

FILED

2015 APR -2 P 12: 37

WEST VIRGINIA LEGISLATURE
EIGHTY-SECOND LEGISLATURE

OFFICE OF THE SECRETARY OF STATE

REGULAR SESSION, 2015



ENROLLED

Senate Bill No. 576

(BY SENATORS BLAIR, WALTERS, WILLIAMS, LEONHARDT,
FACEMIRE, MAYNARD, YOST, SNYDER, FERNS, MILLER, GAUNCH,
MULLINS, PALUMBO AND BOSO)

[PASSED MARCH 10, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB576

FILED

2015 APR -2 P 12:37

ENROLLED

Senate Bill No. 576

OFFICE WEST VIRGINIA
SECRETARY OF STATE

(BY SENATORS BLAIR, WALTERS, WILLIAMS, LEONHARDT,
FACEMIRE, MAYNARD, YOST, SNYDER, FERNS, MILLER, GAUNCH,
MULLINS, PALUMBO AND BOSO)

[Passed March 10, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §24-2-1 of the Code of West Virginia, 1931, as amended, relating to internet protocol-enabled service and voice over internet protocol-enabled service; prohibiting Public Service Commission jurisdiction of internet protocol-enabled service and voice over internet protocol-enabled service; and limiting Public Service Commission jurisdiction of certain telephone company transactions.

Be it enacted by the Legislature of West Virginia:

That §24-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

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

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

4 Common carriage of passengers or goods, whether by air,
5 railroad, street railroad, motor or otherwise, by express or
6 otherwise, by land, water or air, whether wholly or partly by
7 land, water or air; transportation of oil, gas or water by
8 pipeline; transportation of coal and its derivatives and all
9 mixtures and combinations thereof with other substances by
10 pipeline; sleeping car or parlor car services; transmission of
11 messages by telephone, telegraph or radio; generation and
12 transmission of electrical energy by hydroelectric or other
13 utilities for service to the public, whether directly or through a
14 distributing utility; supplying water, gas or electricity, by
15 municipalities or others; sewer systems servicing twenty-five or
16 more persons or firms other than the owner of the sewer
17 systems: *Provided*, That if a public utility intends to provide
18 sewer service by an innovative, alternative method, as defined
19 by the Federal Environmental Protection Agency, the
20 innovative, alternative method is a public utility function and
21 subject to the jurisdiction of the Public Service Commission
22 regardless of the number of customers served by the innovative,
23 alternative method; any public service district created under the
24 provisions of article thirteen-a, chapter sixteen of this code; toll
25 bridges, wharves, ferries; solid waste facilities; and any other
26 public service: *Provided, however*, That natural gas producers
27 who provide natural gas service to not more than twenty-five
28 residential customers are exempt from the jurisdiction of the
29 commission with regard to the provisions of such residential
30 service: *Provided further*, That upon request of any of the
31 customers of such natural gas producers, the commission may,
32 upon good cause being shown, exercise such authority as the
33 commission may deem appropriate over the operation, rates and
34 charges of such producer and for such length of time as the
35 commission may consider to be proper: *And provided further*,
36 That the jurisdiction the commission may exercise over the rates
37 and charges of municipally operated public utilities is limited to
38 that authority granted the commission in section four-b of this
39 article: *And provided further*, That the decision-making

40 authority granted to the commission in sections four and four-a
41 of this article shall, in respect to an application filed by a public
42 service district, be delegated to a single hearing examiner
43 appointed from the commission staff, which hearing examiner
44 shall be authorized to carry out all decision-making duties
45 assigned to the commission by said sections, and to issue orders
46 having the full force and effect of orders of the commission.

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

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

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

55 (3) The utility operating in the adjoining state is regulated
56 by a regulatory agency or commission of the adjoining state;
57 and

58 (4) The number of customers to be served is not
59 substantial. The rates the out-of-state utility charges West
60 Virginia customers shall be the same as the rate the utility is
61 duly authorized to charge in the adjoining jurisdiction. The
62 commission, in the case of any such utility, may revoke its
63 waiver of jurisdiction for good cause.

64 (c) Any other provisions of this chapter to the contrary
65 notwithstanding:

66 (1) An owner or operator of an electric generating facility
67 located or to be located in this state that has been designated
68 as an exempt wholesale generator under applicable federal

69 law, or will be so designated prior to commercial operation
70 of the facility, and for which such facility the owner or
71 operator holds a certificate of public convenience and
72 necessity issued by the commission on or before July 1, 2003,
73 shall be subject to subsections (e), (f), (g), (h), (i) and (j),
74 section eleven-c of this article as if the certificate of public
75 convenience and necessity for such facility were a siting
76 certificate issued under said section and shall not otherwise
77 be subject to the jurisdiction of the commission or to the
78 provisions of this chapter with respect to such facility except
79 for the making or constructing of a material modification
80 thereof as provided in subdivision (5) of this subsection.

81 (2) Any person, corporation or other entity that intends
82 to construct or construct and operate an electric generating
83 facility to be located in this state that has been designated as
84 an exempt wholesale generator under applicable federal
85 law, or will be so designated prior to commercial operation
86 of the facility, and for which facility the owner or operator
87 does not hold a certificate of public convenience and
88 necessity issued by the commission on or before July 1,
89 2003, shall, prior to commencement of construction of the
90 facility, obtain a siting certificate from the commission
91 pursuant to the provisions of section eleven-c of this article
92 in lieu of a certificate of public convenience and necessity
93 pursuant to the provisions of section eleven of this article.
94 An owner or operator of an electric generating facility as is
95 described in this subdivision for which a siting certificate
96 has been issued by the commission shall be subject to
97 subsections (e), (f), (g), (h), (i) and (j), section eleven-c of
98 this article and shall not otherwise be subject to the
99 jurisdiction of the commission or to the provisions of this
100 chapter with respect to such facility except for the making
101 or constructing of a material modification thereof as
102 provided in subdivision (5) of this subsection.

103 (3) An owner or operator of an electric generating facility
104 located in this state that had not been designated as an exempt
105 wholesale generator under applicable federal law prior to
106 commercial operation of the facility, that generates electric
107 energy solely for sale at retail outside this state or solely for
108 sale at wholesale in accordance with any applicable federal
109 law that preempts state law or solely for both such sales at
110 retail and such sales at wholesale, and that had been
111 constructed and had engaged in commercial operation on or
112 before July 1, 2003, shall not be subject to the jurisdiction of
113 the commission or to the provisions of this chapter with
114 respect to such facility, regardless of whether such facility
115 subsequent to its construction has been or will be designated
116 as an exempt wholesale generator under applicable federal
117 law: *Provided*, That such owner or operator shall be subject
118 to subdivision (5) of this subsection if a material modification
119 of such facility is made or constructed.

120 (4) Any person, corporation or other entity that intends to
121 construct or construct and operate an electric generating
122 facility to be located in this state that has not been or will not
123 be designated as an exempt wholesale generator under
124 applicable federal law prior to commercial operation of the
125 facility, that will generate electric energy solely for sale at
126 retail outside this state or solely for sale at wholesale in
127 accordance with any applicable federal law that preempts
128 state law or solely for both such sales at retail and such sales
129 at wholesale and that had not been constructed and had not
130 been engaged in commercial operation on or before July 1,
131 2003, shall, prior to commencement of construction of the
132 facility, obtain a siting certificate from the commission
133 pursuant to the provisions of section eleven-c of this article
134 in lieu of a certificate of public convenience and necessity
135 pursuant to the provisions of section eleven of this article.
136 An owner or operator of an electric generating facility as is
137 described in this subdivision for which a siting certificate has

138 been issued by the commission shall be subject to subsections
139 (e), (f), (g), (h), (i) and (j), section eleven-c of this article and
140 shall not otherwise be subject to the jurisdiction of the
141 commission or to the provisions of this chapter with respect
142 to such facility except for the making or constructing of a
143 material modification thereof as provided in subdivision (5)
144 of this subsection.

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

159 (6) The commission shall consider an application for a
160 certificate of public convenience and necessity filed pursuant
161 to section eleven of this article to construct an electric
162 generating facility described in this subsection or to make or
163 construct a material modification of such electric generating
164 facility as an application for a siting certificate pursuant to
165 section eleven-c of this article if the application for the
166 certificate of public convenience and necessity was filed with
167 the commission prior to July 1, 2003, and if the commission
168 has not issued a final order thereon as of that date.

169 (7) The limitations on the jurisdiction of the commission
170 over, and on the applicability of the provisions of this chapter

171 to, the owner or operator of an electric generating facility as
172 imposed by, and described in this subsection, shall not be
173 deemed to affect or limit the commission's jurisdiction over
174 contracts or arrangements between the owner or operator of
175 such facility and any affiliated public utility subject to the
176 provisions of this chapter.

177 (d) The commission shall not have jurisdiction of internet
178 protocol-enabled service or voice over internet protocol-
179 enabled service. As used in this subsection:

180 (1) "Internet protocol-enabled service" means any
181 service, capability, functionality or application provided
182 using internet protocol, or any successor protocol, that
183 enables an end user to send or receive a communication in
184 internet protocol format, or any successor format, regardless
185 of whether the communication is voice, data or video.

186 (2) "Voice over internet protocol service" means any
187 service that:

188 (i) Enables real-time two-way voice communications that
189 originate or terminate from the user's location using internet
190 protocol or a successor protocol; and

191 (ii) Uses a broadband connection from the user's location.

192 (3) The term "voice over internet protocol service" shall
193 include any service that permits users to receive calls that
194 originate on the public-switched telephone network and to
195 terminate calls on the public-switched telephone network.

196 (e) Notwithstanding any other provisions of this article,
197 the commission shall not have jurisdiction to review or
198 approve any transaction involving a telephone company
199 otherwise subject to sections twelve and twelve-a, article two,

200 chapter twenty-four of this code if all entities involved in the
201 transaction are under common ownership.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Mark R. Meyer
.....
Chairman Senate Committee

John B. Mc
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Mark S. Cannon
.....
Clerk of the Senate

Stephan J. Harrison
.....
Clerk of the House of Delegates

Phillip Pala
.....
President of the Senate

Paul P. Mason
.....
Speaker of the House of Delegates

The within *is approved* this the *2nd*
Day of *April*, 2015.

Earl Rasmussen
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 16 2015

Time 10:46 AM