WEST VIRGINIA CODE: §24-2-11C

§24-2-11c. Siting certificates for certain electric generating facilities or material modifications thereof.

(a) Notice of an application for a siting certificate required under the provisions of subdivisions (1), (2), (3), (4), and (5), subsection (d), section one of this article shall be given as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, with the publication area being each county in which all or a portion of the facility is located or to be located. Such notice shall also be published as a Class I legal advertisement in a newspaper published each weekday in Kanawha County and circulated both within and outside of Kanawha County. If no substantial protest is received within thirty days after the publication of notice, the commission may waive formal hearing on the application.

(b) The commission shall render its decision within three hundred days of the date of filing of an application for a siting certificate. If no decision is rendered within such time period, the commission shall issue a siting certificate as applied for.

(c) In deciding whether to issue, refuse to issue, or issue in part and refuse to issue in part a siting certificate, the commission shall appraise and balance the interests of the public, the general interests of the state and local economy, and the interests of the applicant. The commission may issue a siting certificate only if it determines that the terms and conditions of any public funding or any agreement relating to the abatement of property taxes do not offend the public interest, and the construction of the facility or material modification of the facility will result in a substantial positive impact on the local economy and local employment. The commission shall issue an order that includes appropriate findings of fact and conclusions of law that address each factor specified in this subsection. All material terms, conditions and limitations applicable to the construction and operation of the proposed facility or material modification of the facility shall be specifically set forth in the commission order.

(d) The commission may require an applicant for a siting certificate to provide such documents and other information as the commission deems necessary for its consideration of the application.

(e) If the commission issues the siting certificate, the commission shall have continuing jurisdiction over the holder of the siting certificate for the limited purposes of: (1) Considering future requests by the holder for modifications of or amendments to the siting certificate; (2) considering and resolving complaints related to the holder’s compliance with the material terms and conditions of the commission order issuing the siting certificate, whether or not the complainant was a party to the case in which the siting certificate was issued, which complaints shall be filed, answered, and resolved in accordance with the commission’s procedures for resolving formal complaints; and (3) enforcing the material

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terms and conditions of a commission order as provided in subsection (f) of this section.

(f) If the commission determines, in a proceeding instituted on its own motion or on the motion of any person, that the holder of a siting certificate has failed without reasonable justification to comply with any of the material terms and conditions of a commission order issuing a siting certificate, modifying or amending a siting certificate, or resolving a complaint related to compliance of the holder with the material terms and conditions of a siting certificate, the commission may enforce the material terms and conditions of the commission order: (1) By requiring the holder to show cause why it should not be required so to comply; (2) through a proceeding seeking the imposition of a civil penalty not to exceed $5,000 or criminal penalties as provided in §24-4-4 of this code, or both such civil and criminal penalties, and the imposition of either or both such civil penalty and criminal penalties shall be subject to the provisions of §24-4-8 of this code; (3) by mandamus or injunction as provided in section two of this article; or (4) prior to the completion of construction of the proposed facility or prior to the completion of construction of a material modification of the facility, by the suspension or revocation of the siting certificate, including the preliminary suspension of the siting certificate under the standards applicable to circuit courts of this state for the issuance of preliminary injunctions.

(g) Any person may seek to compel compliance with the material terms and conditions of a commission order issuing, modifying or amending a siting certificate, or resolving a complaint related to the holder's compliance with the material terms and conditions a siting certificate through appropriate proceedings in any circuit court having jurisdiction.

(h) The material terms and conditions of a commission order issuing, modifying or amending a siting certificate or resolving a complaint related to the holder's compliance with the material terms and conditions of a commission order issuing a siting certificate shall continue to apply to any transferee of the siting certificate or to any transferee of all or a portion of the ownership interest in an electric generating facility for which a siting certificate has been issued. In either case, the transferee or original holder of the siting certificate shall be subject to the continuing jurisdiction of the commission to the extent provided in subsections (e) and (f) of this section.

(i) Any party feeling aggrieved by a final order of the commission under this section may petition for a review thereof by the Supreme Court of Appeals pursuant to section one, article five of this chapter.

(j) The commission may prescribe such rules as may be necessary to carry out the provisions of this section in accordance with the provisions of §24-1-7 of this code. Such rules may include and provide for an application fee to be charged an applicant for a siting certificate, or for a modification of, or amendment to, a siting certificate previously issued, under the provisions of this section, which fee shall be paid into the State Treasury and kept in a special fund designated Public Service Commission fund as established in §24-3-6(a) of this code, to be used for the purposes set forth in that subsection.

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