ENROLLED

Committee Substitute for

Senate Bill 180

SENATOR BLAIR, original sponsor

[Passed April 4, 2017; in effect 90 days from passage]
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[Passed April 4, 2017; in effect 90 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.

(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 other than a political subdivision 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.

(b) The jurisdiction of the commission over political subdivisions of this state providing
separate or combined services and having at least four thousand five hundred customers and
annual combined gross revenues of $3 million or more that are political subdivisions of the state
is limited to:

(1) General supervision of public utilities, as granted and described in section five of this
article;

(2) Regulation of measurements, practices, acts or services, as granted and described in
section seven of this article;

(3) Regulation of a system of accounts to be kept by a public utility that is a political
subdivision of the state, as granted and described in section eight of this article;

(4) Submission of information to the commission regarding rates, tolls, charges or
practices, as granted and described in section nine of this article;

(5) Authority to subpoena witnesses, take testimony and administer oaths to any witness
in any proceeding before, or conducted by, the commission, as granted and described in section
ten of this article; and

(6) Investigation and resolution of disputes involving political subdivisions of the state
regarding inter-utility agreements, rates, fees and charges, service areas and contested utility
combinations.
42 (7) Customers of water and sewer utilities operated by a political subdivision of the state and customers of stormwater utilities operated by a public service district may bring formal or informal complaints regarding the commission's exercise of the powers enumerated in this section and the commission shall resolve these complaints.

46 (8) In the event that a political subdivision has a deficiency in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, the bond holder may petition the Public Service Commission for such redress as will bring the accounts to current status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to fully resolve the alleged deficiency or breach.

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

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

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

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

59 (4) The number of customers to be served is not substantial. 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.

63 (d) Any other provisions of this chapter to the contrary notwithstanding:

64 (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
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commission on or before July 1, 2003, 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 July 1, 2003, 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 has 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 July 1, 2003, 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 July 1, 2003, 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 in lieu of a
certificate of public convenience 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 July 1, 2003, 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.

(e) The commission shall not have jurisdiction of Internet protocol-enabled service or voice-over Internet protocol-enabled service. As used in this subsection:

(1) “Internet protocol-enabled service” means any service, capability, functionality or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communication is voice, data or video.

(2) “Voice-over Internet protocol service” means any service that:

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

(ii) Uses a broadband connection from the user's location.
(3) The term “voice-over Internet protocol service” includes any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission shall not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to sections twelve and twelve-a, article two, chapter twenty-four of this code if all entities involved in the transaction are under common ownership.
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 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 25th Day of April, 2017.

Governor
PRESENTED TO THE GOVERNOR

APR 13 2017

Time 9:07 AM