

# Public Service Commission of West Virginia

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



Phone: (304) 340-0300  
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February 11, 2020

Connie Graley, Executive Secretary  
Public Service Commission  
PO Box 812  
Charleston, WV 25323

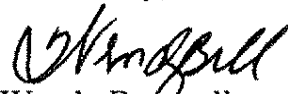
**Re: GENERAL ORDER No. 255.2  
IN THE MATTER OF REVISIONS TO THE  
RULES GOVERNING SITING CERTIFICATES  
FOR EXEMPT WHOLESALE GENERATORS,  
150 C.S.R. Series 30.**

Dear Ms. Ferrell:

Enclosed for filing are the original and twelve (12) copies of the "Initial Comments Filed by Staff" in the above-referenced proceeding.

A copy has been served upon all parties of record.

Yours truly,

  
Wendy Braswell  
Director, Legal Division  
WV State Bar No. 9406

WB/s

Enclosures

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**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**GENERAL ORDER NO. 255.2  
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**INITIAL COMMENTS FILED BY STAFF**

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On January 27, 2020, the Commission issued proposed rules revising the Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. Series 30 (Siting Certificate Rules) and requested public comment on the proposed rules.

The proposed Siting Certificate Rules reflect careful consideration by the Commission to eliminate requirements that are unrelated to or added little to the determination of whether a siting certificate should be granted. The Staff comments on these proposed rules are based on Staff's experience in reviewing applications filed under W. Va. Code §24-2-11c and the Siting Certificate Rules. The Staff comments are tailored toward provisions omitted from the Application Requirements of the proposed rules, as follows:

**Proposed Project Schedule** – proposed Siting Certificate Rule 4.1.1d. The Applicant is now required to provide an explanation of a project schedule, but not a proposed project schedule itself. Although Staff agrees with lifting the requirement to

file a proposed project schedule in the form of a Gantt Chart, Staff believes a project schedule should be required. Projects to construct exempt whole wholesale generators of electricity are capital intensive projects with budgets in the millions or billions of dollars. Construction schedules already exist for these construction projects and can be provided without unduly burdening the applicant. Requiring the submission of a construction schedule will maintain consistency with applications for a certificate of convenience and necessity filed by public utilities under W. Va. Code §24-2-12.

**Fuel Source Transportation Route(s).** The proposed Siting Certificate Rules remove the requirement for the applicant to provide a description of the anticipated mode of transportation and expected route(s) to transport fuel to the plant. Staff notes that in Case No. 19-0890-E-CS-CN, Longview Power II, LLC and Longview Renewable Power, LLC, there has been vocal public protest by members of the public in response to the potential for a high volume of coal truck traffic by their homes and on their local roads. In some cases, fuel source transportation route(s) pose a strong local concern that must be considered by the Commission. Retaining the requirement to provide transportation route(s) will facilitate the Commission in balancing the interests of the public.

**Environmental Data and Cultural Impact Information.** The proposed Siting Certificate Rules 4.1.5.l and 4.1.5.m remove the requirements for the applicant to provide certain information concerning avian migration, avian and bat risk, and the cultural impact. In Staff's experience, issues concerning a project's impact to birds, bats, and cultural areas have been hotly contested before the Commission and in related proceedings. The removal these filing requirements from the Siting Certificate Rules will

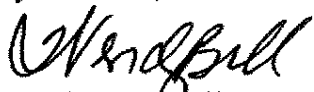
not prevent intervening parties from raising these issues as part of the statutory balancing test under W. Va. Code §24-2-11c. Although this information may fall within the main purview of other agencies or governmental authorities, the provision of this information informs the Commission review and decision on the siting certificate. The Siting Certificate Rules are set forth both to give the Commission and the parties notice of the project's impact on the surrounding area and to put the applicant on notice as to all the information the Commission will need to consider to complete the permitting process. Mt. Cmty. for Responsible Energy v. PSC of W.Va., 222 W. Va. 481, 493-494. As intervening parties are likely to raise the issues of impact to birds, bats, and cultural areas, Staff asks the Commission to require some level of information on these items to assist both the applicant in providing adequate information and the Commission in performing the statutory balancing test.

Accordingly, Staff thanks Commission for the opportunity to provide comments on the proposed Siting Certificate Rules.

Respectfully submitted this the 11<sup>th</sup> day of February 2020.

STAFF OF THE PUBLIC SERVICE  
COMMISSION OF WEST VIRGINIA

By Counsel,

  
Wendy Braswell  
Director, Legal Division  
WV State Bar No. 9406

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**GENERAL ORDER NO. 255.2  
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**CERTIFICATE OF SERVICE**

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I, Wendy Braswell, Director, Legal Division of the Public Service Commission of West Virginia, hereby certify that I have served a copy of the foregoing "Initial Comments Filed by Staff" upon all parties of record, as listed below, by First Class United States Mail; postage prepaid this the 11<sup>th</sup> day of February 2020.

No parties currently listed

  
\_\_\_\_\_  
Wendy Braswell  
Director, Legal Division  
WV State Bar No. 9406

03:45 PM FEB 11 2020 EXEC SEC DIV

February 11, 2020

**VIA HAND DELIVERY**

Ms. Connie Graley  
Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25301

**Re: GENERAL ORDER NO. 255.2**

**IN THE MATTER OF REVISIONS TO THE  
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**CASE NO. 19-0311-EG-GI**

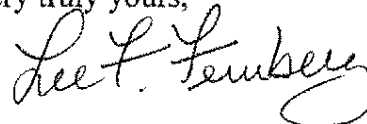
**GENERAL INVESTIGATION INTO THE RULES  
GOVERNING SITING CERTIFICATES FOR  
EXEMPT WHOLESALE GENERATORS.**

Dear Ms. Graley:

Enclosed for filing in the above-referenced case are an original and twelve copies of *Initial Comments of Developers Counsel to the Proposed Rules Governing Siting Certificates for Exempt Wholesale Generators*.

Please do not hesitate to contact me if you have any questions regarding this filing.

Very truly yours,



Lee F. Feinberg  
(WV State Bar #1173)

SJR/jmc:12644717

Enclosures

cc: Certificate of Service

**PUBLIC SERVICE COMMISSION  
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**GENERAL INVESTIGATION INTO THE RULES  
GOVERNING SITING CERTIFICATES FOR  
EXEMPT WHOLESALE GENERATORS.**

**INITIAL COMMENTS OF DEVELOPERS COUNSEL TO THE PROPOSED RULES  
GOVERNING SITING CERTIFICATES FOR EXEMPT WHOLESALE GENERATORS**

On March 5, 2019 the Public Service Commission of West Virginia ("Commission") opened a general investigation regarding the Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. Series 30 ("Rules"). The Commission sought comments from interested parties on recommended improvements to the Rules. A number of interested parties filed Initial Comments on April 30, 2019 and Reply Comments on May 31, 2019.

The Siting Certificate Rules had an effective date more than 15 years ago. Developers Counsel have been involved in a large number of Siting Certificate cases over that period of time. All of this representation before the Commission was on behalf of the Developers of exempt wholesale generator ("EWG") projects, both natural gas fired and wind farms, including original siting filings and modifications.

The Commission Order of January 27, 2020 issuing proposed rules revising the Rules Governing Siting Certificates for Exempt Wholesale Generators made substantial improvements

to the Siting Certificate Rules. Developers Council endorses the Commission's efforts and proposed rules. The comments set forth herein are suggested changes in order to clarify or slightly revise the proposed rules, and in the case of the new traffic rule to substantially revise the proposed rule.

1. Rule 4.1.1.e is not clearly stated. We believe the word "not" should be deleted so that multiple restatements of the same information would be unnecessary provided there is appropriate cross-referencing.

2. Rules 4.1.5.d ("structures") and 4.1.5.f ("equipment") could be confusing. Clearly the rule (f) on equipment is appropriate as it requires descriptions and specific information on generating equipment (which would have already been partially described in Rule 4.1.2), emissions control, safety equipment and "any other major equipment." However, "structures" (4.1.5.d) asked for a detailed description of all major "structures," although Rule 4.1.5.b asks for engineering drawings for the proposed layout "depicting the major structures and installations located thereon." Certainly cross referencing, as referenced to Rule 4.1.1.e should reduce some of the effort required by these rules but elimination of Rule 4.1.5.d (structures) is the better way.

3. Rule 4.1.5.g.1.F. Certainly the mapping requirement is improved by the elimination of the one mile pre-construction map. Nevertheless, we continue to be concerned that the words "private recreational areas" and the words "parks, forests, hunting or fishing areas or similar facilities" in the 5 mile radius map (4.1.5.g.1) makes the mapping (i) difficult at best because many such areas are not shown on available sources and (ii) arbitrary for opponents' arguments that mapping is incomplete.

4. Rule 4.1.5.g.2.B is somewhat confusing. If the rule is intended to cover installations dedicated to construction or operation of the facility located inside the boundaries

then that would appear to be the same information as Rule 4.1.5.g.2.J. If the rule is intended to cover installations dedicated to construction or operation but outside the boundaries it is unnecessarily broad and the language "dedicated to construction or operation" needs to be added. If the rule is expressing a need for mapping every structure and installation within one mile it has broadened the mapping requirement unnecessarily primarily due to the word "individual." Perhaps "major installations" is what is intended.

5. Rule 4.1.5.k.2. We continue to believe pro forma financial statements are unnecessary. No rate payer funds are at stake. No financing is going to occur without adequate financial statements. This particular issue is one of the biggest areas of concerns. Unfortunately, many opponents simply will not adhere to promises made in confidentiality agreements and the supposed penalties can't be collected when the breach occurs.

6. Rule 4.1.5.1.3. Noise. In 4.1.5.1.3.B.4 the old and proposed rules set forth the "noise sensitive areas"; however, the proposed noise rules use the word "structures" (see 4.1.5.1.3 "all existing structures within one mile" and 4.1.5.1.3.B.2 "all existing structures, cemeteries and parks.") For the purposes of noise the words noise sensitive area are better.

7. Rule 4.1.5.1.4 Traffic. We believe that this rule has been revised to become more difficult and costly. Previously for construction an applicant provided traffic levels on roads nearest the property boundaries and any "increased" traffic within one and five miles. Now the rule requires traffic levels expected daily and hourly within a 5 mile radius and a map showing each road described. Thus, the plain language of the rule requires an hourly study that is substantially broader as to number of roads and is not limited to increased traffic and additionally requires a very detailed, arguably irrelevant (if it is every road within five miles) map. The same revisions now would apply to operations also. It is the experience of Developers Counsel that

wind farms employ 10-15 employees and gas fired plants about 30 employees spread over three shifts. In essence operation of an EWG adds no substantial traffic increases and yet the new rules add a substantial layer of effort to demonstrate this fact when the old rule more than adequately provided the necessary information. Perhaps the concept for both construction and operations should be "substantial increases in traffic."

RESPECTFULLY SUBMITTED  
THIS 11<sup>TH</sup> DAY OF FEBRUARY 2020



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Lee F. Feinberg (WV State Bar #1173)  
Susan J. Riggs (WV State Bar #5246)  
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sriggs@spilmanlaw.com

**CERTIFICATE OF SERVICE**

I, Susan J. Riggs, do hereby certify that on this 11<sup>th</sup> day of February, 2020, a copy of the foregoing *“Initial Comments of Developers Counsel to the Proposed Rules Governing Siting Certificates for Exempt Wholesale Generators”* was served upon the following:

**VIA HAND DELIVERY**

Linda Bouvette, Esquire  
Staff Attorney  
Public Service Commission of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25301

George A. Patterson, III, Esquire  
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Kurt L. Krieger, Esquire  
Todd M. Swanson, Esquire  
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Vincent M. Trivelli, Esquire  
The Law Office of Vincent Trivelli, PLLC  
178 Chancery Row  
Morgantown, West Virginia 26501



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Lee F. Feinberg (WV State Bar #1173)

11.30 AM FEB 26 2020 EXEC SEC DIV

February 26, 2020

**VIA HAND DELIVERY**

Ms. Connie Graley  
Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street  
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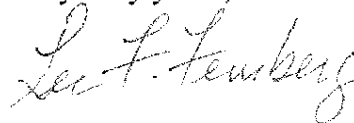
**GENERAL INVESTIGATION INTO THE RULES  
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EXEMPT WHOLESALE GENERATORS.**

Dear Ms. Graley:

Enclosed for filing in the above-referenced case are an original and twelve copies of *Reply Comments of Developers Counsel to the Proposed Rules Governing Siting Certificates for Exempt Wholesale Generators*.

Please do not hesitate to contact me if you have any questions regarding this filing.

Very truly yours,



Lee F. Feinberg  
(WV State Bar #1173)

SJR/jmc:12684045

Enclosures

cc: Certificate of Service

**PUBLIC SERVICE COMMISSION  
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**REPLY COMMENTS OF DEVELOPERS COUNSEL TO THE PROPOSED RULES  
GOVERNING SITING CERTIFICATES FOR EXEMPT WHOLESALE GENERATORS**

This investigation began in March 2019 and on April 30, 2019, the Developers Counsel filed comments. In that first filing of comments, two concerns of project developers and the financial community were highlighted for the Commission: (i) the length of time it takes to process a case and (ii) the costs associated with preparing an initial application in accordance with substantive requirements in the Rules Governing Certificates for Exempt Wholesale Generators, 150 C.S.R. Series 30. Developers believe there are a number of requirements which are duplicative, burdensome, costly, and which do not provide meaningful and necessary information to the Commission.

A number of suggestions were made to the Commission in an effort to eliminate unnecessary sections of the Rules. In the Proposed Rules, some of the suggestions were adopted, in whole or in part; some were not adopted. However, as Developers Counsel stated in its recent comments, it endorsed the Commission's efforts and proposed rules.

Now, however, the Commission Staff has offered comments on the Proposed Rules which, if adopted, would undercut the Commission's efforts. Although we understand that Staff is trying to secure more information for case development, Developers Counsel urges the Commission to reject the Staff's proposals for the following reasons.

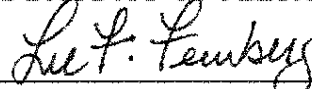
Project Schedule. Rule 4.1.1.d provides that the applicant should provide an explanation of the project schedule. Staff suggests a rule change to require the actual schedule. Isn't an explanation sufficient to demonstrate to the Commission how the applicant intends to proceed? Why are specific time frames important? Actual schedules can rarely be kept, often by circumstances beyond an applicant's control.

Fuel Source Transportation Route. Staff's position seems to be a reaction to a particular pending case and truck traffic discussed in that case. Truck traffic can, and frequently is, developed out of the traffic study (what roads are going to see more traffic in construction and operation?) and not the fuel transportation route. Developers Counsel are concerned with the issue of trying to provide a natural gas pipeline route four or five years before it will even be in service, and before you know the identity of who will build the pipeline and where they must secure rights of way.

Environmental Data and Cultural Impact Information. As Staff states "this information may fall within the main purview of other agencies or governmental authorities." It does belong with SHPO and USFWS.

For the reasons stated above, the Commission should reject Staff's proposals.

RESPECTFULLY SUBMITTED  
THIS 26<sup>th</sup> DAY OF FEBRUARY 2020



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Lee F. Feinberg (WV State Bar #1173)  
Susan J. Riggs (WV State Bar #5246)  
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lfeinberg@spilmanlaw.com  
sriggs@spilmanlaw.com

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I, Lee F. Feinberg, do hereby certify that on this 26<sup>th</sup> day of February, 2020, a copy of the foregoing “*Reply Comments of Developers Counsel to the Proposed Rules Governing Siting Certificates for Exempt Wholesale Generators*” was served upon the following:

**VIA HAND DELIVERY**

Wendy Braswell, Esquire  
Director, Legal Division  
Public Service Commission of West Virginia  
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Linda Bouvette, Esquire  
Staff Attorney  
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Charleston, West Virginia 25301

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