

WEST VIRGINIA CODE: §31G-4-5

§31G-4-5. Electric power utilities; feasibility study for providing broadband services; Public Service Commission to assist; proposed legislation to be developed; report.

(a) For purposes of this section:

- (1) "Commission" shall mean the West Virginia Public Service Commission.
- (2) "Council" shall mean the Broadband Enhancement Council, as defined in §31G-1-1 of this code.
- (3) "Electric utility" shall mean any electric utility operating within this state that is regulated by the commission.
- (4) "Project" shall mean a middle-mile broadband infrastructure expansion project proposed by an electric utility.

(b) Each electric utility may investigate the feasibility of constructing and operating a project within the electric utility distribution system and, if it so elects, may submit a feasibility study of a proposed project to the council on or before December 1, 2019. Additional feasibility studies may be submitted to the council after December 1, 2019, without penalty.

(c) The council and the commission shall assist each such electric utility in its preparation of such a feasibility study.

(d) The feasibility study shall include an evaluation of the following:

(1) The scope of the proposed project for which the feasibility study is conducted, which shall include, but not be limited to:

(A) The route of the middle-mile infrastructure proposed for the project, the number of fiber strands that would be utilized in connection with the proposed project and dedicated to serve as the middle-mile, the location of the electric utility's distribution infrastructure that will be utilized in connection with the proposed project, the capacity of the middle-mile broadband infrastructure that will be available to lease to last-mile broadband Internet providers upon completion of the proposed project;

(B) The estimated cost of the proposed project, including but not limited to engineering costs, construction costs, permitting costs, materials and labor, right-of-way costs, and a reasonable rate of return to the electric utility;

(C) The proposed schedule of construction of the proposed project; and

(D) The method of attachment and connection of the middle-mile broadband fiber assets to the electric utility's distribution infrastructure;

(2) The regulatory and legal barriers to an electric utility constructing a project and operating middle-mile broadband infrastructure to provide access to unserved areas of the state, as defined in §31G-1-2 of this code, and proposed legislation to address such regulatory barriers;

(3) Whether it is in the public interest and the interest of the electric utility to make improvements to the distribution grid in furtherance of providing such middle-mile broadband Internet services in conjunction with its program of electric distribution projects;

(4) Whether it is in the public interest and the interest of the electric utility to operate middle-mile broadband Internet assets to provide access to unserved areas of the state;

(5) Whether it is in the public interest and the interest of the electric utility to permit a third party to lease such capacity to provide last-mile broadband Internet services to unserved areas of the state;

(6) Whether construction of middle-mile broadband Internet infrastructure utilizing electric utility distribution systems is feasible with respect to the maturity of the relevant technology, the compatibility of such services with existing electric services, and the financial requirements to undertake such project;

(7) The anticipated level of rate adjustment necessary to allow the electric utility to recover its costs associated with the proposed project, and a reasonable rate of return, on an expedited basis, that will be recovered by the electric utility through a rate adjustment at the commission; and

(8) Such other information that is pertinent to the project.

(e) Upon receipt of a feasibility study, the council shall post the same on the council website for written public comment for a period of seven days and then shall render a determination, by a majority vote of the council, as to the feasibility of the proposed project.

(f) In its consideration of the feasibility of a project, the council shall identify one or more last-mile broadband Internet providers that may lease the middle-mile broadband Internet capacity created by the proposed project pursuant to lease terms and conditions set by the council.

(g) The council shall render such feasibility determination within 60 days from the date the feasibility study is submitted to the council.

(h) Commencing January 1, 2020, and each year thereafter, the council shall give a report of its consideration of feasibility studies submitted pursuant to this section to the Governor, the President of the Senate, the Speaker of the House of Delegates, and the Joint Committee on

Government and Finance.

WV Legislature