

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1992 SEP 18 AM 10:46
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 W. Va. Code, §5D-1-5 (34)

AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

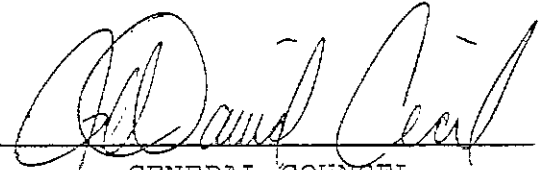
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: Series 4

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

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.


GENERAL COUNSEL
WEST VIRGINIA PUBLIC ENERGY
AUTHORITY

3.40

DATE: September 17, 1992

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: J. David Cecil

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SECRETARY OF STATE

LEGISLATIVE RULE TITLE: Rules and Procedure for Application for and Environmental Assessment of Projects Seeking Qualification for Public Energy

1. Authorizing statute(s) citation Authority's Assistance
West Virginia Code, §5D-1-5 (34)

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

July 27, 1992

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

Advertised in Charleston Gazette giving date of public hearing

(copy attached); also, notice was posted on the front door

of the Courthouse.

c. Date of hearing(s): September 10, 1992

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

Attached X

No comments received X

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

September 18, 1992

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

J. David Cecil, General Counsel

West Virginia Public Energy Authority

304/342-7111

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

**TITLE 53
LEGISLATIVE RULE
PUBLIC ENERGY AUTHORITY**

SERIES 4

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SECRETARY OF STATE

**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. 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 is 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 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.

(a) 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:

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

(i) 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".

(ii) A complete description of the proposed project including: (a) its purpose, size, use, location, cost, production capacity and routes of existing or proposed highways, rail lines, electric transmission lines or gas pipelines, and (b) the methods of construction.

(iii) identification of the real property, right of way or easement to be acquired.

(iv) A list of all licenses, permits or other approvals required by any governmental units.¹

¹ Each of the hereinafter listed Acts may relate to a complete environmental assessment and should be addressed [if applicable to the proposed project and facilities]:

- (1) Air Pollution Control Act
W.Va. Code, §16-20-1, et seq.
- (2) Water Pollution Control Act
W.Va. Code, §20-5A-1, et seq.
- (3) Hazardous Waste Management Act
W.Va. Code, §20-5E-1, et seq.
- (4) West Virginia Protection Act
W.Va. Code, §20-5M-16, et seq.
- (5) Underground Storage Tank Act
W.Va. Code, §20-5M-16

(v) Detailed information as to the need for the project and facts concerning alternative sites considered by the project.

(vi) 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.

(vii) Plans for minimizing any adverse environmental effects.

(viii) An evaluation of the demand for the project's production, the total number of employees anticipated both during construction and upon full operation.

2. 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.

3. 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.

(b) 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:

(1). conforms with and meets all applicable air, water, noise and solid waste laws of the State as determined by issuance of

(6) Natural Stream Preservation Act
W.Va. Code, §20-5B-1, et seq.

(7) Solid Waste Management Act
W.Va. Code, §20-5F-1, et seq.

(8) Historic Preservation
W.Va. Code, §29-1-8

(9) Historic Landmarks
W.Va. Code, §8-26A-1, et seq.

permits, certifications or other evidence of approval in writing by the appropriate state and federal agencies or departments with jurisdiction over these laws;

(2). conforms with adopted or approved county or local land use planning and the official county or local comprehensive zoning laws or ordinances if such plan or ordinance has been lawfully approved and adopted evidenced by a certification or approval in writing with the agency or office charged with oversight of such plans; and

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

(c) 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.

(d) Not more than 90 days after the public hearing is completed, the Authority shall issue its final decision on the project's applicaiton. In reaching a decision, the Authority shall consider whether: (a) 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, electirc tansmission lines or natural gas pipelines route than alternative specific locations; and (b) whether the proposed project would have a positive and beneficial effect upon the economy and employment.

(e) All costs incurred by the Authority that can be directly attributed to the application and envirionment assessment required under this regulation including all legal and other professional fees incurred by the Authority shall be paid by the applicant.

WEST VIRGINIA LEGISLATIVE RULE
WEST VIRGINIA PUBLIC ENERGY AUTHORITY
CHAPTER 5D-1
SERIES4

RECEIVED
1992 SEP 18 AM 10:46
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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 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 projects 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.

AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,

KANAWHA COUNTY, TO-WIT:

I, Debra L. Caldwell 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: HEARING RESCHEDULED

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

29TH DAY OF AUGUST , 1992 .

DATES PUBLISHED:

08/28/92 GAZETTE 09/04/92 GAZETTE

SUBSCRIBED AND SWORN TO BEFORE ME THIS

8TH DAY OF SEPTEMBER , 1992 .

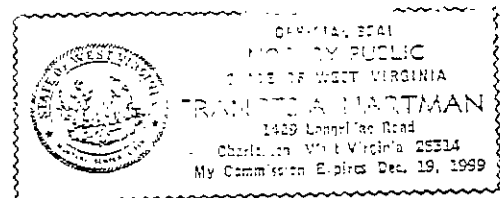
Maureen A. Hartman

NOTARY PUBLIC OF KANAWHA COUNTY, WEST VIRGINIA

PRINTERS FEE \$ 19.16

LEGAL NOTICE
PEA HEARING
RESCHEDULED

Public take notice that the West Virginia Public Energy Authority has rescheduled the public hearing previously scheduled for August 27, 1992, to September 10, 1992, at 10:00 a.m. at the Governor's Press Conference Room, Room 157-J, State Capitol complex, Charleston, West Virginia, on the proposed regulations of the West Virginia Public Energy Authority concerning rules and procedures for application for, and environmental assessment of, projects seeking qualification for assistance from the Public Energy Authority. Copies of the proposed regulation are available upon request. (115251)



AFFIDAVIT OF PUBLICATION

STATE OF WEST VIRGINIA,

KANAWHA COUNTY, TO-WIT:

I, Debra Haldwell

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: PUBLIC ENERGY AUTH.

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

28TH DAY OF JULY , 1992 .

DATES PUBLISHED:

07/27/92 GAZETTE 08/03/92 GAZETTE

SUBSCRIBED AND SWORN TO BEFORE ME THIS

4TH DAY OF AUGUST , 1992 .

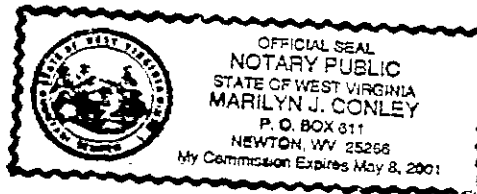
Marilyn J. Conley

NOTARY PUBLIC OF KANAWHA COUNTY, WEST VIRGINIA

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 August 27, 1992, at 10:00 a.m. at the Governor's Press Conference Room, Room 157-J, State Capitol Complex, Charleston, West Virginia, on proposed regulations of the West Virginia Public Energy Authority concerning rules and procedures for application for, and environmental assessment of projects seeking qualification for assistance from the Public Energy Authority. Copies of the proposed regulation are available upon request. (101988)

PRINTERS FEE \$ 17.01



Handwritten notes:
24 HOURS
25 HOURS
Held as scheduled
the Public Hearing
on August 27, 1992, to
the Governor's Press
Conference Room, at
10:00 a.m.

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 _____

**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 Comments

No comments were received at the public hearing held on
September 10, 1992. However, the following grammatical changes were
made to the rule:

1. Paragraph 4.1 - line 4 -
... project which is required ...
2. Paragraph 7.1.1 was duplicated - second omitted.