WEST VIRGINIA CODE: §31J-1-2

§31J-1-2. Timing to act on siting applications.

(a) Timely action required. If the reviewing authority fails to act on a siting application on or before the shot clock date for the application, as defined in subsection (e) of this section, it is presumed not to have acted within a reasonable period of time.

(b) Shot clock period. The shot clock period for a siting application is the sum of:

(1) The number of days of the presumptively reasonable period of time for the pertinent type of application, pursuant to §31J-1-2(c) plus

(2) The number of days of the tolling period, if any, pursuant to subsection (d) of this section.

(c) Presumptively reasonable periods of time:

(1) Review periods for individual applications. The following are the presumptively reasonable periods of time for action on applications seeking authorization for deployments of facilities subject to this section:

(A) Review of an application to colocate a facility using an existing structure: 90 days.

(B) Review of an application to deploy a facility using a new structure: 150 days.

(2) Commencement of Review Period. An applicant has submitted a request for approval that triggers the running of the timeframe for review in §31J-1-2(c):

(1) when it takes the first procedural step that the local government requires as part of its applicable regulatory review process, and, to the extent it has not done so as part of the first required procedural step, or

(2) the applicant submits written documentation showing that a proposed modification is an eligible facilities request.

The reviewing authority may not define the first procedural step as a combination or sequencing of steps, rather than a single step.

(d) Tolling period. Unless a written agreement between the applicant and the reviewing authority provides otherwise, the tolling period for an application (if any) is as set forth herein.

(1) For initial applications, the tolling period shall be the number of days from:

(A) The day after the date when the reviewing authority notifies the applicant in writing that

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the application is materially incomplete and clearly and specifically identifies the missing documents or information that the applicant must submit to render the application complete and the specific rule or regulation creating this obligation; until

(B) The date when the applicant submits all the documents and information identified by the siting authority to render the application complete;

(C) But only if the notice pursuant to §31J-1-2(d)(2)(A) is effectuated on or before the 30th day after the date when the application was submitted; or

(2) For resubmitted applications following a notice of deficiency, the tolling period shall be the number of days from:

(A) The day after the date when the siting authority notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and clearly and specifically identifies the missing documents or information that need to be submitted based on the siting authority's original request under §31J-1-2(d); until

(B) The date when the applicant submits all the documents and information identified by the reviewing authority to render the application complete;

(C) But only if the notice pursuant to paragraph §31J-1-2(d)(2)(A) of this section is effectuated on or before the 10th day after the date when the applicant makes a supplemental submission in response to the siting authority's request under §31J-1-2(d) of this section.

(e) Shot clock date. The shot clock date for a siting application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified pursuant to §31J-1-2(b) and including any pre-application period asserted by the siting authority: *Provided*, That if the date calculated in this manner is a legal holiday under either federal or state law, the shot clock date is the next business day after such date. The term "business day" means any day that is not a weekend day or a legal holiday as defined by the State of West Virginia.

(f) Failure to act. In the event the reviewing authority fails to approve or deny a request seeking approval under this section within the timeframe for review (accounting for any tolling), the request shall be deemed granted. The deemed grant does not become effective until the applicant notifies the reviewing authority in writing after the review period has expired (accounting for any tolling) that the application has been deemed granted.

(g) Fees for applications. A reviewing authority may not impose on an applicant fees or charges that exceed the one-time non-recurring reasonable costs actually incurred by the reviewing authority to review the application.

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