

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

Do Not Mark In this Box

FILED

JUN 10 3 31 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: 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: 4

TITLE OF RULE BEING PROPOSED: Rules & Procedure for Application for
& Environmental Assesment of Projects Seeking Qualifications
for PEA's Assistance

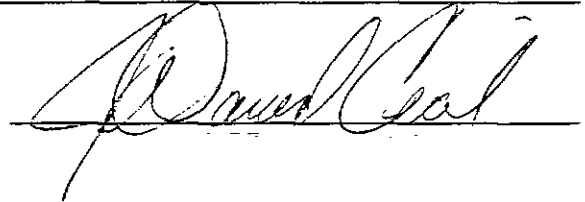
THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 100

SECTION 64-3-15(c), PASSED ON May 26, 1993

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: June 10, 1993



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

May 28, 1993

David Cecil
Public Energy Authority
P.O. Box 129
Charleston, WV 25321

HB 100 authorizing, Title 53, Series 4, Rules & Procedure for Application for & Environmental Assessment of Projects Seeking Qualifications for PEA's Assistance, passed the Legislature on **May 26, 1993**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs HB 100, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office. Authorization for your legislative rule is cited in **HB 100** section **64-3-15(c)**. The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

*****IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, PLEASE SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You
Administrative Law Division

FILED

FEB 17 3 28 PM '93

TITLE 53
LEGISLATIVE RULE
PUBLIC ENERGY AUTHORITY

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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. 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.

§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. 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".

4.1.2. 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.

4.1.3. Identification of the real property, right of way or easement to be acquired.

4.1.4. A list of all licenses, permits or other approvals required by any governmental units.

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

4.1.6. 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.

4.1.7. Plans for minimizing any adverse environmental effects.

4.1.8. 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.