
35 pendency of the complaint proceeding unless the rates, fees, or charges so enacted by the  
36 governing body were enacted subject to refund under the provisions of §24-2-4b(d)(2) or §24-2-  
37 4b(g) of this code.

38 (c) In determining just and reasonable rates, the commission may audit and investigate  
39 management practices and policies, or have performed an audit and investigation of such  
40 practices and policies, in order to determine whether the utility is operating with efficiency and is

41 utilizing sound management practices. The commission shall adopt rules and regulations setting  
42 forth the scope, frequency, and application of such audits and investigations to the various utilities  
43 subject to its jurisdiction. The commission may include the cost of conducting the management  
44 audit in the cost of service of the utility.

45 (d) In determining just and reasonable rates, the commission shall investigate and review  
46 transactions between utilities and affiliates. The commission shall limit the total return of the utility  
47 to a level which, when considered with the level of profit or return the affiliate earns on transactions  
48 with the utility, is just and reasonable.

NOTE: The purpose of this bill is to establish that the Public Service Commission's statutory review period does not commence until it has the necessary information providing the basis of rates, or of the utility's action, that is the subject of a complaint before the Commission.

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