WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION
Form #3

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: West Virginia Public Energy Authority TITLE NUMBER: 53

CITE AUTHORITY West Virginia Code, 1931, §5D-1-5, as amended

AMENDMENT TO AN EXISTING RULE: YES___ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: N/A

TITLE OF RULE BEING AMENDED: N/A

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 1

TITLE OF RULE BEING PROPOSED: Establishment of Fee Schedule and Cost Allocations to the Issuance of Bonds by the West Virginia Public Energy Authority.

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

David Cecil

General Counsel

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM:

LEGISLATIVE RULE TITLE:

1. Authorizing statute(s) citation West Virginia Code, 1931, §5D-1-5, as amended

2. a. Date filed in State Register with Notice of Hearing:

   b. What other notice, including advertising, did you give of the hearing?

   Advertised in both Charleston newspapers giving date of Public Hearing. (copy attached)

   c. Date of hearing (s): May 30, 1990

   d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

   Attached ______ No comments received X

   e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

   December 18, 1990 (Draft Minutes of Board Meeting)

   f. Name and phone number of agency person to contact for additional information:

   J. David Cecil, General Counsel

   342-7111

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: N/A

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

N/A

d. Attach findings and determinations and reasons:

Attached N/A

WEST VIRGINIA LEGISLATIVE RULE
WEST VIRGINIA PUBLIC ENERGY AUTHORITY
CHAPTER 5D-1
SERIES 1

Title: Establishment of Fee Schedule and Cost Allocations Applicable to the Issuance of Bonds by the West Virginia Public Energy Authority.

Section 1. General.

1.1 Scope - This legislative rule 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 - West Virginia Code, 1931, §5D-1-5(8), as amended.

1.3 Filing Date -

1.4 Effective Date -

Section 2. Establishment of Fee Schedule for the Issuance of Bonds of West Virginia Public Energy Authority.

2.1 Pursuant to the provisions of West Virginia Code, 1931, §5D-1-5(8), the West Virginia Public Energy Authority hereby adopts and establishes the following fee schedule for the issuance of the bonds by the Authority.

Fee Schedule

For financing qualified projects as described in the Public Energy Authority Act [West Virginia Code, 1931, §5D-1-1, et seq., as amended.]

Initial Fee

$ 600.00 per million dollars issued for the first ten million dollars of an issue

$ 375.00 over the next ten million dollars of an issue

$5,000.00 minimum fee

Annual Fee

Maximum of 1/25th of 1% of bonds outstanding

(NOTE: The initial fees will be applied in proportion to any fraction of a million dollars issued.)

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

2.3 The annual fees shall be payable on the anniversary date of the respective issues, as calculated as of the date thirty (30) days immediately preceding said anniversary date.

2.4 The Authority may waive any annual fee upon request of the qualified project.

Section 3. Allocation of Costs Applicable to Issuance of Bonds of West Virginia Public Energy Authority.

3.1 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 closing out of the proceeds of that bond issue. All such costs shall be in addition to the fees established in Section 2 of this Rule.

3.2 Without limiting in any manner the costs that can be allocated pursuant to Section 3.1 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 closing out of the proceeds of that bond issue. All such costs shall be in addition to the fees established in Section 2 of this Rule.

3.3 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.

Section 4. Amendment of Fee Schedule.

The Authority may amend, in accordance with law, 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 subsequent issues. Provided, that in no event shall the annual fees established in this Rule exceed an issue's proportionate share of the projected operating expenses of the Authority for the year of assessment as shown in the proposed budget adopted by the Authority for said year of assessment. Provided further, that in no event shall the annual fee established in this Rule for an issue exceed 1/20th of 1% of the bonds outstading for such issue.

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,

KANAWHA COUNTY, TO-WIT:

I, Jean Waldron _______________ OF

THE CHARLESTON GAZETTE, A DAILY DEMOCRATIC NEWSPAPER, PUBLISHED IN THE CITY OF CHARLESTON, KANAWHA COUNTY, WEST VIRGINIA, DO SOLEMNLY SWEAR THAT THE ANNEXED

NOTICE OF: AMENDED NOTICE

WAS DULY PUBLISHED IN SAID PAPER(S) ON THE DATES LISTED BELOW, AND WAS POSTED AT THE FRONT DOOR OF THE COURT HOUSE OF SAID KANAWHA COUNTY, WEST VIRGINIA, ON THE

24TH DAY OF MAY , 1990 .

DATES PUBLISHED:

05/23/90 GAZETTE

SUBSCRIBED AND SWORN TO BEFORE ME THIS

25TH DAY OF MAY , 1990 .

Frances A. Hartman

NOTARY PUBLIC OF KANAWHA COUNTY, WEST VIRGINIA

PRINTERS FEE $ 10.37

OFFICIAL SEAL
NOTARY PUBLIC
WEST VIRGINIA
...MAN
... 25314
My Commission Expires Dec. 19, 1999

STATE OF WEST VIRGINIA

AMENDED LEGAL NOTICE

Public take notice that the West Virginia Public Energy Authority will hold, pursuant to the provisions of Chapter 29A of the Code of West Virginia, a PUBLIC HEARING on May 30, 1990, at 10:00 a.m. at the Holliday Inn, Clarksburg/Bridgeport, West Virginia (Exit 119 of Interstate 79), on proposed regulations of the West Virginia Public Energy Authority concerning: (1) procedures for giving notice to public and media of PEA meetings; (2) establishing fee schedule and cost allocations to issue bonds; and (3) establishing rules and procedures for PEA's exercise of powers of Eminent Domain. Copies of the proposed regulations are available upon request.

(811258)

Draft Copy For Review

BOARD MEETING

OF THE

WEST VIRGINIA PUBLIC ENERGY AUTHORITY

May 30, 1990
Holiday Inn
Clarksburg, West Virginia

The meeting of the West Virginia Public Energy Authority was held on May 30, 1990, at the Holiday Inn, Clarksburg, West Virginia. Chairman Williams convened the meeting at 10:06 a.m.

Board Members Present:

Steven R. Williams
Mike Browning
Thomas A. Cerra
Carroll H. Curry
Paul P. Fulks
Thomas H. Sharpe
Jimmy Joe Wedge

Board Members Absent:

S. Austin Caperton, III
Charles R. Hooten, Jr.

Others Present:

J. David Cecil	Counsel for Public Energy Authority
Dwight Keating	Business Consultant
Norman Kilpatrick	Surface Mining Research Library
Al Ducci	
Carl Irwin	West Virginia University
Teed Wafle	Morgantown Energy Association

Chairman Williams opened the meeting by asking for approval of the board minutes for March 14, 1990. Mr. Cerra made a motion, Mr. Wedge seconded the motion. The motion was passed unanimously. Chairman Williams asked Mr. Cecil for his comments on the Rules and Regulations.

Mr. Cecil stated that the rules and regulations dealt with the following: (1) The notice of meetings of the Public Energy Authority, (2) The establishment of fee schedules and cost allocations for the issuance of bonds by the Authority, and (3) The exercise of powers of eminent domain, which basically provided notice and protection to the land owners.

Chairman Williams asked if anyone from the public wished to comment on the rules and regulations. There being none, Chairman Williams then asked Mr. Wafle to give an update on the Morgantown Energy Project.

Mr. Wafle stated that the major undertaking which they had to do was to demolish the Old Glass Plant and treat the soil which had been contaminated. The cost of the treatment effort at the time of completion would be approximately $2.5 million. As of February 22, all of the soil had been treated. Due to the large quantity of the soil, the site grade had to be raised a total of five feet during the process to accommodate the extra volume of material.

The main contractor for the project is Bechtel Power Construction Company from Maryland. Due to the mild winter, completion of the project is ahead of schedule. The original project completion date is June, 1992 and they are projecting completion three months prior to that date. The total project cost to date is over $44 million. The total project budget is $170 million.

Mr. Cerra asked, "Was the M.O.V.E. appeal based on specific things or was it part of their general attack on the whole project?" Mr. Wafle replied that M.O.V.E. had appealed every permit on the same grounds, saying that the City of Morgantown did not act properly by giving MEA a permit for that site. They have appealed four permits. Three of the permits were governing Bechtel work. Fortunately, Bechtel had applied early enough for their permits that the appeal process had not really affected them. The permit for the steam line is the first one which will have an impact on the project.

They have had two hearings at the Board of Zoning Appeals for the first two permits. The Board of Zoning Appeals upheld the permit by unanimous vote in both cases. M.O.V.E. immediately appealed that ruling to the Circuit Court of Monongahela County, and the first permit that was upheld in December had been appealed to the Circuit Court of Monongahela County. They had a hearing before the judge on May 9, 1990, and MEA is expecting a decision at any time. Another Bechtel permit had been appealed and MEA has a hearing scheduled for June 13 before the Board of Zoning Appeals. Work under that permit has stopped and fortunately, none of that work is critical and is not scheduled to start until after that time. Assuming that the appeal is upheld again by the Board of Zoning Appeals, the stop work order would be lifted and MEA would foresee no problems.

Mr. Cecil inquired if the EPA problem had been resolved. Mr. Wafle stated that it essentially resolved. The latest "wrinkle" in the EPA fallout from the EPA review was that the Air Pollution Control Commission had scheduled a hearing to review the consent order that the University had originally received when they decided to stop burning coal and burn gas temporarily.

Chairman Williams then discussed the minutes regarding the meeting which he, Len Harvey, Dwight Keating and Austin Caperton had with William Berry, Chairman of Dominion Resources, parent company of

Virginia Electric Power Company; Jim Rhodes (Phonetic), President of Virginia Electric Power Company; and Larry Ellis, Vice President and Assistant Planning and Power Supply Manager.

Chairman Williams stated that at the last meeting, Len Harvey had set up a meeting on April 25, 1990, with VEPCO to try to ascertain their level of interest in West Virginia. In trying to summarize the prospects, Chairman Williams felt that they were very discouraging as far as Virginia's political and economic interest in having a major transmission line built that would require them to commit to purchase 1,000 megawatts commencing over a one - to two - year period. VEPCO felt that it was not politically feasible, as they are basically a Virginia Corporation and have their own interest for power generation in Virginia. From a standpoint of committing that much to a single source of future generating capacity, it gave them some concerns about what would happen if the project did not come through when it was needed.

Chairman Williams felt that the positive side of the meeting was AEP and APCO had announced jointly with VEPCO the plans to enhance the transmission interconnections with the two companies in finding a construction of 765kv line that would essentially run across the southern part of West Virginia and tie into VEPCO's system. Chairman Williams stated that the power may or may not go over the 765kv line, but by building the line they could take some of the load from the other lines that might make additional tie-in spots. In Austin Caperton's absence, Chairman Williams stated that he could not speak for Mr. Caperton, but he felt like the Authority and West Virginia's efforts should focus on the announced transmission line.

Chairman Williams stated that they had scheduled a meeting on June 13, with Dick Northup, Vice President of Appalachian Power Company, in order to try to determine what kind of commitments the Authority might be able to obtain from them with regards to West Virginia. Chairman Williams then asked Mr. Dwight Keating for his comments regarding the meeting with VEPCO.

Mr. Keating stated that VEPCO wanted the line for several purposes. First, to relieve the northern part of the system where they are overloaded, as VEPCO had a real strong desire for the line to be built. Second, it will provide additional system security. Third, it allows access to additional generating capacity.

Chairman Williams stated that there are some issues that the Board needs to discuss with regard to public interest which needs to remain confidential in complianace with the Public Information Act. The Chairman then asked if there were any additional business to discuss before the Board went into Executive Session.

Mr. Cecil stated that the Board needed to vote on the rules and regulations.

Chairman Williams asked for a motion to pass the rules and regulations. Mr. Cerra made a motion and Mr. Sharpe seconded the motion. The motion was passed unanimously. The meeting then went into Executive Session.

Following Executive Session, Chairman Williams stated that subject to approval of the Governor, the Board would like to retain Mr. Keating to assist the Board in pursuing power transmission opportunities. Mr. Cerra made a motion and Mr. Curry seconded the motion. The vote was passed unanimously.

There being no further business, the meeting was adjourned at 12:04 PM.