

**WEST VIRGINIA
SECRETARY OF STATE**

JOE MANCHIN, III

ADMINISTRATIVE LAW DIVISION

Form #2

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

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

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

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 30


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

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON March 7, 2005* AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

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

Initial Comments due 2/18/05
Reply Comments due 3/7/05

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



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

Public Service Commission

Richard E. Hitt, General Counsel



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

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

January 4, 2005

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

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2005 JAN -5 A 9:44
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

Dear Judy:

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

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

Sincerely,

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

Richard E. Hitt
General Counsel

REH/ljm

Enclosure

S:\Staff Staff\JLANE\MISC\RULES\ElectricRulesdocuments\EWG RULES\secretaryofstatetransmittalgo2551cf.wpd

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Rules Governing Siting Certificates for Exempt Wholesale Generators

Type of Rule: Legislative Interpretive Procedural

Agency: Public Service Commission

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

Phone Number: 304-340-0300 Email: ssquire@psc.state.wv.us

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The Commission shall collect, for each siting certificate application to construct and operate a facility described in W. Va. Code Section 24-2-1(c), an application fee equalling the lesser of \$500 per megawatt or \$200,000.

The Commission shall collect, for each application for Commission approval of a modification or amendment to a siting certificate, an application fee equalling the greater of \$1,000 or one-tenth of one percent (.001) of the projected capital costs of the proposed modifications, provided, however, that the fee shall not exceed \$200,000.

The application fees shall be used by the Commission to offset its costs to process the above applications.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	2005 Increase/Decrease (use "-")	2006 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	NONE	NONE	NONE
Personal Services	NONE	NONE	NONE
Current Expenses	NONE	NONE	NONE
Repairs & Alterations	NONE	NONE	NONE
Assets	NONE	NONE	NONE
Equipment	NONE	NONE	NONE
Other	NONE	NONE	NONE
2. Estimated Total Revenues	NONE	NONE	NONE

Rule Title: Rules Governing Siting Certificates for Exempt Wholesale Generators

3. **Explanation of above estimates (including long-range effect):**
Please include any increase or decrease in fees in your estimated total revenues.

The application fees described above are new application fees.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

NONE

Date: 1-5-05

Signature of Agency Head or Authorized Representative

E. H. Stark

SUMMARY OF RULE

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

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

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

By Order issued December 18, 2003, the Commission issued initial proposed rules. After the receipt of comments and hearing, the Commission has decided that the issuance of further proposed rules requesting comments on the areas of concern to the Commission is appropriate.

**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 5th day of January, 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

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

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

Accordingly, by Order issued June 2, 2003, the Commission: (1) instituted this General Order; (2) ordered public notice; and (3) established the first public comment period.

Many interested entities and persons filed comments on what the Commission's rules should contain.

By Order issued December 18, 2003, the Commission: (1) issued as proposed legislative rules, Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. 30; (2) established a 60-day comment period on the proposed rules; and (3) required the Commission's Executive Secretary to publish notice and serve parties with a copy of the Order.

On February 3, 2004, the Conservancy requested an extension of the initial comment period.

By Order issued February 11, 2004, the Commission granted an extension of the initial and reply comment periods for all parties concluding at 4:00 p.m. on March 24, 2004. The Commission also set the case for hearing to commence Monday, April 19, 2004, at 9:30 a.m. in the Howard M. Cunningham Hearing Room, Commission offices, 201 Brooks Street, Charleston, West Virginia. The Commission required the Executive Secretary to publish statewide notice of the hearing.

Numerous comments to the proposed rules were filed by interested parties, and reviewed by the Commission.

On April 16, 2004, six parties to this case filed a Joint Motion requesting the establishment of a task force to propose consensus rules, in lieu of those proposed by the Commission (Joint Motion).

The hearing was held as scheduled on April 19, 2004. The Commission heard public comment and took testimony and other evidence from the parties. Mr. Julian Martin, Ms. Holly Rieke, Mr. Jarrett Jamison and Mr. Joseph Trainor provided public comment. A letter from Delegate Harold Michael was read into the transcript record. (Hearing Transcript, pp 11-24). There followed attorney statements either in support of, or in opposition to the Joint Motion filed on April 16, 2004 (Tr. pp. 24-32).

On April 26, 2004, the Commission issued an order pertaining to management of the service list for this proceeding.

By Order issued May 13, 2004, the Commission denied the Joint Motion, filed April 16, 2004, requesting the establishment of a task force to propose consensus rules, in lieu of the Commission's proposed rules.

Initial and Reply briefs were filed June 11, and June 25, respectively.

Summary of Hearing:

The only witness to testify was James Ellars of Commission Staff. Prior to Mr. Ellars taking the stand, counsel for Commission Staff stated her agreement that proposed rule 1.5.A., defining the term EWG facility, should be expanded as proposed by Western Greenbrier Co-Generation and Big Sandy Peaker Plant, to include the facilities listed at W.Va. Code § 24-2-1 (c)(3) and (c)(4).

Mr. Ellars is a Chief Utilities Manager in the Public Service Commission's Engineering Division. Mr. Ellars previously filed comments with the Commission on February 11, 2004, and those were admitted into evidence as Staff Exhibit No. 1.

On cross-examination, Mr. Ellars testified that 300 days is not too long for the Commission to investigate and analyze a EWG siting application. While it does not take 300 days for Commission Staff to do its job, due process requirements, including a hearing, take longer. The time period is necessary for the Commission to fully consider the diverse interests of the public. (Tr. p. 38-39). The 30-day notice required in the siting rules may be in the form of a letter. After receipt of the 30-day notice, Staff may contact the parties for information. (Tr. p. 39).

Staff currently lacks all of the expertise that would be optimal to fully analyze the various types of EWG facility applications, but this may depend on the level of detail required of Staff. The Commission does not employ experts on viewshed analysis, for example. Depending upon the analysis required of Staff in these rules, additional work with additional costs may be imposed upon Staff to do its job. (Tr. p. 39-42). The proposed rules do not attempt to limit the ability of Staff to seek information over and above the listed information, from the applicant. (Tr. p. 42-43).

The rules as proposed do not specify how facilities that reach the end of their useful lives will be removed. Mr. Ellars believes it would be reasonable expectation that once EWG facilities are no longer useful, the land should be returned to "brown field condition." (Tr. p. 43-44). Traditional utilities maintain a fund to pay for demolition and reclamation of old facilities. (Tr. p. 44). Mr. Ellars would have no objection to the addition of a similar requirement in these rules. Another alternative would be to make

demolition and removal a condition of an issued siting certificate. (Tr. p. 45).

In response to questioning by Mr. Knee, Mr. Ellars agreed that in wind turbine projects, for example, if Staff were provided with all relevant information on viewshed and avian issues at the time an application was initially filed, Staff would be able to complete its investigation more quickly. Mr. Ellars supports the addition of an application checklist to facilitate this point. He noted, however, that sometimes Staff's interpretation, and an applicant's interpretation of checklist compliance may differ. (Tr. p. 46-49).

Mr. Ellars conceded that some of the proposed rules are inapplicable to certain types of EWG facilities. For example, Rule 3.1.c.1. would not be applicable to a wind project. (Tr. p. 49-50). The application checklist should either be technology specific or be all-inclusive with the understanding that applicants file the appropriate information for the type of facility that is planned. (Tr. p. 50).

In response to questioning by Mr. Callas, Mr. Ellars agreed that in prior certificate cases filed under *W.Va. Code* § 24-2-11, when Staff felt that it could not adequately review an application due to an applicant's non-provision of information on a checklist or as requested in data requests, Staff has recommended dismissal. Mr. Ellars believes that Staff makes every effort to accommodate applicants who have trouble providing all of the necessary information up front. (Tr. p. 54-55).

Staff's goal in requiring information regarding viewshed is to provide the Commissioner or the Administrative Law Judges with sufficient information as to the impact of a project on its surroundings. (Tr. p. 58).

Counsel for both the Building and Construction Trades Foundation; Western Greenbrier and Big Sandy Peaker Plant; American Electric Power; Atlantic Renewable Energy; Longview Power, LLC; the Commission's Consumer Advocate Division; Friends of the Allegheny Front; and Florida Power and Light LLC, made reference to their previously filed comments in this proceeding.

The Commission ruled from the bench that the filing of post-hearing briefs would be optional.

Following a discussion among counsel and the Commission as to how the service list might be reduced in this case; and future filings regarding the then-pending motion to establish a task force, the hearing was adjourned.

The Briefs:

Initial post-hearing briefs were filed by Allegheny Energy Supply; Commission Staff; the Consumer Advocate Division; American Electric Power; Citizens for Responsible Development; Forks of Cheat Mountain Property Owners Association; Western Greenbrier Co-Generation, LLC, and Big Sandy Peaker Plant, LLC; Jarrett F. Jamison III; and West Virginia State Building and Construction Trades Council.

Reply briefs were filed by Commission Staff; Larry Brent Dadisman; Western Greenbrier Co-Generation, LLC and Big Sandy Peaker Plant, LLD; and American Electric Power.

DISCUSSION

Based on the comments and arguments presented to the Commission, as well as the Commission's own review, the Commission has made a number of revisions to its proposed rules. Those revisions are reflected on Attachment A hereto.

Following the receipt of briefs in this case, the Commission became aware of a report prepared by Governor Wise's Energy Task Force, and dated August 2002, titled "West Virginia' Energy Roadmap 2001-2020." The Commission has learned that this report was submitted to the West Virginia Legislature in 2003. A review of the "Roadmap" indicates that the Governor's Energy Task Force identified a number of goals and recommended certain action items to the Governor Wise, the West Virginia Development Office, and others, which directly or indirectly relate to this Commission's delegated function in issuing siting certificates for facilities described in *W.Va. Code* § 24-2-1(c). The Energy Task Force has not, to date, participated in this proceeding through the filing of comments, or appearance at the hearing.

The establishment and mission of Governor Wise's Energy Task Force indicates that our State government is interested in adopting a formal energy policy to enable the State to assume a leadership role in meeting energy, environmental, and economic challenges. *See* "Roadmap," Overview, p. ii. The "Roadmap" presented a strategic plan outlining West Virginia's role in addressing these needs. *Id.* To this Commission's knowledge, a specific policy has not yet been adopted by the Legislature, and is still in a development stage. This Commission does not wish to promulgate final rules that may conflict with, or be non-supportive of, any formal State energy policy.

Accordingly, the Commission finds it to be reasonable and appropriate to issue revised proposed rules in the form of Attachment A, and establish a second comment and

reply comment period in this proceeding. The Commission specifically invites the participation of the 2001 Governor's Energy Task Force, the West Virginia Development Office, the Transition Office of Governor-Elect Manchin, the West Virginia House of Delegates, and the West Virginia Senate. All entities that previously filed comments in this case may again file comments, but the Commission requests that the comments pertain to State energy policy, and not simply repeat comments filed during the first comment period.

FINDINGS OF FACT

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

2. By Order issued June 2, 2003, the Commission instituted this General Order proceeding for the purpose of developing applicable rules, ordered public notice, and established the first public comment period.

3. Many interested entities and persons filed comments on what the Commission's rules should contain.

4. By Order issued December 18, 2003, the Commission: (1) issued as proposed legislative rules, Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. 30; (2) established a 60-day comment period on the proposed rules; and (3) required the Commission's Executive Secretary to publish notice and serve parties with a copy of the Order.

5. By Order issued February 11, 2004, set the case for hearing and required the Executive Secretary to publish statewide notice of the hearing.

6. Numerous comments to the proposed rules were filed by interested parties, and reviewed by the Commission.

7. The hearing was held as scheduled on April 19, 2004. The Commission heard public comment and took testimony and other evidence from the parties.

8. Following the receipt of briefs in this case, the Commission became aware of a report prepared by Governor Wise's Energy Task Force, and dated August 2002, titled "West Virginia' Energy Roadmap 2001-2020." The Commission has learned that this report was submitted to the West Virginia Legislature in 2003. A review of the "Roadmap" indicates that the Governor's Energy Task Force identified a number of goals and recommended certain action items to the Governor Wise, the West Virginia Development Office, and others, which directly or indirectly relate to this Commission's delegated function in issuing siting certificates for facilities described in *W. Va. Code* §24-2-1(c).

9. The Energy Task Force has not to date participated in this proceeding through the filing of comments, or appearance at the hearing.

10. The establishment and mission of the Governor Wise's Energy Task Force indicates that our State government is interested in adopting a formal energy policy to enable the State to assume a leadership role in meeting energy, environmental, and economic challenges. See "Roadmap", Overview, p. ii. The "Roadmap" presented a strategic plan outlining West Virginia's role in addressing these needs. *Id.*

11. To this Commission's knowledge, a specific policy has not yet been adopted by the Legislature, and is still in a development stage.

CONCLUSIONS OF LAW

1. The revisions reflected on Attachment A, are based on the comments and arguments presented to the Commission, as well as the Commission's own review.

2. This Commission does not wish to promulgate final rules that may conflict with, or be non-supportive of, any formal State energy policy.

3. It is reasonable and appropriate to issue revised proposed rules in the form of Attachment A, and establish a second comment and reply comment period in this proceeding. The Commission specifically invites the participation of the 2001 Governor's Energy Task Force, the West Virginia Development Office, the Transition Office of Governor-Elect Manchin, the West Virginia House of Delegates, and the West Virginia Senate.

4. All entities that previously filed comments in this case may again file comments, but the Commission requests that the comments pertain to State energy policy, and not simply repeat comments filed during the first comment period.

ORDER

IT IS THEREFORE ORDERED that the Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 CSR 30, attached hereto as Attachment A, are hereby promulgated as Commission proposed legislative rules, in lieu of those proposed by Order issued December 18, 2003.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this Order on the current service list by United States Mail, and upon Commission Staff by hand delivery.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon the following:

Patrick R. Esposito, Sr., Ph.D.
Chairman of Governor's Energy Task Force
Augusta Systems, Inc.
3606 Collins Ferry Rd.
Suite 202
Morgantown, WV 26505

David Satterfield, Executive Director
The West Virginia Development Office
Building 6, Room 525
1900 Kanawha Blvd., East
Charleston, WV 25305-0311

Transition Office of Governor-Elect Manchin
1614 Kanawha Blvd. East
Charleston, WV 25311

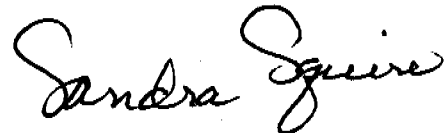
Robert S. Kiss
Speaker
House of Delegates
State Capitol, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470

Earl Ray Tomblin
Senate President
State Capitol, Room M-211
1900 Kanawha Blvd., East
Charleston, WV 25305-0800

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

IT IS FURTHER ORDERED that a second comment period is hereby provided with respect to the revised proposed rules, and comments may be filed with the Commission's Executive Secretary by February 18, 2005, by 4:00 p.m. Any interested party who files comments shall set forth specific comments concerning the proposed rules. Replies to the comments may be filed no later than March 7, 2005, by 4:00 p.m. Any party seeking a further hearing on the proposed rules shall make a specific written request before the close of the comment period and shall explicitly state the grounds upon which the request is made.

A True Copy, Teste:



Sandra Squire
Executive Secretary

JML/ljm
go2551cf.wpd

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 30

RULES GOVERNING SITING CERTIFICATES FOR
EXEMPT WHOLESALE GENERATORS

FILED
2005 JAN - 5 A 9:44
OFFICE WEST VIRGINIA
SECRETARY OF STATE

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

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

1.3. Filing Date --

1.4. Effective Date - _____

1.5. Definitions.

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

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 rules 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 Rule 26 of the *West Virginia Rules of Civil Procedure* and applicable 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 only) or a Class II legal advertisement (if the application is for both a siting certificate and a certificate of convenience and necessity to construct an associated transmission line). Publication shall be made in newspapers published and of general circulation in each county in which all or a portion of the proposed ~~EWG facility~~ 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 an ~~EWG facility~~ 24-2-1(c) generating facility and related transmission facilities of 200,000 volts or greater, the applicant must apply for both a siting certificate and a certificate of public convenience and necessity under W.Va. Code 24-2-11a. When such an application contains both a siting certificate application and an application for a certificate of public convenience and necessity to construct a transmission line of 200,000 volts or greater, the Commission will schedule proceedings to allow it to render its combined decision in both cases within three hundred (300) days of the application filing date.

2.4. When an applicant proposes to construct an ~~EWG Transmission~~ support line, less than 200,000 volts, to be associated with an ~~EWG facility~~ 24-2-1(c) generating facility, then the applicant shall not be required to file a separate application for a certificate of convenience and necessity, pursuant to *W.Va. Code* § 24-2-11. Rather, the ~~EWG Transmission~~ support line shall be deemed to be an integral part of the ~~EWG facility~~ 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.

§150-16-3. Application.

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

3.1.a. Project summary and ~~EWG facility~~ 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 ~~EWG facility~~ 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 EWG facility~~ 24-2-1(c) generating facility;

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

~~5. A description of the site selection process, including descriptions of the major alternatives considered;~~

~~6. A description of any court litigation threatened or pending 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;~~

~~7. A discussion of the principal environmental and socioeconomic considerations of the preferred and alternate sites; and~~

~~8. An explanation of the project schedule; and~~

~~9. Information filed by the applicant in response to the requirements of this section shall not be deemed responses to any other section of the application requirements.~~

3.1.b. Justification of need.

1. Need statement. An applicant for a certificate to site an ~~EWG facility~~ 24-2-1(c) generating facility shall provide a statement explaining the need for the ~~EWG facility~~ 24-2-1(c) generating facility. The statement shall contain references to any available recent long-term regional forecasts, if applicable long term electric supply and demand projections, such as those produced by the East Central Area Reliability Council or the local Regional Transmission Operator.

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

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

2. Total ~~EWG facility 24-2-1(c) generating facility~~ land area requirement;

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

47. A list of expected air and water emissions and a statement whether permits from other federal and/or state regulatory authorities must be obtained with respect to such emissions. If permits from other authorities are not required, the applicant must state the expected impact of such emissions ;

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

69. A summary description of other major equipment.

3.1.d. The applicant shall submit a brief description of the need for new EWG transmission support line(s) or high voltage transmission line(s) associated with the EWG facility 24-2-1(c) generating facility. 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 overlapping time-line format 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 (sState, local, fFederal) agencies (See Rule 5.1.a.). The applicant shall include a statement of the current status of such submissions and receipts including copies of any relevant correspondence 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 ~~EWG facility~~ 24-2-1(c) generating facility;
- and
6. Placement of the ~~EWG facility~~ 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. Site alternatives analyses. The applicant shall describe its site selection study conducted prior to submitting its application for the EWG facility. The study shall have been designed to evaluate all practicable sites for the proposed EWG facility area, and include:~~

- ~~1. A description of the study area or geographic boundaries selected, including the rationale for the selection;~~
- ~~2. A map of suitable scale which includes the study area and which depicts the general sites which were evaluated;~~

[items 3. through 5. were relocated under section 3.1.g.1. which follows.]

~~6. A description of the sites selected for evaluation, their final ranking, and the rationale for selecting the preferred and alternate sites; and~~

[item 7. was relocated under section 3.1.g.1. which follows.]

~~8. The applicant shall provide one copy of any constraint map utilized for the study to the Commission for review.~~

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

[item 10. was relocated under section 3.1.g.1. which follows.]

3.1.hg. 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.

~~3a.~~ [relocated from deleted 3.1.g. above.] A comprehensive list of all siting criteria utilized by the applicant, including any quantitative or weighting values assigned to each;

~~4b.~~ [relocated from deleted 3.1.g. above.] A description of relevant factors, or constraints, identified by the applicant and utilized in the site selection process;

~~5c.~~ [relocated from deleted 3.1.g. above.] A description of the process by which the applicant utilized the siting criteria to evaluate and make a final determination of the preferred and alternate sites;

~~7d.~~ [relocated from deleted 3.1.g. above.] A description of any

qualitative or other factor utilized by the applicant in the selection of the preferred and alternate site.

10e. 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 ~~EWG facility~~ 24-2-1(c) generating facility or facilities indicating the location of the proposed ~~EWG facility~~ 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.

3. ~~Layout Design~~ Design and construction. The applicant shall provide ~~information on the proposed layout~~ the most current engineering design plans for the 24-2-1(c) generating facility, and the description of major structures and installations to be located thereon including, but not limited to, tentative proposed transmission towers, and the distance of possible variation from the tentative tower locations.

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.
- EF. 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.

AB. 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.

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

8. Equipment.

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

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

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

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

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

4. Describe all proposed major public safety equipment.

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

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

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

~~_____ A. The location of the proposed EWG facility 24-2-1(c) generating facility;~~

~~_____ B. Major population centers and geographic boundaries;~~

~~_____ C. Major transportation routes and utility corridors;~~

~~_____ D. Bodies of water which may be directly affected by the proposed EWG facility;~~

~~_____ E. Topographic contours;~~

21. 5-mile radius Map. The applicant shall supply an ANSI size D map(s) of 1:24,000 1:4800 scale or larger containing at least a 5-mile radius from, and depicting, the proposed EWG facility 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 ~~EWG facility~~ 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 natural landmarks~~ 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;

~~32. EWG facility~~ 24-2-1(c) generating facility Map Pre-construction map. The applicant shall supply an ANSI size D map(s) of ~~1:4,800~~ 1:2000 scale of the site 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 and gas wells; and

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

~~A. Generating plant,~~

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

53. 1-Mile Radius Proposed EWG facility 24-2-1(c) generating facility Map. The applicant shall supply an ANSI size D map(s) of ~~1:24,000~~ 1:2000 scale or larger, which shall include the plant site generation facility and transmission line site and at least a 1-mile radius thereof. This map shall show the following features:

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

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

3.1.j.i. Impact on Public Utilities. The applicant shall identify and describe the impact of the EWG facility 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.k.j. Rendering of project.

~~1. The applicant shall provide accurate three dimensional (3D) video renderings of the project. This video must show surrounding topographical and man-made features which are accurately portrayed to scale. The project structures and features must be incorporated within the video accurately and to scale. There must be a video complying with these requirements from the vantage points of the boundaries of the project land footprint. This video must provide for full 3D "walk-around" capability that will allow a full 360 degree panoramic viewing of the project and surrounding features from the project land boundaries. There must be additional videos from all vantage points of each public road, hiking area or scenic overlook area from which any portion of the project will be visible. These additional videos must provide for full 3D "walk through" capabilities along such public roads, hiking areas or scenic overlook areas. The videos must be playable on a computer using a MicroSoft Windows Operating System. The applicant shall provide video renderings from all scenic overlooks from which the 24-2-1(c) generating facility will be visible after construction. The video must be playable on a computer using a MicroSoft Windows Operating System.~~

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

~~3. All videos and s~~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.~~h~~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 for each surface water body and sub-surface water sources, likely to be directly affected by the proposed ~~EWG facility 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; and

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

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

3.1.~~m~~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.

BC. 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 proforma 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; ~~and~~ (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.

4. Regional development impact. The applicant shall describe the impact of the proposed ~~EWG facility~~ 24-2-1(c) generating facility on regional development, including but not limited to housing, commercial and industrial development, and transportation system development. ~~The applicant shall assess the compatibility of the proposed EWG facility and the anticipated resultant regional development with current regional plans:~~

3.1.n.m. Environmental data.

1. Species.

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

~~1. With respect to the geographic area where the EWG facility 24-2-1(c) generating facility will be located, the applicant shall file an Endangered Species Status Report and Habitat Assessment. The foregoing documents will be prepared after consultation with, and include any information provided by, file an affidavit listing any and all permits that the applicant will be required to obtain from the US Fish and Wildlife Service, and 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.~~

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

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

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

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

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

~~1. Describe the expected impacts of EWG facility 24-2-1(c) generating facility operations on endangered and other species present within a one-mile radius of the proposed EWG facility;~~

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

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

2. Species - Wind powered electric generation facilities only. In addition to the requirements stated in Rule 3.1.n.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.

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

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

B. Operation. After the ~~EWG facility~~ 24-2-1(c) generating facility has been in operation for one year, the applicant shall:

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

B. Construction. The applicant shall:

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

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

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

C. Operation. The applicant shall:

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

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

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

4. Noise. The applicant shall:

A. Preconstruction. ~~The applicant shall describe noise already present at and around the site to provide a baseline noise calculation.~~ 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. ~~Describe~~ The study shall predict the construction noise levels expected at the nearest property boundary. ~~The description study shall address~~

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

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

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

45. 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 EWG facility 24-2-1(c) generating facility during construction.

C. Operation. In its application, the applicant shall

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

~~(i) Generating equipment;~~

~~(ii) Processing equipment;~~

~~(iii) Associated road traffic; and~~

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

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

43. Describe equipment and procedures to mitigate the effects of noise emissions from the proposed EWG facility 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, and parks;

5. Traffic.

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

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

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

2. Describe any increased traffic expected within a 1-mile radius of the proposed EWG facility 24-2-1(c) generating facility;

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

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

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

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

2. Identify structures that will be removed or relocated;

3. Describe formally adopted plans for future use of the site and surrounding lands for anything other than the proposed ~~EWG facility 24-2-1(c)~~ generating facility; and

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

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

3.1.~~qo.~~ Cultural impact.

1. Landmarks.

A. The applicant shall estimate the impact of the proposed ~~EWG facility 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.~~i.2h.~~1.

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

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

3.1.sp. Public responsibility. The applicant shall (i) describe the applicant's program for public interaction planned for the siting, construction, and operation of the proposed ~~EWG facility 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 ~~EWG facility 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 ~~greater~~ lesser of \$500 per megawatt or ~~\$10,000~~ \$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 an 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 ~~EWG facility 24-2-1(c) generating facility~~; increase the transmission or generation of the ~~EWG facility 24-2-1(c) generating facility~~; make any modification to the ~~EWG facility 24-2-1(c) generating facility~~ with a potential for environmental impact; or make any modification to the ~~EWG facility 24-2-1(c) generating facility~~ the cost of which will exceed 10% of the original cost to construct the ~~EWG facility 24-2-1(c) generating facility~~, 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 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.sp. 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.sp. of these Rules that is inapplicable or irrelevant to the proposed modification or amendment.

6.4. In addition to the information required by Rules 3.1.a. through 3.1.sp., 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 ~~\$500 per megawatt or \$10,000~~: \$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 an 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.

§150-16-78. Civil penalties.

7-1. 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.

APPLICATION FOR A SITING CERTIFICATE

State of West Virginia
Public Service Commission
Charleston

Case No. _____

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

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

1. That the name and address of the applicant are

_____.

2. That the applicant proposed to _____

_____,
at _____ (city/town), in the County of
_____.

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

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

_____.

Dated this _____ day of _____,
_____.

(Signature of authorized
representative of applicant)

Title of signer (President or
other officer)

Attorney.

A d d r e s s :

Form No. 2.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

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

CASE NO. _____

NAME OF APPLICANT, address of applicant:

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

NOTICE OF FILING

[INSERT MAP]

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

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

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

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

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

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

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

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

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

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

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

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

[NAME OF APPLICANT]

APPLICATION FOR MODIFICATION TO
OR AMENDMENT OF A SITING CERTIFICATE

State of West Virginia
Public Service Commission
Charleston

Case No. _____

Application of

_____ for modification to or amendment of an existing electric generating facility siting certificate in the County of _____

_____ [and for modification to or amendment of an existing certificate of convenience and necessity for a related _____ mile _____ kV transmission line located in the County(ies) of _____.]

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

1. That the name and address of the applicant are

_____.

2. That the applicant proposed to

_____, at _____ (city/town), in the County of _____
_____.

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

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

Dated this _____ day of _____,

(Signature of authorized representative of applicant)

Title of signer (President or other officer)

Attorney.

A d d r e s s :
