

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 638

By Senators Oliverio and Stover

[Introduced February 5, 2024; referred
to the Committee on Economic Development; and
then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §24-2J-1 and §24-2J-2, all relating to establishing a community solar pilot
 3 program for subscribers to gain credits against their utility bills; providing legislative
 4 findings; defining terms; authorizing subscriber-based solar projects that allow solar power
 5 production to be granted credit against electric power costs; providing that an authorized
 6 project is not deemed as a utility; providing conditions and terms for operation for a facility;
 7 providing for regulation of the pilot program by the Public Service Commission; providing
 8 conditions for credits; providing requirements for subscriber organizations; and providing
 9 Public Service Commission rule-making authority and directives.

Be it enacted by the Legislature of West Virginia:

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2J. COMMUNITY SOLAR PILOT PROGRAM.

§24-2J-1. Definitions.

1 (a) "Agrivoltaics" means the co-location of solar energy installations and agriculture
 2 either beneath or between rows of photovoltaic panels;

3 (b) "Applicable bill credit rate" means the dollar-per-kilowatt-hour rate previously
 4 approved by the commission and already used to calculate a subscriber's electricity bill.

5 (c) "Bill credit" means the monetary value of the electricity generated by the community
 6 solar facility allocated to a subscriber to offset that subscriber's electricity bill, which shall be
 7 on a one-to-one basis in kilowatt-hours, exclusive of fees, and calculated by multiplying the
 8 kilowatt-hours by the applicable bill credit rate.

9 (d) "Commission" means the West Virginia Public Service Commission.

10 (e) "Community solar facility" means a facility that generates electricity by means of a
 11 solarphotovoltaic device whereby subscribers receive a bill credit for the electricity generated
 12 in proportion to the size of their subscription. A community solar facility must:

13 (1) Be located in the service territory of the utility;

- 14 (2) Be connected to the electric distribution grid serving the state;
- 15 (3) Have at least three subscribers;
- 16 (4) Be limited to five megawatts or less alternating current per facility, or 10 megawatts
17 or less alternating current per facility if the community solar facility is on a qualifying site, and
18 be subject to an aggregate capacity limitation for each utility as provided by the commission in
19 accordance with §24-2J-2 of this code;
- 20 (5) Set aside no less than 40 percent of its capacity for customers with subscriptions of
21 25 kilowatts or less; and
- 22 (6) Be located on a parcel or contiguous parcels of land, so that no single or contiguous
23 parcel has more than one community solar project on it.
- 24 (f) "Community solar pilot program" or "Program" means the pilot program created
25 through the adoption of rules by the Public Service Commission pursuant to this article to allow
26 for the development of community solar facilities as provided in §24-2J-2 of this code. This pilot
27 program is distinct and separate from the existing net metering program as provided pursuant
28 to §24-2F-8 of this code.
- 29 (g) "Low-income customer" means an individual or household with an income of not
30 more than 80 percent of the area's median income based on United States Department of
31 Housing and Urban Development guidelines.
- 32 (h) "Low-income service organization" means an organization or nonprofit whose
33 primary function is to provide services or assistance to low-income individuals.
- 34 (i) "Net crediting" shall mean a program under which the utility, upon authorization by
35 or on behalf of an eligible customer, remits the portion of the bill credit that represents the
36 subscription fee directly to the subscriber organization of a project and places the remaining
37 bill credit on the eligible customer's bill. In order to participate in net crediting, a customer's
38 subscription fee shall be calculated as a percent of the value of the bill credit that appears on a
39 subscriber's bill. Such percent must be less than 100 percent. The utility may charge the

40 subscriber organization a fee of up to one percent of the bill credit value remitted to the
41 subscriber organization to cover the costs of implementing net crediting.

42 (j) "Qualifying site" means a site made up of one or more contiguous parcels of land
43 where the majority of the acreage utilized for a community solar facility:

44 (1) Has been previously used in electric generation, industrial, manufacturing or
45 mining operations, including, but not limited to, brownfields, closed landfills, hazardous waste
46 sites, former industrial sites, and former mining sites;

47 (2) Will be utilized for the deployment of agrivoltaics, as defined by this section; or

48 (3) Will be utilized to provide at least 51 percent of any electricity generated to low-
49 income customers.

50 (k) "Subscriber" means a retail electric customer of a utility who owns one or more
51 subscriptions of a community solar facility interconnected with that utility. A subscriber must be
52 located in the same electric utility service territory where the community solar facility is
53 located.

54 (l) "Subscriber organization" means any for-profit or nonprofit entity that owns or
55 operates one or more community solar facilities. A subscriber organization shall not be
56 considered a utility pursuant to this chapter solely as a result of its ownership or operation of a
57 community solar facility.

58 (m) "Subscription" means a contract between a subscriber and a subscriber
59 organization. A subscription shall be sized such that the estimated bill credits do not exceed
60 the subscriber's average annual bill for the customer account to which the subscription is
61 attributed.

62 (n) "Utility" means a public utility as defined pursuant to §24-1-2 of this code: *Provided,*
63 That for purposes of this article, utility shall not include rural electric cooperatives, municipal
64 utilities, nor utilities serving less than 30,000 customers.

§24-2J-2. Pilot program creation and implementation; Public Service Commission

Rulemaking.

1 (a) The commission shall file rules in accordance with §24-1-7 of the code to establish a
2 community solar pilot program that is substantively similar in nature to community solar programs
3 offered in other states. Such rules shall establish a community solar program in West Virginia by
4 January 1, 2025, and shall require each utility to file any tariffs, agreements, or forms necessary for
5 implementation of the program, which shall be subject to comment by interested parties and final
6 commission approval. Any such tariffs shall be consistent with the bill credit rates established by
7 this article.

8 (b) The rules promulgated by the commission and any associated filing approved by the
9 commission shall:

10 (1) Establish an aggregate capacity limitation for each utility such that generation from
11 community solar facilities reaches but does not exceed:

12 (A) Six percent of total retail sales for a utility prior to January 1, 2027;

13 (B) Eight percent of total retail sales for a utility prior to January 1, 2029; and

14 (C) Ten percent of total retail sales by January 1, 2031.

15 The Commission may increase the aggregate capacity limitations for a community solar
16 project if the project provides additional electric service to businesses making a capital investment
17 in a new or expanded industrial facility located in West Virginia and resulting in new electric
18 generating load to the utility.

19 (2) Ensure broad competition for the development, ownership, and operation of community
20 solar facilities, including a separate and distinct program for third-party, non-utility entities that
21 produce at least 75 percent of program capacity;

22 (3) Develop a bill credit that reasonably allows for the creation and financing of community
23 solar facilities by non-utility subscriber organizations;

24 (4) Allow for customers to participate in the community solar pilot program on a first-come,
25 first-served basis;

26 (5) Value bill credits for a subscriber's subsequent monthly electric bill for the
27 proportional output of a community solar facility attributable to that subscriber for not less than
28 35 years from the date a community solar facility is first interconnected;

29 (6) Allow all customer classes to participate in the program, and ensure participation
30 opportunities for all customer classes;

31 (7) Prohibit punitive fees or other charges that undermine the feasibility of a community
32 solar project's economics or customer energy bill savings;

33 (8) Include one or more mechanisms sufficient to ensure accessibility for low-income
34 customers and low-income service organizations. The commission shall ensure that mechanisms
35 targeted toward low-income customers and low-income service organizations are crafted to
36 achieve tangible economic benefits for low-income customers and should integrate with existing
37 complementary programs, including, but not limited to, energy efficiency, energy assistance,
38 and/or workforce development programs. In determining the appropriate mechanism(s), the
39 commission, utilities, and stakeholders shall work with the Legislature and appropriate state
40 agencies to consider the development of financing options, financial incentives, education and
41 outreach programs, or appropriate program participation goals or minimums;

42 (9) Not remove a customer from its otherwise applicable customer class in order to
43 subscribe to a community solar facility;

44 (10) Reasonably allow for the transferability and portability of subscriptions, including
45 allowing a subscriber to retain a subscription to a community solar facility if the subscriber moves
46 within the same utility territory;

47 (11) Clarify existing interconnection standards for distributed customer generator
48 generation facilities to efficiently and effectively interconnect community solar projects and to
49 ensure that projects shall not be prohibited from apply for interconnection and being placed in the
50 interconnection queue after the effective date of this article;

51 (12) Provide for consumer protection in accordance with existing laws and consistent with

- 52 consumer protections provided in programs managed by peer utilities;
- 53 (13) Allow the utility to recover reasonable costs of administering the program;
- 54 (14) Address the co-location of two or more community solar facilities on a single or
- 55 contiguous parcel of land, and provide guidelines for determining when two or more facilities are
- 56 co-located;
- 57 (15) Encourage adherence to best market practices for construction and decommissioning
- 58 of community solar facilities;
- 59 (16) Incentivize, support, or encourage, when appropriate, community solar facility siting
- 60 on marginal farm land or agrivoltaic development;
- 61 (17) Include a program implementation schedule.
- 62 (c) The provisions of this section shall expire on December 31, 2031. The expiration of the
- 63 section shall not affect any community solar projects previously approved by the commission
- 64 pursuant to this section on or before December 31, 2031.

NOTE: The purpose of this bill is to create a community solar program where subscribers can purchase an interest in a solar facility and use credits against their electric utility costs; establishing parameters and conditions for the program; and providing for administration and rulemaking by the Public Service 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.