

Form #6

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

AGENCY: West Virginia Public Energy Authority TITLE NUMBER: 53

AMENDMENT TO AN EXISTING RULE: YES____, NO_X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: §53-3-1 (series 1)

TITLE OF RULE BEING PROPOSED: Rules and Procedure for the
Issuance of Bonds, Establishment of Fee Schedule and Cost
Allocations.

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) Senate Bill No. 1

SECTION §64-3-15(b), PASSED ON March 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: April 15, 1992

GENERAL COUNSEL

TITLE 53
LEGISLATIVE RULE
PUBLIC ENERGY AUTHORITY

SERIES 1

Rules and Procedure for the Issuance of Bonds,
Establishment of Fee Schedule and Cost Allocations

§53-3-1. General.

1.1 Scope. -- This rule includes special notice and public hearing provisions and establishes the fee schedule and the allocation of costs applicable to the issuance of bonds by the West Virginia Public Energy Authority.

1.2 Authority. -- W.Va. Code §5D-1-5(11).

1.3 Filing date. --

1.4 Effective date. --

§35-1-2. Definitions.

2.1 "Act" means the West Virginia Public Energy Authority Act compiled in W.Va. Code §5D-1-1 et seq.

2.2 "Applicant" means a person which requests the Authority to issue bonds to obtain funds for the purpose of financing the cost of acquisition and construction of a qualified project or any additions, extensions or improvements thereto.

2.3 "Qualified project" means either a natural gas transmission project or an electric power project as defined in the Act and that has been approved by a vote of the Authority that such project is consistent with the purposes of the Act.

2.4 The terms "Authority", "Board", "bond", "construction", "cost", "electric power project", "governmental agency", "natural gas transmission project" and "person" shall have the meanings ascribed to them in the W.Va. Code §5D-1-3.

§53-1-3. Prerequisites to Authority's Approval of Bond Issue.

3.1 Prior to consideration of the decision of the Board to issue bonds, the Board shall provide notice of a public hearing as follows:

3.1.1 At least thirty days prior to the date the public hearing is to be held, the Board shall provide written notice to all members of the Legislature. A member of the Legislature may notify the Board that the member does not desire such notice; in such case, the Board is not required to notify that member.

3.1.2 At least thirty days prior to the date the public hearing is to be held, the Board shall provide written notice to the county commission of each county within which the project is located.

3.1.3 At least thirty days prior to the date the public hearing is to be held, the Board shall provide written notice to the council of each municipality in each county within which the project is located.

3.1.4 During the two successive weeks prior to the public hearing, the Board shall maintain a posted notice at the county seat of each county within which the project is located. Such notice may be posted at the county courthouse and additional notices may be placed at other locations within the county. Such additional notices shall be conspicuous for the members of the public to observe.

3.1.5 The Board shall cause a class II legal advertisement, in compliance with W.Va. Code §59-3-1 et seq., to be published.

a. The notice shall be published in such a manner that the publication area will contain each county within which the project is located. The notice may be required to be published in more than one publication.

b. The notice shall be published at least fourteen days prior to the date of the public hearing, but in no event shall the notice be published more than twenty-one days prior to the date of the public hearing.

3.2 Prior to any final decision of the Board to authorize the issuance of bonds, the Board shall hold a public hearing.

3.2.1 The Authority shall appoint a representative of the Authority knowledgeable about the project considered to conduct the public hearing.

a. The public may be present and submit written statements or oral testimony.

b. The public may question the Authority's representative.

c. All of the testimony and evidence received at the hearing and the responses of the representative to questions shall be recorded by stenographic notes and characters or by mechanical means.

3.2.2 The representative shall make a report of the public hearing. At a minimum, the report shall contain the written comments submitted and a transcription of oral testimony presented. In addition, a summation of the speakers' remarks and the Authority's response to the comments shall be included.

3.2.3 The report shall be made available for review by the public and within thirty days following the public hearing, the report shall be provided to the following persons:

a. To any person making a written request to the Authority.

b. To all persons who received written notice of the public hearing.

c. To each member of the Board.

§53-1-4. Special Notice Requirements of Meetings at Which a Bond Issue will be Finally Considered.

4.1 Any person desiring notice of a meeting of the Board regarding the issuance of bonds may make a written request to the Board to be notified of such meeting. The request should state which particular project the person has an interest.

4.2 In addition to the meeting notice requirements compiled in 53 CSR 2, Procedure for Providing Notice of Meetings, notice shall be provided in the following manner for all regular or special meetings at which a bond issue will be finally considered.

4.2.2 The Chairperson shall cause a notice of the meeting to be published as a class II legal advertisement in compliance with W.Va. Code §59-3-1 et seq. The notice shall state the time, place and purpose of the meeting and the notice shall be published in each county in which the project is located.

4.2.3 The Chairperson shall cause a written notice of the meeting to be delivered by regular United States mail to any person who has previously made a request in accordance with section 4.1 of this rule. Such notice shall be sent in advance of the meeting so that the notice is delivered prior to the meeting date.

§53-1-5. Fees for the Issuance of Bonds.

5.1 The Authority shall be entitled to receive fees for the issuance of bonds by the Authority to applicants to provide funds for financing the costs of qualified projects.

5.2 Initial fee - Each applicant receiving funds from the Authority through issuance of bonds by the Authority shall pay to the Authority an initial fee.

5.2.1 The initial fee shall be calculated based on the total amount of the bonds issued in an amount equal to the following, including any fraction of a million dollars issued:

a. \$ 600 per million dollars issued for the first ten million dollars of an issue.

- b. \$ 375 per million dollars issued in excess of the first ten million dollars of an issue.

5.2.2 The minimum initial fee shall be \$5,000 dollars.

5.2.3 The initial fees shall be payable at the closing out of the proceeds of the bond issue.

5.3 Annual fees - Each applicant receiving funds from the issuance of bonds by the Authority shall pay to the Authority an annual fee.

5.3.1 By the affirmative vote of a majority of the Board members, the Board shall set the amount of the annual fee.

5.3.2 In no event may the annual fee exceed an amount of 1/20th of 1% (1/20%) of the bonds outstanding for a particular issue.

5.3.3 The initial annual fee shall be payable at the time of the closing out of the proceeds of the bond issue.

5.3.4 Each subsequent annual fee shall be paid on the anniversary date of the respective bond issue, as calculated as of the date thirty (30) days immediately preceding said anniversary date.

5.3.5 The Authority may waive or reduce the annual fee upon written request by the recipient of the bond funds for good cause shown. Such waiver or reduction must be requested ninety (90) days prior to the due date of the payment of the fee.

§53-1-6. Allocation of Costs Applicable to Issuance of Bonds

6.1 All costs incurred by the Authority that can be directly attributed to a bond issue pending before the Authority shall be allocated to that bond issue and such costs shall be paid at the closing out of the proceeds of that bond issue. All such costs shall be in addition to the fees imposed and payable pursuant to the provisions of section 5 of this rule.

6.2 Without limiting in any manner the costs that can be allocated pursuant to section 6.1 of this rule, all legal and other professional fees incurred by the Authority that can be attributed to a bond issue shall be allocated to that bond issue and such legal and other professional fees shall be paid at the closing out of the proceeds of that bond issue. All such costs shall be in addition to the fees imposed and payable pursuant to the provisions of section 5 of this rule.

6.3 In the event that a bond issue is not consummated for any reason, whether by action of the Authority or otherwise, all costs incurred by the Authority that can be attributed to such bond issue, including any legal and other professional fees, shall be paid by the entity or entities, if any, that proposed or requested such bond issue.

§53-1-7. Amendment of Fee Schedule.

7.1 The Authority may amend the fee schedule by the affirmative vote of a majority of the Board members and any such amendment shall be binding and applicable to all issues outstanding at the time of the effective date of the change and to all subsequent issues.

7.1.1 In no event may the annual fees imposed and payable pursuant to this rule exceed an applicant's proportionate share of the projected operating expenses of the Authority for the year of assessment.

7.1.2 In no event may the annual fee imposed and payable pursuant to the provisions of this rule exceed 1/20th of 1% of the bonds outstanding for a particular issue.

Bill Pub Energy Fees

53-1

H. B. 4316

(By Delegate Grubb)

(Introduced January 27, 1991; referred to the

Committee on Finance then the Judiciary)

A BILL to amend article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to authorizing the public energy authority to promulgate legislative rules relating to the establishment of a fee schedule and cost allocations to the issuance of bonds by the authority.

Be it enacted by the Legislature of West Virginia:

That article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fourteen, to read as follows:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-3-14. Public energy authority.

4316

1 The legislative rules filed in the state register on the
2 twentieth day of December, one thousand nine hundred ninety,
3 modified by the public energy authority to meet the objections of
4 the legislative rule-making review committee and refiled in the
5 state register on the twenty-sixth day of July, one thousand nine
6 hundred ninety-one, relating to the public energy authority
7 (establishment of a fee schedule and cost allocations to the
8 issuance of bonds by the West Virginia public energy authority)
9 are authorized.

10

11 NOTE: The purpose of this bill is to authorize the Public
12 Energy Authority to promulgate legislative rules relating to the
13 establishment of a fee schedule and cost allocations to the
14 issuance of bonds by the authority.

15

16 This section is new; therefore, strike-throughs and
17 underscoring have been omitted.