

**WEST VIRGINIA
SECRETARY OF STATE
BETTY IRELAND
ADMINISTRATIVE LAW DIVISION**

Form #5

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2005 JUL 12 P 1:59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Public Service Commission TITLE NUMBER: 150

CITE AUTHORITY: W. Va. Code, 24-2-11c

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____ NO X

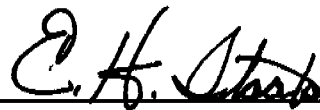
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 30

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

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS September 10, 2005



Authorized Signature

#13.10



Public Service Commission

Richard E. Hitt, General Counsel

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Charleston, West Virginia 25323

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July 12, 2005

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

FILED
2005 JUL 12 P 1:58
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Re: Rules Governing Siting Certificates For
Exempt Wholesale Generators
150 CSR Series 30

Dear Judy:

Enclosed for filing is a copy of the Commission's revised final rules in the referenced series. The rules have been revised to correct the noise provisions contained within the rules as issued by Order dated May 25, 2005, which would become effective July 25, 2005. Also enclosed is a notice of adoption reflecting that the revised final rules will become effective on September 10, 2005. The other forms, i.e., fiscal note, summary of the rule, and statement of circumstances, submitted to you on May 25, 2005, are unchanged by this decision.

In addition, a diskette has been enclosed containing the revised final rules in both the strike-through and underlined version as well as a clean version. If there are any problems with the submittal, please bring them to my attention immediately. Thank you for your consideration.

Sincerely,

Richard E. Hitt
General Counsel

REH/ljm
Enclosure

**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 12th day of July, 2005.

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

By this order the Commission issues revised final rules. The rules have been revised to correct the Noise provisions contained within the rules as issued by Order dated May 25, 2005.

Background

By Order issued May 25, 2005, the Commission adopted final *Rules Governing Siting Certificates for Exempt Wholesale Generators*, 150 C.S.R. 30. The reader may refer to the May 25, 2005, Order for the full procedural history of this case.

On June 6, 2005, three separate petitions for reconsideration of the May 25, 2005, Order were filed by GenPower, LLC; US Windforce, LLC; and PPM Atlantic Renewable.

On June 10, 2005, the Executive Director of the West Virginia Development Office filed a letter in support of the petitions for reconsideration.

On June 15, 2005, Staff filed a response to the petitions for reconsideration in which Staff agreed that the noise portions of the Commission's rules should be revisited. Staff further suggested that the Commission allow for public comment on the noise issue since the last round of comments was limited to issues relating to the State's energy policy.

On June 16, 2005, the Commission's Consumer Advocate Division (CAD) filed a Response to the petitions for reconsideration.

On June 21, 2005, the Sierra Club filed a petition for reconsideration.

On June 24, 2005, L. Thomas Bulla, Secretary, West Virginia Department of Commerce, filed a letter opposing a "no increase" noise standard as contained within the final rules.

Arguments on Reconsideration:

By PPM Atlantic Renewable: PPM asserted that it would not be able to operate under the no increase requirement as to noise contained within the rules. Under the rules, if a house, school, or other noise sensitive area exists within one mile of the project, no construction could occur. All exempt wholesale generation facilities create noise to some extent. PPM stated that the rule does not balance the interests, as required by the enabling statute, because the noise rule would impose a no increase requirement.

PPM further noted that the Commission failed to provide parties with appropriate notice and opportunity to comment on the noise rules, as they were significantly changed from the noise rules attached to the Commission's January 5, 2005, Order. The changes were made without explanation or opportunity to comment. Thus, the Commission did not comply with *W. Va. Code 24-1-7* as to the noise provisions. The no increase requirement is contrary to the noise provisions published December 18, 2003 (initial proposed rules) and those published January 5, 2005 (revised proposed rules).

By US Windforce, LLC: US Windforce noted that the construction ambient noise study required by the rules requires that noise levels be determined at all noise sensitive areas within one-mile of the property line. Only a very general definition of noise sensitive areas is given. This could require hundreds of noise measurements depending on location of the project. What is needed is a representative sampling. The rules do provide that when compliance is measured, representative sampling is employed, but not when ambient noise is measured. The rule gives no guidance as to accomplishing representative sampling. The construction noise provisions do not allow for pile driving and other necessary high noise activities. The Commission should address noise in a working group or other setting where experts can provide advice. The regulations should adopt an appropriate balance.

By GenPower, LLC: GenPower asked the Commission to reconsider the rules' requirement that applicants provide a 5-year *pro forma* financial statement. The financial status of applicants that are not public utilities is outside the Commission's jurisdiction. Proprietary

information would be subject to disclosure.

GenPower also asked the Commission to reconsider the noise portions of the rules. Although GenPower was the source of the Commission's most recent noise rules, GenPower had suggested in its prior filings that not all project developers could meet the standards. GenPower intended to create a safe harbor in that if a developer could meet the no increase standard, then noise would not be an issue in that developer's Siting application proceeding. However, a developer would be free to propose an alternative noise standard that could be the subject of a Commission hearing. Accordingly, GenPower did not intend that the no impact standard be a prerequisite for all projects.

The Commission's rules should have stated that where a noise regulation is in effect for an area, that regulation, and not the Commission's noise rules, would govern. In addition, the noise monitoring provisions should be refined to eliminate flaws. The Commission's rules do not indicate whether already existing facilities would be required to comply with the noise monitoring requirements. GenPower suggested that further public comment on the noise provisions would be desirable.

By Staff: Staff noted that it may not be reasonably possible for applicants to meet the construction and operation noise standards. The operation noise standard allows for no increase from the ambient noise level. Staff would prefer the noise provisions as set forth in the proposed rules attached to the Commission's January 5, 2005, Order, with a few revisions:

Ld-Equivalent noise measured from the hours of 7 AM to 10 PM.

Ln-Equivalent noise measured from the hours of 10 PM to 7 AM.

DNL-The same as Ldn where the cumulative 24-hour noise level is calculated by increasing the Ln by 10 dB before totaling.

By Sierra Club: The Sierra Club requested that the Commission reconsider various sections of the Rules, including, waste generation, financial and economic data, and wildlife species. The Sierra Club further argued that the noise provisions are not sufficiently protective of the public and should be strengthened.

The CAD: The CAD stated that GenPower's opposition to the *pro forma* financial statement filing requirement for a proposed project is without merit. Without such information, CAD argued, the Commission cannot fairly appraise and balance the interests of the state and local economy as well as the applicant. Nor could the Commission assess whether a project will have a substantial positive impact on the local economy and local employment. The foregoing balancing and assessment are required of the Commission by statute. CAD further

noted that the Commission routinely deals with the protection of proprietary information, and the fact that proprietary information may be contained in a *pro forma* financial statement should not limit the information available to the Commission.

As to the noise provisions, CAD noted that only U.S. Windforce asked for reconsideration of the noise studies required by Rule 3.1.1.4.A. While the other sections of the noise rules should be suspended, the rules requiring the studies described in Rule 3.1.1.4.A. should be placed into effect immediately. The suspended noise provisions should then be referred to a Task Force to be chaired by a member of Commission Staff.

DISCUSSION

Upon review of the petitions for reconsideration summarized above, as well as the rules issued on May 25, 2005, the Commission finds that the final rules as issued on May 25, 2005, inadvertently contained noise standards which had not been included in the proposed rules, had not been subject to party comments and may, in fact be unrealistic and unfair. The noise rules as set forth in the January 5, 2005, proposed rules, however, were reasonably balanced and designed to provide the Commission with information upon which to base its ultimate decision in future siting cases. Those proposed rules did not set up an inflexible standard. Rather, the proposed rules provided the Commission with the opportunity to consider projected noise levels and to consider conditioned siting certificates and/or remedial action if projected noise levels are determined to be unacceptable. Therefore, the Commission finds that it is reasonable and appropriate to reissue the final rules amended to contain the noise provisions that were contained in the revised proposed rules issued by Commission Order dated January 5, 2005.

Notwithstanding our adoption of the attached rules as final rules, the Commission agrees with the parties that continued study of the noise aspects of electric generation facilities is appropriate. The Commission will, by this Order, institute a Task Force, to be headed by a member of Commission Staff, to continue to study the noise issues, and to make consensus recommendations to the Commission regarding noise issues and concerns as related to electric generation facilities. At this time, the Commission is not adopting the noise related definition changes suggested by Commission Staff or by the Sierra Club. Clarification of definitions, however, is an example of an appropriate subject for the Task Force to address.

The Commission will deny the requests by GenPower and the Sierra Club to reconsider issues unrelated to the noise provisions. With respect to GenPower's objections to the *pro forma* financial statement filing requirement of the rules, the Commission would remind GenPower that the requirement does not include company financial information, but

rather financial projections for the generation facility. Furthermore, as pointed out by the CAD, applicants are free to seek proprietary treatment of any confidential or trade secret data.

The final rules adopted hereby are attached to this Order as Attachment A. Changes from the rules as issued on May 25, 2005, are reflected by strike-through and underlined text.

FINDINGS OF FACT

1. By Order issued May 25, 2005, the Commission adopted final *Rules Governing Siting Certificates for Exempt Wholesale Generators*, 150 C.S.R. 30.
2. On June 6, 2005, three separate petitions for reconsideration of the May 25, 2005, Order were filed by GenPower, LLC; US Windforce, LLC; and PPM Atlantic Renewable.
3. On June 10, 2005, the Executive Director of the West Virginia Development Office filed a letter in support of the petitions for reconsideration.
4. On June 15, 2005, Staff filed a response to the petitions for reconsideration in which Staff agreed that the noise portions of the Commission's rules should be revisited. Staff further suggested that the Commission allow for public comment on the noise issue since the last round of comments was limited to issues relating to the State's energy policy.
5. On June 16, 2005, the Commission's Consumer Advocate Division (CAD) filed a Response to the petitions for reconsideration.
6. On June 21, 2005, the Sierra Club filed a petition for reconsideration.
7. On June 24, 2005, L. Thomas Bulla, Secretary, West Virginia Department of Commerce, filed a letter opposing a "no increase" noise standard as contained within the final rules.

CONCLUSIONS OF LAW

1. The final rules as issued on May 25, 2005, inadvertently contained noise standards which had not been included in the proposed rules, had not been subject to party comments and may, in fact be unrealistic and unfair.

2. The noise rules as set forth in the January 5, 2005, proposed rules, however, were reasonably balanced and designed to provide the Commission with information upon which to base its ultimate decision in future siting cases.

3. The January 5, 2005, proposed rules did not set up an inflexible standard. Rather, the proposed rules provided the Commission with the opportunity to consider projected noise levels and to consider conditioned siting certificates and/or remedial action if projected noise levels are determined to be unacceptable.

4. It is reasonable and appropriate to reissue the final rules amended to contain the noise provisions that were contained in the revised proposed rules issued by Commission Order dated January 5, 2005.

5. Notwithstanding our adoption of the attached rules as final rules, the Commission agrees with the parties that continued study of the noise aspects of electric generation facilities is appropriate.

6. The Commission will, by this Order, institute a Task Force, to be headed by a member of Commission Staff, to continue to study the noise issues, and to make consensus recommendations to the Commission regarding noise issues and concerns as related to electric generation facilities.

7. At this time, the Commission is not adopting the noise related definition changes suggested by Commission Staff or by the Sierra Club. Clarification of definitions, however, is an example of an appropriate subject for the Task Force to address.

8. The Commission will deny the requests by GenPower and the Sierra Club to reconsider issues unrelated to the noise provisions.

ORDER

IT IS THEREFORE ORDERED that the attached Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. 30, and the forms attached thereto, attached hereto as Attachment A, are hereby adopted as final Commission legislative rules, in lieu of the rules adopted by Order issued May 25, 2005.

IT IS FURTHER ORDERED that Attachment B hereto is a blackline version of the final rules, showing changes from the rules as proposed on May 25, 2005, and the final rules.

IT IS FURTHER ORDERED that the new Rules Governing Siting Certificates for Exempt Wholesale Generators, and the forms attached thereto, shall be effective sixty days from the date of this Order, or on September 10, 2005.

IT IS FURTHER ORDERED that, upon entry hereof, the Commission's Executive Secretary shall file a copy of this order and the rules, together with the required form, with the Secretary of State of West Virginia.

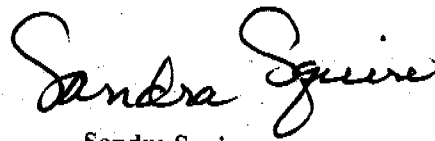
IT IS FURTHER ORDERED that a task force is hereby instituted to continue to study noise issues and concerns as related to electric generation facilities. The Task Force shall be headed by a member of Commission Staff.

IT IS FURTHER ORDERED that the Task Force shall file a report with the Commission in one hundred and eighty (180) days. The Task Force report shall be docketed under a separate case number.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this order and the attached blackline version of the rules upon all parties of record in this proceeding, by First Class United States Mail, and upon Commission Staff by hand delivery.

IT IS FURTHER ORDERED that this case is hereby resolved and shall be removed from the Commission's docket of active cases.

A True Copy, Teste:



Sandra Squire
Executive Secretary

JML/ljm
go2551ch.wpd

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 30

RULES GOVERNING SITING CERTIFICATES FOR
EXEMPT WHOLESALE GENERATORS

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2005 JUL 12 P 1:58

FILED

§ 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 or make a material modification to an electric generating facility as described in *W. Va. Code* § 24-2-1(c). 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 – July 12, 2005

1.4. Effective Date – September 10, 2005

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 Transmission 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. 24-2-1(c) generating facility – An electric generating facility, including an EWG facility which is, or will be, located in West Virginia that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and

such sales at wholesale.

1.5.d. Transmission 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.

1.6. An applicant for a Siting certificate may request a waiver of any of the information requirements of Rules 3.1.a. through 3.1.p. of these Rules that is inapplicable to the proposed Siting certificate. The Commission will consider requests for waiver of Siting certificate requirements as to distributed energy generation facilities that are not net metered, on a case by case basis.

1.7. In addition to the information required by Rules 3.1.a. through 3.1.p., upon request of the Commission or Commission Staff, the applicant for a Siting certificate shall provide the Commission or Commission Staff with any additional information pertinent to Commission review of the Siting certificate. This rule does not impact the rights of other parties to seek discovery pursuant to the Commission's *Rules of Practice and Procedure*, 150 C.S.R. 1.

1.8. An applicant for a Siting certificate may request that information it files in response to discovery requests, or pursuant to Rules 3.1.a. through 3.1.p. hereof, be accorded proprietary treatment. The Commission will review such requests pursuant to applicable statutory and case law.

§ 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 and/or a

transmission support line) or a Class II legal advertisement (if the application is for both a Siting certificate and a certificate of public convenience and necessity to construct an associated transmission line of 200,000 volts or over). Publication shall be made in newspapers published and of general circulation in each county in which all or a portion of the proposed 24-2-1(c) generating 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 a 24-2-1(c) generating facility and related transmission facilities of 200,000 volts or greater, the applicant must simultaneously 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 a Transmission support line, less than 200,000 volts, to be associated with a 24-2-1(c) generating facility, then the applicant shall not be required to file a separate application for a certificate of public convenience and necessity, pursuant to *W.Va. Code* § 24-2-11. Rather, the Transmission support line shall be deemed to be an integral part of the 24-2-1(c) generating 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. However, the applicant must include in its filing all of the information concerning the transmission line, as if it were a separate filing.

§ 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 24-2-1(c) generating 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 24-2-1(c) generating facility;

2. Reasons for selection of the proposed site including the principal environmental and socio-economic considerations of the proposed site.

3. A description of the proposed 24-2-1(c) generating facility;
4. A list of all required government (state, local, federal) approvals and/or permits for the 24-2-1(c) generating facility, and the filing status of each.
5. A description of any court litigation formally noticed 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. An explanation of the project schedule; and
7. 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 a 24-2-1(c) generating facility shall provide a statement explaining the need for the 24-2-1(c) generating facility. The statement shall contain references to any available long term electric supply and demand projections, such as those produced by the East Central Area Reliability Council or the local Regional Transmission Operator, and any other rationale for building the facility.

3.1.c. Description of 24-2-1(c) generating facility. The applicant shall submit:

1. Where applicable, 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 24-2-1(c) generating facility land area requirement;
3. Where applicable, fuel quantity. Indicate the maximum amount of fuel expected to be consumed in one hour and the expected amount of fuel consumed per year.
4. Fuel Quality. Indicate expected fuel characteristics such as ash, sulfur and btu value.
5. Fuel Transportation. Indicate the expected mode of fuel

transportation. List the location(s) of the expected fuel source(s). Indicate the expected route(s) from the fuel source(s) to the plant.

6. Fuel Storage. Indicate how much, if any, fuel will be stored on and off site. Discuss the details of such storage arrangements including the expected number of days of fuel to be stored.

7. A list of expected air and water emissions and, for each emission, the name of the federal and/or state regulatory authority from which a permit must be obtained, or, a statement that no permits from other federal and/or state regulatory authorities are required for that emission. If permits from other authorities are not required, the applicant must state the expected impact of such emissions;

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

9. A summary description of other major equipment, including any significant safety equipment, e.g., fire fighting equipment.

3.1.d. The applicant will submit all interconnection studies undertaken on behalf of the project by the Regional Transmission Organization and/or the owner(s) of transmission lines with which a Transmission support line or other high voltage transmission line to the 24-2-1(c) generating facility is proposed to interconnect.

3.1.e. Proposed Project schedule in Gantt Chart including the critical path and covering all applicable major activities and milestones, including:

1. Acquisition of land and/or 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 correspondence addressing the status of applications or permits from agencies from which the applicant is seeking approvals or permits;
4. Preparation of the final design;

5. Construction of the 24-2-1(c) generating facility; and

6. Placement of the 24-2-1(c) generating 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. 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.

A. A comprehensive list of all Siting criteria utilized by the applicant, including any quantitative or weighting values assigned to each;

B. A description of relevant factors, or constraints, identified by the applicant and utilized in the site selection process;

C. A description of the process by which the applicant utilized the Siting criteria to evaluate and make a final determination of the site;

D. A description of any qualitative or other factor utilized by the applicant in the selection of the site.

E. 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.

2. An aerial photograph for a one-mile radius from the 24-2-1(c) generating facility or facilities indicating the location of the proposed 24-2-1(c) generating facility(ies) in relation to surface features. This photograph shall have been taken no earlier than one (1) year prior to the date the Siting certificate application was filed and the proposed facility location(s) should be clearly marked. The scale of the photograph shall be indicated on the photograph.

3. Design and construction. The applicant shall provide plan view and elevation view engineering drawings based on information on the proposed layout on the

most current engineering design plans for the 24-2-1(c) generating facility, depicting the major structures and installations to be located thereon. With respect to any transmission line, the applicant shall provide plan view drawings depicting the alignment of the transmission line, transmission tower locations and likely variations thereof. Applicant shall also include elevation view drawings of the type of transmission tower likely to be used.

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 based on engineering design plans filed pursuant to this section.

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. Transmission towers;
- F. Security facilities.

7. Future plans.

A. The applicant shall state whether it intends to be the entity that will own and operate the 24-2-1(c) generating facility into the future.

B. 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.

C. The applicant shall describe post useful life demolition, removal, disposal, and restoration plans for facilities.

8. Equipment.

A. Generating equipment. The applicant shall describe the proposed major generating equipment.

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.g.8.B.3. and 3.1.g.8.B.4. of this rule.

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

1. 5-mile radius Map. The applicant shall supply an ANSI size D map(s) of 1 inch:4800 feet scale or larger containing at least a 5-mile radius from, and depicting, the proposed 24-2-1(c) generating facility and transmission lines, 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 24-2-1(c) generating 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 Historic Places, 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;

2. 24-2-1(c) generating facility Pre-construction map. The applicant shall supply an ANSI size D map(s) of 1 inch:2000 feet scale or larger containing at least one mile radius from the proposed facility 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 gas, and oil wells.

3. 1-Mile Radius Proposed 24-2-1(c) generating facility Map. The applicant shall supply an ANSI size D map(s) of 1 inch:2000 feet scale or larger, which shall include the generation facility and transmission line site and at least a 1-mile radius thereof.

This map shall show the following features:

- A. The 24-2-1(c) facility;
- B. Fuel, waste, and other storage facilities, associated with the 24-2-1(c) facility;
- C. Fuel and waste processing facilities, if any, associated with the 24-2-1(c) facility;
- D. Water supply and sewage lines, required by the 24-2-1(c) facility;
- E. Transmission lines;
- F. Substations, switchyards, and transformers, into which transmission lines will connect;
- G. Transportation facilities and access roads, required for the construction or operation of the 24-2-1(c) facility;
- H. Grade elevations where modified during construction, of the 24-2-1(c) facility; and
- I. Other pertinent installations, dedicated to the construction or operation of the 24-2-1(c) facility.

3.1.i. Impact. The applicant shall identify and describe the impact of the 24-2-1(c) generating facility on any public utilities, including but not limited to water utilities, sewer utilities, electric utilities, commercial solid waste facilities, natural gas utilities, and telephone utilities. The applicant shall further identify and describe the impact of the 24-2-1(c) generating facility on other generating facilities whether or not utility-owned.

3.1.j. Rendering of project.

1. The applicant shall provide still renderings from all scenic overlooks and project views that will be most evident to the public, and which are accessible to the applicant, from which the 24-2-1(c) generating facility will be visible after construction.

2. 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.k. 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, to the extent records exist, for each surface water body and sub-surface water sources, likely to be directly affected by the proposed 24-2-1(c) generating 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;

3. Provide existing maps of aquifers which may be directly affected by the proposed 24-2-1(c) generating facility;

4. A study of how the project and the water use identified in Rule 3.1.c.8. will affect the identified water sources.

3.1.l. 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. Describe any agreements with public entities and whether such agreements would transfer to a future purchaser(s) of the 24-2-1(c) generating facility.

C. 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. The disclosure shall include reasonable

estimates of the amount of taxes the applicant would pay if, hypothetically, the applicant constructed and operated the 24-2-1(c) generating facility without the benefit of any agreements abating taxes. For purposes of this paragraph, public funding shall include:

1) loans, grants or contributions from the State or Federal government, 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. Pro forma financial statements. The applicant shall provide pro forma financial statements (Balance Sheet, Funds Statement and Income Statement) for each year of the start-up phase (project development and construction) and for the first five years of operation of the proposed project. The financial statements must disclose all assumptions.

3. Local and State Economic Impact. The applicant shall provide estimates of the effect of the project on the local and state economy as well as the model used to derive the estimates. Such estimates shall cover the construction phase of the project and the ongoing impacts after construction. Such estimates shall include but not be limited to: (i) the impact on local employment (including the number of added man-hours, 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; (iv) the impact on area property values; (v) the impact on existing infrastructure; (vi) the impact on per capita income in the local area and the region; and (vii) the impact of lost opportunity(ies) as to alternative use(s) of the land upon which the 24-2-1(c) generating facility is proposed to be built. The baseline data used to provide this information shall come from existing sources, and the applicant is not required to conduct new demographic or socio-economic research.

4. Regional development impact. The applicant shall describe the impact of the proposed 24-2-1(c) generating facility on regional development, including but not limited to housing, commercial and industrial development, and transportation system development.

3.1.m. Environmental data.

1. Species.

A. With respect to the geographic area where the 24-2-1(c) generating facility will be located, the applicant shall file an affidavit listing any and all permits that the applicant will be required to obtain from the US Fish and Wildlife Service, the West Virginia Department of Natural Resources, or any other government authority, with respect to threatened or endangered species. The affidavit shall include a statement that the applicant will comply with all permitting, and/or "taking" requirements of such other governmental agencies.

B. In the event the applicant represents to the Commission that it is not required by other governmental agencies to follow any process or permitting requirements with respect to threatened or endangered species that may be located on the land proposed for the 24-2-1(c) generating facility, other parties to a Siting certificate proceeding may petition the Commission to consider the impact on species pursuant to the Commission's public interest review of the Siting certificate application.

2. Species - Wind powered electric generation facilities only. In addition to the requirements stated in Rule 3.1.m.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. If both of the Spring and Fall studies are not available at the time an application is filed, the applicant shall file the one that is available, and file the other study within 90 days of the application filing date.

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

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

B. Operation. After the 24-2-1(c) generating facility has been in operation for one year, the applicant shall perform and file with the Commission the results of an avian and bat lighting study conducted for one year after the 24-2-1(c) generating 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 24-2-1(c) generating facility. For structures higher than 100 feet, the viewshed analysis must encompass a 20-mile radius around the property boundaries of the 24-2-1(c) generating facility, or around the proposed location of facilit(ies) if known.

B. Construction. The applicant shall:

1. Describe the expected impacts of construction on the viewshed within a one-mile radius of the proposed 24-2-1(c) generating facility;

2. Describe the expected impacts of construction on the viewshed within a five-mile radius of the proposed 24-2-1(c) generating facility;

3. For structures higher than 100 feet, describe the expected impacts of construction on the viewshed within a 20-mile radius around the proposed 24-2-1(c) generating facility;

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

C. Operation. The applicant shall:

1. Describe the expected impacts of 24-2-1(c) generating facility operations on the viewshed within a one-mile radius of the proposed 24-2-1(c) generating facility;

2. Describe the expected impacts of 24-2-1(c) generating facility operations on the viewshed within a five-mile radius of the proposed 24-2-1(c) generating facility;

3. For structures higher than 100 feet, describe the expected impacts of operation on the viewshed within a 20-mile radius around the proposed 24-2-1(c) generating facility;

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

4. Noise.

A. Preconstruction. The applicant shall provide a noise exposure map of the noise present prior to construction. Said map will contain contour lines of equal noise at and up to one mile from the 24-2-1(c) generating facility's property line. The increment of equal noise levels will be no more than 3db. Noise will be shown as average Day-Night Sound Levels (DNL). Noise events during the night (Defined as 10:00pm to 6:59am) shall be weighted (or penalized) by 10db to reflect the greater perceived impact of noise during the night. The base line noise study conducted to develop this map shall be no less than seven days including Saturday and Sunday. The map shall show all existing structures within one mile of the 24-2-1(c) generating facility's property line and shall indicate whether such structure is residential, commercial or industrial. Current land uses shall also be designated.

B. Construction. In its application, the applicant shall file a predictive noise study as to construction noise which 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.

1. The study shall predict the construction noise levels expected at the nearest property boundary.

2. The study shall predict the construction noise levels expected within a one-mile radius of the proposed 24-2-1(c) generating facility and indicate the location of any noise-sensitive areas within one mile of the proposed 24-2-1(c) generating facility;

3. The study shall predict the construction noise levels expected within a five-mile radius of the proposed 24-2-1(c) generating facility and indicate the location of any noise-sensitive areas within five miles of the proposed 24-2-1(c) generating facility;

4. For purposes of the predictive noise study, noise sensitive areas shall include, but not be limited to, hospitals, schools, residences, cemeteries, parks, and places of religious worship;

5. As part of the study, the applicant shall describe

equipment and procedures that can or will be used to mitigate the effects of noise emissions from the proposed 24-2-1(c) generating facility during construction.

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

1. Provide a noise exposure map of the noise expected to be present during operation. Said map will contain contour lines of equal noise at and up to one mile from the 24-2-1(c) generating facility's property line. The increment of equal noise levels will be no more than 3db. Noise will be shown as average DNL. Noise events during the night (Defined as 10:00pm to 6:59am) shall be weighted (or penalized) by 10db to reflect the greater perceived impact of noise during the night. The noise exposure map will take into account all aspects of operation including but not limited to generating equipment, processing equipment and associated road traffic.

2. The map shall show all existing structures within one mile of the 24-2-1(c) generating facility's property line and shall indicate whether such structure is residential, commercial or industrial. Current land uses should also be designated.

3. Describe equipment and procedures to mitigate the effects of noise emissions from the proposed 24-2-1(c) generating facility during operation.

4. For purposes of the predictive noise study, noise sensitive areas shall include, but not be limited to, hospitals, schools, residences, cemeteries, parks, and places of religious worship.

5. Traffic.

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

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 24-2-1(c) generating facility;

3. Describe any increased traffic levels expected within

a 5-mile radius of the proposed 24-2-1(c) generating 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 24-2-1(c) generating 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 24-2-1(c) generating facility;

3. Describe traffic levels attributable to project operations expected within a 5-mile radius of the proposed 24-2-1(c) generating 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 24-2-1(c) generating facility.

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

1. Estimate the impact of the proposed 24-2-1(c) generating facility on the land uses depicted on the map required in Rule 3.1.h.1.;

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 24-2-1(c) generating facility; and

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

3.1.o. Cultural impact.

1. Landmarks.

A. The applicant shall estimate the impact of the proposed 24-2-1(c) generating 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.h.1.

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

2. Recreation areas. The applicant shall estimate the impact of the proposed 24-2-1(c) generating facility on recreational areas identified on the map required by Rule 3.1.h.1. and describe plans to mitigate any adverse impact.

3.1.p. Public responsibility. The applicant shall (i) describe the applicant's program for public interaction planned for the siting, construction, and operation of the proposed 24-2-1(c) generating 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 24-2-1(c) generating facility.

§ 150-16-4. Application fee.

4.1. Each application filed pursuant to section 3.1 *et seq.* of these rules shall be accompanied with an application fee equaling the lesser of \$500.00 per megawatt or \$200,000.00.

§ 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 a 24-2-1(c) generating facility for which a Siting certificate has been issued plans to: construct the facility using engineering design plans different than those filed with its original Siting certificate application; modify the footprint of the 24-2-1(c) generating facility; increase the transmission or generation of the 24-2-1(c) generating facility; make any modification to the 24-2-1(c) generating facility with a potential for environmental impact, then the owner or operator must obtain prior Commission approval of such modification. If the owner or operator believes that when considering the totality of the circumstances surrounding any such modification, the

modification is not material or that the modification will not materially affect the viewshed impacts, noise levels, emissions or other environmental impacts, it may petition the Commission for waiver of the requirement to obtain a modification or amendment to its Siting certificate. The Commission may deny or grant such request or it may limit the information required to be filed, depending on the circumstances of the proposed modification.

6.2. A request for Commission approval of a modification or amendment to a Siting certificate shall be filed using Form No. 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.p. 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.p. of these Rules that is inapplicable to the proposed modification or amendment.

6.4. In addition to the information required by Rules 3.1.a. through 3.1.p., upon request by the Commission or Commission Staff, 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. This rule does not impact the rights of other parties to seek discovery pursuant to the Commission's *Rules of Practice and Procedure*, 150 C.S.R. 1.

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 \$1,000.00 or one tenth of one percent (.001) of the projected capital cost of the proposed modifications, provided, however, that the fee shall not exceed \$200,000.00.

§ 150-16-7. Transfer or Assignment of Siting Certificate.

7.1. If an owner or operator of a 24-2-1(c) generating facility plans to transfer or assign its Siting certificate to another entity, the owner or operator shall, at least 30 days prior to the closing date of such transfer or assignment, provide the Commission with notice of the identity of the transferee, the mailing address of the transferee, the names and mailing addresses of the managing members or officers of the transferee, and an affidavit of the transferee stating that the transferee agrees that it is bound by all terms and conditions of the Siting certificate for the 24-2-1(c) generating facility.

§ 150-16-8. Civil penalties.

8.1. 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.

Form No. 1

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) Transmission support line] or [and for a certificate of public 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 ___ day of _____, 2____.

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 [type of generating facility proposed] 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]

Form No. 3

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 public 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 proposes 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: _____

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 or make a material modification to an electric generating facility as described in *W. Va. Code* § 24-2-1(c). 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 – ~~May 25, 2005~~ July 12, 2005

1.4. Effective Date – ~~July 25, 2005~~ September 10, 2005

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 Transmission 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. 24-2-1(c) generating facility – An electric generating facility, including an EWG facility which is, or will be, located in West Virginia that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and

such sales at wholesale.

1.5.d. Transmission 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.

1.6. An applicant for a Siting certificate may request a waiver of any of the information requirements of Rules 3.1.a. through 3.1.p. of these Rules that is inapplicable to the proposed Siting certificate. The Commission will consider requests for waiver of Siting certificate requirements as to distributed energy generation facilities that are not net metered, on a case by case basis.

1.7. In addition to the information required by Rules 3.1.a. through 3.1.p., upon request of the Commission or Commission Staff, the applicant for a Siting certificate shall provide the Commission or Commission Staff with any additional information pertinent to Commission review of the Siting certificate. This rule does not impact the rights of other parties to seek discovery pursuant to the Commission's *Rules of Practice and Procedure*, 150 C.S.R. 1.

1.8. An applicant for a Siting certificate may request that information it files in response to discovery requests, or pursuant to Rules 3.1.a. through 3.1.p. hereof, be accorded proprietary treatment. The Commission will review such requests pursuant to applicable statutory and case law.

§ 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 and/or a transmission support line) or a Class II legal advertisement (if the application is for both a

Siting certificate and a certificate of public convenience and necessity to construct an associated transmission line of 200,000 volts or over). Publication shall be made in newspapers published and of general circulation in each county in which all or a portion of the proposed 24-2-1(c) generating 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 a 24-2-1(c) generating facility and related transmission facilities of 200,000 volts or greater, the applicant must simultaneously 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 a Transmission support line, less than 200,000 volts, to be associated with a 24-2-1(c) generating facility, then the applicant shall not be required to file a separate application for a certificate of public convenience and necessity, pursuant to *W.Va. Code* § 24-2-11. Rather, the Transmission support line shall be deemed to be an integral part of the 24-2-1(c) generating 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. However, the applicant must include in its filing all of the information concerning the transmission line, as if it were a separate filing.

§ 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 24-2-1(c) generating 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 24-2-1(c) generating facility;
2. Reasons for selection of the proposed site including the principal environmental and socio-economic considerations of the proposed site.
3. A description of the proposed 24-2-1(c) generating facility;

4. A list of all required government (state, local, federal) approvals and/or permits for the 24-2-1(c) generating facility, and the filing status of each.

5. A description of any court litigation formally noticed 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. An explanation of the project schedule; and

7. 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 a 24-2-1(c) generating facility shall provide a statement explaining the need for the 24-2-1(c) generating facility. The statement shall contain references to any available long term electric supply and demand projections, such as those produced by the East Central Area Reliability Council or the local Regional Transmission Operator, and any other rationale for building the facility.

3.1.c. Description of 24-2-1(c) generating facility. The applicant shall submit:

1. Where applicable, 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 24-2-1(c) generating facility land area requirement;

3. Where applicable, fuel quantity. Indicate the maximum amount of fuel expected to be consumed in one hour and the expected amount of fuel consumed per year.

4. Fuel Quality. Indicate expected fuel characteristics such as ash, sulfur and btu value.

5. Fuel Transportation. Indicate the expected mode of fuel transportation. List the location(s) of the expected fuel source(s). Indicate the expected route(s) from the fuel source(s) to the plant.

6. Fuel Storage. Indicate how much, if any, fuel will be stored on and off site. Discuss the details of such storage arrangements including the expected number of days of fuel to be stored.

7. A list of expected air and water emissions and, for each emission, the name of the federal and/or state regulatory authority from which a permit must be obtained, or, a statement that no permits from other federal and/or state regulatory authorities are required for that emission. If permits from other authorities are not required, the applicant must state the expected impact of such emissions;

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

9. A summary description of other major equipment, including any significant safety equipment, e.g., fire fighting equipment.

3.1.d. The applicant will submit all interconnection studies undertaken on behalf of the project by the Regional Transmission Organization and/or the owner(s) of transmission lines with which a Transmission support line or other high voltage transmission line to the 24-2-1(c) generating facility is proposed to interconnect.

3.1.e. Proposed Project schedule in Gantt Chart including the critical path and covering all applicable major activities and milestones, including:

1. Acquisition of land and/or 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 correspondence addressing the status of applications or permits from agencies from which the applicant is seeking approvals or permits;
4. Preparation of the final design;
5. Construction of the 24-2-1(c) generating facility; and
6. Placement of the 24-2-1(c) generating 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. 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.

A. A comprehensive list of all Siting criteria utilized by the applicant, including any quantitative or weighting values assigned to each;

B. A description of relevant factors, or constraints, identified by the applicant and utilized in the site selection process;

C. A description of the process by which the applicant utilized the Siting criteria to evaluate and make a final determination of the site;

D. A description of any qualitative or other factor utilized by the applicant in the selection of the site.

E. 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.

2. An aerial photograph for a one-mile radius from the 24-2-1(c) generating facility or facilities indicating the location of the proposed 24-2-1(c) generating facility(ies) in relation to surface features. This photograph shall have been taken no earlier than one (1) year prior to the date the Siting certificate application was filed and the proposed facility location(s) should be clearly marked. The scale of the photograph shall be indicated on the photograph.

3. Design and construction. The applicant shall provide plan view and elevation view engineering drawings based on information on the proposed layout on the most current engineering design plans for the 24-2-1(c) generating facility, depicting the major structures and installations to be located thereon. With respect to any transmission line, the applicant shall provide plan view drawings depicting the alignment of the transmission line, transmission tower locations and likely variations thereof. Applicant shall also include elevation view drawings of the type of transmission tower likely to be used.

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 based on engineering design plans filed pursuant to this section.

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. Transmission towers;
- F. Security facilities.

7. Future plans.

A. The applicant shall state whether it intends to be the entity that will own and operate the 24-2-1(c) generating facility into the future.

B. 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.

C. The applicant shall describe post useful life demolition, removal, disposal, and restoration plans for facilities.

8. Equipment.

A. Generating equipment. The applicant shall describe the proposed major generating equipment.

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.g.8.B.3. and 3.1.g.8.B.4. of this rule.

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

1. 5-mile radius Map. The applicant shall supply an ANSI size D map(s) of 1 inch:4800 feet scale or larger containing at least a 5-mile radius from, and depicting, the proposed 24-2-1(c) generating facility and transmission lines, 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 24-2-1(c) generating 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 Historic Places, 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;

2. 24-2-1(c) generating facility Pre-construction map. The applicant shall supply an ANSI size D map(s) of 1 inch:2000 feet scale or larger containing at least one mile radius from the proposed facility 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 gas, and oil wells.

3. 1-Mile Radius Proposed 24-2-1(c) generating facility Map. The applicant shall supply an ANSI size D map(s) of 1 inch:2000 feet scale or larger, which shall include the generation facility and transmission line site and at least a 1-mile radius thereof. This map shall show the following features:

A. The 24-2-1(c) facility;

24-2-1(c) facility;

B. Fuel, waste, and other storage facilities, associated with the

C. Fuel and waste processing facilities, if any, associated with

the 24-2-1(c) facility;

D. Water supply and sewage lines, required by the 24-2-1(c) facility;

E. Transmission lines;

F. Substations, switchyards, and transformers, into which transmission lines will connect;

G. Transportation facilities and access roads, required for the construction or operation of the 24-2-1(c) facility;

H. Grade elevations where modified during construction, of the 24-2-1(c) facility; and

I. Other pertinent installations, dedicated to the construction or operation of the 24-2-1(c) facility.

3.1.i. Impact. The applicant shall identify and describe the impact of the 24-2-1(c) generating facility on any public utilities, including but not limited to water utilities, sewer utilities, electric utilities, commercial solid waste facilities, natural gas utilities, and telephone utilities. The applicant shall further identify and describe the impact of the 24-2-1(c) generating facility on other generating facilities whether or not utility-owned.

3.1.j. Rendering of project.

1. The applicant shall provide still renderings from all scenic overlooks and project views that will be most evident to the public, and which are accessible to the applicant, from which the 24-2-1(c) generating facility will be visible after construction.

2. 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.k. 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, to the extent records exist, for each

surface water body and sub-surface water sources, likely to be directly affected by the proposed 24-2-1(c) generating 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;

3. Provide existing maps of aquifers which may be directly affected by the proposed 24-2-1(c) generating facility;

4. A study of how the project and the water use identified in Rule 3.1.c.8. will affect the identified water sources.

3.1.1. 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. Describe any agreements with public entities and whether such agreements would transfer to a future purchaser(s) of the 24-2-1(c) generating facility.

C. 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. The disclosure shall include reasonable estimates of the amount of taxes the applicant would pay if, hypothetically, the applicant constructed and operated the 24-2-1(c) generating facility without the benefit of any agreements abating taxes. For purposes of this paragraph, public funding shall include:

1) loans, grants or contributions from the State or Federal government, 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. Pro forma financial statements. The applicant shall provide pro forma financial statements (Balance Sheet, Funds Statement and Income Statement) for each year of the start-up phase (project development and construction) and for the first five years of operation of the proposed project. The financial statements must disclose all assumptions.

3. Local and State Economic Impact. The applicant shall provide estimates of the effect of the project on the local and state economy as well as the model used to derive the estimates. Such estimates shall cover the construction phase of the project and the ongoing impacts after construction. Such estimates shall include but not be limited to: (i) the impact on local employment (including the number of added man-hours, 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; (iv) the impact on area property values; (v) the impact on existing infrastructure; (vi) the impact on per capita income in the local area and the region; and (vii) the impact of lost opportunity(ies) as to alternative use(s) of the land upon which the 24-2-1(c) generating facility is proposed to be built. The baseline data used to provide this information shall come from existing sources, and the applicant is not required to conduct new demographic or socio-economic research.

4. Regional development impact. The applicant shall describe the impact of the proposed 24-2-1(c) generating facility on regional development, including but not limited to housing, commercial and industrial development, and transportation system development.

3.1.m. Environmental data.

1. Species.

A. With respect to the geographic area where the 24-2-1(c) generating facility will be located, the applicant shall file an affidavit listing any and all permits that the applicant will be required to obtain from the US Fish and Wildlife Service, the West Virginia Department of Natural Resources, or any other government authority, with respect to threatened or endangered species. The affidavit shall include a statement that the applicant will comply with all permitting, and/or "taking" requirements of such other governmental agencies.

B. In the event the applicant represents to the Commission that it is not required by other governmental agencies to follow any process or permitting

requirements with respect to threatened or endangered species that may be located on the land proposed for the 24-2-1(c) generating facility, other parties to a Siting certificate proceeding may petition the Commission to consider the impact on species pursuant to the Commission's public interest review of the Siting certificate application.

2. Species - Wind powered electric generation facilities only. In addition to the requirements stated in Rule 3.1.m.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. If both of the Spring and Fall studies are not available at the time an application is filed, the applicant shall file the one that is available, and file the other study within 90 days of the application filing date.

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

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

B. Operation. After the 24-2-1(c) generating facility has been in operation for one year, the applicant shall perform and file with the Commission the results of an avian and bat lighting study conducted for one year after the 24-2-1(c) generating 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 24-2-1(c) generating facility. For structures higher than 100 feet, the viewshed analysis must encompass a 20-mile radius around the property boundaries of the 24-2-1(c) generating facility, or around the proposed location of facilit(ies) if known.

B. Construction. The applicant shall:

1. Describe the expected impacts of construction on the viewshed within a one-mile radius of the proposed 24-2-1(c) generating facility;

2. Describe the expected impacts of construction on the

viewshed within a five-mile radius of the proposed 24-2-1(c) generating facility;

3. For structures higher than 100 feet, describe the expected impacts of construction on the viewshed within a 20-mile radius around the proposed 24-2-1(c) generating facility;

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

C. Operation. The applicant shall:

1. Describe the expected impacts of 24-2-1(c) generating facility operations on the viewshed within a one-mile radius of the proposed 24-2-1(c) generating facility;

2. Describe the expected impacts of 24-2-1(c) generating facility operations on the viewshed within a five-mile radius of the proposed 24-2-1(c) generating facility;

3. For structures higher than 100 feet, describe the expected impacts of operation on the viewshed within a 20-mile radius around the proposed 24-2-1(c) generating facility;

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

~~4. Noise.~~

~~A. Preconstruction.~~

~~1. Ambient Noise Study. The applicant shall provide maps of the existing ambient Ld and Ln noise levels within 1 mile of the property line at all noise sensitive areas. Noise will be shown as average Day-Night Sound Levels (DNL). The ambient base line data obtained from such study will be collected over a period of at least seven consecutive days. Noise events during the night (Defined as 10:00 p.m. to 6:59 a.m.) shall be weighted (or penalized) by 10db to reflect the greater perceived impact of noise during the night.~~

~~2. Predictive Noise Study. The applicant shall provide maps of the noise expected to be generated by the facility. Such maps will clearly show all noise sensitive areas and their associated predicted noise levels in terms of both Ld, Ln and~~

~~weighted DNL operation of the facility.~~

~~3. Cumulative Noise Impact Study. The applicant shall provide maps of the predicted ambient noise levels during operation and inclusive of plant noise at all noise sensitive areas within 1 mile of the property line.~~

~~B. Construction Period:~~

~~1. Daytime construction. Shall be limited to no more than 5 dB increase in pre-existing Ld measured at all noise sensitive areas within 1 mile from the property line. Ld will be defined as the weighted average Led measured from 0700 to 2200 hours.~~

~~2. Nighttime construction. Shall be limited to no more than 3 db increase in Ln measured at all noise sensitive areas within 1 mile from the property line. Ln will be defined as the weighted average Led measured from 2200 to 0700 hours.~~

~~3. Compliance. During the entire construction period the applicant will continuously monitor the Led levels at all noise sensitive areas within 1 mile from the property line. Daily Ld, Ln and weighted DNL values will be reported to the Commission on a quarterly basis.~~

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

~~1. Daytime operation. Shall be limited to pre-existing ambient Ld measured at all noise sensitive areas within 1 mile from the property line. Ld will be defined as the weighted average Led measured from 0700 to 2200 hours.~~

~~2. Nighttime operation. Shall be limited to pre-existing ambient Ln, measured at all noise sensitive areas within 1 mile from the property line. Ln will be defined as the weighted average Led measured from 2200 to 0700 hours.~~

~~3. Compliance. During periods of full operation the applicant will periodically but no less than annually monitor the Led levels at representative noise sensitive areas within 1 mile from the property line. Such periodic studies will be for seven consecutive days. The applicant will maintain records of such daily Ld, Ln and weighted DNL and will make such records available to the Commission upon request at any time. If, at any time, the noise levels exceed the limits specified in this Rule, the applicant will immediately report such violations to the Commission along with the results of any efforts undertaken to identify the causes. Should the total time of non-compliance exceed~~

~~1%, the applicant shall, to the best of its ability, attempt to identify the cause of such non-compliance. Subsequently, the applicant shall file a mitigation plan with the Commission Staff and upon its acceptance, promptly implement such mitigation.~~

~~D. Noise sensitive areas. Shall include, but not be limited to; hospitals, schools, residences, cemeteries, parks, and places of religious worship.~~

4. Noise.

A. Preconstruction. The applicant shall provide a noise exposure map of the noise present prior to construction. Said map will contain contour lines of equal noise at and up to one mile from the 24-2-1(c) generating facility's property line. The increment of equal noise levels will be no more than 3db. Noise will be shown as average Day-Night Sound Levels (DNL). Noise events during the night (Defined as 10:00pm to 6:59am) shall be weighted (or penalized) by 10db to reflect the greater perceived impact of noise during the night. The base line noise study conducted to develop this map shall be no less than seven days including Saturday and Sunday. The map shall show all existing structures within one mile of the 24-2-1(c) generating facility's property line and shall indicate whether such structure is residential, commercial or industrial. Current land uses shall also be designated.

B. Construction. In its application, the applicant shall file a predictive noise study as to construction noise which 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.

1. The study shall predict the construction noise levels expected at the nearest property boundary.

2. The study shall predict the construction noise levels expected within a one-mile radius of the proposed 24-2-1(c) generating facility and indicate the location of any noise-sensitive areas within one mile of the proposed 24-2-1(c) generating facility;

3. The study shall predict the construction noise levels expected within a five-mile radius of the proposed 24-2-1(c) generating facility and indicate

the location of any noise-sensitive areas within five miles of the proposed 24-2-1(c) generating facility;

4. For purposes of the predictive noise study, noise sensitive areas shall include, but not be limited to, hospitals, schools, residences, cemeteries, parks, and places of religious worship;

5. As part of the study, the applicant shall describe equipment and procedures that can or will be used to mitigate the effects of noise emissions from the proposed 24-2-1(c) generating facility during construction.

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

1. Provide a noise exposure map of the noise expected to be present during operation. Said map will contain contour lines of equal noise at and up to one mile from the 24-2-1(c) generating facility's property line. The increment of equal noise levels will be no more than 3db. Noise will be shown as average DNL. Noise events during the night (Defined as 10:00pm to 6:59am) shall be weighted (or penalized) by 10db to reflect the greater perceived impact of noise during the night. The noise exposure map will take into account all aspects of operation including but not limited to generating equipment, processing equipment and associated road traffic.

2. The map shall show all existing structures within one mile of the 24-2-1(c) generating facility's property line and shall indicate whether such structure is residential, commercial or industrial. Current land uses should also be designated.

3. Describe equipment and procedures to mitigate the effects of noise emissions from the proposed 24-2-1(c) generating facility during operation.

4. For purposes of the predictive noise study, noise sensitive areas shall include, but not be limited to, hospitals, schools, residences, cemeteries, parks, and places of religious worship.

5. Traffic.

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

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 24-2-1(c) generating facility;
3. Describe any increased traffic levels expected within a 5-mile radius of the proposed 24-2-1(c) generating 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 24-2-1(c) generating 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 24-2-1(c) generating facility;
3. Describe traffic levels attributable to project operations expected within a 5-mile radius of the proposed 24-2-1(c) generating 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 24-2-1(c) generating facility.

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

1. Estimate the impact of the proposed 24-2-1(c) generating facility on the land uses depicted on the map required in Rule 3.1.h.1.;
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 24-2-1(c) generating facility; and
4. Describe the applicant's plans for concurrent or secondary uses of the site.

3.1.o. Cultural impact.

1. Landmarks.

A. The applicant shall estimate the impact of the proposed 24-2-1(c) generating 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.h.1.

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

2. Recreation areas. The applicant shall estimate the impact of the proposed 24-2-1(c) generating facility on recreational areas identified on the map required by Rule 3.1.h.1. and describe plans to mitigate any adverse impact.

3.1.p. Public responsibility. The applicant shall (i) describe the applicant's program for public interaction planned for the siting, construction, and operation of the proposed 24-2-1(c) generating 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 24-2-1(c) generating facility.

§ 150-16-4. Application fee.

4.1. Each application filed pursuant to section 3.1 *et seq.* of these rules shall be accompanied with an application fee equaling the lesser of \$500.00 per megawatt or \$200,000.00.

§ 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 a 24-2-1(c) generating facility for which a Siting certificate has been issued plans to: construct the facility using engineering design plans different than those filed with its original Siting certificate application; modify the footprint

of the 24-2-1(c) generating facility; increase the transmission or generation of the 24-2-1(c) generating facility; make any modification to the 24-2-1(c) generating facility with a potential for environmental impact, then the owner or operator must obtain prior Commission approval of such modification. If the owner or operator believes that when considering the totality of the circumstances surrounding any such modification, the modification is not material or that the modification will not materially affect the viewshed impacts, noise levels, emissions or other environmental impacts, it may petition the Commission for waiver of the requirement to obtain a modification or amendment to its Siting certificate. The Commission may deny or grant such request or it may limit the information required to be filed, depending on the circumstances of the proposed modification.

6.2. A request for Commission approval of a modification or amendment to a Siting certificate shall be filed using Form No. 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.p. 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.p. of these Rules that is inapplicable to the proposed modification or amendment.

6.4. In addition to the information required by Rules 3.1.a. through 3.1.p., upon request by the Commission or Commission Staff, 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. This rule does not impact the rights of other parties to seek discovery pursuant to the Commission's *Rules of Practice and Procedure*, 150 C.S.R. 1.

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 \$1,000.00 or one tenth of one percent (.001) of the projected capital cost of the proposed modifications, provided, however, that the fee shall not exceed \$200,000.00.

§ 150-16-7. Transfer or Assignment of Siting Certificate.

7.1. If an owner or operator of a 24-2-1(c) generating facility plans to transfer or assign its Siting certificate to another entity, the owner or operator shall, at least 30 days prior to the closing date of such transfer or assignment, provide the Commission with notice of the identity of the transferee, the mailing address of the transferee, the names and mailing addresses of the managing members or officers of the transferee, and an affidavit of the transferee stating that the transferee agrees that it is bound by all terms and conditions of the

Siting certificate for the 24-2-1(c) generating facility.

§ 150-16-8. Civil penalties.

8.1. 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.

Form No. 1

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) Transmission support line] or [and for a certificate of public 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: _____

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

Entered by the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the ___ day of _____, 2_____.

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 [type of generating facility proposed] 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 public 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 proposes 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: _____