

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

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2005 MAY 25 P 1:43

Form #5

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

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

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

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS July 25, 2005


Authorized Signature

#14.40

FISCAL NOTE

P.S.C.
Series 30

In the matter of a rulemaking to institute the Commission's Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. 30.

I. OBJECTIVES OF THE RULE

The purpose of this rulemaking is to carry out the Commission's statutory duties pursuant to § 24-2-1 and §24-2-11c of the West Virginia Code.

II. COST OF IMPLEMENTING THE PROPOSED RULE

There will be no significant implementation cost relating to this rulemaking for the State of West Virginia. The Commission does not anticipate additional costs to be incurred as a result of the rulemaking.

III. THE EFFECT THIS MEASURE WILL HAVE ON THE COSTS OR REVENUES OF STATE GOVERNMENT (Information required by fiscal notes for either house of the Legislature.)

This rulemaking will have no effect on the costs or revenues of state government.

IV. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS

This rulemaking will have no significant economic impact on the state or its residents.

DATE: 5-25-05

AGENCY: Public Service
Commission

SIGNATURE OF
AUTHORIZED REPRESENTATIVE



E. H. Staats, Chairman
Public Service Commission

**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, on January 5, 2005, the Commission issued further proposed rules requesting comments on the areas of concern.

The Commission has reviewed the second round of comments and finds that the public interest is served by the issuance of the Commission's final rules.

SUMMARY OF RULE

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

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 25th day of May, 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 adopts final rules.

Background

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, 2004 and June 25, 2004, 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 Commissioners or the Administrative Law Judges with sufficient information as to the impact of a project on its surroundings. (Tr. p. 58).

Counsel for 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.

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, LLC; and American Electric Power.

By Order issued January 5, 2005, the Commission made a number of revisions to its proposed rules based on the comments and arguments presented to the Commission, as well as the Commission's own review. Further, the Commission noted that it had recently been made aware of a report prepared by Governor Wise's Energy Task Force, dated August 2002, titled "West Virginia' Energy Roadmap 2001-2020," which was submitted to the West Virginia Legislature in 2003. The Commission opined that the goals and action items stated in the Roadmap could directly or indirectly relate to the Commission's delegated function in issuing siting certificates for facilities described in W.Va. Code § 24-2-1(c). The Commission did not wish to promulgate final rules that may conflict with, or be non-supportive of, any formal State energy policy.

Accordingly, the Commission issued revised proposed rules, and established a second comment and reply comment period. The Commission specifically invited 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 were again invited to file comments, but the Commission requested that the comments pertain to State energy policy, and not repeat comments filed during the first comment period.

The following parties filed either initial or reply comments during the second comment period: Citizens for Responsible Development; Forks of Cheat Forest Property Owners Association; Chestnut Woods Association, LLC; GenPower, LLC; US Wind Force, LLC, Mt. Storm Wind Force, LLC, and Liberty Gap Wind Force, LLC; Governor's Energy Task Force by Chairman Pat Esposito; D. Michael Roberts and Viola Riggleman; Jarrett F. Jamison, III; Western Greenbrier Co-Generation, LLC and Big Sandy Peaker Plant, LLC; Commission Staff; CAD; Donald Gasper; West Virginia Development Office; PPM Atlantic Renewable; and West Virginia Highlands

Conservancy.

DISCUSSION

The Commission has reviewed and considered both rounds of comments and by this Order promulgates final Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. 30. The Commission will not address each of the filed comments and will instead allow the rules to speak for themselves. The Commission does, however, have the following responses to a few of the filed comments:

Chestnut Woods Association, LLC, suggested, among other things, that the Commission include a provision to ensure the availability of resources to carry out the demolition, removal and restoration of property at the end of the useful life of a facility sited pursuant to the rules. The Commission notes that its final rule 3.1.g.7. requires an applicant to furnish the Commission with information on its plans for post useful life demolition, removal, disposal, and restoration plans for facilities. Parties to an application proceeding are free to negotiate for other requirements relating to post useful life plans, or to request that the Commission make siting authority contingent upon an applicant's providing adequate assurances regarding such plans.

The West Virginia Development Office suggested that the Commission should process siting certificate cases in 180 days, rather than taking the 300-day statutory decision period. The Commission will certainly consider requests to process cases on an expedited schedule whenever possible.

Several parties objected to the requirement of rule 3.1.1.2. that applicants provide pro forma financial statements regarding the project. The Commission will clarify that the financial statements should pertain to the generation facility business, and not to the financial condition of the developer.

With regard to comments expressing concern about an applicant's disclosure of proprietary financial information, the Commission concludes that the financial information required by the rules is necessary for the Commission to conduct its public interest analysis pursuant to statute. While the Commission can afford filed financial information with proprietary treatment if a request to do so is filed in accordance with the Commission's Rules of Practice and Procedure, the Commission has no authority to give blanket protection from Freedom of Information Act (FOIA) requests. Each FOIA request must be considered and decided on a case-by-case basis.

The Commission agrees with the suggestion of the West Virginia Development

Office that the 10% cost ceiling on modifications that would not require Commission approval, should be removed. The other criteria for modifications that require prior Commission approval are sufficient to protect the public interest.

FINDINGS OF FACT

1. Following a hearing and briefing schedule, by Order issued January 5, 2005, the Commission made a number of revisions to its proposed rules based on the comments and arguments presented to the Commission, the Commission's own review, and a new awareness of a report prepared by Governor Wise's Energy Task Force, dated August 2002, titled "West Virginia' Energy Roadmap 2001-2020."

2. The Commission issued revised proposed rules and established a second comment and reply comment period.

3. The Commission specifically invited 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 were again invited to file comments, but the Commission requested that the comments pertain to State energy policy, and not repeat comments filed during the first comment period.

4. The following parties filed either initial or reply comments during the second comment period: Citizens for Responsible Development; Forks of Cheat Forest Property Owners Association; Chestnut Woods Association, LLC; GenPower, LLC; US Wind Force, LLC, Mt. Storm Wind Force, LLC, and Liberty Gap Wind Force, LLC; Governor's Energy Task Force by Chairman Pat Esposito; D. Michael Roberts and Viola Riggleman; Jarrett F. Jamison, III; Western Greenbrier Co-Generation, LLC and Big Sandy Peaker Plant, LLC; Commission Staff; CAD; Donald Gasper; West Virginia Development Office; PPM Atlantic Renewable; and West Virginia Highlands Conservancy.

CONCLUSION OF LAW

The Commission has reviewed and considered both rounds of comments and by this Order promulgates final Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. 30.

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.

IT IS FURTHER ORDERED that Attachment B hereto is a blackline version of the final rules, showing changes from the rules as proposed on January 5, 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 July 25, 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 forms, with the Secretary of State of West Virginia.

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 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 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
go2551cg.wpd

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

1.4. Effective Date – July 25, 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.

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.

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.

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)

Address: _____

Attorney.

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:

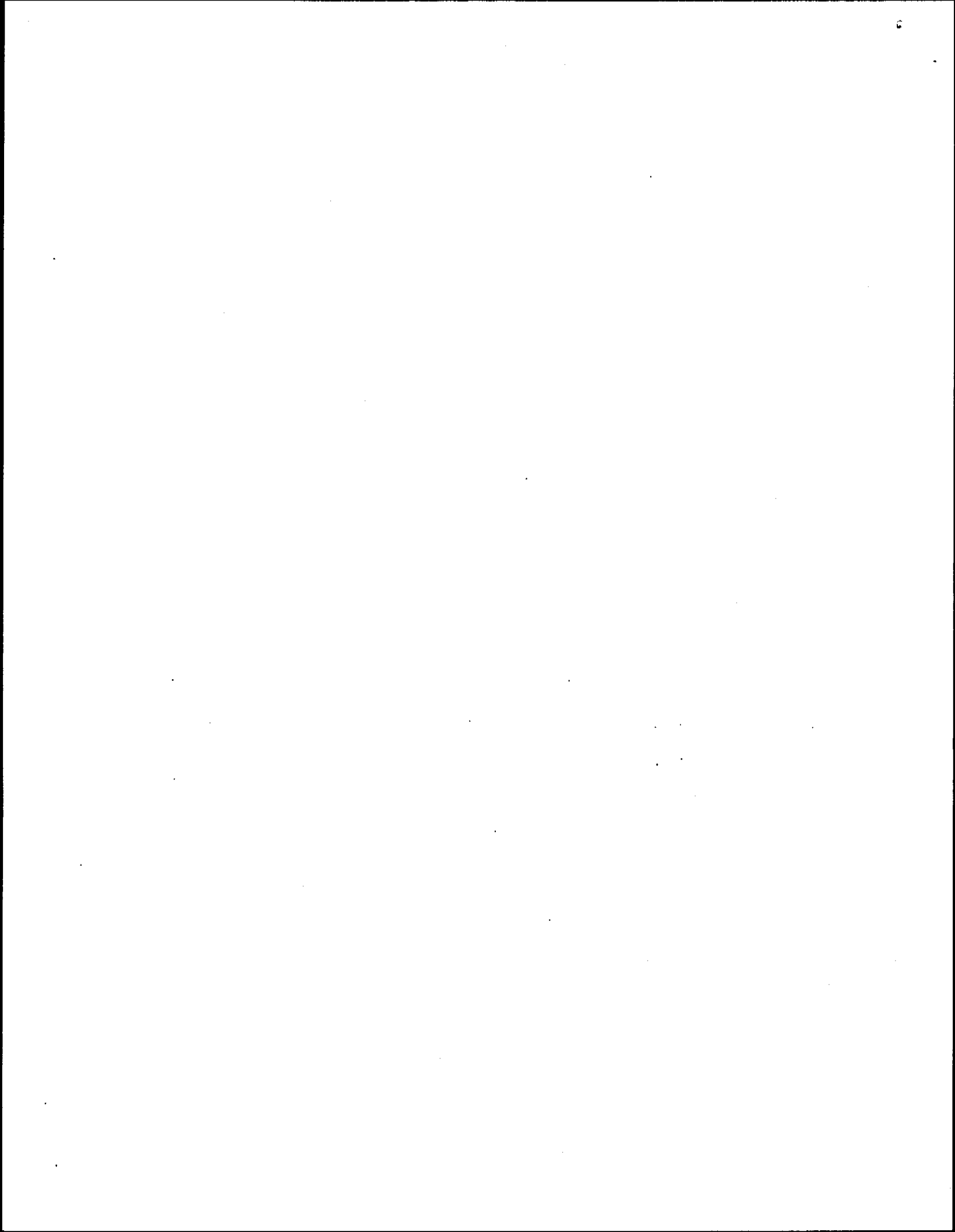
Dated this _____ day of _____,

(Signature of authorized
representative of applicant)

Title of signer (President or other officer)

Address: _____

Attorney.



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

1.4. Effective Date – July 25, 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 ~~Rule 26 of the West Virginia Rules of Civil Procedure~~ and applicable statutory and case law.

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

2.1. Any entity intending to file an application for a sSiting 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 sSiting 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 sSiting certificate only and/or a transmission support line) or a Class II legal advertisement (if the application is for both a sSiting 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 an 24-2-1(c) generating facility and related transmission facilities of 200,000 volts or greater, the applicant must simultaneously apply for both a sSiting certificate and a certificate of public convenience and necessity under W.Va. Code § 24-2-11a. When such an application contains both a sSiting 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 Transmission support line, less than 200,000 volts, to be associated with an 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 sSiting 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 an 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 whether that no permits from other federal and/or state regulatory authorities must be obtained with respect to such are required for that emissions. 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 shall submit a brief description of the need for new transmission support line(s) or high voltage transmission line(s) associated with the 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~~ 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 ~~s~~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. A comprehensive list of all siting criteria utilized by the applicant, including any quantitative or weighting values assigned to each;

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

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

e 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, and the description of depicting the 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. 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, and 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; ~~and~~.

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. ~~Generating plant~~ 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 video 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. ~~The video must be playable on a computer using a MicroSoft Windows Operating System.~~~~

~~2. The applicant shall provide still renderings that are representative of the project views that will be most evident to the public.~~

~~3. 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; and

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.58. 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:

1. 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. ~~The applicant shall:~~

A. ~~Preconstruction.~~

~~1. Ambient Noise Study. The applicant shall provide a noise exposure maps of the noise present prior to construction. Said map will contain contour lines of equal noise at an 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 3 db. 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. 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 1 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 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 EWG facility 24-2-1(C) generating facility;

~~_____~~ 3. The study shall predict the construction noise levels expected within a 5-mile radius of the proposed 24-2-1(c) generating facility and indicate the location of any noise-sensitive areas within five mile 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, and parks;

~~_____~~ 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 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.

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

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.

~~4. D. For purposes of the predictive noise study, nNoise sensitive areas, s~~Shall include, but not be limited to, hospitals, schools, residences, cemeteries, and 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 the 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.2.1.;

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 sSiting 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 sSiting 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, ~~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 sSiting 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 sSiting 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 sSiting 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 sSiting 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 an 24-2-1(c) generating facility plans to transfer or assign its sSiting 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 sSiting 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.

APPLICATION FOR A SITING CERTIFICATE

State of West Virginia
Public Service Commission
Charleston

Case No. _____

Application of _____ for an electric generating facility sSiting 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)

Address: _____

Attorney.

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 coal-fired [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's 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 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)

Address: _____

Attorney.