

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #1

Do Not Mark In this Box

FILED
JUL 27 11:16
1992

NOTICE OF PUBLIC HEARING ON A PROPOSED RULE

AGENCY: West Virginia Public Energy Authority TITLE NUMBER: 53
RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code, §5D-1-5(34)
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: Series 4

TITLE OF RULE BEING PROPOSED: Rules and Procedure for
Application for and Environmental Assessment of Projects
Seeking Qualification for Public Energy Authority's Assistance

DATE OF PUBLIC HEARING: August 27, 1992 TIME: 10:00 a.m.
LOCATION OF PUBLIC HEARING: Governor's Press Conference Room
State Capitol
Room 157-J
Charleston, WV 25305

COMMENTS LIMITED TO: ORAL___, WRITTEN___, BOTH X

COMMENTS MAY ALSO BE MAILED TO THE FOLLOWING ADDRESS: J. David Cecil, Esquire
General Counsel/PEA

The Department requests that persons wishing to make
comments at the hearing make an effort to submit written
comments in order to facilitate the review of these comments.

P. O. Box 129
Charleston, WV 25321

The issues to be heard shall be limited to the proposed rule.

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL _____

2.90

CECIL, BARTH & THOMPSON
ATTORNEYS AT LAW
KANAWHA BOULEVARD, WEST AT BERKELEY
CHARLESTON, WEST VIRGINIA

July 27, 1992

J. DAVID CECIL
J. NICHOLAS BARTH
STEPHEN L. THOMPSON

MAILING ADDRESS:
P.O. BOX 129
CHARLESTON, WV 25321

TELEPHONE:
(304) 342-7111
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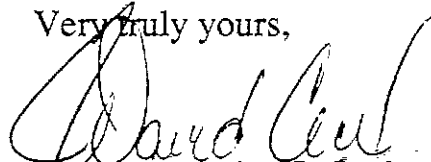
Ms. Judy Cooper, Director
Administrative Law Division
Secretary of State's Office
State Capitol Complex
Charleston, WV 25305

RE: West Virginia Public Energy
Authority
Legislative Rule

Dear Judy,

Enclosed please find for filing with your office a Notice of Public Hearing on a Proposed Rule for the above-referenced agency. I have attached all of the documents which I believe are required for the initial filing. However, should you have any questions or need additional information, please do not hesitate to call.

Very truly yours,



J. David Cecil
General Counsel
WV Public Energy Authority

JDC:kdl
Enclosures

cc: Steven R. Williams, President
WV Public Energy Authority

PEA Board Members



DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES
OFFICE OF THE SECRETARY

State Capitol, Room R-151
Charleston, West Virginia 25305-0310
Telephone: (304) 558-3255
Fax No.: (304) 558-4983

GASTON CAPERTON
Governor

JOHN M. RANSON
Cabinet Secretary

July 10, 1992

J. David Cecil, General Counsel
Public Energy Authority
c/o Cecil, Barth & Thompson
P.O. Box 129
Charleston, West Virginia 25321

RE: Proposed Rules - Title 53, Series 4 (Rules and procedure
for application for and environmental assessment of
projects seeking qualification for Public Energy
Authority assistance)

Dear David:

Pursuant to West Virginia Code §5F-2-2(a)(12), I hereby
consent to the proposal of the rules specified above.

You may attach a copy of this letter to your filing with the
Secretary of State as evidence of my consent.

Sincerely yours,

John M. Ranson
John M. Ranson
Cabinet Secretary

JMR:cjb
cc: Dwight Keating
B:RUL-PEA.RUL

**TITLE 53
LEGISLATIVE RULE
PUBLIC ENERGY AUTHORITY**

SERIES 4

**Rules and Procedure for Application for and Environmental Assessment of Projects
Seeking Qualification for Public Energy Authority's Assistance**

§53-4-1 General.

1.1 Scope. -- This rule includes special notice and public hearing provisions and establishes cost allocations for application and environmental assessment of proposed projects seeking assistance from the Public Energy Authority.

1.2 Authority. - - W.Va. Code §5D-1-5 (34)

1.3 Filing date. - -

1.4 Effective date. - -

§53-4-2 Purpose.

2.1 Purpose. This the purpose of this regulation is to establish the Authority's application and review process including assessment of the effects of applicant project upon the environment. These regulations are promulgated to implement the application procedure required by the Authority for all proposed projects which seek financial or other assistance from the agency. The regulations are designed to insure compliance with all state and federal regulations relative to the environment applicable to any proposed project and that each application be subject to a public hearing in one of the counties in which the project will be located. The regulation further states that which are required under federal law to submit an environmental impact statement under the National Environmental Policy Act of 1969, as amended, may submit such environmental impact statement in lieu of the environmental assessment requirements of this regulation. Further the regulation provides that any individual or entity filing an application for qualification as a qualified project shall pay all costs incurred by the PEA related to the application process.

§53-4-3. Definitions.

§53-4-4. Application and Environmental Assessment for Authority's Assistance

4.1 Any applicant for the Public Energy Authority assistance for any proposed project qualified for consideration under the Public Energy Act of 1985, as amended, shall file an application with the Authority in the form prescribed by the Authority: Provided, however that any project which are required under federal law to submit an environmental impact statement under the National Environmental Policy Act of 1969, as amended, may submit such environmental impact statement in lieu of the environmental assessment requirements of this regulation. The application shall include the following information:

4.1.1 A statement of the environmental conditions of the proposed project. The Statement shall include the following:

- a. An inventory of existing environmental conditions at the proposed project site and the immediate area which will address the requirements of subsection "b" hereof. The term "project site" shall be construed to include, in addition to the physical site of the project itself, all appurtenances to the same, including but not limited to highways, rail lines, electric transmission lines, natural gas pipelines, water and/ or sewer lines or other utilities to or from the project, and other areas which will be modified, improved, disturbed or affected by the project, and are collectively referred to as, "the facilities".
- b. A complete description of the proposed project including: (1) its purpose, size, use, location, cost, production capacity and routes of existing or proposed highways, rail lines, electric transmission lines or gas pipelines, and (2) the methods of construction.
- c. Identification of the real property, right of way or easement to be acquired.
- d. A list of all licenses, permits or other approvals required by any governmental units.
- e. Detailed information as to the need for the project and facts concerning alternative sites considered by the project.
- f. An assessment of the probable effects of the proposed project upon the natural environment of the area, its scenic or natural beauty, rare or irreplaceable natural resources or unique historic sites.
- g. Plans for minimizing any adverse environmental effects.
- h. An evaluation of the demand for the project's production, the total number of employees anticipated both during construction and upon full operation.

§53-4-5 Notice to Public in Counties in Which Project Located.

5.1 Upon receipt of an application, the Authority shall have a copy of such application available for public inspection at the office of the county clerk at the county courthouse of and at least one public library in each county in which the proposed project will be located.

§53-4-6 Request for Supplemental Information or Data

6.1 After initial review by the Authority with the assistance of the relevant governmental agencies or departments, the Authority may require specific information to supplement the initial application. Upon request for such additional information, the Authority shall require its submission within such reasonable time as may be determined by the Authority.

§53-4-7 Review by Counsel and Assistance of Appropriate Governmental Agencies

7.1 Upon receipt of the initial application, the PEA with the assistance of its general counsel and all other appropriate governmental departments and agencies shall insure that the proposed project:

7.1.1 conforms with and meets all applicable air, water, noise and solid waste laws of the State as determined by issuance of permits, certifications or other evidence of approval in writing by the appropriate state and federal agencies or departments with jurisdiction over these laws;

7.1.2 conforms with and meets all applicable air, water, noise and solid waste laws of the State as determined by issuance of permits, certifications or other evidence of approval in writing by the appropriate state and federal agencies or departments with jurisdiction over these laws;

7.1.3 conforms with the State development plan, if such plan has been lawfully approved and adopted as evidenced by a certification or approval in writing by such agency or office charged with oversight of such plan(s)

§53-4-8 Public Hearing on Application

8.1 Not more than ninety (90) days after the application is completed, the Authority shall hold at least one public hearing in one of the counties in which the facility or any part of it is situated to solicit the views of the public about the proposed project. Prior to the hearing the Authority shall make the application available to the public. In addition, any comments on the application by the Authority or any other state department, any proposed permits to be issued by any state agency or department to the applicant including any conditions proposed by such agency or department prior to granting such permits, and any other pertinent information shall be made available to the public prior to hearing. The Authority shall provide notice of the public hearing on the application in accordance with W.Va. Code, §§5D-1-5b [1990] and the Authority's regulations on notice and public hearings.

§53-4-9 Criterion for Approval of Proposed Project's Application

9.1 Not more than 90 days after the public hearing is completed, the Authority shall issue its final decision on the project's application. In reaching a decision, the Authority shall consider whether:

9.1.1. the proposed project evidences fewer undesirable environmental, economic and cultural consequences in the specific proposed location of the project and the proposed location of its highways, rail lines, electric transmission lines or natural gas pipelines route than alternative specific locations; and

9.1.2. whether the proposed project would have a positive and beneficial effect upon the economy and employment.

**WEST VIRGINIA LEGISLATIVE RULE
WEST VIRGINIA PUBLIC ENERGY AUTHORITY
CHAPTER 5D-1
SERIES 4**

Title: Rules and Procedure for Application for and Environmental
Assessment of Projects Seeking Qualification for Public Energy
Authority's Assistance.

Brief Summary of Content

The purpose of this regulation is to establish the Authority's application and review process including assessment of the effects of applicant project upon the environment. These regulations are promulgated to implement the application procedure required by the Authority for all proposed projects which seek financial or other assistance from the agency. The regulations are designed to insure compliance with project and that each application be subject to a public hearing in one of the counties in which the project will be located. The regulation further states that which are required under federal law to submit an environmental impact statement under the National Environmental Policy Act of 1969, as amended, may submit such environmental statement in lieu of the environmental assessment requirements of this regulation. Further the regulation provides that any individual or entity filing an application for qualification as a qualified project shall pay all costs incurred by the PEA related to the application process.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules and Procedure for Application for, and Environmental Assessment of, Projects Seeking Qualification for Assistance from the Public Energy Authority.

Type of Rule: X Legislative Interpretive Procedural

Agency West Virginia Public Energy Authority

Address Room 1-151, State Capitol

Charleston, WV 25305

ANNUAL			FISCAL YEAR			
1.	Effect of Proposed Rule	Increase	Decrease	Current	Next	Thereafter
	Estimated Total Cost \$	-0-	\$ -0-	\$ -0-	\$ -0-	\$ -0-

Personal Services

Current Expense

Repairs and Alterations NONE

Equipment

Other

2. Explanation of above estimates: N/A

3. Objectives of these rules: The purpose of this regulation is to establish the Authority's application and review process including assessment of the effects of applicant project upon the environment.

4. 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.
- b. Date of hearing:
- c. On what date did you file in the State Register the findings and determinations required together with the reasons therefore?
- d. Attach findings and determinations and reasons:

Attached _____