WEST VIRGINIA CODE: §24-2-1O

§24-2-1o. Renewable energy facilities program.

(a) The Legislature finds and declares that:

(1) West Virginia is rich in energy resources, which provide many advantages to the state, its economy and its citizens;

(2) West Virginia's abundant mineral reserves have created, and will continue to create, many benefits to the state and its citizens, including thousands of jobs, a strong tax base and a low-cost, reliable source of electricity;

(3) Coal-fired plants currently supply over 90 percent of electricity generation to the citizens and businesses of this state;

(4) Businesses that may otherwise locate or expand facilities in this state often require that a portion of the electricity that they purchase be generated via renewable sources;

(5) Creating a program for the development of certain renewable sources of electricity by electric utilities will result in increased economic development opportunities in the state, create jobs and enhance the use of the state's electricity generation; and

(6) Creating a program to authorize electric utilities to provide a portion of the state's electricity needs through a process that allows them to plan, design, construct, purchase, own and operate renewable electric-generating facilities, energy storage resources, or both, pursuant to this section is in the public interest of the state.

(b) *Definitions* – For the purpose of the section:

"Capital investments" include, but are not limited to, costs related to the planning, design, construction, purchase, and ownership of renewable electric-generating facilities, energy storage resources, and interconnections with transmission and distribution facilities.

"Commission" or "Public Service Commission" means the Public Service Commission of West Virginia.

"Electric utility" means any electric distribution company that sells electricity to retail customers in this state under rates regulated by the commission. Unless specifically provided for otherwise, for the purposes of this section, the term "electric utility" may not include rural electric cooperatives, municipally owned electric facilities or utilities serving less than 30,000 residential electric customers in West Virginia.

"Eligible site" means any site in this state that has been previously used in electric generation, industrial, manufacturing or mining operations, including, but not limited to,

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brownfields, closed landfills, hazardous waste sites, former industrial sites, and former mining sites. In the event that there is no available site that has been previously used in electric generation, industrial, manufacturing or mining operations in the area to be served by a renewable electric facilities program, an eligible site may include any suitable site in this state approved for use in connection with a renewable electric facilities program by the Secretary of the Department of Commerce.

"Energy storage resource" means infrastructure located on an eligible site that allows for the energy absorption and release of electrical energy into the electric grid.

"Renewable electric facilities program" means a program proposed by an electric utility to plan, design, construct, purchase, own, and operate renewable electric-generating facilities, energy storage resources, or both, pursuant to this section: *Provided*, That a renewable electric facilities program may not consist solely of energy storage resources.

"Renewable electric-generating facility" means infrastructure located on an eligible site that generates electricity solely through solar photovoltaic methods or other solar methods.

(c) Electric utilities may file with the commission an application for a multiyear comprehensive renewable energy facilities program that complies with the provisions of this section for planning, designing, constructing, purchasing, owning, and operating renewable electric-generating facilities, energy storage resources, or both, by the electric utility. Subject to commission review and approval, a renewable energy facilities program may be amended and updated by the electric utility. The recovery of costs in support of the renewable energy facilities program shall be allowed in the manner set forth in this section.

(d) Any renewable energy facilities program shall comply with the following requirements:

(1) An electric utility may purchase each renewable electric-generating facility and each energy storage resource from a developer of renewable electric-generating facilities or energy storage resources or construct such facilities on its own, as applicable. Any purchase of a renewable electric-generating facility or energy storage resources shall be subject to a competitive procurement administered by the electric utility. An electric utility may select to purchase a renewable electric-generating facility, energy storage resource, or both, based on a myriad of factors, including, but not limited to, price and nonprice criteria, which shall include, but not be limited to, geographic distribution of generating capacity, areas of higher employment, or regional economic development.

(2) An electric utility may elect to petition the commission, outside of a base rate case proceeding, at any time for a prudency determination with respect to the purchase, construction, and ownership by the electric utility of one or more renewable electric-generating facilities, energy storage resources, or both. The commission's final order regarding any such petition shall be entered by the commission within 150 days after the date of the filing of such petition.

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(3) No renewable electric-generating facility shall have a generating capacity greater than 50 megawatts until such time as 85 percent of that renewable electric-generating facility's annual energy output is being sold or is contracted to be sold to residential, commercial, or industrial customers pursuant to a renewable special contract or renewable tariff, and, thereafter, any expansion of that or another renewable energy-generating facility's generating capacity shall proceed in increments of up to 50 megawatts each until such time as 85 percent or more of all renewable energy-generating facility's aggregate, annual energy output is being sold or is contracted to be sold to customers pursuant to a renewable special contract or renewable tariff;

(4) No single renewable electric-generating facility shall have a generating capacity greater than 200 megawatts;

(5) The cumulative generating capacity of all renewable electric-generating facilities operating at any given time, and for which rate recovery is provided by the commission under this section, shall not exceed 400 megawatts among all investor-owned electric utilities in this state: *Provided*, That the cumulative generating capacity of all renewable electric-generating facilities operating at any one time, and for which rate recovery is provided by the commission under this section, shall not exceed 200 megawatts for all electric utilities within the state owned by the same corporate parent company;

(6) The calculation of maximum megawatts of generating capacity for renewable electric-generating facilities established in this subsection shall not include the storage capacity of energy storage resources;

(7) As part of the renewable energy facilities program, the electric utilities must offer the energy output for sale to customers from all classes of service.

(e) Applications made under this section are in lieu of an application for a certificate of public convenience and necessity pursuant to §24-2-11 of this code and shall contain the following:

(1) A description of the renewable electric-generating facilities, energy storage resources, or both, in such detail as the commission prescribes, including, but not limited to, the generating capacity and location of the facilities and a description of the competitive purchase procurement process administered by the electric utility that is required under this section;

(2) A proposed concurrent cost-recovery mechanism for actual and projected capital investments in the renewable electric-generating facilities, energy storage resources, or both, and for operation and maintenance expenses and taxes associated with such facilities; and

(3) Other information that the applicant considers relevant or the commission requires.

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(f) Upon filing of an application, the applicant shall publish, in the form the commission directs, which form shall include, but not be limited to, the anticipated rates and, if any, rate increase under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with §59-3-1 *et seq.*, of this code, the publication area to be each county in which service is provided by the electric utility, a notice of the filing of the application and that the commission shall hold a hearing on the application within 90 days of the notice; unless no opposition to the rate change is received by the commission within one week of the proposed hearing date, in which case the hearing can be waived, and the commission shall issue a final order within 150 days of the application filing date.

(g) The planning, design, construction, purchase, ownership, and operation of renewable electric-generating facilities, energy storage resources, or both, pursuant to this section is in the public interest, and the commission shall so find when considering applications for renewable energy facilities programs submitted by an electric utility pursuant to this section.

(h) Upon notice and hearing, if required by the commission, the commission shall approve the applications made under this section and allow concurrent recovery of costs related to the expenditures, as provided in subsection (i) of this section, if the commission finds that the expenditures and the associated rate requirements are just and reasonable and that the applications comply with the requirements of this section.

(i) Upon commission approval, electric utilities shall be authorized to implement renewable electric facilities programs and to concurrently recover their costs, including a return on capital investments, operation and maintenance, depreciation, and tax expenses directly attributable to the renewable electric facilities program capital investments, if any, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the average planned net incremental increase to rate base attributable to the renewable electric facilities program for the coming year, considering the projected amount and timing of capital investments under the renewable electric facilities program plus any capital investments in previous years of the program. The rate of return shall be determined by utilizing the rate of return on equity and the capital structure authorized by the commission in the electric utility's most recent base rate case proceeding or in the case of a settled base rate case, a rate of return on equity set forth in or associated with such settlement or, if neither is set forth in or associated with such settlement, a rate of return on equity and a capital structure determined by the commission to be reasonable, and the projected average weighted cost of the electric utility's debt during the period of the renewable electric facilities program to determine the weighted cost of capital based upon the electric utility's capital structure determined as specified above.

(2) Income taxes applicable to the return allowed on the renewable electric facilities program shall be calculated at the statutory rate for inclusion in rates.

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(3) Incremental operation and maintenance, depreciation, and property tax expenses directly attributable to the renewable electric facilities program shall be estimated for the upcoming year.

(4) Following commission approval of its application made under this section, an electric utility shall place into effect rates that include an increment for concurrent cost recovery that recovers the allowance for return, related income taxes at the statutory rate, operation and maintenance, depreciation, and property tax expenses associated with the electric utility's actual and projected capital investments under the renewable electric facilities program for the upcoming year, net of contributions to recovery of those incremental costs provided by customers who have executed renewable special contracts, or who are taking power under renewable tariffs and are served by the renewable electric facilities program investments, if any, ("incremental cost-recovery increment"). In each year subsequent to the order approving the renewable electric facilities program and the incremental cost-recovery increment, the electric utility shall file an application with the commission setting forth a new proposed incremental cost recovery increment for concurrent cost recovery of forecasted costs to be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual incremental costs attributable to the renewable electric facilities program, for the preceding year.

(5) The renewable electric-generating facilities, energy storage resources, or both, constructed, purchased, contracted, owned, installed, and in service pursuant to an application approved by the commission shall be considered used and useful for rate recovery purposes. Any concurrent cost recovery mechanism approved by the commission shall limit the amount of cost to be recovered from any individual customer of the electric utility to a maximum of $1,000 per month: *Provided,* That this limitation shall not impact the electric utility's ability to recover all costs incurred pursuant to this section from other customers. Customers who have executed renewable special contracts or are taking power under renewable tariffs pursuant to an approved renewable electric facilities program are not subject to any such limits imposed by the commission.

(6) If an electric utility serves customers in more than one jurisdiction, and a jurisdiction other than this state denies the electric utility recovery of the costs incurred pursuant to a renewable electric facilities program approved by the commission and allocated to that jurisdiction, the electric utility shall recover all of the costs of the renewable electric facilities program from its West Virginia jurisdictional customers if the commission finds that the expenditures and the associated rate requirements are just and reasonable, and all attributes of the renewable electric facilities program, including energy, capacity, and renewable energy credits shall be assigned to this state.

(j) The electric utility may make any accounting accruals necessary to establish a regulatory asset or liability through which actual incremental costs incurred and costs recovered through the rate mechanism are tracked.

(k) With respect to renewable electric facilities programs, electric utilities may defer

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incremental operation and maintenance expenses attributable to regulatory and compliance-related requirements introduced after the electric utility's last base rate case proceeding and not included in the electric utility's current base rates or incremental cost-recovery increment in lieu of current recovery. In a future base rate case, the commission shall allow recovery of such deferred costs amortized over a reasonable period of time to be determined by the commission provided the commission finds that the costs were reasonable and prudently incurred and were not reflected in rates in prior base rate cases.

(l) The provisions of this section shall expire on December 31, 2025. The expiration of this section shall not affect the full and timely cost recovery associated with a renewable energy facilities program for which an application has been filed with the commission pursuant to this section on or before December 31, 2025, nor for any projects previously approved by the commission pursuant to this section.

(m) Notwithstanding any provision of this article to the contrary, no provision herein this section shall displace any current levels of coal-fired generation capacity.

(n) Notwithstanding the provisions of §24-2-11c of this code, any person or entity: (1) Who is not an electric utility; (2) who intends to purchase or construct and operate an electric generating facility as an exempt wholesale generator under federal law; (3) who will generate electricity solely through solar photovoltaic or other solar methods; and (4) who, if desired, intends to purchase or construct and operate energy storage for such electricity may file an application with the Public Service Commission under this section in such detail and with such publication requirements as the commission may prescribe; and the commission shall hold a hearing, unless waived, within 90 days of publication and issue a final order on a siting certificate or modification thereof within 150 days of the application filing date. No other provision of this section shall apply to these exempt wholesale generators.

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