WEST VIRGINIA LEGISLATURE

ENROLLED

SENATE BILL NO. 419

(By Senators Hous and Hunter)

PASSED March 10, 2006

In Effect 90 days from Passage
ENROLLED

Senate Bill No. 419

(BY SENATORS LOVE AND HUNTER)

[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §16-13A-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-2-1 and §24-2-11 of said code, all relating to the authority of the Public Service Commission; providing that an innovative, alternative sewer service method provided by a public utility is subject to the jurisdiction of the Public Service Commission; modifying the review by the Public Service Commission of public convenience and necessity applications where the project has been approved by Infrastructure and Jobs Development Council; and providing that Infrastructure and Jobs Development Council-approved projects receiving a certificate of public convenience may not be compelled to reopen.

Be it enacted by the Legislature of West Virginia:

That §16-13A-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-1 and §24-2-11 of said code be amended and reenacted, all to read as follows:
CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-25. Borrowing and bond issuance; procedure.

(a) Notwithstanding any other provisions of this article to the contrary, a public service district may not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article without the prior consent and approval of the Public Service Commission: Provided, That approval of funding set forth in section eleven, article two, chapter twenty-four of this code or this section is not required if the funding is for a project which has received a certificate of public convenience and necessity after eighth day of July, two thousand five, from the commission and where the cost of the project changes but the change does not affect the rates established for the project.

(b) The Public Service Commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied with chapter five-g of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to:

(1) Experience with the same engineering firm; or

(2) Completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.
(c) An engineering contract that meets one or more of the following criteria is exempt from the waiver or approval requirements:

(1) A contract with a public service district that is a Class A utility on the first day of April, two thousand three, or subsequently becomes a Class A utility as defined by commission rule;

(2) A contract with a public service district that does not require borrowing and that can be paid out of existing rates;

(3) A contract where the payment of engineering fees are contingent upon the receipt of funding, and commission approval of the funding, to construct the project which is the subject of the contract; or

(4) A contract that does not exceed fifteen thousand dollars.

(d) Requests for approval or waivers of engineering contracts shall be deemed granted thirty days after the filing date unless the staff of the Public Service Commission or a party files an objection to the request. If an objection is filed, the Public Service Commission shall issue its decision within one hundred twenty days of the filing date. In the event objection is received to a request for a waiver, the application shall be considered a request for waiver as well as a request for approval in the event of a waiver is not appropriate.

(e) Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the Public Service Commission in accordance with the provision of chapter twenty-four of this code when a public service district is seeking to acquire or construct public service property.
CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity, by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems: Provided, That if a public utility intends to provide sewer service by an innovative, alternative method, as defined by the Federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities; and any other public service: Provided, however, That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the jurisdiction of the commission with regard to the provisions of such residential service: Provided further, That upon request of any of the customers of such natural gas producers, the commission may,
upon good cause being shown, exercise such authority as
the commission may deem appropriate over the operation,
rates and charges of such producer and for such length of
time as the commission may consider to be proper: And
provided further, That the jurisdiction the commission
may exercise over the rates and charges of municipally
operated public utilities is limited to that authority
granted the commission in section four-b of this article:
And provided further, That the decision-making authority
granted to the commission in sections four and four-a of
this article shall, in respect to an application filed by a
public service district, be delegated to a single hearing
examiner appointed from the commission staff, which
hearing examiner shall be authorized to carry out all
decision-making duties assigned to the commission by said
sections, and to issue orders having the full force and
effect of orders of the commission.

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

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

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

(3) The utility operating in the adjoining state is regu-
lated by a regulatory agency or commission of the adjoin-
ing state; and

(4) The number of customers to be served is not substan-
tial. The rates the out-of-state utility charges West
Virginia customers shall be the same as the rate the utility
is duly authorized to charge in the adjoining jurisdiction.
The commission, in the case of any such utility, may
revoke its waiver of jurisdiction for good cause.
(c) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before the first day of July, two thousand three, shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article as if the certificate of public convenience and necessity for such facility were a siting certificate issued under said section and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(2) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before the first day of July, two thousand three, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article.
and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale, and that had been constructed and had engaged in commercial operation on or before the first day of July, two thousand three, shall not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility, regardless of whether such facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: Provided, That such owner or operator shall be subject to subdivision (5) of this subsection if a material modification of such facility is made or constructed.

(4) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before the first day of July, two thousand three, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission.
pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of section eleven-c of this article and necessity for the modification pursuant to the provisions of section eleven of this article and, except for the provisions of section eleven-c of this article, shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to section eleven of this article to construct an electric generating facility described in this subsection or to make or construct a material modification of such electric generating facility as an application for a siting certificate pursuant to section eleven-c of this article if the application for the certificate of public convenience and necessity was filed with the commission prior to the first
day of July, two thousand three, and if the commission has not issued a final order thereon as of that date.

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

§24-2-11. Requirements for certificate of public convenience and necessity.

(a) No public utility, person or corporation shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing such construction franchise, license or permit.

(b) Upon the filing of any application for such certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, such certificate of convenience and necessity: Provided, That the commission, after it gives proper notice and if no protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of protest, made within thirty days, to the application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three,
chapter fifty-nine of this code. The publication area shall
be the proposed area of operation.

(c) Any public utility, person or corporation subject to
the provisions of this section shall give the commission at
least thirty days' notice of the filing of any such applica-
tion for a certificate of public convenience and necessity
under this section: Provided, That the commission may
modify or waive the thirty-day notice requirement and
shall waive the thirty-day notice requirement for projects
approved by the infrastructure and jobs development
council.

(d) The commission shall render its final decision on any
application filed under the provisions of this section or
section eleven-a of this article within two hundred seventy
days of the filing of the application and within ninety days
after final submission of any such application for decision
following a hearing.

(e) The commission shall render its final decision on any
application filed under the provisions of this section that
has received the approval of the Infrastructure and Jobs
Development Council pursuant to article fifteen-a, chapter
thirty-one of this code within one hundred eighty days
after filing of the application: Provided, That if a protest
is received within thirty days after the notice is provided
pursuant to subsection (b) of this section, the commission
shall render its final decision within two hundred seventy
days of the filing of the application.

(f) If the projected total cost of a project which is the
subject of an application filed pursuant to this section or
section eleven-a of this article is greater than fifty million
dollars, the commission shall render its final decision on
any such application filed under the provisions of this
section or section eleven-a of this article within four
hundred days of the filing of the application and within
ninety days after final submission of any such application
for decision after a hearing.
(g) If a decision is not rendered within the aforementioned one hundred eighty days, two hundred seventy days, four hundred days or ninety days, the commission shall issue a certificate of convenience and necessity as applied for in the application.

(h) The commission shall prescribe such rules as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(i) Pursuant to the requirements of this section the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline or other seller to such person; or

(2) Natural gas produced by such person.

(j) A public utility, including a public service district, which has received a certificate of public convenience and necessity after the eighth day of July, two thousand five from the commission and has been approved by the Infrastructure and Jobs Development Council, is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not affect the rates established for the project.

(k) Any public utility, person or corporation proposing any electric power project that requires a certificate under this section is not required to obtain such certificate before applying for or obtaining any franchise, license or permit from any municipality or other governmental agency.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 1st Day of April, 2006.

Governor
PRESENTED TO THE
GOVERNOR
MAR 31 2006

Time 10:30 AM