WEST VIRGINIA CODE: §8-19-2

§8-19-2. Contracts for purchase of electric power or energy by a municipality; definitions; requirements; payments; rates and charges.

(a) For the purposes of this section:

(1) “Contract” means an agreement entered into by a municipality with any other party for the purchase of electric output, capacity, or energy from a project as defined herein;

(2) “Any other party” means any other legal entity, including, but not limited to, another municipality, political subdivision, public authority, agency, or instrumentality of any state or the United States, a partnership, a limited partnership, a limited liability company, a corporation, an electric cooperative or an investor-owned utility existing under the laws of any state; and

(3) “Project” or “projects” means systems or facilities owned by another party and used for the generation, transmission, transformation, or supply of electric power, or any interest in them, whether an undivided interest as a tenant in common or otherwise, or any right to the output, capacity, or services thereof.

(b) In addition to the general authority to purchase electricity on a wholesale basis for resale to its customers, any municipality that owns and operates an electric power system under the provisions of this article may enter into a contract with any other party for the purchase of electricity from one or more projects located in the United States that provides that the contracting municipality is obligated to make payments required by the contract whether or not a project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the power and energy contracted for, and that the payments shall not be subject to any reduction, whether by offset or otherwise, and shall not be conditioned upon performance or nonperformance by any other party. The contract may provide that, in the event of a default by the municipality or any other party to the contract in the performance of each entity’s obligations under the contract, any nondefaulting municipality or any other party to the contract shall on a pro rata basis succeed to the rights and interests of, and assume the obligations of, the defaulting party.

(c) Notwithstanding any other provisions of law, ordinance or charter provision to the contrary, a contract under §8-19-2(b) of this code may extend for more than 50 years or 50 years from the date a project is estimated to be placed into normal continuous operation and the execution and effectiveness of the contract is not subject to any authorizations or approvals by the state or any agency, commission, instrumentality, or political subdivision thereof except as otherwise specifically required by law.

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(d) A contract §8-19-2(b) of this code may provide that payments by the municipality are made solely from and may be secured by a pledge of and lien upon revenues derived by the municipality from ownership and operation and that payments shall constitute an operating expense of the electric power system. No obligation under the contract shall constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the municipality or upon any of its income, receipts, or revenues, except the revenues of the municipality's electric power system. Neither the faith and credit nor the taxing power of the municipality shall be pledged for the payment of any obligation under the contract.

(e) A municipality contracting under the provisions of §8-19-2(b) of this code is obligated to fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services it sells, furnishes, or supplies through its electric power system in an amount sufficient to provide revenues adequate to meet its obligations under the contract and to pay any and all other amounts payable from or constituting a charge and lien upon the revenues, including the amounts necessary to pay the principal and interest on any municipal bonds issued related to its electric power system: Provided, That any change in the rates and charges of the municipality to the customers of the electric power system under the provisions of this section are subject to the provisions and requirements of §8-19-2a of this code and the obligations of the municipality under the contract are costs of providing electric service within the meaning of that section.

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