



WEST VIRGINIA SECRETARY OF STATE

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Office of West Virginia  
Secretary Of State

## NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Economic Development WV Department  
of

RULE TYPE: Legislative

TITLE-SERIES: 145-20

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

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

The above proposed Legislative rules, following review by the Legislative Rule Making Review Committee, is hereby modified as a result of review and comment by the Legislative Rule Making Review Committee. The attached modifications are filed with the Secretary of State.

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Garner Marks -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 145  
LEGISLATIVE RULE  
DEPARTMENT OF ECONOMIC DEVELOPMENT

SERIES 20

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.

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

1.3. Filing Date --

1.4. Effective Date --

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

§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.

2.2. "Department" means the West Virginia Department of Commerce, as established in W. Va. Code §5B-1-1 et seq.

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

2.3.1. 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;

2.3.2. Is owned, operated, or leased by an entity or affiliated group of entities;

2.3.3. 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;

2.3.4. Has a critical IT load in the aggregate of 90 megawatts total or higher; and

2.3.5. Is placed into service on or after July 1, 2025.

2.4. "Inordinate Burden" means a parcel's use is so severely 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 forming a group in which the closest point between any parcel and another parcel in the group is no greater than four (4) miles.

2.6. “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.

2.7. “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:

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

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.

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.

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.

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

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.

**§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:

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.

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;

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 Nearly Contiguous Property.

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.

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.

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:

4.1.6.a. approximate proposed acreage and location;

4.1.6.b. estimated capital investment

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

4.1.6.d. estimated project completion date;

4.1.6.e. major project milestones;

4.1.6.f. estimated generation capacity;

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

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 geological condition located on any nearly contiguous parcel that may result in the nearly contiguous 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.

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

5.1. Prior to issuing a decision, the Secretary may request additional information, data or verification of the contents of the Letter of Intent from the Petitioner that the Secretary deems necessary to make his or her decision. In the event the Secretary requests additional information, data or verification of the contents

of the Letter of Intent from the Petitioner, the Petitioner shall be provided with a reasonable amount of time to deliver the additional information, data or verification of the contents of the Letter of Intent to the Secretary.

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.

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. The period by which the Secretary must provide a decision on the request for a microgrid certification may be extended upon request by Petitioner or, when the Secretary has requested additional information, data or verification 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, data or verification.

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

5.5. If the Secretary, after considering the facts and circumstances presented in the Letter of Intent and any other relevant factor, denies the request for certification of a microgrid district, he or she will explain the reasons for the decision.

5.6. The Secretary's decision on the request for certification of a microgrid district shall be final and not subject to reconsideration except as set forth in Section 8, below.

5.7. Nothing in this rule is intended to exempt a certificated microgrid district from otherwise applicable state and federal environmental regulations.

#### **§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.

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:

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

6.2.2. 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).

6.2.3. 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.

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.

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.

**§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:

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

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

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

**§145-20-8. Appeals.**

8.1. 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.

**§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:

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

9.1.2. Petitioner must meet the definition of High Impact Data Center set forth in Section 2.3 of this rule.

**§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:

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

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

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:

10.1.3.a. approximate proposed acreage and location;

10.1.3.b. estimated capital investment

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;

10.1.3.d. estimated project completion date;

10.1.3.e. major project milestones;

10.1.3.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, by Petitioner to offset the potential effects of the High Impact Data Center project being developed in close proximity to such locations; and

10.1.3.g. existence of any unique physical or geological condition located on any nearly contiguous parcel that may result in the nearly contiguous parcel having an inordinate burden placed upon it as a direct result of the development of the proposed High Impact Data Center project, and the proposed actions, if any, by Petitioner to offset the potential inordinate 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, data or verification of the contents of the Petition from the Petitioner that the Secretary deems necessary to make his or her decision. The Secretary may also 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. In the event the Secretary requests additional information, data or verification from the Petitioner or the relevant electric utility, the Petitioner or the relevant electric utility shall be provided with a reasonable amount of time to deliver the additional information, data or verification 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, data or verification from the Petitioner or the relevant electric utility, by a number of days equal to the time between the Secretary's request and the Petitioner's or the relevant electric utility's delivery of the requested information, data or verification.

11.3. The Secretary shall approve the request for certification of a High Impact Data Center if, in the Secretary's discretion, it would be unreasonable to withhold approval of the proposed certification based on the facts and circumstances presented in the Petition and any other relevant information the Secretary has obtained.

11.4. If the Secretary, after considering the facts and circumstances presented in the Petition and any other relevant factor, 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.

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 except as set forth in section 13, below.

11.6. Nothing in this rule is intended to exempt a certificated High Impact Data Center from otherwise applicable state and federal environmental regulations.

**§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.

**§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.

**§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:

14.1.1. All filings shall be double spaced.

14.1.2. All filings shall be in 12-point, Times New Roman font.

14.1.3. All filings shall be justified and use 1-inch margins.

14.1.4. All filings shall have a limit of 5 pages.

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.

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.