

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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1992 APR -9 AM 7:56  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED  
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: West Virginia Public Energy Authority TITLE NUMBER: 53

AMENDMENT TO AN EXISTING RULE: YES , NO

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 3)

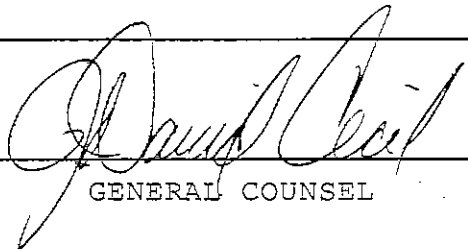
TITLE OF RULE BEING PROPOSED: Rules and Procedures for the  
Exercise of the Powers of Eminent Domain for Qualified  
Projects.

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(a), 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 3

Rules and Procedures for the Exercise of the Powers of  
Eminent Domain for Qualified Projects

§53-3-1. General.

1.1 Scope. -- This rule establishes the rules for the Public Energy Authority to exercise its powers of eminent domain/condemnation for qualified projects including special notice and public hearing provisions.

1.2 Authority. -- W.Va. Code §5D-1-5(14).

1.3 Filing date. --

1.4 Effective date. --

§53-3-2. Purpose.

2.1 Purpose. The purpose of these regulations is to implement the procedure required for the Public Energy Authority to exercise the right of eminent domain/condemnation, in accordance with the following objectives: To ensure that owners of real property or interests in real property to be acquired for Public Energy Authority projects or public energy assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and to promote public confidence in the Public Energy Authority's land and right-of-way acquisition programs for its qualified projects. To provide the public and persons interested or effected by the decisions of the Board of the Public Energy Authority with respect to property or right-of-way acquisition, the ability to comment and provide input in the decision making process through public hearings and public notice of the Board's meetings and to provide notice of such meetings to state, county and municipal officials.

§53-3-3. Definitions.

3.1 "Acquiring entity" means the Authority or any entity which has a project qualified by the Authority as consistent with the Authority's statutory authority and purpose.

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

3.3 "Agency" means the Public Energy Authority or entity which under the auspices of the Public Energy Authority acquires real property, right-of-ways or easements.

3.4 "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of the adequately described property as of a specific date, supported by the presentation and analysis of relevant market information. An appraisal shall be performed using the principles contained in the "Uniform Appraisal Standards for Federal Land Acquisitions" published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972.

3.5 "Fair market value" means the appraised value as determined by an appraisal made by an independent person or firm chosen by the Authority.

3.6 "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.

3.7 "Real property" means lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the term real property and includes any and all interests in such property less than full title (fee simple), such as easements, right-of-ways, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

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

#### §53-3-4. Notices to Property Owners and Record Keeping.

4.1 Each notice which the acquiring entity is required to provide to a proper owner or occupant under these regulations shall be personally served or sent by certified or registered first class mail, return receipt requested, and documented in the acquiring entity's files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall state the name and telephone number of a person who may be contacted for answers to questions or other needed assistance.

4.2 The acquiring entity shall maintain adequate records of its acquisition activities in sufficient detail to demonstrate compliance with these regulations. The records shall be retained for at least three (3) years after each owner of real property or

interest therein receives the final payment to which he or she is entitled under these regulations. The record keeping requirements of these regulations apply to the acquisition of a life estate or life use, acquisition by leasing, including options(s) for extension, acquisition of right-of-ways or easements and whether the acquisition is temporary or permanent.

4.3 The acquiring entity shall make every reasonable effort to acquire the real property or interest therein expeditiously by negotiations. In all instances, the acquiring entity shall make all reasonable efforts to properly, fairly and justly represent the interests of the Authority and the State of West Virginia in its acquisition endeavors.

#### §53-3-5. Criteria for Appraisals.

5.1 A detailed appraisal shall be prepared for all acquisitions. An appraisal shall contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, the appraisal shall contain the following items:

5.1.1 The purpose and function of the appraisal, a definition of the estate being appraised and a statement of the assumptions and limiting conditions affecting the appraisal.

5.1.2 An adequate description of the physical characteristics of the property being appraised, a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of the highest and best use, and at least a five (5) year sales history of the property.

5.1.3 All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the acquiring entity may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

5.1.4 A description of comparable sales, if any, including a description of all relevant physical, legal and economic factors such as parties to the transaction, source and method of financing and verification by a party involved in the transaction.

5.1.5 A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

5.1.6 The effective date of valuation, date of appraisal, signature and certification of the appraiser.

5.2 To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than due to physical deterioration within the reasonable control of the owner.

5.3 If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in real property to be acquired shall not be less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value of the retained improvements.

5.4 No appraiser shall have any interest, direct or indirect, in the real property being appraised for the acquiring entity. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser may act as negotiator for real property or interests in real property which the person has appraised.

§53-3-6. Application for Authority's Approval of Eminent Domain Power.

6.1 Any acquiring entity may request the Authority to exercise the Authority's right of eminent domain/condemnation for a qualified project by filing a written request with the Board.

6.2 The acquiring entity must present the following evidence to the Board:

6.2.1 That the real property, right-of-way or easement proposed to be acquired is necessary for the finalization of the project and that alternative routes for the project have been reviewed and are not financially or physically consistent with the interest and purposes of the project.

6.2.2 A description and location identification of the proposed real property, right-of-way or easement to be acquired and the owners and interests of each in the same.

6.2.3 An identification of the buildings, structures, or other improvements, including removable building equipment and trade fixtures, which are considered to be part of the real property, right-of-way or easement for which the offer of just compensation has been made.

6.2.4 The amount that the acquiring entity has established as just compensation for the real property, right-of-way or easement. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of the allowable damages or benefits to any remaining property.

6.2.5 That all reasonable efforts have been made to reach a fair and reasonable accommodation between the acquiring

entity and the owner including a listing of all offers, counteroffers and refusals.

6.2.6 Documentation of the initial written purchase offer and documentation that the owner has been given a written statement by the acquiring entity. Such statement shall include:

a. A statement of the amount offered as just compensation. In the case of partial acquisition, the compensation for the real property, right-of-way or easement to be acquired and the compensation for damages, if any, to the remaining real property, which shall be stated separately.

b. A description and location identification of the real property and the interest in the real property to be acquired.

c. An identification of the buildings, structures and other improvements, including reasonable building equipment and trade fixtures, which are considered to part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

d. Any update or subsequent offer of just compensation with appropriate documentation that the offer has been considered and rejected as impracticable.

6.3 If the information presented by the owner or a material change in the character or condition of the property indicates the need for new appraisal information, or if a significant delay occurred since the time of the appraisal(s) of the property, the acquiring entity shall have the appraisal(s) updated or obtain new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the acquiring entity shall promptly re-establish just compensation and offer that amount to the owner in writing.

#### §53-3-7. Approval of Acquiring Entity's Application.

7.1 The Board may approve or deny an acquiring entity's application for the Board to proceed with consideration of the Board's exercise of the right of eminent domain. Upon the affirmative vote of a majority of all of the members of the Board, the Board may grant approval to continue consideration of the acquiring entity's request if the Board shall be fully and completely satisfied:

7.1.1 That the project is one approved by the Board as consistent with the purposes of the Act;

7.1.2 That all reasonable efforts have been made to acquire the real property or interest in real property by the acquiring entity without success;

7.1.3 That there are no reasonable alternatives which are economically or physically consistent with the best interests of the qualified project; and

7.1.4 That any further attempts at negotiations between the acquiring entity and the owners may jeopardize the timely completion of the qualified project.

§53-3-8. Prerequisites to Authority's Approval of Eminent Domain Power.

8.1 The Authority shall prepare a written statement of the following:

8.1.1 A statement of the nature of the proposed project.

8.1.2 A summary of the data supporting the Board's determination to continue to consider the exercise of the right of eminent domain with regard to a particular project.

8.1.3 A description and location identification of the proposed real property, right-of-way or easement to be acquired.

8.1.4 The environmental impact statement or assessment required pursuant to W.Va. Code §5D-1-5(34).

8.2 During the two successive weeks prior to the public hearing required pursuant to section 8.4, the Board shall make available to the public the information required by section 8.1 by placing the information with the county clerk at the courthouse of each county in which the project is located.

8.3 Prior to consideration of the decision of the Board to exercise the right of eminent domain, the Board shall provide notice of a public hearing as follows:

8.3.1 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.

8.3.2 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.

8.3.3 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.

8.3.4 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.

8.3.5 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.

8.4 Prior to any final decision of the Board to authorize the exercise of the right of eminent domain, the Board shall hold a public hearing.

8.4.1 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.

8.4.2 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.

8.4.3 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.

§53-3-9. Special Notice of Meetings at Which the Exercise of Eminent Domain will be Finally Considered.

9.1 Any person desiring notice of a meeting of the Board regarding its exercise of the right of eminent domain 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.

9.2 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 the exercise of the right of eminent domain will be finally considered.

9.2.1 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.

9.2.2 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 9.1. Such notice shall be sent in advance of the meeting so that the notice is delivered prior to the meeting date.

§53-3-10. Exercising the Right of Eminent Domain.

10.1 The Authority may exercise its right of eminent domain only after the acquiring entity has complied with this rule and upon the affirmative vote of a majority of all of the members of the Board.

10.2 The Authority may exercise the right of eminent domain only in a manner consistent with the provisions of the West Virginia Constitution Article III, §9 and in accordance with the applicable provisions of W.Va. Code §§5D-1-1 et seq., 54-1-1 et seq., 54-2-1 et seq. and 54-3-1 et seq.

Bill Pub Energy Eminent Domain 53-3

H. B. 4317

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the

Committee on the Judiciary)

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10 A BILL to amend article three, chapter sixty-four of the code of  
11 West Virginia, one thousand nine hundred thirty-one, as  
12 amended, by adding thereto a new section, designated section  
13 fourteen, relating to authorizing the public energy authority  
14 to promulgate legislative rules relating to the establishment  
15 of rules and procedure for the exercise of the powers of  
16 eminent domain for qualified projects.

17 Be it enacted by the Legislature of West Virginia:

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

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

24 §64-3-14. Public energy authority.

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 rules and procedure for the exercise of the  
8 powers of eminent domain for qualified projects) are authorized.

9

10 NOTE: The purpose of this bill is to authorize the Public  
11 Energy Authority to promulgate legislative rules relating to the  
12 establishment of rules and procedure for the exercise of the  
13 powers of eminent domain for qualified projects.

14

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