



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Public Service Commission TITLE-SERIES: 150-39

RULE TYPE: Legislative Exempt Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Rules Governing Siting Certificates for Solar Exempt Wholesale Generators

CITE STATUTORY AUTHORITY: 24-1-7, 24-2-10(n) and 24-2-11c

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

September 3, 2020

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Janet A Terry -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION**

**SERIES 39
RULES GOVERNING SITING CERTIFICATES FOR
SOLAR EXEMPT WHOLESALE GENERATORS**

§150-39-1. General.

1.1. Scope. -- This legislative rule applies to any entity that intends to construct, or construct and operate, a qualified solar electric generating facility to provide wholesale service as described in W.Va. Code §24-2-1o(n). Qualified applicants electing to proceed under these Rules are not subject to Series 30 Rules Governing Siting Certificates.

1.2. Authority. -- W. Va. Code §§ 24-1-7, 24-2-1o(n) and 24-2-11c.

1.3. Filing Date. -- August 4, 2020

1.4. Effective Date. -- September 3, 2020

§150-39-2. Definitions.

2.1. Exempt Wholesale Generator (EWG) - An electric generating facility to be located in West Virginia that has been designated as an exempt wholesale generator under federal law or will be so designated prior to commercial operation of the facility. As used herein, this term shall also include any Transmission support line associated with the EWG facility.

2.2. Solar EWG siting certificate - A siting certificate issued by the Public Service Commission of West Virginia pursuant to W.Va. Code §24-2-1o.

2.3. Solar EWG generating facility - A West Virginia located EWG facility which is not owned by an electric utility that will generate electricity solely through solar photovoltaic or other solar methods and, if applicable, may store such electricity.

2.4. Transmission support line - A transmission line of less than 200 thousand volts that, except for Rule 3.5., would be certificated by the Commission pursuant to W.Va. Code §24-2-11, and not pursuant to W.Va. Code §24-2-11a.

§150-39-3. Pre-filing and Filing Requirements.

3.1. Any entity intending to file an application for a Solar EWG siting certificate shall, at least fifteen (15) days and no more than ninety (90) days prior to the date it intends to file its application, give the Commission notice by filing with the Commission's Executive Secretary an original and twelve (12) copies of a letter of notification. The Commission may modify or waive this requirement. A pre-filing notice shall expire after 90 days.

3.2. An applicant for a Solar EWG siting certificate may request that information it files in response to discovery requests, or pursuant to these rules be accorded proprietary treatment. The Commission will review such requests pursuant to applicable statutory and case law. Any party asserting confidentiality for such information must:

3.2.1 File with the Executive Secretary's office an unredacted hard copy version of each document that contains the confidential information. Each page, including cover page, for which a confidential designation is claimed, must be identified with a bold header stating, "Confidential Version."

In addition, all information for which confidential treatment is requested must be identified with the use of bold double square brackets ([[]) at the beginning and end of the material that is redacted in the public version. The party claiming confidentiality should restrict its designations to encompass only the specific information that it asserts is confidential. If a confidential designation is challenged, the party claiming confidentiality shall have the burden to prove that the information designated as confidential falls under the standards for nondisclosure enunciated in the West Virginia Freedom of Information Act, W.Va. Code §29B-1-1, et. seq. and that the designation is narrowly tailored to encompass only confidential information. A motion for protective treatment shall be filed at the same time as the confidential information.

3.2.2 File with the Executive Secretary's office a public version of each document that contains no confidential information and a public version of each document with the confidential information redacted. Each public version document must be clearly marked on every page, including the cover page, with a bold header stating "Public Version." The redactions of asserted confidential information may be actual marked-out sections, or, blank sections beginning and ending with bold double square brackets ([[]) with the phrase "redacted material" within the brackets. The blank area within the redaction shall cover the entire length of redacted text.

3.2.3 The confidential version must be filed on the same day as the public, redacted version.

3.3. Within 90 days following the filing of a notice of intent pursuant to Rule 3.1., an applicant shall submit to the Commission's Executive Secretary an original and twelve (12) copies of its application for a Solar EWG siting certificate. To be accepted for filing as provided in Rule 3.7., an application shall include all information required by these Rules, including Form No. 1, Form No. 2 and Form No. 4. When preparing Form No. 2 attached to these Rules, the applicant should leave blank the date of the order and the case number. The Commission will then issue an order requiring publication of the Notice of Filing. Publication shall be made in newspapers of general circulation in each county in which all or a portion of the proposed Solar EWG generating facility, and, if applicable, a 200,000 volts or over transmission line, is located or will be located and in a newspaper published and of general circulation in Kanawha County. The applicant shall file proof of publication provided by the newspaper(s) with the Commission as soon as possible after the Notice of Filing is published.

3.4. When an applicant seeks authority to construct a Solar EWG generating facility and related transmission line of 200,000 volts or greater, the applicant must simultaneously apply for both a Solar EWG siting certificate and a certificate of public convenience and necessity under W.Va. Code §24-2-11a for the 200,000 volts or greater transmission facilities. The application for the transmission facilities will be assigned a separate docket number. Both dockets will be styled as relating to each other. All documents relating to either the Solar EWG generating facility or the 200,000 volts or greater transmission line will be included in both case files. When an applicant files both a Solar EWG siting certificate application and an application for a certificate of public convenience and necessity to construct a transmission line of 200,000 volts or greater, the Commission will attempt to schedule proceedings to allow it to render its combined decision in both cases within one hundred and fifty (150) days of the application filing date. This rule does not provide the applicant with any assurance that an application under W.Va. Code §24-2-11a will be concluded within one hundred and fifty (150) days.

3.5. When an applicant proposes to construct a Transmission support line of less than 200,000 volts, to be associated with a Solar EWG generating facility, then the applicant shall not be required to file a separate application for a certificate of public convenience and necessity, pursuant to W.Va. Code §24-2-11. Rather, the Transmission support line shall be deemed to be an integral part of the Solar EWG generating facility and will be evaluated by the Commission within the 150 day period set forth in W.Va. Code §24-2-1o(n), within the context of the Solar EWG siting certificate application case. However, the applicant must include in its filing all of the information concerning the transmission line as required by the Rules for Government of Electric Utilities, 150 C.S.R. 3, as if it were a separate filing.

3.6. An applicant for a Solar EWG siting certificate may request a waiver for good cause shown of any of the information requirements of Rules 4.1.1. through 4.1.5. of these Rules that is inapplicable to the proposed Solar EWG siting certificate.

3.7. Except for filing requirements that are the subject of a motion for waiver filed contemporaneously with submission of an application, only a complete application will be deemed a filed application. Within fifteen (15) days of submission of an application for a Solar EWG siting certificate, the Commission will determine if the application is substantially complete. If it is not substantially complete the Commission will notify the Applicant by Order of the missing information. The Applicant shall have fifteen (15) days to submit the missing information (date of completion). If the applicant completes the application within fifteen (15) days of the Commission Order, the application will be deemed filed on the date of completion. If the applicant does not submit missing information within fifteen (15) days of the Commission Order, the application will be deemed rejected and will be returned to the Applicant. If the filing is rejected the filing fee will be returned to the Applicant.

§150-39-4. Application.

4.1. In addition to the applicable forms attached to these Rules and information concerning any Transmission support line described in Rule 3.5, if applicable, a completed application shall include the following:

4.1.1. Project summary and Solar EWG generating facility overview. Information filed by the applicant in response to the requirements of this section shall be deemed responses to any other section of the application requirements provided that a cross-reference notation is included in both locations. In general, the summary should be suitable as a reference for state and local governments and for the public. The summary and overview shall include the following:

4.1.1.a. A statement explaining the general purpose of the Solar EWG generating facility.

4.1.1.b. A description of the proposed Solar EWG generating facility.

4.1.1.c. A list of all required government (state, local, federal) approvals and/or permits for the Solar EWG generating facility, and the filing status of each.

4.1.1.d. An explanation of the project schedule.

4.1.2. Description of Solar EWG generating facility.

4.1.2.a. For each generation or storage unit, provide: the type of unit, estimated net demonstrated capability, expected annual capacity factor and expected hours of annual generation or storage output for each year of the first five years of operation.

4.1.2.b. Total Solar EWG generating facility land area requirement.

4.1.2.c. Water requirement, source of water, treatment, quantity of any discharge and names of receiving streams.

4.1.3. A list of any interconnection studies or agreements required and the timetable for completion of those studies or agreements.

4.1.4. The projected in-service date, or dates, for the whole or portions (if applicable), of the Solar EWG generating facility.

4.1.5. Technical data.

4.1.5.a. With respect to any transmission support line, the applicant shall provide plan view drawings depicting the alignment of the transmission support line, transmission tower locations and variations thereof. Applicant shall also include elevation view drawings of the type of transmission tower(s) likely to be used.

4.1.5.b. A description of post-useful life demolition, removal, and disposal plans for facilities and site restoration plans.

4.1.5.c. Electric Storage Facilities. If applicable, a description of the proposed electricity storage equipment.

4.1.5.d. A description of the methods and equipment proposed for control of liquids and site runoff storm water.

4.1.5.e. Local and State Economic Impact. Estimates of the effect of the project on the local and state economy.

4.1.5.f. Permits. A listing of all permits that the applicant will be required to obtain from the US Fish and Wildlife Service, the West Virginia Department of Natural Resources, or any other government authority. The application must include a verified statement that the applicant will comply with all permitting, and other requirements of such other governmental agencies.

4.1.5.g. Project layout. A map that depicts the boundaries of the project and the general layout of the solar array(s) and major structures of the facility. The map must be of sufficient size to enable identification of the geographic location of the facility in relationship to the immediate surrounding landmarks.

§150-39-5. Application Fee.

5.1. Applications submitted for siting of a Solar EWG generating facility shall be accompanied by an application fee equaling the lesser of \$100.00 per megawatt or \$40,000.00.

§150-39-6. Requirements of Other Agencies and Conditions.

6.1. If the applicant has not obtained required permits or approvals from other governmental agencies prior to the Commission issuing a decision, the Commission may issue a Solar EWG siting certificate contingent upon receipt of such permits/approvals. The Commission may also grant a Solar EWG siting certificate subject to other conditions determined to be reasonable and necessary by the Commission.

§150-39-7. Modification or Amendment to Solar EWG Siting Certificates.

7.1 An owner or operator of a Solar EWG generating facility must obtain Commission approval to eliminate or modify any terms, conditions or limitations in the Commission order approving a solar siting certificate. Further the owner or operator must obtain prior Commission approval to make any material modification to the Solar EWG generating facility as approved by the Commission, including but not limited to, modifying the footprint of the Solar EWG generating facility or increasing the transmission or generation capacity of the Solar EWG generating facility. If the owner or operator believes that, when considering the totality of the circumstances surrounding any elimination or modification of the terms and conditions of the certificate or material modification of the Solar EWG generating facility, the change is not material, it may petition the Commission for waiver of the requirement to obtain a modification or amendment to its Solar EWG siting certificate. The Commission may deny or grant such request or it

may limit the information required to be filed, depending on the circumstances of the proposed modification.

7.2. An owner or operator shall request Commission approval of a modification or amendment to a Solar EWG siting certificate using Form No. 3, attached to these Rules.

7.3. Any application for Commission approval of a waiver or modification of a condition previously ordered by the Commission and accepted by the original applicant or for a material modification to the Solar EWG generating facility shall be accompanied with an application fee equaling the greater of \$500.00 or one tenth of one percent (.001) of the projected capital cost incurred or eliminated by the proposed waiver or modifications, provided, however, that the fee shall not exceed \$40,000.00.

§ 150-39-8. Standard of Review

8.1. The Commission will grant an application for a Solar EWG siting certificate or modification, if the Commission finds the construction of the facility or modification is not contrary to the public interest.

§ 150-39-9. Transfer or Assignment of Siting Certificate.

9.1. If an owner or operator of a Solar EWG generating facility plans to transfer or assign its Solar EWG siting certificate to another entity, the owner or operator shall, at least 30 days prior to the closing date of such transfer or assignment, provide the Commission with notice of the identity of the transferee, the mailing address of the transferee, the names and mailing addresses of the managing members or officers of the transferee, and an affidavit of the transferee stating that the transferee agrees that it is bound by all terms and conditions of the Solar EWG siting certificate for the Solar EWG generating facility.

§150-39-10. Civil Penalties.

10.1. Civil penalties imposed and collected by the Commission pursuant to W. Va. Code § 24-2-11c(f) shall be deposited in a special fund designated public service commission fund as established in subsection (a), section six [§24-3-6], article three of Chapter 24 of the West Virginia Code, to be used for the purposes set forth in that subsection.

Solar Form No. 1
150CSR39

APPLICATION FOR A SOLAR EWG SITING CERTIFICATE¹

State of West Virginia
Public Service Commission
Charleston

Case No. _____

Application of _____ for an electric generating facility Solar EWG siting certificate in the County(ies) of _____ (add whichever of the following are applicable) [including a related _____ mile _____ kV (must be less than 200 kV) Transmission support line] [and for a certificate of public convenience and necessity, pursuant to W. Va. Code § 24-2-11a, for a related _____ mile _____ kV transmission line to be located in the County(ies) of _____.]

Comes now the above-named _____, the applicant herein, and respectfully shows the Commission as follows:

1. That the name and address of the applicant are _____.
2. That the applicant proposes to _____ at _____ (city/town), in the County of _____.
3. Attached hereto is a copy of the effective charter of incorporation of the applicant.
4. A certificate should be issued for the following reasons:

_____.

Dated this _____ day of _____, _____.

(Signature of authorized representative of applicant)

Title of signer (President or other officer)

Attorney.

Address: _____

¹ Additional pages as described in these rules and summarized on Form No. 4 must accompany this application.

Solar Form No. 2
150CSR39

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered by the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston
on the ___ day of _____, 2_____.

CASE NO. _____

[NAME OF APPLICANT]

[address of applicant]

Application for a Solar EWG Siting Certificate to Authorize the
Construction and Operation of a Wholesale Electric
Generating Facility in _____
County, West Virginia.

NOTICE OF FILING

[INSERT MAP]

On _____ [date] _____, _____ [the Applicant] _____, filed an
application for a Solar EWG Siting Certificate, pursuant to W. Va. Code § 24-2-1o(n), to authorize the
construction and operation of a solar electric wholesale generating facility (the Facility) [including a
related transmission line of less than 200 kV in _____ County(ies) _____] or [and for a
Certificate of Public Convenience and Necessity, pursuant to W. Va. Code § 24-2-11a, to construct and
operate a high voltage transmission line] in _____ County(ies) _____.] The application is on
file with and available for public inspection at the Public Service Commission, 201 Brooks Street, in
Charleston, West Virginia. Upon its completion, the Facility [and the transmission line] will be used by
the Applicant to generate electricity exclusively for wholesale in the competitive wholesale market in
West Virginia and other locations.

The Applicant is owned by _____. The Applicant proposes to construct a _____ MW solar
electric generating facility and certain ancillary facilities, [and to construct transmission lines to
interconnect the Facility with _____] and related appurtenances on a tract of land
located _____.

The Applicant estimates that construction of the Facility will cost approximately
_____.

[The Applicant estimates that construction of the transmission line will cost approximately
_____.]

The Applicant asserts that the Facility, including any associated transmission line(s) incidental to the
Facility and operating below 200,000 volts, are not West Virginia jurisdictional utility services provided
to

Solar Form No. 2
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the public, and there will be no direct impact to West Virginia ratepayers. Rates charged for electricity sold by the Facility will be subject to regulation by the Federal Energy Regulatory Commission ("FERC") Non-incidentals transmission lines operated above 200,000 volts will provide utility service subject to the jurisdiction of the FERC for wholesale transmission to entities other than end-users of electricity.

The Facility will be an exempt wholesale generator as defined under Section 32(a) of the Public Utility Holding Company Act of 1935 or other superseding federal law.

The Applicant will enter into an interconnection and operating agreement with PJM Interconnection, L.L.C., a regional transmission organization, which will govern the Facility's interconnection at _____ which is located _____ [describe proximity to the Facility] _____. The Applicant, or the purchasers of the electricity generated by the Facility, will enter into transmission service agreements with _____ to govern the transmission of the electricity across _____'s facilities. Such transmission of electricity will be subject to the terms of _____'s Open Access Transmission Tariff on file with the FERC. The transmission line will not compete with other utilities and will be for the sole purpose of transmitting the electricity generated at the Facility onto the grid for the wholesale market.

The marked transmission corridor boundaries on the above map indicates the location of the corridor in which the transmission line will be located. The corridor begins near _____ and proceeds directly to _____ [describe path of the line, length, compass directions] _____.

Anyone desiring to intervene should file a written petition to intervene within 30 days following the date of this publication unless a later date is authorized by Commission order. Failure to timely intervene can affect your right to protest aspects of this Solar EWG siting certificate case for the Facility [and this certificate of public convenience and necessity case for the transmission line], or to participate in future proceedings. Letters of protest and comment may be filed at any time during processing of the application. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure. All protests and interventions should be addressed to Executive Secretary, P. O. Box 812, Charleston, West Virginia 25323.

In the absence of substantial protests within the thirty (30) day period, the Commission may waive formal hearing and grant the application based on the evidence submitted with said application and its review thereof.

[NAME OF APPLICANT]

Solar Form No. 3
150CSR39

APPLICATION FOR MODIFICATION TO
OR AMENDMENT OF A SOLAR EWG SITING CERTIFICATE

State of West Virginia
Public Service Commission
Charleston

Case No. _____

Application of _____
for modification to or amendment of an existing electric generating facility Solar EWG siting certificate
in the County of _____ [and for modification to
or amendment of an existing certificate of public convenience and necessity for a related _____ mile,
_____ kV transmission line located in the County(ies) of _____.]

Comes now the above-named _____, the applicant herein, and
respectfully shows the Commission as follows:

1. That the name and address of the applicant are _____
_____.

2. That the applicant proposes to _____
_____ at _____ (city/town), in the County of _____
_____.

3. Attached hereto is a copy of the effective charter of incorporation of the applicant.

4. Commission approval of the requested modification or amendment should be granted for the
following reasons:

_____.

Dated this _____ day of _____, _____.

(Signature of authorized representative of applicant)

Title of signer (President or other officer)

Attorney.

Address: _____

Solar Form 4
150CSR9

[NAME OF APPLICANT]

[address of applicant]

Application for a Solar EWG Siting Certificate to Authorize the
Construction and Operation of a Wholesale Electric
Generating Facility in _____
County, West Virginia filed on _____ [date].

This form sets forth the minimum amount of information that should be included in an application for a Solar EWG siting certificate

- 1. Completed Form No. 1 (Rule 3.3).
- 2. Completed Form No. 2 (Rule 3.3).
- 3. Completed Form No. 4 (Rule 3.3).
- 4. If the Solar EWG generating facility has a transmission line of 200,000 volts or greater, file an application for a certificate of public convenience and necessity under W.Va. Code §24-2-11a for the 200,000 volts or greater transmission line (Rule 3.4).
- 5. If the Solar EWG facility has a transmission line of less than 200,000 volts, file all of the information concerning the transmission line as required by the Rules for Government of Electric Utilities, 150 C.S.R. 3 (Rule 3.5).
- 6. Project summary, including a statement of the general purpose of the facility, a description of the proposed Solar EWG generating facility, a list of all required government (state, local, federal) approvals and/or permits for the Solar EWG generating facility, and the filing status of each, and an explanation of the project schedule (Rule 4.1.1.).
- 7. Description of the Solar EWG generating facility including the type of unit, estimated net demonstrated capability, expected annual capacity factor and expected hours of annual generation or storage output for each year of the first five years of operation, the total Solar EWG generating facility land area requirement, and the water requirement, source of water, treatment, quantity of any discharge and names of receiving streams (4.1.2).
- 8. A list of any interconnection studies or agreements required and the timetable for completion of those studies or agreements (Rule 4.1.3.).
- 9. The projected in-service date or dates for the whole or portions of the Solar EWG generating facility (Rule 4.1.4.).
- 10. Plan view drawings depicting the alignment of the transmission line, transmission tower locations and likely variations thereof, if applicable. Applicant shall also include elevation view drawings of the type of transmission tower(s) likely to be used (Rule 4.1.5.a.).
- 11. A description of post-useful life demolition, removal, and disposal plans for facilities and site restoration plans. (Rule 4.1.5.b.).
- 12. If applicable, a description of the proposed electricity storage equipment. (Rule 4.1.5.c.).
- 13. A description of the methods and equipment proposed for control of liquids and site runoff storm water. (Rule 4.1.5.d.).

Solar Form No. 4
150CSR39

Form No. 4
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- 14. Estimates of the effect of the project on the local and state economy (Rule 4.5.1.e.).
- 15. A listing of all permits that the applicant will be required to obtain from the US Fish and Wildlife Service, the West Virginia Department of Natural Resources, or any other government authority, with a verified statement that the applicant will comply with all permitting, and other requirements of such other governmental agencies. (Rule 4.1.5.f.).
- 16. A verified statement that the applicant will comply with all permitting, and other requirements of such other governmental agencies (Rule 4.1.5.f.).
- 17. Map depicting the boundaries of the project and the layout of the facility. (Rule 4.1.5.g.).
- 18. Application Fee (Rule 5.1).