

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

Form #2

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2003 DEC 18 P 2:00

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Public Service Commission TITLE NUMBER: 150 C.S.R.

RULE TYPE: Exempt Legislative CITE AUTHORITY: W. Va. Code 24-2-11c

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 RULE BEING PROPOSED: 30

TITLE OF RULE BEING PROPOSED: Rules Governing Siting Certificates For Exempt Wholesale  
Generators

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON March 1, 2004\* AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Sandra Squire  
Executive Secretary  
West Virginia Public Service  
Commission  
P. O. Box 812  
Charleston, WV 25323

\*Initial Comments due 2/13/04  
Reply Comments due 3/1/04

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

**STATEMENT OF CIRCUMSTANCES WHICH  
REQUIRE THE PROPOSED RULE**

On March 8, 2003, the West Virginia Legislature passed House Bill 2870 specifying the jurisdiction of the West Virginia Public Service Commission over, and the application of Chapter 24 of the West Virginia Code to, owners or operators of, and entities intending to construct, certain exempt wholesale generator facilities and electric generating facilities. The jurisdiction also extends to owners, operators, or entities intending to materially modify such facilities. Pursuant to the Bill, each such facility will require a siting certificate or a certificate for modification of existing facilities. The Public Service Commission has authority to establish filing fees, to seek the imposition of civil or criminal penalties, or both. Furthermore, the Bill permits the Commission to promulgate rules relating to such siting and material modification certificates. The Bill was codified in §24-2-1 and § 24-2-11c of the West Virginia Code. This rulemaking is responsive to that legislation.

□  
APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules Governing Siting Certificates For Exempt Wholesale Generators

Type of Rule:  Legislative     Interpretive     Procedural

Agency: Public Service Commission of WV

Address: P. O. Box 812  
Charleston, WV 25323

1. Effect of Proposed rule:

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<b>ESTIMATED TOTAL COST</b>	NONE	NONE	NONE	NONE	NONE
<b>PERSONAL SERVICES</b>	NONE	NONE	NONE	NONE	NONE
<b>CURRENT EXPENSE</b>	NONE	NONE	NONE	NONE	NONE
<b>REPAIRS &amp; ALTERATIONS</b>	NONE	NONE	NONE	NONE	NONE
<b>EQUIPMENT</b>	NONE	NONE	NONE	NONE	NONE
<b>OTHER</b>	NONE	NONE	NONE	NONE	NONE

2. Explanation of Above Estimates:

3. Objectives of These Rules:

To carry out the purposes and intent of House Bill No. 2870 Codified at 24-2-1' and 24-2-11c of the West Virginia Code.

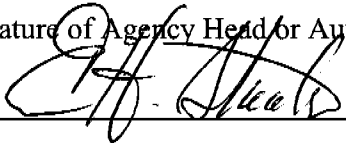
Rule Title: Rules Governing Siting Certificates for Exempt Wholesale Generators

4. Explanation of Overall Economic Impact of Proposed Rule:

- A. Economic Impact on State Government:  
The Commission will collect an application fee equal to the greater of \$500 per megawatt to be constructed, or \$10,000. The same fee will be collected from applicants for modifications to or amendments of existing siting certificates.
  
- B. Economic Impact on Political Subdivisions; Specific Industries; Specific Groups of Citizens: See application fee detailed above to be required of applicants for siting certificates or to modify or amend an existing siting certificate.
  
- C. Economic Impact on Citizens/Public at Large.  
None

Date: 12-17-03

Signature of Agency Head or Authorized Representative:

  
\_\_\_\_\_

## SUMMARY OF RULE

The Commission has proposed Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 CSR 30. The new rules are responsive to newly codified Section 24-2-11c and amendments to Section 24-2-1 of the West Virginia Code, which authorizes the West Virginia Public Service Commission to: review applications for siting certificates with respect to entities intending to construct or construct and operate an electric generating facility to be located in West Virginia that has been, or will be, designated as an exempt wholesale generator under applicable federal law; and review applications for modification of such siting certificates. The Rules set forth the application requirements and procedures, as well as the application fees.

# Public Service Commission

Richard E. Hitt, General Counsel



201 Brooks Street, P.O. Box 812  
Charleston, West Virginia 25323

Phone: (304) 340-0317  
FAX: (304) 340-0372

December 17, 2003

Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
1900 Kanawha Blvd. E  
Charleston, WV 25305-0771

Re: Series 30  
Rules Governing Siting Certificates for  
Exempt Wholesale Generators

Dear Judy:

Enclosed for filing is a copy of the proposed rules in the referenced series. Included is a notice of a comment period, a fiscal note; a summary of the rule, and the statement of circumstances.

If there are any problems or questions, please bring them to my attention. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Hitt", written over a large, stylized flourish.

Richard E. Hitt  
General Counsel

REH/ljm  
Enclosures

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 18<sup>th</sup> day of December, 2003.

GENERAL ORDER NO. 255.1

IN THE MATTER OF RULES RELATING TO SITING CERTIFICATES  
OR MATERIAL MODIFICATION CERTIFICATES FOR FACILITIES  
OPERATED AS EXEMPT WHOLESALE GENERATORS PURSUANT TO  
FEDERAL LAW AND FOR CERTAIN ELECTRIC GENERATING FACILITIES

**COMMISSION ORDER**

On March 8, 2003, the West Virginia Legislature passed House Bill 2870 specifying the jurisdiction of the West Virginia Public Service Commission over, and the application of Chapter 24 of the West Virginia Code to, owners or operators of, and entities intending to construct, certain exempt wholesale generator facilities and electric generating facilities. The jurisdiction also extends to owners, operators, or entities intending to materially modify such facilities. Pursuant to the Bill, each such facility will require a siting certificate or a certificate for modification of existing facilities. The Public Service Commission has authority to establish filing fees, to seek the imposition of civil or criminal penalties, or both. Furthermore, the Bill permits the Commission to promulgate rules relating to such siting and material modification certificates. The Bill was codified in §24-2-1 and § 24-2-11c of the West Virginia Code.

In view of this new authority, the Commission found it to be in the public interest to institute this General Order proceeding for the purpose of developing applicable rules. The Commission served a copy of this Order on all parties who had participated in prior Commission proceedings involving the certification of exempt wholesale generators, and invited all interested persons to file comments as to the proposed content of Commission rules. The Order noted that the rules to be subsequently proposed would also be subject to public comment.

Accordingly, by Order issued June 2, 2003, the Commission instituted this General Order; ordered public notice; and established a public comment period to expire

August 1, 2003. The comment period was later extended until August 15, 2003.

The following entities filed comments: Timberline Homeowners Association, Inc.; Forks of Cheat Forest Property Owners Association; Robert F. Hurley; Fort Martin Community Association; Stacey Lambert; Wind Energy Summit at Blackwater Falls; West Virginia Building and Construction Trades Council, AFL-CIO; Stewards of the Potomac Highlands; Friends of the Allegheny Front, Jarrett F. Jamison, III; Cynthia D. Ellis; Robert Tower; West Virginia Interfaith Global Climate Change Campaign; Sierra Club West Virginia Chapter; Frank G. Fitzpatrick; Jarrie and Lucille Jamison; Donald Gasper; Fastwater Flyfishing School; Scott Smith; James W. McNeely; Juliana Serafin; the Commission's Consumer Advocate Division; Larry Brent Dadisman; Steve and Sharon Barnett; Michael Fisher; Susan Bly; Leonard Knee; Wayne Kirby; Friends of Blackwater; Linda and Tim Blakeley; Commission Staff; Shelley L. Ware; William M. Romano; John M. Brown; West Virginia Highlands Conservancy; Charles B. Dollison; Edward T. Cogar; and Charles E. Thomas.

### **DISCUSSION**

Upon consideration of the filed comments and review of similar rules adopted by other states, the Commission has drafted the rules attached as Attachment B hereto, and by this order issues those rules as proposed legislative rules. This order provides a sixty (60) day comment period. Parties who desire a hearing in this proceeding should file a written request for hearing during the comment period.

### **FINDINGS OF FACT**

1. On March 8, 2003, the West Virginia Legislature passed House Bill 2870 specifying the jurisdiction of the West Virginia Public Service Commission over, and the application of Chapter 24 of the West Virginia Code to, owners or operators of, and entities intending to construct, certain exempt wholesale generator facilities and electric generating facilities. The jurisdiction also extends to owners, operators, or entities intending to materially modify such facilities.

2. Pursuant to the Bill, each such facility will require a siting certificate or a certificate for modification of existing facilities.

3. The Public Service Commission has authority to establish filing fees, to seek the imposition of civil or criminal penalties, or both.

4. The Bill permits the Commission to promulgate rules relating to such siting and

material modification certificates. The Bill was codified in §24-2-1 and § 24-2-11c of the West Virginia Code.

5. In view of this new authority, the Commission found it to be in the public interest to institute this General Order proceeding for the purpose of developing applicable rules. The Commission served a copy of this Order on all parties who had participated in prior Commission proceedings involving the certification of exempt wholesale generators, and invited all interested persons to file comments as to the proposed content of Commission rules. The Order noted that the rules to be subsequently proposed would also be subject to public comment.

6. By Order issued June 2, 2003, the Commission instituted this General Order; ordered public notice; and established a public comment period to expire August 1, 2003. The comment period was later extended until August 15, 2003.

7. The entities listed above filed comments.

### CONCLUSIONS OF LAW

Upon consideration of the filed comments and review of similar rules adopted by other states, the Commission has drafted the rules attached as Attachment B hereto, and by this order issues those rules as proposed legislative rules. This order provides a sixty (60) day comment period. Parties who desire a hearing in this proceeding should file a written request for hearing during the comment period.

### ORDER

IT IS THEREFORE ORDERED that the attached Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 CSR 30, attached hereto as Attachment B, are hereby promulgated as Commission proposed legislative rules.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall give notice of these proposed rules to all parties of record and parties previously served in this proceeding, by United States Mail, and upon Commission Staff by hand delivery.

IT IS FURTHER ORDERED that the Commission Executive Secretary cause the notice attached hereto as Attachment A to be published once in newspapers published and of general circulation in the following cities comprising statewide publication: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton,

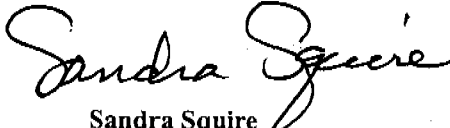
Welch, Wheeling, and Williamson.

IT IS FURTHER ORDERED that the Executive Secretary shall file a copy of these rules, together with requisite filing forms, with the Office of the Secretary of State.

IT IS FURTHER ORDERED that a comment period shall be provided with respect to the proposed rules, and comments may be filed with the Commission's Executive Secretary by February 13, 2004, by 4:00 p.m. Any interested party who files comments shall set forth specific comments concerning the proposed rules. Replies to the comments may be filed no later than March 1, 2004, by 4:00 p.m. Any party seeking a hearing on the proposed rules shall make a specific written request before the close of the comment period and shall explicitly state the grounds upon which the request is made.

IT IS FURTHER ORDERED that the Executive Secretary shall provide copies of these proposed rules to interested parties who address inquiries to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, West Virginia 25323.

A True Copy, Teste:

  
Sandra Squire  
Executive Secretary

JML/ljm  
go2551cb.wpd

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

GENERAL ORDER NO. 255.1

IN THE MATTER OF RULES RELATING TO SITING CERTIFICATES  
OR MATERIAL MODIFICATION CERTIFICATES FOR FACILITIES  
OPERATED AS EXEMPT WHOLESALE GENERATORS PURSUANT TO  
FEDERAL LAW AND FOR CERTAIN ELECTRIC GENERATING FACILITIES

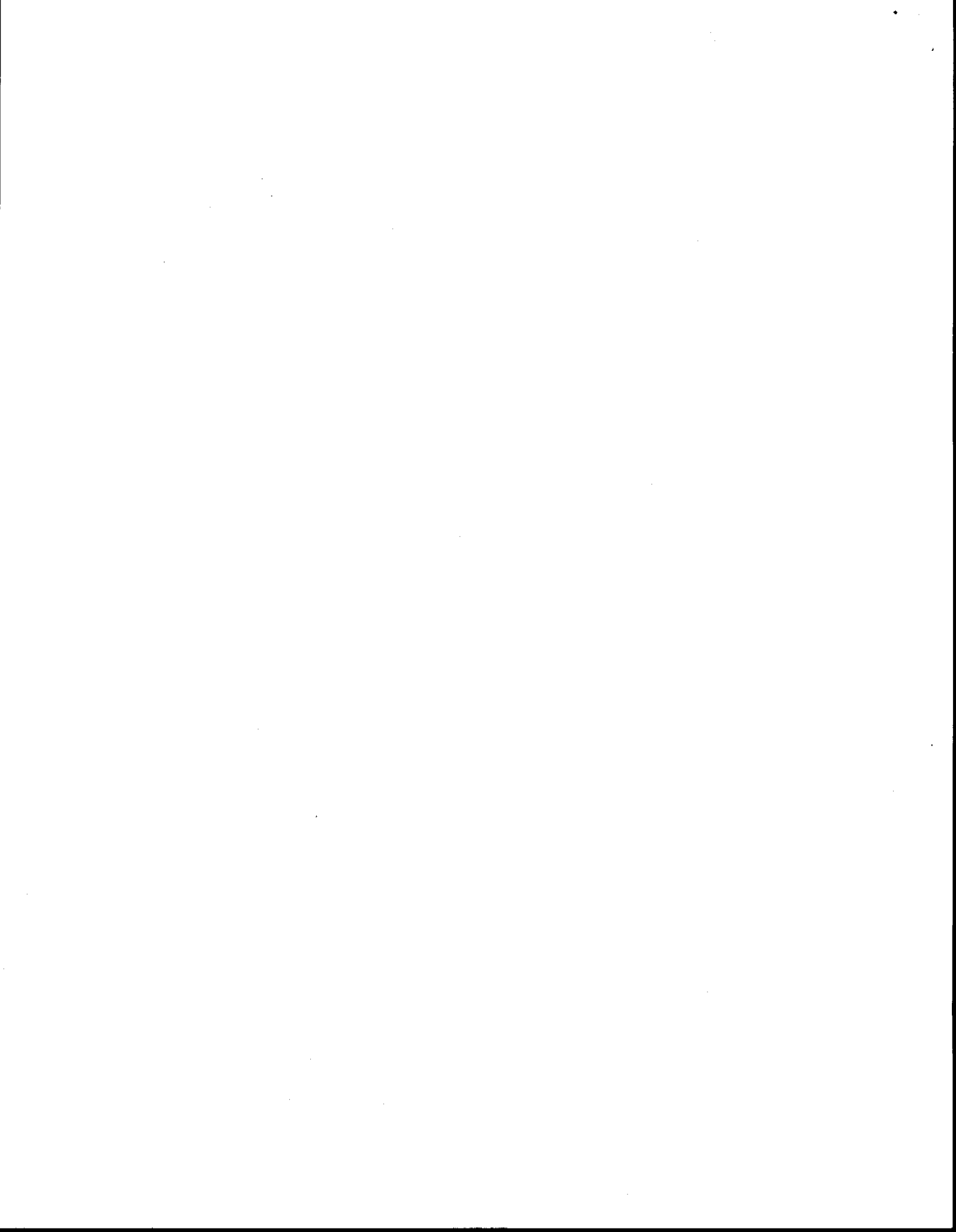
**NOTICE OF ISSUANCE OF PROPOSED RULES**

On March 8, 2003, the West Virginia Legislature passed House Bill 2870 specifying the jurisdiction of the West Virginia Public Service Commission over, and the application of Chapter 24 of the West Virginia Code to, owners or operators of, and entities intending to construct, certain exempt wholesale generator facilities and electric generating facilities. The jurisdiction also extends to modification of such facilities. Each such facility will require a siting certificate or a certificate for modification of existing facilities. The Bill permits the Commission to promulgate rules relating to such siting and material modification certificates. The Bill was codified in §24-2-1 and § 24-2-11c of the West Virginia Code.

By Order issued June 2, 2003, the Commission instituted this case; solicited comments on the content of future rules; ordered public notice; and established a public comment period which expired August 15, 2003.

Following consideration of filed comments, by order issued December 18, 2003, the Public Service Commission issued proposed Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 CSR 30 and established a 60-day comment period. Initial comments should be filed by February 13, 2004, by 4:00 p.m., and reply comments by March 1, 2004, by 4:00 p.m.

Interested parties may request a copy of the proposed rules and may file written comments on the proposed rules, by filing a written request or comment addressed to: Executive Secretary, West Virginia Public Service Commission, P.O. Box 812, Charleston, West Virginia 25323. Requests or comments should reference the General Order No. 255.01. Persons desiring a hearing on the proposed rules should include a request for hearing in the filed comments.



ATTACHMENT B  
FILED

2003 DEC 18 P 2:00

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION

SERIES 30

RULES GOVERNING SITING CERTIFICATES FOR  
EXEMPT WHOLESALE GENERATORS

§150-16-1. General.

1.1. Scope. -- This legislative rule applies to any entity that intends to construct or construct and operate an electric generating facility to be located in West Virginia that has been designated as an exempt wholesale generator, as defined herein, and for which the owner or operator does not hold a certificate of public convenience and necessity issued by the Commission on or before July 1, 2003. This rule does not apply to net-metering facilities covered by tariffs approved by this Commission in Case No. 02-1495-E-GI.

1.2. Authority. -- *W. Va. Code* §§ 24-2-11c.

1.3. Filing Date -- December 18, 2003

1.4. Effective Date - \_\_\_\_\_

1.5. Definitions.

1.5.a. EWG facility - An electric generating facility to be located in West Virginia that has been designated as an exempt wholesale generator under federal law, or will be so designated prior to commercial operation of the facility. As used herein, this term shall also include any EWG support line associated with the EWG facility.

1.5.b. Siting certificate - A certificate issued by the Public Service Commission of West Virginia authorizing the construction and/or operation of an electric generating facility that is an exempt wholesale generator in the State.

1.5.c. EWG support line - A transmission line of less than 200 thousand

volts that, except for Rule 2.4., would be certificated by the Commission pursuant to *W.Va. Code* §24-2-11, and not pursuant to *W.Va. Code* § 24-2-11a.

#### §150-16-2. Pre-filing and Filing Requirements.

2.1. Any entity intending to file an application for a siting certificate pursuant to *W.Va. Code* §24-2-11c shall, at least thirty days prior to the date it intends to file its application, give the Commission notice of its intent to file an application by filing with the Commission's Executive Secretary, an original and twelve (12) copies of, a letter of notification. The Commission may modify or waive this requirement.

2.2. Thirty days following the filing of a notice of intent pursuant to Rule 2.1., an applicant shall file with the Commission's Executive Secretary an original and twelve (12) copies of its application for a siting certificate. To be acceptable, an application shall include: (1) a completed Form No. 1 attached to these Rules; (2) a completed Form No. 2. When preparing Form No. 2, the applicant should leave blank the date of the order and the case number. When the Executive Secretary has assigned a case number, a completed Form No. 2 will be issued to the applicant as an order requiring publication of the Notice of Filing either as a Class I legal advertisement (if the application is for a siting certificate only) or a Class II legal advertisement (if the application is for both a siting certificate and a certificate of convenience and necessity to construct an associated transmission line). Publication shall be made in newspapers published and of general circulation in each county in which all or a portion of the proposed EWG facility is located or will be located and in a newspaper published and of general circulation in Kanawha County. The applicant shall file affidavits of publication provided by the newspaper(s) with the Commission as soon as possible after the Notice of Filing is published.

2.3. When an applicant seeks authority to construct an EWG facility and related transmission facilities of 200,000 volts or greater, the applicant must apply for both a siting certificate and a certificate of public convenience and necessity under *W.Va. Code* 24-2-11a. When such an application contains both a siting certificate application and an application for a certificate of public convenience and necessity to construct a transmission line of 200,000 volts or greater, the Commission will schedule proceedings to allow it to render its combined decision in both cases within three hundred (300) days of the application filing date.

2.4. When an applicant proposes to construct an EWG support line, less than 200,000 volts, to be associated with an EWG facility, then the applicant shall not be required to file a separate application for a certificate of convenience and necessity, pursuant to *W.Va. Code* § 24-2-11. Rather, the EWG support line shall be deemed to be

an integral part of the EWG facility and will be evaluated by the Commission within the 300 day period set forth in *W.Va. Code* § 24-2-11c, within the context of the siting certificate application case.

### §150-16-3. Application.

3.1. In addition to Form No. 1, a completed application shall include the following:

3.1.a. Project summary and EWG facility overview. In general, the summary should be suitable as a reference for state and local governments and for the public. The summary and overview shall include the following:

1. A statement explaining the general purpose of the EWG facility;
2. A description of the proposed EWG facility;
3. A list of all required government (state, local, federal) approvals and/or permits for the EWG facility.
4. A description of the site selection process, including descriptions of the major alternatives considered;
5. A description of any court litigation threatened or pending involving the project and copies of all relevant pleadings and court orders in such proceedings. The applicant has a continuing obligation to provide the Commission with information described in this paragraph during the pendency of its siting certificate application at the Commission;
6. A discussion of the principal environmental and socioeconomic considerations of the preferred and alternate sites; and
7. An explanation of the project schedule.
8. Information filed by the applicant in response to the requirements of this section shall not be deemed responses to any other section of the application requirements.

3.1.b. Justification of need.

1. Need statement. An applicant for a certificate to site an EWG facility shall provide a statement explaining the need for the EWG facility. The statement shall contain references to any available recent long-term regional forecasts, if applicable.

3.1.c. Description of EWG facility. The applicant shall submit:

1. For each generation unit, the type of unit, estimated net demonstrated capability, heat rate, expected annual capacity factor and expected hours of annual generation for each year of the first five years of operation;

2. Total EWG facility land area requirement;

3. Fuel quantity and quality (i.e., ash, sulfur, and Btu value); source(s) of fuel; fuel transportation and storage arrangements;

4. A list of expected air and water emissions;

5. Water requirement, source of water, treatment, quantity of any discharge and names of receiving streams;

6. A summary description of other major equipment.

3.1.d. The applicant shall submit a brief description of the need for new EWG support line(s) or high voltage transmission line(s) associated with the EWG facility.

3.1.e. Proposed Project schedule in overlapping time-line format covering all applicable major activities and milestones, including:

1. Acquisition of land and land rights;

2. Submittal of the application and receipt of a Public Service Commission siting certificate;

3. Submittal and receipt of all required approvals and/or permits from other governmental (state, local, federal) agencies (See Rule 5.1.a.). The applicant shall include a statement of the current status of such submissions and receipts including copies of any relevant correspondence from agencies from which the applicant is seeking approvals or permits;

4. Preparation of the final design;
5. Construction of the EWG facility; and
6. Placement of the EWG facility in service.

3.1.f. Impact of Delays. The applicant shall briefly describe the impact of critical delays on the eventual in-service date.

3.1.g. Site alternatives analyses. The applicant shall describe its site selection study conducted prior to submitting its application for the EWG facility. The study shall have been designed to evaluate all practicable sites for the proposed EWG facility area, and include:

1. A description of the study area or geographic boundaries selected, including the rationale for the selection;
2. A map of suitable scale which includes the study area and which depicts the general sites which were evaluated;
3. A comprehensive list of all siting criteria utilized by the applicant, including any quantitative or weighting values assigned to each;
4. A description of relevant factors, or constraints, identified by the applicant and utilized in the site selection process;
5. A description of the process by which the applicant utilized the siting criteria to evaluate and make a final determination of the preferred and alternate sites;
6. A description of the sites selected for evaluation, their final ranking, and the rationale for selecting the preferred and alternate sites; and
7. A description of any qualitative or other factor utilized by the applicant in the selection of the preferred and alternate site.
8. The applicant shall provide one copy of any constraint map utilized for the study to the Commission for review.

9. The applicant shall provide a summary table comparing the sites, utilizing the technical, financial, environmental, and other factors identified in the study. Design and equipment alternatives shall be included where the use of such alternatives influenced the siting decision.

10. The applicant may provide a copy of any site selection study produced by or for the applicant for the proposed project as an attachment to the application. The study may be submitted in response to any pertinent requirements of this rule, provided that the information contained therein is responsive and the information is clearly cross-referenced to the requirements of this rule.

3.1.h. Technical data.

1. Site. Information on the location, major features, and the topographic, geologic, and hydrological suitability of the selected site shall be submitted by the applicant. This information may be derived from the best available reference materials.

2. An aerial photograph for a one-mile radius from the EWG facility or facilities indicating the location of the proposed EWG facility(ies) in relation to surface features.

3. Layout and construction. The applicant shall provide information on the proposed layout and the description of major structures and installations to be located thereon.

4. Site activities. The applicant shall describe the proposed site preparation and reclamation operations, including:

A. Test boring;

B. Removal of vegetation;

C. Grading and drainage provisions;

D. Access roads;

E. Removal and disposal of debris; and

F. Post-construction reclamation.

5. Plans for construction. The applicant shall describe the proposed construction sequence.

6. Structures. The applicant shall describe, in as much detail as is available at the time of submission of the application, all major proposed structures, including the following:

- A. Estimated overall dimensions;
- B. Construction materials;
- C. Color and texture of facing surfaces;
- D. Any unusual features.
- E. Security facilities.

7. Future plans.

A. The applicant shall describe any plans for future additions of generating units for the site, including the type and timing; and the maximum generating capacity anticipated for the site.

B. The applicant shall describe post useful life demolition and disposal plans for facilities.

8. Equipment.

A. Generating equipment. The applicant shall describe the proposed major generating equipment for each alternate site.

B. Emission control and safety equipment. The applicant shall:

1. Describe all proposed major flue gas emission control equipment, including tabulations of expected efficiency, power consumption, and operating costs for supplies and maintenance;

2. Discuss the reliability of the equipment and the reduction in efficiency for partial failure;

3. Describe the equipment proposed for control of effluents discharged into water bodies and receiving streams; and

4. Describe all proposed major public safety equipment.

C. The applicant shall describe any other major equipment not discussed in paragraphs 3.1.h.8.B.3. and 3.1.h.8.B.4. of this rule.

3.1.i. Maps. The applicant shall file the following maps with its application.

1. 10-mile radius Map. The applicant shall supply a map of 1:36,000 or larger scale showing the following features within a 10-mile radius of the EWG facility:

- A. The location of the proposed EWG facility;
- B. Major population centers and geographic boundaries;
- C. Major transportation routes and utility corridors;
- D. Bodies of water which may be directly affected by the proposed EWG facility;
- E. Topographic contours;

2. 5-mile radius Map. The applicant shall supply a map of 1:24,000 scale containing a 5-mile radius from the proposed EWG facility, and showing the following features:

- A. Major population centers and geographic boundaries;
- B. Major transportation routes and utility corridors;
- C. Bodies of water which may be directly affected by the proposed EWG facility;
- D. Topographic contours;
- E. Major institutions;

F. Incorporated communities; public or private recreational areas, parks, forests, hunting or fishing areas, or similar facilities; historic scenic areas or places; religious places; archaeological places; or places otherwise of cultural significance, including districts, sites, buildings, structures and objects which are recognized by, registered with, or identified as eligible for registration by the national registry of natural landmarks, or any state agency.

G. Land use and classifications; including residential, urban, manufacturing, commercial, mining, transportation, utilities, wetland, forest and woodland, pasture and crop land;

3. EWG facility Map Pre-construction. The applicant shall supply a map of 1:4,800 scale of the site pre-construction, showing the following existing features:

- A. Topographic contours;
- B. Existing vegetative cover;
- C. Individual structures and installations;
- D. Surface bodies of water;
- E. Water and gas wells; and

4. 5-Mile Radius EWG facility Map. The applicant shall supply a map of 1:24,000 scale, which shall include the proposed plant site and a 5-mile radius thereof, and proposed path of any less than 200 thousand volt transmission line, and 5-miles on either side of the path. This map shall show the following features:

- A. Generating plant;
- B. Fuel, waste, and other storage facilities;
- C. Fuel and waste processing facilities, if any;
- D. Water supply and sewage lines;
- E. Transmission lines;

- F. Substations;
- G. Transportation facilities and access roads;
- H. Grade elevations where modified during construction; and
- I. Other pertinent installations.

5. 1-Mile Radius Proposed EWG facility Map. The applicant shall supply a map of 1: 24,000 scale, which shall include the plant site and a 1-mile radius thereof. This map shall show the following features:

- A. Generating plant;
- B. Fuel, waste, and other storage facilities;
- C. Fuel and waste processing facilities, if any;
- D. Water supply and sewage lines;
- E. Transmission lines;
- F. Substations;
- G. Transportation facilities and access roads;
- H. Grade elevations where modified during construction; and
- I. Other pertinent installations.

6. Transmission line map(s). In addition to the foregoing maps, if the applicant is seeking a certificate of convenience and necessity to construct a transmission line, other than an EWG support line, associated with the electric generating facility, the location of which exceeds the 5-mile radius depicted on the map required in Rule 3.1.i.4, the applicant shall file a map or maps with a scale of 1:24,000 showing the entirety of the proposed transmission line. This map or maps shall also show the details listed in Rule 3.1.i.4. A through I.

3.1.j. Impact on Public Utilities. The applicant shall identify and describe the impact of the EWG facility on any public utilities.

### 3.1.k. Rendering of project.

1. The applicant shall provide accurate three dimensional (3D) video renderings of the project. This video must show surrounding topographical and man-made features which are accurately portrayed to scale. The project structures and features must be incorporated within the video accurately and to scale. There must be a video complying with these requirements from the vantage points of the boundaries of the project land footprint. This video must provide for full 3D "walk around" capability that will allow a full 360 degree panoramic viewing of the project and surrounding features from the project land boundaries. There must be additional videos from all vantage points of each public road, hiking area or scenic overlook area from which any portion of the project will be visible. These additional videos must provide for full 3D "walk through" capabilities along such public roads, hiking areas or scenic overlook areas. The videos must be playable on a computer using a MicroSoft Windows Operating System.

2. In addition to the required videos, the applicant shall provide still renderings that are representative of the project views that will be most evident to the public.

3. All videos and still renderings which show structures at ground level shall include a scaled 6 foot tall figure in near proximity to such structures to allow the viewer to clearly see the scale of the project structures.

#### 3.1.l. Hydrology and wind. The applicant shall:

1. Provide the natural and the man-affected water budgets, including the ten-year mean and critical (lowest seven-day flow in ten years) surface flows and the mean and extreme water tables during the past ten years for each surface water body and sub-surface water sources, likely to be directly affected by the proposed EWG facility;

2. Provide an analysis of the prospects of floods and high winds for the area, including the probability of occurrences and likely consequences of various flood stages and wind velocities, and describe plans to mitigate any likely adverse consequences; and

3. Provide existing maps of aquifers which may be directly affected by the proposed EWG facility.

4. A study of how the project and the water use identified in Rule 3.1.c.5. will affect the identified water sources.

### 3.1.m. Financial and Economic data.

#### 1. Debt and Equity Capital.

A. The applicant shall provide estimates of the amounts of debt and equity capital for the project. These estimates shall include all capital that will support the construction of the project and all permanent sources of capital, if different than construction financing. Any temporary, interim or bridge financing, whether related to the construction phase of the project or otherwise, must be fully disclosed.

B. If the project will have any funding from public sources, either initially or in the future, the amount and terms for such funding must be fully disclosed. Such disclosure shall include a listing of each source of public funding, a description of the public funding and a copy of the written agreement(s) setting forth the terms and conditions for the public funding. For purposes of this paragraph, public funding shall include:

1) loans, grants or contributions from the State, any sub-division of the State or any public Board, Commission or similar entity;

2) leases or other uses of property owned by the State, any sub-division of the State or any public Board, Commission or similar entity;

3) abatement of any taxes;

2. Financial Statements. The applicant shall provide proforma financial statements (Balance Sheet, Funds Statement and Income Statement) for the first five years of operation of the proposed project.

3. Local and State Economic Impact. The applicant shall provide estimates of the effect of the project on the local and state economy. Such estimates shall cover the construction phase of the project and the ongoing impacts after construction. Such estimates shall include: (i) the impact on local employment (including the number of added jobs and expected payroll value of added jobs), both directly and indirectly related to the project; (ii) the impact on all local and state taxes (including gross tax amounts and net amounts if any abatement agreements apply), both directly and indirectly related to the project; (iii) the impact on local commercial business activity including tourism; and (iv) the impact on area property values.

4. Regional development impact. The applicant shall describe the impact of the proposed EWG facility on regional development, including housing, commercial and industrial development, and transportation system development. The applicant shall assess the compatibility of the proposed EWG facility and the anticipated resultant regional development with current regional plans.

3.1.n. Environmental data.

1. Species.

A. Preconstruction. In its application, the applicant shall:

1. With respect to the geographic area where the EWG facility will be located, the applicant shall file an Endangered Species Status Report and Habitat Assessment. The foregoing documents will be prepared after consultation with, and include any information provided by, the US Fish and Wildlife Service and the West Virginia Department of Natural Resources.

B. Construction. In its application, the applicant shall:

1. Describe the expected impacts of construction on endangered and other species present within a one-mile radius of the proposed EWG facility;

2. Describe the expected impacts of construction on endangered and other species present within a 5-mile radius of the proposed EWG facility;

3. Describe any plans to mitigate the impact of construction on endangered and other species present within a 5-mile radius of the proposed EWG facility, including any habitat conservation plan(s).

C. Operation. In its application, the applicant shall:

1. Describe the expected impacts of EWG facility operations on endangered and other species present within a one-mile radius of the proposed EWG facility;

2. Describe the expected impacts of EWG facility operations on endangered and other species present within a five-mile radius of the proposed EWG facility;

3. Describe any plans to mitigate the impact of EWG facility operations on endangered and other species present within a 5-mile radius of the proposed EWG facility.

2. Species - Wind powered electric generation facilities only. In addition to the requirements stated in Rule 3.1.n.1. for all Species, the applicant shall adhere to the following.

A. Preconstruction. In its application, the applicant shall:

1. File copies of, and state the results of a Spring and Fall avian migration study.

2. File copies of, and state the results of a Phase I Avian Risk Assessment.

3. File copies of, and state the results of lighting study from empirical data available on similar facilities.

B. Operation. After the EWG facility has been in operation for one year, the applicant shall:

1. Perform and file with the Commission the results of a lighting study conducted for one year after the EWG facility commences operation.

3. View.

A. Preconstruction. The applicant shall file copies of, and state the results of a viewshed analysis with respect to the EWG facility.

B. Construction. The applicant shall:

1. Describe the expected impacts of construction on the viewshed within a one-mile radius of the proposed EWG facility;

2. Describe the expected impacts of construction on the viewshed within a five-mile radius of the proposed EWG facility;

3. Describe any plans to mitigate the impact of the construction on the viewshed.

C. Operation. The applicant shall:

1. Describe the expected impacts of EWG facility operations on the viewshed within a one-mile radius of the proposed;

2. Describe the expected impacts of EWG facility operations on the viewshed within a five-mile radius of the proposed EWG facility;

3. Describe any plans to mitigate the impact of operations on the viewshed.

4. Noise. The applicant shall:

A. Preconstruction. The applicant shall describe noise already present at and around the site to provide a baseline noise calculation.

B. Construction. In its application, the applicant shall:

1. Describe the construction noise levels expected at the nearest property boundary. The description shall address:

- (i) Dynamiting activities;
- (ii) Operation of earth moving equipment;
- (iii) Driving of piles;
- (iv) Erection of structures;
- (v) Truck or other traffic;
- (vi) Installation of equipment.

2. Describe the construction noise levels expected within a one-mile radius of the proposed EWG facility and indicate the location of any noise-sensitive areas within one mile of the proposed EWG facility;

3. Describe the construction noise levels expected within a five-mile radius of the proposed EWG facility and indicate the location of any noise-sensitive areas within five mile of the proposed EWG facility;

4. Describe equipment and procedures to mitigate the effects of noise emissions from the proposed EWG facility during construction.

C. Operation. In its application, the applicant shall:

1. Describe the operational noise levels expected at the nearest property boundary. The description shall address:

- (i) Generating equipment;
- (ii) Processing equipment;
- (iii) Associated road traffic; and

2. Describe the operational noise levels expected within a one-mile radius of the proposed EWG facility and indicate the location of any noise-sensitive areas within one mile of the proposed EWG facility;

3. Describe the operational noise levels expected within a five-mile radius of the proposed EWG facility and indicate the location of any noise-sensitive areas within five mile of the proposed EWG facility;

4. Describe equipment and procedures to mitigate the effects of noise emissions from the proposed EWG facility during operation.

5. Traffic.

A. Preconstruction. In its application, the applicant shall describe existing pre-construction traffic near the site to provide baseline traffic calculation.

B. Construction. In its application, the applicant shall:

1. Describe the traffic levels expected on roads nearest the property boundary.

2. Describe any increased traffic expected within a 1-mile radius of the proposed EWG facility;

3. Describe the any increased traffic levels expected within a 5-mile radius of the proposed EWG facility;

4. Describe any plans to mitigate the impact of increased traffic with respect to traffic sensitive areas within a 5-mile radius of the proposed EWG facility during construction.

C. Operation. In its application, the applicant shall:

1. Describe daily or hourly traffic attributable to project operation expected at the nearest property boundary.

2. Describe traffic levels attributable to project operations expected within a one-mile radius of the proposed EWG facility;

3. Describe traffic levels attributable to project operations expected within a 5-mile radius of the proposed EWG facility;

4. Describe any plans to mitigate the effects of traffic attributable to project operations with respect to traffic sensitive areas within a 5-mile radius of the proposed EWG facility.

3.1.o. Land Uses. In its application, the applicant shall:

1. Estimate the impact of the proposed EWG facility on the land uses depicted on the map required in Rule 3.1.i.2.

2. Identify structures that will be removed or relocated;

3. Describe formally adopted plans for future use of the site and surrounding lands for anything other than the proposed EWG facility; and

4. Describe the applicant's plans for concurrent or secondary uses of the site.

3.1.p. Public services and facilities. The applicant shall describe the probable impact of the construction and operation on public services and facilities.

3.1.q. Cultural impact.

1. Landmarks.

A. The applicant shall estimate the impact of the proposed EWG facility on the preservation and continued meaningfulness of any historic, scenic, religious or archaeological areas or places; or places otherwise of cultural significance depicted on the map required by Rule 3.1.i.2.

B. Describe any plans to mitigate adverse impacts on these landmarks.

2. Recreation areas. The applicant shall estimate the impact of the proposed EWG facility on recreational areas identified on the map required by Rule 3.1.i.2 and describe plans to mitigate any adverse impact.

3.1.s. Public responsibility. The applicant shall (i) describe the applicant's program for public interaction planned for the siting, construction, and operation of the proposed EWG facility, i.e., public information programs; and (ii) describe any insurance or other corporate programs for providing liability compensation for damages to the public resulting from construction or operation of the proposed EWG facility.

§150-16-4. Application fee.

4.1. Each application filed pursuant to these rules shall be accompanied with an application fee equaling the greater of \$500 per megawatt or \$10,000.

§150-16-5. Requirements of other agencies.

5.1. In the event the applicant fails to obtain required permits from, or meet applicable requirements of applicable government agencies within 100 days of the date the application is filed, the Commission may issue a siting certificate contingent upon receipt of such permits/approvals.

§150-16-6. Modification or Amendment to Siting Certificates.

6.1. If an owner or operator of an EWG facility for which a siting certificate has been issued plans to: modify the footprint of the EWG facility; increase the transmission or generation of the EWG facility; make any modification to the EWG facility with a potential for environmental impact; or make any modification to the EWG facility the cost of which will exceed 10% of the original cost to construct the EWG facility, then the owner or operator must obtain prior Commission approval of such modification.

6.2. A request for Commission approval of a modification or amendment to a siting certificate shall be filed using Form 3, attached to these Rules. In addition to Form No. 3, a completed application shall include all of the information required by Rules 3.1.a through 3.1.s. of these Rules.

6.3. The applicant for approval of a modification or amendment to a siting certificate may request a waiver of any of the information required by Rules 3.1.a. through 3.1.s. of these Rules that is inapplicable or irrelevant to the proposed modification or amendment.

6.4. In addition to the information required by Rules 3.1.a. through 3.1.s., upon request, the applicant for approval of a modification or amendment to a siting certificate shall provide the Commission or Commission Staff with any additional information pertinent to Commission review of the proposed modification.

6.5. Any application for Commission approval of a modification or amendment to a siting certificate shall be accompanied with an application fee equaling the greater of \$500 per megawatt or \$10,000.

#### §150-16-7. Civil penalties.

7.1. Civil penalties imposed and collected by the Commission pursuant to *W. Va. Code* §24-2-11c(f) shall be deposited in a special fund designated public service commission fund as established in subsection (a), section six [§ 24-3-6], article three of Chapter 24 of the *West Virginia Code*, to be used for the purposes set forth in that subsection.

APPLICATION FOR A SITING CERTIFICATE

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

Application of \_\_\_\_\_ for an electric  
generating facility siting certificate in the County of  
\_\_\_\_\_ [including a related \_\_\_ mile \_\_\_ kV (must  
be less than 200 kV) EWG support line] or [and for a certificate of convenience and necessity,  
pursuant to *W.Va. Code* § 24-2-11a, for a related \_\_\_ mile \_\_\_ kV transmission line to be  
located in the County(ies) of \_\_\_\_\_.]

Comes now the above-named \_\_\_\_\_, the applicant  
herein, and respectfully shows the Commission as follows:

1. That the name and address of the applicant are \_\_\_\_\_  
\_\_\_\_\_.

2. That the applicant proposed to \_\_\_\_\_  
\_\_\_\_\_ at \_\_\_\_\_ (city/town), in the County of \_\_\_\_\_  
\_\_\_\_\_.

3. Attached hereto is a copy of the effective charter of incorporation of the applicant.

4. A certificate should be issued for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of authorized representative of  
applicant)

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_  
Attorney.

Address: \_\_\_\_\_

Form No. 2.

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered by the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the  
City of Charleston on the

CASE NO. \_\_\_\_\_

NAME OF APPLICANT, address of applicant:

Application for a Siting Certificate to Authorize the  
Construction and Operation of a Wholesale Electric  
Generating Facility in \_\_\_\_\_  
County, West Virginia.

**NOTICE OF FILING**

[INSERT MAP]

On \_\_\_\_\_ [date], \_\_\_\_\_ (the Applicant),  
filed an application for a Siting Certificate, pursuant to W. Va. Code § 24-2-11c, to  
authorize the construction and operation of an electric wholesale generating facility (the  
Facility) [including a related transmission line of less than 200 kV in \_\_\_\_\_  
County(ies)] or [and for a Certificate of Public Convenience and Necessity, pursuant to  
W. Va. Code § 24-2-11a, to construct and operate a high voltage transmission line] in  
\_\_\_\_\_ County(ies).] The application is on file with and available for public  
inspection at the Public Service Commission, 201 Brooks Street, in Charleston, West  
Virginia. Upon its completion, the Facility [and the transmission line] will be used by the  
Applicant to generate electricity exclusively for wholesale in the competitive wholesale  
market in West Virginia and other locations.

The Applicant is owned by \_\_\_\_\_. The Applicant proposes to  
construct a \_\_\_\_\_ MW coal-fired electric generating facility and certain ancillary facilities,  
[and to construct transmission lines to interconnect the Facility with  
\_\_\_\_\_] and related appurtenances on a tract of land located  
\_\_\_\_\_.

The Applicant estimates that construction of the Facility, will cost approximately \_\_\_\_\_.

[The Applicant estimates that construction of the transmission line will cost less than \_\_\_\_\_.]

The Applicant asserts that [neither] the Facility [nor the transmission line] are utilities providing service to the public, and there will be no impact to West Virginia ratepayers. Rates charged for electricity sold by the Facility will be subject to regulation by the Federal Energy Regulatory Commission ("FERC") pursuant to Section 205 of the Federal Power Act. The Applicant intends to file a market-based rate schedule with FERC that will allow sales from the Facility to be at negotiated rates.

The Applicant will be the entity responsible for the construction and operation of the Facility and for the sale of electricity generated by the Facility. The Applicant will operate the Facility as an exempt wholesale generator as defined under Section 32(a) of the Public Utility Holding Company Act of 1935.

The Applicant will enter into an interconnection and operating agreement with \_\_\_\_\_, a regional transmission organization, which will govern the Facility's interconnection at \_\_\_\_\_ which is located \_\_\_\_\_ [describe proximity to the Facility]. The Applicant, or the purchasers of the electricity generated by the Facility, will enter into transmission service agreements with \_\_\_\_\_ to govern the transmission of the electricity across \_\_\_\_\_'s facilities. Such transmission of electricity will be subject to the terms of \_\_\_\_\_'s Open Access Transmission Tariff on file with the FERC. The transmission line will not compete with other utilities and will be for the sole purpose of transmitting the electricity generated at the Facility onto the grid for the wholesale market.

The solid black line on the above map indicates the location of the corridor in which the transmission line will be located. The corridor begins near \_\_\_\_\_ and proceeds directly to \_\_\_\_\_ [describe path of the line, length, compass directions].

The Applicant asserts that it is not a public utility within the meaning of West Virginia Code § 24-2-11 and does not believe that need for the Facility, nor Tariff Rule 42 Exhibits should be addressed by the Commission. Therefore, the Applicant requests a waiver of the Public Service Commission's filing requirements to provide certain information including the utility service rendered, proposed rates, project construction costs, project financing and estimates of operating revenues and expenses, and the

information required by Tariff Rule 42 (e.g., statements of net income, operating revenues, depreciation, West Virginia jurisdictional rate base, plant in service and capital structure). And, because the Applicant will not be regulated by the Commission as a public utility, it requests a waiver of all the Commission's filing and reporting requirements, meter requirements, customer relations, inspections and tests, standards and quality of service, promotional practices, consumer reimbursement program, uniform accounting requirements, and the requirement to allow Commission inspection of books, papers, reports and statements that are specific to regulated public utilities whose practices impact captive ratepayers.

Anyone desiring to protest or intervene should file a written protest or notice of intervention within 30 days following the date of this publication unless otherwise modified by Commission order. Failure to timely protest or intervene can affect your right to protest aspects of this Siting Certificate case for the Facility [and this Certificate of Public Convenience and Necessity case for the transmission line], or to participate in future proceedings. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure. All protests and interventions should be addressed to Executive Secretary, P. O. Box 812, Charleston, West Virginia 25323.

In the absence of substantial protests within said thirty (30) day period, the Commission may waive formal hearing and grant the application based on the evidence submitted with said application and its review thereof.

[NAME OF APPLICANT]

APPLICATION FOR MODIFICATION TO  
OR AMENDMENT OF A SITING CERTIFICATE

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

Application of \_\_\_\_\_  
for modification to or amendment of an existing electric generating facility siting certificate in  
the County of \_\_\_\_\_ [and for  
modification to or amendment of an existing certificate of convenience and necessity for a related  
\_\_\_\_\_ mile \_\_\_\_\_ kV transmission line located in the County(ies) of  
\_\_\_\_\_.]

Comes now the above-named \_\_\_\_\_, the applicant  
herein, and respectfully shows the Commission as follows:

1. That the name and address of the applicant are \_\_\_\_\_  
\_\_\_\_\_.

2. That the applicant proposed to \_\_\_\_\_  
\_\_\_\_\_,  
at \_\_\_\_\_ (city/town), in the County of \_\_\_\_\_  
\_\_\_\_\_.

3. Attached hereto is a copy of the effective charter of incorporation of the applicant.

4. Commission approval of the requested modification or amendment should be granted  
for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Signature of authorized representative of  
applicant)

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_  
Attorney.

Address: \_\_\_\_\_