

SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSE

Agency: West Virginia Department of Commerce

Rule Series: Title 145, Series 20

Rule Title: *Rule to Petition the Department of Commerce for Certification of a Microgrid District or Certification as a High Impact Data Center*

Statutory Authority: W. Va. Code § 5B-2-21(a) and § 5B-2-21A

Related Legislation: House Bill 2014 (2025 Regular Session)

I. METHODOLOGY FOR COMMENT REVIEW AND CONSOLIDATION

On December 10, 2025, the West Virginia Department of Commerce (the “Department”), filed Title 145, Series 20, the *Rule to Petition the Department of Commerce for Certification of a Microgrid District or Certification as a High Impact Data Center* (the “Proposed Rule”). This rule is promulgated pursuant to W. Va. Code §§ 5B-2-21(a) and 5B-2-21A, which stems from the “2025 Power Generation and Consumption Act” (“HB 2014”). HB 2014 made significant changes to standardize the process for the development of Microgrids and High Impact Data Centers in the State of West Virginia. The changes to the West Virginia Code set forth in HB 2014 became effective 90 days from passage, July 11, 2025.

The Department was given authority to promulgate legislative and emergency rules authority in HB 2014, *see* W. Va. Code § 5B-2-21(a), and to provide additional framework for the process for potential certification of either a Microgrid or a High Impact Data Center the Department filed the Proposed Rule and an Emergency Rule (which contains identical language) on the same day. The Emergency Rule was filed to ensure that these time-sensitive potential projects had a legal framework while the Proposed Rule made its way through the legislative process. Once this legislative rulemaking process has been completed the Emergency Rule will be of no further effect.

During the public comment period for the Proposed Rule, the Department received approximately 935 individual comments submitted via email.

Commensurate with this Summary of Public Comments and Agency Response, the Department has filed an agency approved modified rule (the “Modified Rule”), which was developed with representatives from the Department of Commerce, including individuals from the Division of Economic Development, the Office of Energy, and the Data Economy Office. The

substance of this response was also developed with assistance from the Department of Environmental Protection (the “WVDEP”) and accounts for the numerous public comments.

A redlined copy of the Modified Rule is attached as Exhibit A, and the specifics of each change to the Modified Rule are outlined in greater detail below.

a. Administrative Efficiency and Legal Compliance

Generally, legal requirements for the Department’s response to public comments on the Proposed Rules are primarily governed by the State Administrative Procedures Act, W. Va. Code § 29A-3-1 *et seq.*

Prior to submitting the Modified Rule to the Secretary of State, the Department is required to: (i) respond to all public comments received during the rulemaking process; and (ii) explain the reasoning for why specific comments were either incorporated into the final rule or rejected. Given the substantial volume of public comments received, and the significant overlap in the substantive issues raised, the Department has elected to batch and consolidate these comments pursuant to W. Va. Code § 29A-3-11(a)(2). This section explicitly authorizes an agency to "consolidate substantially similar comments and responses in the interest of efficiency."

To manage this volume effectively, the legal office of the Department utilized one of the State’s document management platforms to categorize each comment based on substantive content, grouping the form letters and repetitive submissions for administrative convenience while ensuring every unique substantive issue was reviewed and appropriately considered. Public comments have been sorted into the following five categories:

- a. Economic Concerns (see Exhibit B)
- b. Environmental Concerns (see Exhibit C)
- c. Public Transparency Concerns (see Exhibit D)
- d. Local Control Concerns (see Exhibit E)
- e. Infrastructure Concerns (see Exhibit F)

These categories have been created and attached as separate Exhibits to allow the Department, the Legislature, and the public to easily comb through the many comments for specific subject-matter concerns. Any individual public comment may have touched upon just one of the above noted categories or multiple categories. To the extent that any single comment covered multiple topics, those comments will appear in multiple batches within the attached Exhibits.

Below is a summary of the categorized comments received. A summary of each category of public comment and the Department's responses to each category of public comment will follow.

b. Rule Scope

A significant number of comments did not respond directly to the substance of the Proposed Rule, instead addressing policy decisions already adjudicated and codified by the Legislature in HB 2014. This Proposed Rule, as modified in the Modified Rule, is merely an administrative framework to implement the Department role in the process set forth in the Energy Generation and Consumption Act. Critically, this rule is a foundational piece of the larger administration of multibillion-dollar infrastructure investments in West Virginia. These projects have the potential to provide significant property tax revenue for the benefit of both the host county and the State at large including to reduce the personal income tax, to reinvest in the situs county and, on a per capita basis, in all counties; to fund economic development grants; and to fund grid stabilization.

The Department has no legal authority to alter the provisions of West Virginia Code through the rulemaking process. To the extent that many comments have requested such changes, the Department is legally incapable of making such changes through this legal process.

Furthermore, the Department does not specialize in environmental regulation. This Modified Rule only seeks to provide guidelines for the Department's role in the Microgrid and High Impact Data Center development process. Nothing in this rule alters or obviates any project's regulatory requirements outlined in the West Virginia Code and relevant environmental regulation. This process only reviews the potential viability of an applicant project for the economic viability and energy needs.

As will be noted in greater detail below, an approved project will still be required to obtain any and all relevant environmental and regulatory permits through the Public Service Commission and the WVDEP. The Department has, nevertheless, required the inclusion of certain information for review by the Secretary of Commerce at this stage, including consideration of various local and site-specific factors, to assist in the Department's determination that a proposed project may be appropriate for a specific location.

c. Rule Modifications

Below is a summary of the modifications made to the Proposed Rule, reflected in the Agency Approved Modified Rule filed with the Secretary of State on January 12, 2025. Certain changes are made in response to industry request to expand the definition of "nearly contiguous,"

Other language was added in response to numerous public comments requesting additional consideration for schools, churches, residences, businesses, and sites listed on the National Register of Historic Place and National Register of Historic Landmarks. And other changes related to the request for additional information and the requirement that a petition for certification be filed before seeking other relevant permits were made in response to the numerous comments expressing concern about a project's effect on the State's electrical grid.

Summary of changes (*see Exhibit A*, below)

- “Inordinate Burden” definition added to §2.4.
- Renumbering of the remainder of §2.
- Corrected formatting in §§ 4.1.6.a. through 4.1.6.l.
- Additional considerations for the Secretary’s analysis of Microgrid Certification related to proximity to certain structures and geologic conditions added to §§ 4.1.6.k. and 4.1.6.l.
- Additional considerations for the Secretary’s analysis of Microgrid Certification related to proximity to certain structures and geologic conditions added to a new § 5.4.
- Renumbering the remaining subsections in § 5 and additional considerations for the Secretary’s analysis of Microgrid Certification in the renumbered §§ 5.5 and 5.6.
- Additional considerations for the Secretary’s analysis of High Impact Data Center Certification related to proximity to certain structures and geologic conditions added to §§ 10.1.4.f. and 10.1.4g.
- Allowing the Secretary to seek additional information related to a petition for High Impact Data Center Certification in § 11.1. and allowing for a tolling of the relevant deadline for response in § 11.2.
- Renumbering of §11. to account for the new § 11.1.
- Additional considerations for the Secretary’s analysis of High Impact Data Center Certification related to proximity to certain structures and geologic conditions added to a new § 11.3.
- Additional considerations for the Secretary’s analysis of High Impact Data Center Certification in the renumbered §§ 11.5 and 11.6.

- Additional requirements that petition for certification should be filed with the Secretary before other state or federal permit is sought in new § 14.2. and renumbering the following section.

II. SUMMARY OF CONCERNS AND AGENCY RESPONSES

a. *Economic Concerns*

i. Summary of Comments:

Commenters expressed apprehension regarding the financial impact of High Impact Data Centers on ratepayers, fearing that upgrades would lead to higher residential utility bills. Conversely, industry representatives argued that strict mileage limits for "nearly contiguous" property are economically detrimental due to West Virginia's unique mountainous topography.

Based on the consolidated public feedback, the following economic impact statements summarize the primary concerns regarding the development of High Impact Data Centers and microgrids in West Virginia:

- Protection of Utility Ratepayers: Commenters request amendment to Proposed Rule §145-20-3.1.2, to require that existing ratepayers must be prioritized to ensure they do not subsidize the massive electricity costs, capacity charges, or grid infrastructure upgrades required by data centers. Commenters ask that applicants should be required to demonstrate that these facilities will cover the full cost of their energy consumption and any necessary utility updates.
- Demonstration of Financial Viability: Commenters request amendment to Proposed Rule §145-20-4.1.6.3, to require that the state should require petitioners to provide revenue estimates, financial models, and independent financial analyses to prove the economic viability of their energy sources and organizational competency. Commenters also request amendment to and §145-20-7, to expand the scope of the annual reporting requirements.
- Prevention of Stranded Infrastructure Costs: Commenters ask that local governments and citizens require legal assurances against "stranded costs" from infrastructure upgrades if projects are abandoned or not completed as planned.
- Mandatory Community Benefit Agreements: Commenters have requested some type of binding community benefit agreements should be a prerequisite for any company seeking waivers from local regulations or zoning to ensure local communities are fairly compensated for impacts.

- Preservation of Existing Economies: Commenters ask that the rules must account for potential negative impacts on established tourism-based economies, such as in Tucker County, where natural resource-based tourism generates substantial annual revenue.
- Property Value Safeguards: Commenters state that there is a significant need to address the potential for decreased property values for homes and businesses located near, but not included within, the boundaries of microgrid districts.
- Transparency in Tax Revenue and Job Creation: Commenters have concerns regarding the diversion of 70% of incremental property tax revenue to the state rather than local governments. Furthermore, they note that there may be limited full-time job creation potential, and request that this must be weighed against the significant environmental and community impacts these facilities may impose.

ii. Agency Response:

The economic impact of HB 2014, the impetus for this legislative rule, is potentially enormous. Facilitating the certification and eventual development of Microgrid Districts and HIGDC projects leverages West Virginia's abundant natural resources and history of power generation to promote and facilitate transformative investments in energy and data infrastructure across the state. The Bill also provides for the creation of various funds to lower the state income tax, fund future economic development projects, and stabilize the electric grid with funds that will not be assessed against individual ratepayers. The rule is a next step in facilitating the goals of the bill. It sets out important definitions, requirements and process for petitioning the Secretary for certification as a microgrid district and High Impact Data Center.

As referenced in the attached Modified Rule, the Department accepted some of the comments and, in turn, made the following changes:

- In response to topographic concerns raised by Spilman Thomas & Battle, the Department has amended the Modified Rule §145-20-2.5 to extend the definition of "nearly contiguous" property from one mile to one and a half miles. This strikes a balance between development flexibility and maintaining the integrity of a unified district.
- In response to various comments expressing concerns related to the Department's review of the economic viability of a project, the Department increased the authority of the Secretary to request additional information from relevant sources, including the relevant public utilities, related to the availability of power to any given project on the High Impact

Data Center side of the Rule. This authority already existed for the Microgrid side of the Proposed Rule so this change also more closely aligns the Department's certification process for Microgrids and High Impact Data Center.

With respect to the other public comments, there are several concerns already addressed by HB 2014. The job of the Department in this process is to review and assess an application for financial viability and facilitate the available electricity considerations. The Department, in conjunction with subject-matter experts from the Division of Economic Development, the Office of Energy, and the Data Economy Office will review all necessary and relevant project information, as required in the Modified Rule. The State will do a full analysis of each project petition and consider all relevant factors to determine the appropriateness and viability of the said petition.

There will be projects that receive certification but never go on to get built. This process aims to separate the wheat from the chaff so that the WVDEP is not flooded with speculators and unserious projects, enabling them to give due regard to the vetted, viable projects in the most expeditious manner possible.

Relative to Microgrid development, HB 2014 explicitly prohibits cost-shifting to regulated utility customers; all infrastructure costs must be borne by developers or microgrid consumers. One of the most significant safeguards for the ratepayer is the explicit prohibition against shifting costs to existing utility customers. W. Va. Code §5B-2-21(f) (2025). Regulated electric utility customers cannot bear any costs associated with the construction, operation, ancillary services, or capacity of non-utility-owned microgrids. And with respect to infrastructure costs, any new transmission or distribution facilities built specifically to serve these microgrid districts must be paid for by the developers or consumers within that district, not by the general public through rate hikes. *Id.* So, HB 2014 already addresses and protect against these concerns.

With respect to High Impact Data Center development, HB 2014 allows for the private contracting for electricity with the regulated utilities. This is a process the Department will support in conjunction with the Public Service Commission. The intent of the State in any such negotiation will be the facilitation of new economic development opportunities in the State of West Virginia with the explicit intent of benefiting the West Virginia ratepayer.

To that end, HB 2014 created the Electric Grid Stabilization and Security Fund for the benefit of the West Virginia ratepayer. W. Va. Code § 5B-2N-2a (2025). HB 2014 established a

new state fund specifically to support the reliability of the traditional grid as new, high-demand infrastructure is built. The fund provides financial support for grid stabilization and security initiatives for regulated utilities. An additional and unique safeguard also prevents these funds from being used to decommission or replace existing coal or gas-fired power plants. This ensures that the “build-out” of new tech infrastructure does not inadvertently lead to the premature closure of the state’s baseload power assets.

Furthermore, the “New Electric Load” requirement in HB 2014, *see* W. Va. Code § 5B-2-21(d) (2025), is intended to prevent “load jumping” (where an existing customer simply moves to a Microgrid to avoid utility costs, leaving other ratepayers to cover the fixed costs of the grid).

With respect to Microgrids, before a developer can bypass the local utility to build their own generation, they are legally required to attempt a partnership first. *See* W. Va. Code § 5B-2-21(e). More specifically, they are subject to the following provisions:

- 120-Day Rule: Applicants must demonstrate they made “good faith efforts” to negotiate an electricity supply contract with the local utility for at least 120 days.
- Special Contracts: If an agreement is reached, it is filed as a “special contract” with the Public Service Commission (PSC), allowing the utility to retain the customer under customized economic terms.

With respect to tourism concerns, the Department is intimately familiar with the central economic role that tourism plays in our State. The Division of Natural Resources is an integral piece of the Department’s makeup. The Department is dedicated to protecting and bolstering the tourism opportunities in this State. But that can be done while also supporting new and exciting economic development opportunities that make use of our strategic location for data centers and our natural resources necessary to power them.

With respect to the tax revenue reallocation, this is a provision explicitly set forth in HB 2014, and the Department has no authority to amend State Code through the rulemaking process. Specifically, HB 2014 changes how property taxes associated with High-Impact Data Centers are distributed, creating a formula that reinvests in the state’s broader economic stability. Specifically, the formula is as follows:

- 50% to the state’s Personal Income Tax Reduction Fund;
- 30% to the situs county;
- 10% to all other counties on a per capita basis;

- 5% to Economic Enhancement Grant Fund; and
- 5% to the Electric Grid Stabilization and Security Fund.

See W. Va. Code §11-6N-4(c)(4) (2025).

This tax split outlined above was a negotiated agreement, passed by the legislature with input from county officials. This distribution aims to equitably allocate the potential future windfall from multi-billion-dollar investments. While the State has one of the most favorable tax policies for the development of a high impact data center, even accounting for that attractive rate, the property values from a prospective project will be enormous. Most of the tax windfall will be directed back to the West Virginia taxpayer through a fund dedicated to funding personal income tax reduction.

What's more, the situs county will receive a plurality of the revenue to support local services and local needs that may arise from the increased economic activity. Even if a county does not land a high impact data center, the funds generated from any such development in the State will still cause a direct windfall to all other counties. The remainder of the funds will be divided between Economic Development investment for the attraction of new business and the expansion of existing businesses in the state, and to the Electric Grid Stabilization and Security Fund discussed in detail above. *See* W. Va. Code §11-6N-4(c)(4) (2025).

b. Environmental Concerns

i. Summary of Comments:

Based on the consolidated public feedback, the following environmental impact statements summarize the primary concerns regarding the development of high-impact data centers and microgrids in West Virginia:

- **Protection of Karst Topography and Water Resources:** Commenters request the addition of language to Proposed Rule §§ 145-20-3.1 and 9.1 to require that facilities located in karst terrain must be required to use surface water utilities rather than groundwater to prevent the depletion of residential wells, damage to agricultural operations, and the formation of sinkholes. Applicants must fully disclose details regarding water consumption, discharge, and potential impacts on water availability and quality.
- **Mitigation of Air Pollution and Thermal Inversions:** Commenters ask that the Proposed Rule require full disclosure of all air pollution produced by microgrids, including criteria pollutants, hazardous air pollutants, and greenhouse gases. Commenters note that specific

protections are needed for areas like Canaan Valley, where unique topography leads to thermal inversions that can trap harmful emissions and prolong public exposure.

- Regulation of Chemical and Thermal Discharge: Commenters express concerns regarding the discharge of biocides, corrosion inhibitors, heavy metals, and flame retardants (specifically PFAS compounds or "f-gases") which are linked to adverse health effects. Commenters ask that the Proposed Rule should also address the environmental impact of heat generation from backup generators and cooling systems.
- Management of Nuisance Impacts: Commenters ask that the Proposed Rule require that proposed developments must be evaluated for their collective impact on noise levels, light pollution, and visual viewsheds to protect the quality of life for nearby communities and maintain the character of scenic areas.
- Wildlife and Habitat Preservation: Commenters ask that applicants must demonstrate how facilities will impact local wildlife and natural habitats, ensuring that industrial development does not lead to significant ecological degradation.
- Promotion of Sustainable Energy Alternatives: Commenters ask that the state should require petitioners to evaluate the feasibility of renewable energy alternatives and battery storage options as part of their energy source demonstration.
- Standardization of Permits and Assessments: Commenters request amendment of the Proposed Rule §145-20-4.1 to ensure comprehensive oversight that all air emissions within a microgrid district should be considered under a single air permit consistent with Clean Air Act requirements. Furthermore, commenters ask that applications should include environmental impact assessments conducted by independent, qualified professionals.
- Groundwater Use Prohibition: Commenters request a new §§ 145-20-4.1 and 10.1 to add a required attestation that groundwater will not be utilized for any purpose if the majority of the subject property is in karst terrain.
- Mandatory Agency Review: Commenters request amendment to §§ 145-20-5.2 and 11 to change the language from "may" to "shall" regarding the Secretary seeking assistance from the Office of Energy, WVDEP, and the Public Service Commission (PSC).

ii. Agency Response:

The Department has no oversight authority regarding environmental permitting of any proposed projects. As noted above, there will certainly be project petitions reviewed and approved

by this Department that do not make it through the WVDEP process. This may happen for any number of reasons. While the WVDEP retains primary jurisdiction over environmental permits, the Department agrees that adjoining parcels deserve protection from inordinate burdens.

The Department has added § 145-20-4.1.6.k. to the Modified Rule, requiring the Petitioner to identify:

"The existence of any unique physical or geological condition located on an adjoining parcel that may result in the adjoining parcel having an inordinate burden placed upon it as a direct result of the development of the proposed microgrid project, and the proposed actions, if any, by Petitioner to offset the potential inordinate burden."

Additionally, the Department has elected to add § 145-20-4.1.6.l. to the Modified Rule, to require the Secretary to consider the following:

"Proximity to schools, churches, residences, businesses, sites listed on the National Register of Historic Places, and National Historic Landmarks as designated by the National Park Service, and the proposed actions, if any, by Petitioner to offset the potential effects of the microgrid project being developed in close proximity to such locations."

These edits have been done in the interest of not only local concerns, as noted in greater detail below, but also for the management of any potential environmental nuisance impacts on homes, schools, churches, and businesses, which may be located anywhere near a proposed project. Further environmental regulatory reviews will be conducted by other, more appropriately equipped parts of state government.

With respect to Karst Topography (landscape formed by the dissolution of soluble bedrock, like limestone, by slightly acidic water, creating distinctive features such as caves, sinkholes, springs, and underground drainage) and related water considerations, the State Geologic and Economic Survey is a division of the Department and maintains a database of Karst Topography information. The Geologic and Economic Survey works closely with the WVDEP on Karst Topography, but the regulation of any activity in and around Karst Topography is managed by the WVDEP.

The Department is not the appropriate source of environmental regulation related to chemical use and thermal inversions. Furthermore, as noted above, the Department cannot alter or enhance environmental and/or ecological regulations under this rulemaking process. While the

Department can consider the environment in its review, there are other, more appropriate regulations and regulators who will do this work throughout the development of these complex projects.

Also, regarding sustainable energy alternatives, there is no need to amend the rule to incentivize or require any specific type of energy source. The relevant project will make their own determinations about the economic viability of any specific energy source they may choose to utilize. The State of West Virginia has a long and storied history powering the United States of America, and we intend to continue that tradition with a comprehensive—“all of the above”—energy generation policy.

Notwithstanding the Department’s position on the environmental considerations set forth in the public comments, below is an overview of the relevant regulatory framework for the development of a Microgrid or a High Impact Data Center.

iii. Department of Environmental Protection (Regulatory Framework):

Although this rule does not touch on environmental regulations, in consultation with the WVDEP, the State emphasizes that several existing regulatory mechanisms provide protection. Developing a power plant or a data center in West Virginia also involves a multi-agency regulatory landscape. While the Department of Commerce handles the certification of as a High Impact Data Centers and the economic impacts of the proposed project, the WVDEP focuses on the "how," ensuring the facility complies with air, water, and waste standards.

Under the HB 2014, data centers and their associated microgrids are subject to specific oversight intended to balance rapid development with environmental and grid safeguards.

○ *The Review Process—WVDEP*

Before turning dirt, both types of facilities generally follow the developer must apply to the WVDEP for technical permits. The WVDEP does not decide *if* a project is a good idea; it decides if the project meets legal environmental limits.

○ *Regulatory Requirements by WVDEP Divisions*

▪ *Division of Air Quality (DAQ)*

There is already robust process for air quality permitting in West Virginia; and data centers, including those using large-scale backup generators or on-site natural gas power, are not exempted from that process.

- Minor Source Pre-Construction Permits (45CSR13): Required for any source of air emissions that has the potential to emit more than specific thresholds of "criteria pollutants" (like NO_x or SO₂) but less than amounts that would define the source as a "major source."
- Major Source Pre-Construction Permits (45CSR14 – "PSD Permitting"): Required for any source of air emissions that has the potential to emit regulated pollutants in amounts that would define the source as a "major source" (major source thresholds vary for different types of sources, i.e., a combined cycle turbine facility compared to a facility powered by internal combustion engines). The PSD Permitting process is a more rigorous permitting process than for a minor source.
- Major Source Operating Permits (45CSR30 – "Title V Permitting"): Required for any source of air emissions that has the potential to emit regulated pollutants in amounts that would define the source as a "major source" under Title V rules. This permit is not required until after the source is operating.
- Specific for Data Centers: Recent 2025 projects (e.g., in Mingo and Tucker counties) have seen "aggregate power" permits where 100+ reciprocating engines are treated as a single source of emissions.
 - Division of Water and Waste Management (DWWM)
- NPDES (National Pollutant Discharge Elimination System): Required if the facility will discharge treated water into streams. For power plants, this covers cooling water; for data centers, this covers runoff or blowdown from cooling towers.
- Construction Stormwater General Permit: Required for any site disturbance over one acre. This is critical for the massive "pads" required for hyper-scale data centers.
- Tier II / Water Quantity: Large data centers can consume 3–5 million gallons of water daily for cooling. The WVDEP monitors these withdrawals.

○ Comparison of Requirements

Requirement	Power Plant	Data Center
Air Permitting	Major source (Title V/PSD) usually required due to continuous combustion.	Often "Synthetic Minor" or Rule 13, but microgrids are increasingly triggering Major Source reviews.
Water Usage	High (Steam cycle/cooling).	Very High (Evaporative cooling for servers).

Solid Waste	Coal combustion residuals (CCR) for coal plants; minimal for gas.	Electronic waste (e-waste) and backup battery disposal (Lead-acid/Lithium).
Decommissioning	Strict bonding/plans required (esp. for wind/solar/coal).	New 2025 standards require microgrid owners to provide decommissioning plans to the DEP.

○ Public Participation and Timelines

- The WVDAQ process is designed to be transparent but structured:
 - Application Submission: Filed electronically through DAQ email system.
 - Completeness Review (30 Days): The DAQ has 30 days to conduct a completeness determination and inform the company of any deficiencies in the permit application.
 - Public Notice: The applicant must publish a Class I legal advertisement in a local newspaper when the application is submitted (before it can be deemed complete) and the DAQ must also publish a Class I legal advertisement in a local newspaper when/if they make a preliminary determination to issue the permit.
 - Comment Period (30 Days): The formal public comment period begins with the publication of the DAQ advertisement. The public can submit written comments. Per the Director’s discretion (like the Tucker County power facility), the DAQ may hold a public meeting if interest justifies it, where the public can provide oral comments.⁶
 - Final Determination (90–180 Days): Depending on the permit type, the DAQ has a statutory time limit of 90 (minor sources) or 180 (major sources) days that begins when the application is deemed complete.
- The WVDWWM process is designed to be transparent and structured. Below is an overview of the key steps:
 - Application Submission: All applications must be filed through the Electronic Submission System (ESS).

- **Completeness Review (90 Days):** The DWWM will not process a permit until an administratively complete application is received. The DWWM has 90 days from the submission date to determine completeness and notify the permittee in writing. Once the application is deemed complete, the DWWM will act upon it.
 - **Public Notice:** The DWWM will publish a Class I legal advertisement in a qualified newspaper with the largest circulation in the county where the discharge will occur.
 - **Comment Period (30 Days):** The formal public comment period begins upon publication of the advertisement. During this time, the public may submit written comments. At the Director's discretion, the DWWM may hold a public hearing to receive oral comments if there is a significant degree of public interest regarding the draft permit.
 - **Final Determination (60 Days):** Following the close of the comment period, the DWWM must issue a final permit decision (to issue, deny, modify, revoke and reissue, or terminate the permit). The final decision becomes effective at least 30 days after the DWWM provides notice of the decision.
- **Note on Appeals:** Decisions made by the WVDEP can be appealed to the Air Quality Board or the Environmental Quality Board by citizens or organizations that believe the permit violates the law.

c. Public Transparency Concerns

i. Summary of Comments:

Based on the consolidated public feedback, the following public transparency statements summarize the primary concerns regarding the development of high-impact data centers and microgrids in West Virginia:

- **Elimination of Blanket Confidentiality:** Commenters feel Proposed Rule § 145-20-15 should be amended to ensure that only specific, verified "Confidential Business

Information" is shielded, while Letters of Intent and Petitions remain accessible to the public. Other comments request elimination of the section entirely.

- Implementation of Public Filing Requirements: Commenters ask to balance corporate privacy with public interest; petitioners must submit a redacted public version of all applications to allow for community oversight.
- Establishment of Mandatory Public Notice and Comment: Commenters suggest amendment to Proposed Rule §§ 145-20-8 and 13 to include a structured process for public notice and a meaningful comment period before any certification decisions are finalized to prevent projects from being approved without community knowledge.
- Expansion of Application Requirements: Commenters state that the current five-page limit should be replaced with a requirement for comprehensive technical documentation, including disclosures on environmental impacts, water usage, and emissions.
- Requirement for Independent Verification: Commenters request amendment to Proposed Rule §145-20-4.1.6.3, and ask to prevent unchecked administrative discretion, applications should undergo independent review by qualified third-party experts in engineering, economics, and environmental science

ii. Agency Response:

Confidentiality is statutorily mandated by W. Va. Code § 5B-2-21A(e) to protect proprietary business data. However, the Secretary will ensure determinations are informed by the project's physical relationship to the public through new disclosure requirements.

The confidentiality provisions are comparable to the West Virginia Division of Economic Development's authority in developing business relationships at large. *See* W. Va. Code § 5B-2-1(g) (treating as confidential "[a]ny documentary material, data or other writing made or received by the Division of Economic Development or other public body whose primary responsibility is economic development, for the purpose of furnishing assistance to a new or existing business.>"). The types of economic and trade secret information required for certification of a Microgrid or a High Impact Data Center is very sensitive and could provide a competitive advantage to other businesses if publicly disclosed. To allow the Secretary of Commerce, the Division of Economic Development, the Office of Energy, and the Data Economy Office to have open, frank, and meaningful conversation with project principles, the companies must feel comfortable sharing

information. The Department will do everything in its power to balance the need for public input with the need to maintain and protect a project's highly sensitive trade secret data.

Again, the Department has nothing to do with the regulation of environmental matters associated with these developments and does not issue any environmental permitting. It is the purview of the WVDEP to review and analyze the environmental impact, water usage, and emissions associated with any project.

The Department will scrutinize the economic viability and energy needs of each petition for certification of a Microgrid or High Impact Data Center with our subject-matter experts who work with and for the Department, the Division of Economic Development, the Office of Energy, and the Data Economy Office. To the extent third-party engineering or economic assessment is necessary, the Department has the authority elsewhere in the West Virginia Code to hire consultants. This rule does not need to touch on that subject.

The Agency has reviewed the public transparency comments and elected not to make any edits to the Modified Rule for the reasons stated above.

d. Local Control Concerns

i. Summary of Comments:

Based on the consolidated public feedback, the following local control concerns summarize the primary concerns regarding the development of high-impact data centers and microgrids in West Virginia:

- Preemption of Local Authority and Zoning: Commenters note that the Proposed Rule grants the Secretary of Commerce sole review authority, removing decision-making power from elected local officials. Commenters describe this position as "immune from citizen oversight." Commenters expressed concerns about HB 2014 explicitly preempting local zoning and land development regulations, preventing communities from enforcing their own standards on high-impact projects.
- Risks to Natural and Historic Resources: Commenters feel that by allowing certification of projects to bypass certain local regulations the rule removes the "safety net" for natural and historic resources. Commenters request amendments to Proposed Rule §§ 145-20-3.1 and 9.1 requiring petitioners to explicitly demonstrate that projects will not impact properties on state or national historic registers.

- "Contiguity" and Geographic Loopholes: Commenters object to the Proposed Rule § 145-20-2.4, the definition of "nearly contiguous," which allows properties up to one mile apart to be treated as a single microgrid district. Commenters fear that this definition allows districts to "leapfrog" or surround non-participating properties. Commenters request that all parcels in a microgrid district be truly contiguous (physically touching) to prevent fragmented development. Alternatively, some commenters feel the one mile definition is too restrictive given the State's mountainous terrain.
- Lack of Transparency and Public Process: Objections were raised regarding the "emergency" status of the rules, which bypasses standard legislative review and public hearings. Specific requests were made to remove § 145-20-15 to restore transparency and ensure the public can access information about developments.
- Exclusion of Community Input and Benefits. Commenters feel shut out of the approval process for projects that directly affect them. Commenters request the development of "Community Benefit Agreements," which would require developers to be legally obligated to negotiate benefits (such as infrastructure improvements) with the host community.

ii. Agency Action:

The Department has amended § 145-20-4.1.6 to require the Secretary to consider:

"Proximity to schools, churches, residences, businesses, sites listed on the National Register of Historic Places, and National Historic Landmarks as designated by the National Park Service, and the proposed actions, if any, by Petitioner to offset the potential effects of the microgrid project being developed in close proximity to such locations."

In response to the concerns regarding preemption of local regulations, this is not a function of the Proposed Rule. HB 2014 explicitly preempted certain local zoning authority in an effort to normalize and streamline the process, statewide, for the review, consideration, and development of these large-scale, complex business decisions. The language in HB 2014 is consistent with the preemption of local control in existing code. W. Va. Code § 5B-1-9.

The State is completely invested in the safety and viability of these projects for the benefit of its citizens. The rule cannot change the provisions set forth in West Virginia Code. The Modified Rule has, however, been amended to provide some additional local consideration in the review by the Secretary.

With respect to comments related to the natural and historic resources, the Department understands and appreciates the concerns outlined in the Public Comments and has, therefore, amended the Modified Rule to incorporate those considerations into the Secretary's review.

With respect to the term "Nearly Contiguous," as noted above, the State has elected to modify the rule to extend the term from 1-Mile to 1.5-Miles. This was done pursuant to certain comments noting the difficult terrain existing in our State. The concerns about "leapfrogging" have been considered, but HB 2014 sets express limits on total acreage, *see* W. Va. Code § 5B-2-21(b)(3) ("The area certified as a microgrid district shall be no greater than 2,250 acres"). This maximum total acreage was determined to be a sufficient limitation to address the concerns from this type of comment.

With respect to the concerns regarding the fact that the Department filed an Emergency Rule, commensurate with the notice of this Proposed Rule, as noted above, this was expressly authorized by HB 2014, *see* W. Va. Code § 5B-2-21a(b), and provides a certification framework for these time-sensitive projects while the Proposed Rule is considered by the Legislature. Under W. Va. Code § 29A-3-15(a), the emergency rule is effective for no more than fifteen months and will expire on the effective date of the rule the Legislature authorizes pursuant to this legislative rulemaking process. W. Va. Code § 29A-3-15(a)(4).

With respect to the concerns about Section 15 of the Proposed Rule, the State will be entrusted with highly sensitive "trade secrets" during the certification process outlined in the rule. This information includes sensitive financial materials, long-term strategic plans, equipment decisions, and electric grid information that will have large scale business and national security implications. It is imperative that a company working with the Department has a level of comfort necessary to have open and frank conversations about these development decisions.

Again, the Department is not the entity charged with regulating the environmental and ecological implications of these proposed projects. Instead, it evaluates the financial and energy conditions associated with these projects. These will be reviewed by subject matter experts in the Department of Commerce, the Office of Energy, and the Data Economy Office. The confidentiality section, as written, is appropriately tailored to this stage of the development process and will enable the Department to better conduct that economic, financial, and energy-related evaluation.

Finally, with respect to the proposed "community benefit agreements," the Department appreciates these concerns raised in this comment, but is confident that the process outlined in

both HB 2014 and these Modified Rules will promote and provide for significant local and statewide benefit. HB 2014 is expected to be a transformative initiative for the state's economy and a significant portion of its benefits are, by statute, dedicated to personal income tax reduction, reinvested in the local counties, grid stabilization, and economic development. The Modified Rules will aid that transformative effort by providing a process for certification of this important industry.

e. Infrastructure Concerns

i. Summary of Comments:

Based on the consolidated public feedback, the following infrastructure concerns summarize those raised regarding the development of high-impact data centers and microgrids in West Virginia:

- Transportation and Road Network: Multiple requests for developers to disclose anticipated traffic volumes and vehicle weights for both the construction and operational phases. Concerns that heavy industrial traffic will degrade local roads, with no clear mechanism to ensure developers cover the cost of repairs.
- Water and Wastewater Management: Repeated concerns that water extraction and construction in karst (limestone) areas could destabilize the ground or contaminate local aquifers. Many comments note fears that massive cooling requirements and wastewater discharge will overwhelm public water management agencies and deplete local groundwater supplies.
- Emergency Services Infrastructure: Commenters request for the disclosure of specific needs for fire, police, and medical services. Concerns that local volunteer departments lack the infrastructure, training, or equipment to handle industrial-scale incidents, specifically citing risks like massive on-site fuel storage (e.g., 30 million gallons of diesel).
- Utility and Grid Infrastructure: Commenters expressed concerns that §145-20-2.4 allowing "microgrid districts" to include properties up to one mile apart (non-contiguous) will result in inefficient, sprawling installation of fiber and utility lines. Commenters requested that data centers pay for their own grid reinforcements to prevent strain on the existing electrical infrastructure used by residents.

- Community Infrastructure (Schools & Housing): Commenters expressed concerns that the influx of workforce or related development will strain local housing availability and lead to overcrowding in public schools.

i. Agency Response:

The Department is committed to ensuring that this process not only protects but strengthens the existing infrastructure across our State. HB 2014 specifically established the “Electric Grid Stabilization and Security Fund.” This fund provides significant protection for the West Virginia ratepayer by funding grid reliability improvements without assessment against the ratepayer, potentially providing long-term savings.

Still, the Department has recognized a need for some additional information in its infrastructure analysis of High-Impact Data Centers, and therefore added language to the Modified Rule § 145-20-11.3 to allow the Secretary to:

"Seek additional information, data, or verification from relevant electric utilities regarding capacity, grid stability, and infrastructure requirements for any Petition related to high impact data center approval."

With respect to the transportation and road concerns, the Department is confident that the construction process for any Microgrid or High Impact Data Center will be conducted in accordance with all relevant regulations, including review and approval from the Department of Highways.

With respect to concerns related to the water infrastructure, the Department does not regulate the State’s water infrastructure, and this rule is not the appropriate vehicle for doing so. The Department is committed to considering water in its analysis. With that in mind, the Department has held meetings with developers that include “closed loop” cooling systems that use no more than any other industrial facility, as well as the potential for utilizing the geothermal advantage of cold water from flooded deep mines for the cooling infrastructure on these projects.

Additionally, as noted above, with respect to Karst Topography (landscape formed by the dissolution of soluble bedrock, like limestone, by slightly acidic water, creating distinctive features such as caves, sinkholes, springs, and underground drainage) and other similar water considerations, the State Geologic and Economic Survey is a division of the Department and maintains a database of Karst Topography information. The Geologic and Economic Survey works

closely with the WVDEP on Karst Topography, but the regulation of any activity in and around Karst Topography is managed by the WVDEP.

With respect to school and housing infrastructure, the Department is committed to supporting the growth of our State and will do everything possible to ensure that growth and development is sustainable and enures to the benefit of our citizens. These projects have the potential to provide significant property tax revenue for the benefit of both the host county and the State at large.

As noted in greater detail above, the relevant property tax distribution set forth in HB 2014 aims to equitably allocate the potential future windfall from multi-billion-dollar investments. Most of the tax windfall will be directed back to the West Virginia taxpayer. The situs county will receive a plurality of the revenue to support local services and local needs that may arise from the increased economic activity. Even if a county does not land a high impact data center, the funds generated from any such development in the State will still cause a direct windfall to all other counties, which can be utilized to improve county services. The remainder of the funds will be divided between Economic Development investment for the attraction of new business and the expansion of existing businesses in the state, and to the Electric Grid Stabilization and Security Fund discussed in detail above.

III. CONCLUSION

For the reasons stated above, the Department has incorporated those certain amendments noted herein to the Modified Rule and filed them with the Secretary of State. These changes are reflected in this document and in the attached Exhibit A. Beyond those amendments, the Department hereby rejects the incorporation of further amendments proposed or set forth in the public comments.

Exhibit A

TITLE 145
LEGISLATIVE RULE
DEPARTMENT OF ECONOMIC DEVELOPMENT

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SERIES 20

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RULE TO PETITION THE DEPARTMENT OF COMMERCE FOR CERTIFICATION OF A MICROGRID DISTRICT OR CERTIFICATION AS A HIGH IMPACT DATA CENTER.

§145-20-1. General.

1.1. Scope -- The following rule governs the petitioning of the Department of Commerce for certification of a microgrid district or certification as a high impact data center.

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1.2. Authority -- W. Va. Code §SB-2-21(a) and W. Va. Code §SB 2-21A.

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1.3. Filing Date --

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1.4. Effective Date --

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1.5. Sunset Provision -- This rule shall terminate and have no further force or effect on August 1, 2031.

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§145-20-2. Definitions.

2.1. "Critical IT load" means that portion of electric power capacity, expressed in terms of megawatts, which is reserved solely for owners or tenants of a data center to operate their computer server and required supporting equipment.

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2.2. "Department" means the West Virginia Department of Commerce, as established in W. Va. Code §SB-1-1 et seq.

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2.3. "High Impact Data Center" means a facility or group of facilities that:

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 (a) Consists of one or more parcels in this state, along with the buildings, substations, and other infrastructure, fixtures, and personal property located on the parcels;

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 (b) Is owned, operated, or leased by an entity or affiliated group of entities;

 (c) Is used to house and operate equipment that receives, stores, aggregates, manages, processes, transforms, retrieves, researches, or transmits data, or that is necessary for the proper operation of equipment that receives, stores, aggregates, manages, processes, transforms, retrieves, researches, or transmits data;

 (d) Has a critical IT load in the aggregate of 50 megawatts total or higher; and

 (e) Is placed into service on or after July 1, 2025.

2.4. "Incorporate burden" means a parcel's use is no longer restricted that it deprives the owner of nearly all of its economically beneficial use.

2.5. "Nearly Contiguous Property" means two or more parcels of property that are separated by a distance of no more than one ~~mile~~ and one-half (1 1/2) miles, at their closest point.

2.56. "Ownership Interest" means the right to possess, use, modify or sell real property, but does not include non-possessory interests such as easements or rights-of-way.

2.57. "Secretary" means the Secretary of the Department.

§145-20-3. Eligibility requirements to petition the Secretary for certification of a microgrid district: Exempt from rule.

3.1. Petitioner must meet the following requirements to be eligible to petition the Secretary for certification of a microgrid district.

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3.1.1. Petitioner shall be registered with the Secretary of State to do business in West Virginia.

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3.1.2. At least 120 days before seeking certification, a Petitioner must make good faith efforts to negotiate for the supply of all or part of its electricity needs for the project from the local distribution electric utility. This requirement does not apply to microgrid districts proposing to produce 300 megawatts or more of electricity or for microgrid districts that are proposing to not be connected in any way to the local distribution electric utility after completion of all construction.

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3.1.3. Petitioner shall not have solicited businesses already receiving electric service from a regulated utility in this state to relocate to the proposed certified microgrid district.

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3.1.4. Petitioner shall not have entered into any contract, or otherwise committed, to deliver any electricity generated from within the certified microgrid district to any entity outside the microgrid district, except that a maximum of 10% of the electricity generated from within the certified microgrid district may be delivered outside the microgrid district if delivered directly to the wholesale market.

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3.1.5. Petitioner must have an ownership interest in, and control over, the real property subject to the microgrid district certification.

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3.1.6. The limitations set forth in Sections 3.1.3 and 3.1.4. of this rule do not apply to microgrid districts certified on or before January 1, 2024.

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§145-20-4. Letter of Intent Requirements for Certification of Microgrid District.

4.1. Petitioner must seek certification of a microgrid district by submitting a Letter of Intent to the Secretary. Each Letter of Intent shall include the following minimum requirements:

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4.1.1. A statement indicating whether more than 70% of the electricity generated within the proposed microgrid district will be consumed by one or more High Impact Data Centers when such data centers are completed and fully operational.

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4.1.2. A statement setting forth why the microgrid district is necessary to attract at least two businesses to locate or expand in this state.

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4.1.3. A certified map identifying the border of the proposed microgrid district, which said microgrid district shall not exceed 2,250 acres of ~~contiguous~~ Nearly Contiguous Property.

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4.1.4. An attestation that electricity generated within the microgrid district will be used only within the microgrid district with no more than 10% being delivered outside the microgrid district to the wholesale market.

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4.1.5. Documentation evidencing the Petitioner's good-faith effort to negotiate for the supply of all or part of its electricity needs for the project from the local distribution electric utility. This requirement does not apply to microgrid districts proposing to produce 300 megawatts or more of electricity or for microgrid districts that are proposing to not be connected in any way to the local distribution electric utility after completion of all construction.

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4.1.6. Sufficient economic, financial, and engineering information concerning the proposed project with sufficient detail to adequately inform the department of the size, scope, and nature of the target customers of the project, including, without limitation, the:

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4.1.6.a. approximate proposed acreage and location;

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4.1.6.b. estimated capital investment;

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4.1.6.c. evidence of Petitioner's financial capacity to complete the project;

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4.1.6.d. estimated project completion date;

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4.1.6.e. major project milestones;

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4.1.6.f. estimated generation capacity;

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4.1.6.g. estimated power loading internal to the microgrid;

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4.1.6.h. estimated power, including backup power, needed from the local distribution electric utility;

4.1.6.i. estimated power supplied to the wholesale market;

4.1.6.j. types or sources of each electric power generation unit;

4.1.6.k. proximity to schools, churches, residences, businesses, sites listed on the National Register of Historic Places, and National Historic Landmarks as designated by the National Park Service, and the proposed actions, if any, by Petitioner to offset the potential effects of the microgrid project being developed in close proximity to such locations;

4.1.6.l. existence of any unique physical or ecological condition located on any nearby contiguous parcel that may result in the nearby contiguous parcel being an irreplaceable natural resource upon it as a direct result of the development of the proposed microgrid project, and the proposed actions, if any, by Petitioner to offset the potential irreplaceable burden.

§145-20-5. Approval or denial of Microgrid Certification.

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5.1. Prior to issuing a decision, the Secretary may request additional information from the Petitioner that the Secretary deems necessary to make his or her decision. In the event the Secretary requests additional information from the Petitioner, the Petitioner shall be provided with a reasonable amount of time to ~~provide~~ provide additional information to the Secretary.

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5.2. The Secretary may seek assistance in making his or her decision on the certification of a microgrid district from the Division of Economic Development, the Office of Energy, the Public Service Commission, or the Department of Environmental Protection.

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5.3. The Secretary shall provide a decision on the request for microgrid certification within ~~two~~ months after the submission of the Letter of Intent.

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5.4. The Secretary shall approve the request for certification of a microgrid district if, in the Secretary's discretion, based on the facts and circumstances presented in the Letter of Intent ~~and any other relevant facts~~, it would be unreasonable to withhold approval of the proposed certification.

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5.5. If the Secretary, after considering the facts and circumstances presented in the Letter of Intent ~~and any other relevant facts~~, denies the request for certification of a microgrid district, he or she will explain the reasons for the decision and why approval of microgrid district certification was not unreasonably withheld.

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5.6. The Secretary's decision on the request for certification of a microgrid district shall be final and not subject to reconsideration ~~by the Secretary except as set forth in Section 11, below.~~

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§145-20-6. Conversion of Merchant Plant to Microgrid

6.1. Any existing merchant power plant that desires certification of a microgrid district, but cannot meet the statutory requirements of §5B-2-21(c)(6) because it is contractually obligated or otherwise required to provide more than 10% of the power it generates to the wholesale market, may seek a pre-certification review by the Secretary.

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6.2. To request a pre-certification review by the Secretary, a merchant plant must submit a Letter of Intent as required by ~~Section 4.1~~ of this rule. In addition to the requirements set forth in ~~Section 4.1~~ of this rule, the merchant plant's Letter of Intent shall:

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~~6.2.a)~~ Acknowledge that the merchant plant cannot meet the statutory requirements of §5B-2-21(c)(6).

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~~6.2.b)~~ Provide the Secretary with an estimated date by which the merchant plant will be able to meet the statutory requirements of §5B-2-21(c)(6).

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~~6.2.c)~~ Advise whether the merchant plant is seeking a pre-certification meeting with the Secretary to review the merchant plant's proposed conversion to a microgrid.

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6.3. The Secretary shall review the merchant plant's Letter of Intent and advise the merchant plant within a reasonable time whether the Secretary will provide a pre-certification meeting. If the Secretary decides to provide a pre-certification meeting, the meeting shall be set on a date and at a time determined by the Secretary.

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6.4. If after the pre-certification meeting the Secretary determines that the merchant plant would qualify for certification as a microgrid district but for its inability to comply with the provisions of §5B-2-21(c)(6), the Secretary may, in his or her discretion, provide the merchant plant with a non-binding letter advising it of that fact. Such a letter by the Secretary shall be considered as advisory only and shall not confer any rights upon the merchant plant or entitle it to operate as part of a certified microgrid district. If a merchant plant later determines that it can comply with the provisions of §5B-2-21(c)(6), it must resubmit an updated Letter of Intent with the Secretary pursuant to ~~Section 4.1~~ of this rule.

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§145-20-7. Annual Report.

7.1. If Petitioner is granted a microgrid district certification by the Secretary, the Petitioner shall file an annual report with the Secretary setting forth at a minimum:

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7.1.a. The total amount of electricity provided monthly by Petitioner to High Impact Data Centers within the certified microgrid district.

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7.1.b. The total amount of electricity generated from within the certified microgrid district and delivered monthly outside the certified microgrid district to the wholesale market.

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7.1.c. Any change in tenants or customers of the Petitioner within the certified microgrid district.

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§145-20-8. Appeals.

5.1. All proceedings in the appeal of the Secretary's actions concerning a request for microgrid district certification or the proceedings therefore, and any judicial review thereof, shall be conducted in accordance with the provisions of §29A-5-1 et seq. of this code and any procedural rules adopted pursuant thereto.

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§145-20-9. Eligibility requirements to petition the Secretary for certification as High Impact Data Center.

9.1. Petitioner must meet the following requirements to be eligible to petition the Secretary for certification as a High Impact Data Center:

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9.1.1. Petitioner shall be registered with the Secretary of State to do business in West Virginia.

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9.1.2. Petitioner must meet the definition of "High Impact Data Center" set forth in 1. Section 2.3 thereof of this code.

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§145-20-10. Petition requirements for certification as High Impact Data Center.

10.1. Petitioner must seek certification as a High Impact Data Center by submitting a Petition to the Secretary within thirty (30) days after Petitioner becomes aware that it will satisfy the definition of High Impact Data Center or Petitioner has satisfied the definition of a High Impact Data Center. Each Petition shall include the following minimum requirements:

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10.1.1. An attestation that the Petitioner meets the definition of a High Impact Data Center set forth in subsection 2.3 thereof of this code.

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10.1.2. The Petitioner's proposed critical IT load and total load upon completion of the project.

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10.1.3. Sufficient economic, financial, and engineering information concerning the proposed project with sufficient detail to adequately inform the department of the size, scope, and nature of the project, including, without limitation, the:

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10.1.3.a. approximate proposed acreage and location;

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10.1.3.b. estimated capital investment

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10.1.3.c. whether Petitioner has requested a power study from the regulated utility, and if a power study has been so requested, the date, if any, estimated by the regulated utility that electric service will first be delivered to the project;

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10.1.3.d. estimated project completion date; and

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10.1.4.e. major project milestones;

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10.1.4.f. proximity to schools, churches, residences, businesses, sites listed on the National Register of Historic Places, and National Historic Landmarks as designated by the National Park Service, and the proposed actions, if any, for Petitioner to offset the potential effects of the proposed project being developed in close proximity to such locations; and

10.1.4.g. existence of any unique physical or ecological conditions located on any nearby contiguous parcel that may result in the nearby contiguous parcel having an unbalanced burden placed upon it as a direct result of the development of the proposed industrial project, and the proposed actions, if any, by Petitioner to offset the potential unbalanced burden.

§145-20-11. Approval or denial of High Impact Data Center Certification.

11.1. Prior to issuing a decision, the Secretary may request additional information from the Petitioner that the Secretary deems necessary to make his or her decision. In the event the Secretary requests additional information from the Petitioner, the Petitioner shall be provided with a reasonable amount of time to deliver additional information to the Secretary.

11.2. The Secretary shall provide a decision on the request for High Impact Data Center certification within 14 days after the submission of the Petition. The period by which the Secretary must provide a decision on the request for a High Impact Data Center certification may be extended upon request by Petitioner or, when the Secretary has requested additional information from the Petitioner, by a number of days equal to the time between the Secretary's request and the Petitioner's delivery of the requested information.

11.3. The Secretary shall approve the request for certification of a High Impact Data Center if, in the Secretary's discretion, based on the facts and circumstances presented in the Petition and any other relevant facts, it would be unreasonable to withhold approval of the proposed certification. Provided that the Secretary may seek additional information, data, or verification from relevant electric utilities regarding capacity and stability and infrastructure requirements for any Petition related to high impact data center approval.

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11.4. If the Secretary, after considering the facts and circumstances presented in the Petition and any other relevant facts, denies the request for certification of a High Impact Data Center, he or she will explain the reasons for the decision and why approval of the High Impact Data Center certification was not unreasonably withheld.

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11.5. The Secretary's decision on the request for certification of a High Impact Data Center shall be final and not subject to reconsideration by the Commission or as set forth in section 13, Section.

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§145-20-12. Annual Report.

~~12.1. If Petitioner is granted a High Impact Data Center certification by the Secretary, the Petitioner shall file an annual report with the Secretary providing a status update on the project and confirming that it continues to meet the definition of a High Impact Data Center as set forth in ~~Section 2.3 of this rule.~~~~

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§145-20-13. Appeals.

~~13.1. All proceedings in the appeal of the Secretary's actions concerning a request for High Impact Data Center certification or the proceedings therefore, and any judicial review thereof, shall be conducted in accordance with the provisions of §29A-5-1 et seq. of this code and any procedural rules adopted pursuant thereto.~~

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§145-20-14. Format and filing requirements.

~~14.1. The following format requirements shall apply to all Letters of Intent seeking certification of a microgrid district and all Petitions seeking certification of a High Impact Data Center.~~

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~~14.1.a) All filings shall be double spaced.~~

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~~14.1.b) All filings shall be in 12-point, Times New Roman font.~~

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~~14.1.c) All filings shall be justified and use 1-inch margins.~~

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~~14.1.d) All filings shall have a limit of 5 pages.~~

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~~14.2. All Letters of Intent seeking certification of a microgrid district shall be filed with the Secretary prior to Petitioner filing an application for any state or federal permit associated with the microgrid project.~~

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~~14.3. All Letters of Intent seeking certification of a microgrid district and all Petitions seeking certification of a High Impact Data Center shall be filed with the Secretary via hand delivery or mail service to: Secretary, Department of Commerce, 1900 Kanawha Boulevard East, Building 3, Suite 800, Charleston, WV 25305.~~

§145-20-15. Confidentiality.

~~15.1. All Letters of Intent seeking certification of a microgrid district and all Petitions seeking certification of a High Impact Data Center shall be deemed confidential. The Secretary shall institute a process to ensure that such documents are treated as confidential.~~

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