

**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 20th day of March 2020.

GENERAL ORDER NO. 255.2

IN THE MATTER OF REVISIONS TO THE RULES GOVERNING SITING CERTIFICATES FOR EXEMPT WHOLESAL GENERATORS, 150 C.S.R. Series 30.

COMMISSION ORDER

The Commission adopts rules revising the Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. Series 30 (Siting Rules).

BACKGROUND

By Order issued March 5, 2019, the Commission opened Case No. 19-0311-EG-GI, a General Investigation of the Commission Siting Rules. The West Virginia Supreme Court of Appeals indicated, in a recent decision, that the Commission should amend the Siting Rules to eliminate the requirement of a hypothetical tax calculation. Ohio Valley Jobs Alliance, Inc., et al. v. The Public Service Commission of West Virginia, et al., Case No. 18-0249, Memorandum Decision issued November 1, 2018 at 10-11. As a result of that case and other recent cases, the Commission determined that the Siting Rules as a whole should be examined.

In the General Investigation, the Commission received initial and reply comments from Longview Power, LLC (Longview), attorneys Lee Feinberg and Susan Riggs (Developers Counsel), the West Virginia Independent Oil and Gas Association (IOGA), The West Virginia Building and Construction Trades Council, AFL-CIO (Trades Council), and Commission Staff. The Commission received initial comments from Hope Gas Inc., dba Dominion Energy West Virginia (Hope).

On January 27, 2020, the Commission initiated this rulemaking proceeding and issued proposed revised Siting Rules after consideration of the comments in the General Investigation. Initial comments on the proposed Siting Rules were due on February 11, 2020 and Reply comments were due on February 26, 2020. The Commission received Initial Comments from Staff and Developers Counsel. Developers Counsel filed Reply Comments.

DISCUSSION

Staff Comments

Staff agreed with the removal of the Gantt Chart requirement in Siting Rule 3.1.e. Staff, however, asserted that a project schedule should be required. Construction schedules already exist for these construction projects and developers can provide them without unduly burdening the applicant. Requiring the submission of a construction schedule will maintain consistency with applications for a certificate of convenience and necessity. Developers Counsel responded that the requirement for an explanation of the project schedule required by the proposed rule should be sufficient.

The Commission questions the value of requiring a detailed project schedule in reviewing 24-2-1(d) generating facility siting certificate cases. The project schedule may change significantly from the time a siting certificate application is filed and the time construction actually begins. An explanation of the expected project schedule is sufficient. The Commission, Staff or any other party can request an actual project schedule if it is necessary for review of the application.

Staff recommended that the Commission retain the Siting Rule 5 requirement for information about the fuel transportation route. Staff noted the public concern about coal truck traffic in the recent Longview Power case and stated that in some cases there is strong local concern about fuel transportation routes. Developers Counsel replied that truck traffic is provided by the traffic study. Developers Counsel also stated that developers have difficulty determining gas pipeline routes several years before the line will be in service.

The overwhelming majority of siting certificate cases involve wind-powered or gas-fired exempt wholesale generators (EWG) that do not have heavy traffic issues during operation. The exact route of a gas pipeline can be difficult to predict years in advance of construction. Also, developers can address truck traffic in the traffic study. The Commission will not adopt Staff's recommendation to retain the fuel transportation requirement.

Staff disagreed with the removal of the Siting Rule 3.1.m requirement that wind-powered EWGs provide studies on the impact of a project on endangered species, birds, and bats and cultural impact information required by Siting Rule 3.1.o. Staff asserted that compliance with the Siting Rules gives the Commission and the parties information about a project's impact on the surrounding area and informs applicants as to information the Commission needs to consider to complete the permitting process. Citing, Mt. Cmty. for Responsible Energy v. PSC of W.Va., 222 W. Va. 481, 493-494. Staff stated that intervening parties are likely to raise the issues relating to impact on birds, bats, and cultural areas. Staff asked the Commission to require some level of information on these items to assist the applicant in providing adequate information and to assist the

Commission in performing the statutory balancing test. Developers Counsel responded that this information is in the purview of the State Historic Preservation Office and the United States Fish and Wildlife Service.

The Commission has removed the requirement that an application include avian studies, bat risk assessments, and cultural impact information. These areas are generally regulated by other agencies. A party may request this information in a data request or may petition the Commission to consider avian, bat, and cultural impact information on grounds that it is necessary to determine the public interest in a particular case.

Developers Counsel Comments

Developers Counsel recommended that the word “not” be removed from Siting Rule 4.1.1.e. in order to allow cross-referencing and eliminate duplication of information. The Commission agrees.

Developers Counsel recommended that the Commission eliminate Siting Rule 4.1.5.d. Siting Rules 4.1.5.b and 4.1.5.f require information and descriptions of major structures and equipment. The Commission agrees that Siting Rule 4.1.5.d is duplicative and should be removed.

Developers Counsel expressed concern about the requirement of Siting Rule 4.1.5.g.1.F that an applicant show “private recreational areas” and “parks, forests, hunting or fishing areas or similar facilities” on the five-mile radius pre-construction map. Many of these areas are not shown on available sources. The Commission agrees that some of the areas required to be shown on the five-mile map may not be readily identifiable as a “private recreational area” or a “hunting or fishing area.” The Commission has revised the rule to require that an applicant show “areas officially designated as public or private recreational areas, parks, forests, hunting or fishing areas” on the five-mile pre-construction map.

Developers Counsel questioned the requirement of Siting Rule 4.1.5.g.2.B that the one-mile map show “individual structures and installations outside the boundaries of the 24-2-1(d) generating facility.” The Commission agrees with Developers Counsel that this requirement is overly broad. It is also duplicative because the one-mile map required for the noise study must show all noise sensitive areas within a one-mile radius. The rule should be clarified by requiring that the map show individual structures and installations required for construction or operation.

The Commission agrees with Developers Counsel that pro forma financial statements are unnecessary and will remove that requirement from the Siting Rules. An EWG’s financial condition does not affect ratepayers, and pro forma financial statements provide little insight into whether construction of the EWG will result in a substantial

positive impact on the local economy and local employment. An applicant could not obtain adequate financing absent sound financial projections.

Developers Counsel recommended revising the noise exposure maps required by Siting Rules 4.1.5.1.3.A and 4.1.5.1.3.B.2 to show all noise sensitive areas instead of all structures or all structures, cemeteries and parks because “noise sensitive areas” are listed in Siting Rule 4.1.5.1.3.B.4. The Commission agrees and will adopt this recommendation.

Developers Counsel asserted that proposed Siting Rules 4.1.5.1.4.B.1, 4.1.5.1.4.C.1, and 4.1.5.1.4.C.3 regarding traffic are more burdensome than the current rules and recommended that the requirements for information on traffic during construction and operation apply to “substantial increases in traffic.” The Commission agrees that the Siting Rules should require information about substantial increases in traffic and will revise the Siting Rules accordingly.

The Commission has made other revisions to the proposed Siting Rules. To provide more clarity, the requirements for filing confidential information are now stated in Siting Rule 3.2 in place of the reference to Case No. 09-1485-E-P. In addition, the phrase “(including gross tax amounts and net amounts if any abatement agreements apply)” in Siting Rule 4.1.5.k.2 is now removed to be consistent with removal of the requirement for a hypothetical tax calculation. The Commission has made other immaterial clarifying, stylistic, and grammatical revisions that do not affect the meaning of the Siting Rules.

FINDINGS OF FACT

1. The Commission proposed revisions to the Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. Series 30.
2. The public had notice of this proceeding and an opportunity to comment as evidenced by the affidavits of publication filed with the Executive Secretary.
3. The Commission has considered the comments received in this matter in rendering the decisions herein.

CONCLUSION OF LAW

After giving consideration to the filed comments, the proposed Siting Certificate Rules, with modifications as noted herein, should be promulgated.

ORDER

IT IS THEREFORE ORDERED that the Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. Series 30, attached hereto as Attachment A are promulgated as final rules effective May 19, 2020.

IT IS FURTHER ORDERED that the Commission Executive Secretary file a clean copy of the text of the final Rules Governing Siting Certificates for Exempt Wholesale Generators, 150 C.S.R. Series 30, with the required forms with the office of the West Virginia Secretary of State.

IT IS FURTHER ORDERED that on entry of this Order, General Order No. 255.2 is closed and shall be removed from the docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary serve a copy of this Order on all parties that filed comments in Case No. 19-0311-EG-GI, and all electric utilities and gas utilities operating in West Virginia, the CAD and any other parties who were served in Case No. 19-0311-EG-GI, by electronic service if e-service agreements are on file, or by United States First Class Mail and on Staff by hand delivery.

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