WEST VIRGINIA CODE CHAPTER 5D

WV Legislature

§5D-1-1. Short title.

This chapter shall be known and cited as the "West Virginia Public Energy Authority Act."

WV Legislature

§5D-1-2. Purpose and intent.

The Legislature finds and declares:

(a) That the long-term health and economy of the United States will depend upon the availability of reliable sources of energy;

(b) That the State of West Virginia has abundant reserves of coal, natural gas and other natural resources;

(c) That the economy of the State of West Virginia needs a reliable and dependable market for the state's coal, natural gas and other natural resources and the by-products thereof;

(d) That the State of West Virginia needs to encourage the efficient utilization and disposition of by-products resultant from the production of natural resources;

(e) That, with all due regard to the protection of the environment and husbandry of the natural resources of this state, the health, happiness, safety, right of gainful employment and general welfare of the citizens of this state will be promoted by the establishment and operation of coal fired electric generating plants and transmission facilities and the establishment and operation of natural gas transmission projects and/or other energy projects; and

(f) That the means and measures herein authorized for the financing, building and operation of the facilities described in subsection (e) are, as a matter of public policy, for the public purpose of the state.

Accordingly, the public energy authority created herein shall be authorized to initiate such directives and take such measures as may be necessary to effectuate the public purpose of this chapter.

WV Legislature

§5D-1-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(1) "Authority" means the West Virginia public energy authority created in section four of this article, the duties, powers, responsibilities and functions of which are specified in this article.

(2) "Board" means the West Virginia public energy authority board created in section four of this article, which shall manage and control the West Virginia public energy authority.

(3) "Bond" means a revenue bond, or note or other evidence of indebtedness, including, but not limited to, a taxable bond and commercial paper, issued by the West Virginia economic development authority or by the authority to effect the intents and purposes of this article.

(4) "Construction" includes construction, acquisition, reconstruction, enlargement, improvement and providing furnishings or equipment.

(5) "Cost" as applied to natural gas transmission projects, electric power projects or other energy projects authorized by the authority includes, but is not limited to: The cost of their acquisition and construction, including all costs pertaining to pipelines; the cost of acquisition of all land, rights-of-way, property rights, easements, franchise rights, contract rights, lease rights and other rights or interests required by the authority for such acquisition and construction; the cost of demolishing or removing any pipeline, buildings or structures on land so acquired, including the cost of acquiring any lands to which such pipelines, buildings or structures may be moved; the cost of acquiring or constructing and equipping a principal office and suboffices of the authority; the cost of diverting highways, interchange of highways and access roads to private property, including the cost of land or easements therefor; the cost of all machinery, furnishings and equipment, all financing charges, and interest prior to and during construction and after completion of construction; the cost of all engineering services and all expenses of research and development with respect to natural gas transmission projects, electric power projects, and related facilities; the cost of all legal services and expenses; the cost of all plans, specifications, surveys and estimates of cost and revenues; all working capital and other expenses necessary or incident to determining the feasibility or practicability of acquiring or constructing any such projects; all administrative expenses and such other expenses as may be necessary or incident to the acquisition or construction of any such projects; the financing of such acquisition or construction, and the cost of financing of the placing of any such project in operation. Any obligation or expenses incurred after the effective date of this article by any person, with the approval of the authority, for surveys, borings, preparation of plans and specifications and other engineering services in connection with the acquisition or construction of a project shall be regarded as a part of the cost of such project and shall be reimbursed out of the proceeds of loans or bonds as authorized by the provisions of this article.

(6) "End-user" means any person who consumes or uses natural gas in connection with any

WV Legislature

industrial, commercial, residential or other use, except that such term shall not include any person purchasing such natural gas for resale to another person. For purposes of this article, the term end-user shall include local distribution companies and intrastate pipelines as defined in article three, chapter twenty-four of this code.

(7) "Electric power project" means the complex of structures, machinery and associated equipment for the generation or transmission of electricity including the production and distribution of other energy produced from coal, natural gas and by-products of coal occurring as a result of the production of coal, and all facilities related or incidental thereto.

(8) "Governmental agency" means the state government or any agency, department, division or unit thereof; counties; municipalities; public service districts; regional governmental authorities and any other governmental agency, entity, political subdivision, public corporation or agency; the United States government or any agency, department, division or unit thereof; and any agency, commission or authority established pursuant to an interstate compact or agreement.

(9) "Local distribution company" means any person, other than any interstate pipeline or any intrastate pipeline, engaged in transportation or local distribution of natural gas and the sale of natural gas for ultimate consumption.

(10) "Natural gas transmission project" means any natural gas pipeline and all facilities necessary or incident to the transportation of natural gas to or for the benefit of industrial or other end-users in West Virginia, the acquisition or construction of which is financed, in whole or in part, by the West Virginia public energy authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant, loan or any other source by, or through, the authority as provided in this article, including facilities, the acquisition or construction of which is authorized, in whole or in part, by the West Virginia public energy authority or the acquisition or construction of which is financed, in whole or in part, from funds made available by grant, loan or any other source by, or through, the authority as provided in this article, including all pipelines, buildings and facilities which the authority deems necessary for the operation of the project, together with all property, rights, easements and interests which may be required for the operation of the project.

(11) "Owner" includes all persons having any title or interest in any property rights, easements and interests authorized to be acquired by this article.

(12) "Person" means any public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country; the United States or the State of West Virginia; any federal or state governmental agency; political subdivision; county commission; municipality; industry; public service district; partnership; trust; estate; person or individual; and group of persons or individuals acting individually or as a group or any other legal entity whatever.

WV Legislature

(13) "Pipeline" or "pipelines" means any actual lines of pipe for the transmission and distribution of natural gas together with all appurtenances, facilities, structures, equipment, machinery and other items related to the transmission and distribution of gas through lines of pipe.

(14) "Revenue" means any money or thing of value collected by, or paid to, the West Virginia public energy authority as rents, loan payments, installment payments, or other proceeds of sale, rates, user fees, service charges or other charges for the electric power produced by, for the use of, for the lease, the lease with an option to purchase or the purchase of, or in connection with any electric power project; or as rent, use, transportation or service fee or charge for use of, or in connection with, any natural gas transmission project; or other money or property from any source which is received and may be expended for or pledged as revenues pursuant to this article.

WV Legislature

§5D-1-4. West Virginia Public Energy Authority continued; West Virginia Public Energy Board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

(a) The West Virginia Public Energy Authority is continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are essential governmental functions and for a public purpose.

(b) The authority shall be controlled, managed and operated by a seven-member board known as the West Virginia Public Energy Authority Board, which is continued. The seven members include the Secretary of the Department of Commerce or designee; the Secretary of the Department of Environmental Protection or designee; the Director of the Economic Development Authority or designee; and four members representing the general public. The public members are appointed by the Governor, by and with the advice and consent of the Senate, for terms of one, two, three and four years, respectively.

(c) On June 30, 2007, the terms of all appointed members shall expire. Not later than July 1, 2007, the Governor shall appoint the public members required in subsection (b) of this section to assume the duties of the office immediately, pending the advice and consent of the Senate.

(d) The successor of each appointed member is appointed for a four-year term. A vacancy is filled by appointment by the Governor in the same manner as the original appointment. A member appointed to fill a vacancy serves for the remainder of the unexpired term. Each board member serves until a successor is appointed.

(e) No more than three of the public members may at any one time belong to the same political party. No more than two public members may be employed by or associated with any industry the authority is empowered to affect. One member shall be a person with significant experience in the advocacy of environmental protection. Board members may be reappointed to serve additional terms.

(f) All members of the board shall be citizens of the state. Before engaging in their duties, each member of the board shall comply with the requirements of article one, chapter six of this code and give bond in the sum of $25,000 in the manner provided in article two of said chapter. The Governor may remove any board member as provided in section four, article six of said chapter.

(g) The Secretary of the Department of Commerce or his or her designee shall serve as chair. The board annually elects one of its members as vice chair and appoints a secretary-treasurer who need not be a member of the board.

(h) Four members of the board constitute a quorum and the affirmative vote of the majority of members present at any meeting is necessary for any action taken by vote of the board. A

WV Legislature

vacancy in the membership of the board does not impair the rights of a quorum by such vote to exercise all the rights and perform all the duties of the board and the authority.

(i) The person appointed as secretary-treasurer, including a board member if so appointed, shall give bond in the sum of $50,000 in the manner provided in article two, chapter six of this code.

(j) Each public member shall be reimbursed for reasonable expenses incurred in the discharge of official duties. All expenses incurred by the board shall be paid in a manner consistent with guidelines of the Travel Management Office of the Department of Administration and are payable solely from funds of the authority or from funds appropriated for such purpose by the Legislature. Liability or obligation is not incurred by the authority beyond the extent to which moneys are available from funds of the authority or from such appropriations.

(k) In addition to such other duties and responsibilities as may be prescribed in this code, the Office of Energy is responsible for managing and administering the daily functions of the authority and for performing all other functions necessary to the effective operation of the authority.

WV Legislature

§5D-1-5. Powers, duties and responsibilities of authority generally; termination of certain powers.

The West Virginia Public Energy Authority has and may exercise all powers necessary or appropriate to execute its corporate purpose. The authority may:

(1) Adopt, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules to implement and make effective its powers and duties, such rules to be promulgated in accordance with the provisions of chapter twenty-nine-a of this code.

(2) Adopt and use an official seal and alter the same at pleasure.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name, and particularly to enforce the obligations and covenants made under this article. Any actions against the authority shall be brought in the circuit court of Kanawha County.

(5) Foster, encourage and promote the mineral development industry. The authority is encouraged to maximize the use of the West Virginia mineral development industry, but is not prohibited from utilizing nonstate mineral resources.

(6) Represent the state with respect to national initiatives concerning the mineral development industry and international marketing activities affecting the mineral development industry.

(7) Engage in strategic planning to enable the state to cope with changes affecting or which may affect the mineral development industry.

(8) Acquire, whether by purchase, construction, gift, lease, lease-purchase or otherwise, any electric power project or natural gas transmission project. In the event that an electric power project to be constructed pursuant to this article is designed to utilize coal wastes for the generation of electricity or the production of other energy, such project shall also be capable of using coal as its primary energy input: Provided, That it shall be demonstrated to the authority's satisfaction that quantities of coal wastes exist in amounts sufficient to provide energy input for such project for the term of the bonds or notes issued by the authority to finance the project and are accessible to the project.

(9) Lease, lease with an option by the lessee to purchase, sell, by installment sale or otherwise, or otherwise dispose of, to persons other than governmental agencies, any or all of its electric power projects or natural gas transmission projects for such rentals or amounts and upon such terms and conditions as the Public Energy Authority Board may deem advisable.

WV Legislature

(10) Finance one or more electric power projects or natural gas transmission projects by making secured loans to persons other than governmental agencies to provide funds for the acquisition, by purchase, construction or otherwise, of any such project or projects.

(11) Issue bonds for the purpose of financing the cost of acquisition and construction of one or more electric power projects or natural gas transmission projects or any additions, extensions or improvements thereto which will be sold, leased with an option by the lessee to purchase, leased or otherwise disposed of to persons other than governmental agencies or for the purpose of loaning the proceeds thereof to persons other than governmental agencies for the acquisition and construction of said projects or both. Such bonds shall be issued and the payment of such bonds secured in the manner provided by the applicable provisions of sections seven, eight, nine, ten, eleven, twelve, thirteen and seventeen, article two-c, chapter thirteen of this code: Provided, That the principal and interest on such bonds shall be payable out of the revenues derived from the lease, lease with an option by the lessee to purchase, sale or other disposition of or from loan payments in connection with the electric power project or natural gas transmission project for which the bonds are issued, or any other revenue derived from such electric power project or natural gas transmission project.

(12) In the event that the electric power project or natural gas transmission project is to be owned by a governmental agency, apply to the economic development authority for the issuance of bonds payable solely from revenues as provided in article fifteen, chapter thirty-one of this code: Provided, That the economic development authority shall not issue any such bonds except by an act of general law: Provided, however, That the authority shall require that in the construction of any such project, prevailing wages shall be paid as part of a project specific agreement which also takes into account terms and conditions contained in the West Virginia - Ohio valley market retention and recovery agreement or a comparable agreement.

(13) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(14) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article and compensation shall be paid for public or private lands so taken; and the authority may sell any of the real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests acquired hereunder in such manner and upon such terms and conditions as the authority deems proper: Provided, That if the authority determines that land or an interest therein acquired by the authority through the exercise of the power of eminent domain for the purpose of this article is no longer necessary or useful for such purposes, and if the authority desires to sell such land or interest therein, the authority shall first offer to sell such land or interest to the owner or owners from whom it was acquired, at a price equal to its fair market value: Provided, however, That if the prior owner or owners shall decline to reacquire the land or

WV Legislature

interest therein, the authority shall be authorized to dispose of such property by direct sale, auction, or competitive bidding. In no case shall such land or an interest therein acquired under this subdivision be sold for less than its fair market value. This article does not authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, except for the acquisition of easements or rights-of-way which will not unreasonably interfere with the operation of the property or facilities of such public utility or common carrier, and in the event of the taking or disturbance of property or facilities of public utility or common carrier, provision shall be made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

The term "real property" as used in this article is defined to include lands, structures, franchises and interests in land, including lands under water and riparian rights, and any and all other things and rights usually included within the said term, and includes also any and all interests in such property less than full title, such as easements, rights-of-way, uses, leases, licenses and all other incorporeal hereditaments and every estate, interest or right, legal or equitable, including terms for years and liens thereon by way of judgments, mortgages or otherwise, and also all claims for damages for such real estate.

For the purposes of this section, "fair market value" shall be determined by an appraisal made by an independent person or firm chosen by the authority. The appraisal shall be performed using the principles contained in the "Uniform Appraisal Standards for Federal Land Acquisitions" published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972.

(15) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers: Provided, That if any electric power project or natural gas transmission project is to be constructed by a person other than a governmental agency, and with whom the authority has contracted to lease, sell or finance such project upon its completion, then the authority shall not be required to comply with the provisions of article twenty-two, chapter five of this code requiring the solicitation of competitive bids for the construction of such a project.

(16) Employ managers, superintendents and other employees, and retain or contract with consulting engineers, financial consultants, accountants, architects, attorneys, and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of bonds issued by the economic development authority, from the proceeds of bonds issued by or loan payments, lease payments or other payments received by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

(17) Receive and accept from any federal agency, or any other source, grants for or in aid of the construction of any project or for research and development with respect to electric

WV Legislature

power projects, natural gas transmission projects or other energy projects, and receive and accept aid or contribution from any source of money, property, labor or other things of value to be held, used and applied only for the purpose for which such grants and contributions are made.

(18) Purchase property coverage and liability insurance for any electric power project or natural gas transmission project or other energy project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance which may be provided for under a resolution authorizing the issuance of bonds or in any trust agreement securing the same.

(19) Charge, alter and collect transportation fees and other charges for the use or services of any natural gas transmission project as provided in this article.

(20) Charge and collect fees or other charges from any energy project undertaken as a result of this article.

(21) When the electric power project is owned and operated by the authority, charge reasonable fees in connection with the making and providing of electric power and the sale thereof to corporations, states, municipalities or other entities in the furtherance of the purposes of this article.

(22) Purchase and sell electricity or other energy produced by an electric power project in and out of the State of West Virginia.

(23) Enter into wheeling contracts for the transmission of electric power over the authority's or another party's lines.

(24) Make and enter into contracts for the construction of a project facility and joint ownership with another utility and the provisions of this article shall not constrain the authority from participating as a joint partner therein.

(25) Make and enter into joint ownership agreements.

(26) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds issued by the economic development authority pursuant to the provisions of article fifteen, chapter thirty-one of this code or bonds issued by the authority.

(27) Broker the purchase of natural gas for resale to end-users: Provided, That whenever there are local distribution company pipelines already in place the authority shall arrange to transport the gas through such pipelines at the rates approved by the Public Service Commission of West Virginia.

(28) Engage in market research, feasibility studies, commercial research, and other studies

WV Legislature

and research pertaining to electric power projects and natural gas transmission projects or any other functions of the authority pursuant to this article.

(29) Enter upon any lands, waters and premises in the state for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceedings which may be then pending and the authority shall make reimbursement for any actual damages resulting to such lands, waters and premises as a result of such activities.

(30) Participate in any reorganization proceeding pending pursuant to the United States Code (being the act of congress establishing a uniform system of bankruptcy throughout the United States, as amended) or any receivership proceeding in a state or federal court for the reorganization or liquidation of a responsible buyer or responsible tenant. The authority may file its claim against any such responsible buyer or responsible tenant in any of the foregoing proceedings, vote upon any question pending therein, which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such responsible buyer or responsible tenant or of any entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(31) Make or enter into management contracts with a second party or parties to operate any electric power project or any gas transmission project and associated facilities, or other related energy project, either during construction or permanent operation.

(32) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

(33) Nothing herein shall be construed to permit the transportation of gas produced outside of this state through a natural gas transmission project.

(34) The authority shall, after consultation with other agencies of state government having environmental regulatory functions, promulgate legislative rules pursuant to chapter twenty-nine-a of this code, to establish standards and principles to be applied to all projects in assessing the effects of projects on the environment: Provided, That when a proposed project requires an environmental impact statement pursuant to the National Environmental Policy Act of 1969, a copy of the environmental impact statement shall be filed with the authority and be made available prior to any final decision or final approval of any project and prior to the conducting of any public hearings regarding the project, and in any such case, no assessment pursuant to the legislative rule need be made.

WV Legislature

§5D-1-5a. Publication of notice of certain meetings.

For all meetings of the board at which a bond issue of the authority will be finally considered, and for all meetings of the board at which the exercise of the right of eminent domain will be finally considered, whether such meeting be a regular or special meeting, the chairman shall cause a notice of said meeting to be published as a class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be each county in which the project is located. In addition, notice in writing of such meeting shall be given, by regular United States mail, to any person who shall have previously made a request, in writing, to be so notified with regard to a particular project.

WV Legislature

§5D-1-5b. Public hearing before final consideration of bond issue or exercise of right of eminent domain.

(a) Prior to any final decision of the board to take action with respect to the issuance of revenue bonds or to authorize the exercise of the right of eminent domain with respect to any electric power or natural gas transmission project, the authority shall:

(1) Prepare and reduce to writing the nature of the proposed project, a summary of the data supporting the board's determination and a description and location identification of the proposed real property, right of way, or easement to be acquired. The written statement under this section and the environmental impact statement or assessment required pursuant to section five of this article shall be available for public inspection at the office of the county clerk at the county courthouse of each county in which the project is located during the two successive weeks before the date of the public hearing required by this section;

(2) Provide for a public hearing to be held at a reasonable time and place within at least one county in which the project is located to allow interested members of the public to attend the hearing without undue hardship. Members of the public may be present, submit statements and testimony and question the authority's representative appointed pursuant to this section;

(3) Not less than thirty days prior to such public hearing, provide notice to all members of the Legislature, unless otherwise notified by a member that such member does not desire such notice, to the county commission of each county within which the project is located and to the municipal council of each municipality in said county;

(4) Cause to be published a notice of the required public hearing. The notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be each county in which the project is located. The public hearing shall be held no earlier than the fourteenth successive day and no later than the twenty-first successive day following the first publication of the notice. The notice shall contain the time and place of the public hearing along with a brief description of the project and its proposed location;

(5) Cause a copy of the required notice to be posted at the county seat of each county within which the project is located for members of the public to observe. Such notice shall remain posted for two successive weeks prior to the date of the public hearing;

(6) Appoint a representative of the authority who shall conduct the required public hearing. The representative of the authority shall make a report of the public hearing available for inspection by the public or, upon written request of any interested person, provide a written copy thereof and to all individuals previously receiving written notice of the hearing within thirty days following the public hearing; and

(7) The representative of the authority conducting the public hearing shall make the results

of the hearing available to the board for its consideration prior to the board making decisions regarding the proposed project.

(b) No final action of the board with respect to the issuance of revenue bonds or authorizing the exercise of the right of eminent domain with respect to a proposed project may be made before the thirtieth successive day following the public hearing required by this section, but in no event shall final action of the board be made prior to fifteen days after the report of the public hearings are made available to the public in general.

WV Legislature

§5D-1-5c. Approval of decommissioning or deconstructing an existing power plant.

(a) No existing coal, oil, or natural gas fueled power plant shall undertake any decommissioning or deconstructing activities prior to obtaining approval from the authority: *Provided*, That such approval may not be unreasonably withheld.

(b) The authority may approve the decommissioning or deconstructing of an existing coal, oil, or natural gas fueled power plant upon the submission of a petition containing, at a minimum, the following information:

(1) An analysis by an authority approved third party that evaluates the social, environmental, and economic impact at a local and statewide level of such decommissioning and deconstruction; and

(2) Potential alternatives to the decommissioning and deconstruction, including the reconstruction that make use of other technologies, including novel technologies and green technologies as alternative fuel sources.

(c) The authority shall propose rules for legislative approval and promulgate emergency rules in accordance with the provisions of §29A-3-1 *et seq*. of this code to implement this section, including exempting power plants that have been non-producing for at least five years prior to the effective date of this section.

WV Legislature

§5D-1-6. Authority may construct, finance, lease, sell, maintain, etc., electric power projects and transmission facilities.

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the West Virginia public energy authority may initiate, acquire, construct, maintain, lease, lease with an option for the lessee to purchase, sell, by installment sale or otherwise, or otherwise dispose of, repair and operate electric power generating projects and transmission facilities, and may issue bonds for the purpose of financing the cost of acquisition and construction of electric power projects and transmission facilities which will be sold, leased, leased with an option by the lessee to purchase or otherwise disposed of to person other than governmental agencies or for the purpose of loaning the proceeds thereof to persons other than governmental agencies for the acquisition and construction of said projects or both; or if the electric power project is to be owned by a governmental agency request the issuance of bonds by the economic development authority, payable solely from revenues, to pay the cost or finance in whole or in part such projects: Provided, That the economic development authority shall not be authorized to issue any such bonds except by an act of general law, as provided in article fifteen, chapter thirty-one of this code. An electric power project shall not be undertaken unless it has been determined by the authority that the project will be consistent with the purposes set out in this article. Any resolution providing for acquiring or constructing such projects shall include a finding by the authority that such determinations have been made.

The authority is authorized and directed:

(1) To cooperate with the appropriate agencies and officials of the United States government to the end that any electric power project shall be so planned and constructed as to be adaptable to the plans of the United States.

(2) To apply to the appropriate agencies and officials of the United States government including the federal energy regulatory commission for such licenses, permits or approval of its plans or projects as it may deem necessary or advisable, and in its discretion and upon such terms and conditions as it may deem appropriate, to accept such licenses, permits or approvals as may be tendered to it by such agencies or officials and such federal or other public or governmental assistance as is now or may hereafter become available to it; and to enter into contracts with such agencies or officials relating to the construction or operation of any project authorized by this article.

(3) To proceed with the physical construction or completion of any project authorized by this article, including the erection of the necessary power houses and other facilities, instrumentalities and things necessary or convenient to that end, and including also the erection of such transmission lines as may be necessary to conduct the electricity; and including also the acquisition or construction of transmission lines or the use of such transmission lines, available or which may be made available, to conduct electricity to such point or points at which the electricity is sold by the authority to any person, corporation or association, public or private.

WV Legislature

(4) To cooperate with and, when the board deems it feasible and advisable, to enter into contractual arrangements with utility companies.

(5) To purchase, when available, coal, natural gas or the by-products of coal produced in this state as the fuel source for all electric power projects.

WV Legislature

§5D-1-7. Authority may construct, finance, maintain, etc., natural gas transmission projects and facilities.

To accomplish the public policies and purposes and to meet the responsibility of the state as set forth in this article, the West Virginia public energy authority may initiate, acquire, construct, reconstruct, enlarge, maintain, repair, improve, furnish, equip, lease or rent, and operate natural gas transmission projects at such locations or areas within the state as may be determined by the authority: Provided, That at least thirty days prior to exercising any such power, the authority shall provide written notice to any local natural gas distribution company or to any company that transports natural gas in intrastate or interstate commerce, which would experience a direct loss of sales to an end-user presently served by such company as a result of such natural gas transmission project. For purposes of this article, notice shall be given either by personal delivery thereof to the affected company to be so notified, or by depositing such notice in the United States mail, postage prepaid, in an envelope addressed to such affected company.

WV Legislature

§5D-1-8. Annual report to Governor and Legislature; audit.

The authority shall make an annual report, as soon as possible after the close of each fiscal year, of its activities for the preceding fiscal year to the Governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of financing, of construction or of operations of its projects.

WV Legislature

§5D-1-9. Expenses of authority.

From time to time the Legislature may appropriate funds to be used for the purposes of this article. All expenses incurred in carrying out the provisions of this article shall be payable solely from funds of the authority or from funds appropriated to the authority for such purpose by the Legislature. Such article does not authorize the authority to incur indebtedness or liability on behalf of or payable by the state.

WV Legislature

§5D-1-10. Use of funds by authority; restrictions.

All moneys, properties and assets acquired by the authority, bonds or as revenues or otherwise, shall be held by it in trust for the purposes of carrying out its powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys shall at no time be commingled with other public funds.

WV Legislature

§5D-1-11. Investment of funds by authority.

The authority is hereby authorized and empowered to invest any funds not needed for immediate disbursement in any of the following securities:

(1) (i) Direct obligations of or obligations guaranteed by the United States of America; (ii) evidences of ownership of a proportionate interest in specified direct obligations of, or specific obligations the timely payment of the principal of and the interest on which are unconditionally and fully guaranteed by, the United States of America, which obligations are held by a bank or trust company organized and existing under the law of the United States of America or any state thereof in the capacity of custodian and (iii) obligations, the sole source of the payment of the principal of and interest on which are obligations of the nature of those described in clause (i), which are irrevocably pledged for such purpose;

(2) Bonds, debentures, notes or other evidences of indebtedness issued by any of the following agencies: Banks for cooperatives; federal intermediate credit banks; federal home loan bank system; Export-Import Bank of the United States; federal land banks; the Federal National Mortgage Association or the Government National Mortgage Association;

(3) Public housing bonds issued by public agencies or municipalities and fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States of America; or temporary notes issued by public agencies or municipalities or preliminary loan notes issued by public agencies or municipalities, in each case, fully secured as to the payment of both principal and interest by a requisition or payment agreement with the United States of America;

(4) Certificates of deposit secure by obligations of the United States of America;

(5) Direct obligations of or obligations guaranteed by the State of West Virginia;

(6) Direct and general obligations of any other state within the territorial United States, to the payment of the principal of and interest on which the full faith and credit of such state is pledged: Provided, That at the time of their purchase, such obligations are rated in either of the two highest rating categories by a nationally recognized bond-rating agency;

(7) Any fixed interest bond, note or debenture of any corporations organized and operating within the United States: Provided, That such corporation shall have a minimum net worth of $15 million and its securities or its parent corporation's securities are listed on one or more of the national stock exchanges: Provided, however, That (i) such corporation has earned a profit in eight of the preceding ten fiscal years as reflected in its statements, and (ii) such corporation has not defaulted in the payment of principal or interest on any of its outstanding funded indebtedness during its preceding ten fiscal years, and (iii) the bonds, notes or debentures of such corporation to be purchases are rated "AA" or the equivalent thereof or better than "AA" or the equivalent thereof by at least two or more nationally recognized rating services such as Standard and Poor's, Dunn & Bradstreet or Moody's; and

WV Legislature

(8) Such other investments which at the time of the acquisition thereof shall be listed as permissible investments of trusted funds in an official statement, offering circular or prospectus with respect to indebtedness which is rated by Moody's or Standard & Poor's not less than the highest rating assigned by such agencies to any series of bonds.

WV Legislature

§5D-1-12. Maintenance, operation and repair of projects.

Each electric power project, each natural gas transmission project or other energy project owned and operated by the authority, when constructed and placed in operation, shall be maintained and kept in good condition and repair by the authority. Each such project owned and operated by the authority shall be operated by such operating employees as the authority employs or pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed in carrying out the provisions of this article and in the exercise of the powers granted hereunder with regard to any project shall be restored or repaired and placed in its original condition, as nearly as practicable, or adequate compensation made therefor out of funds provided in accordance with the provisions of this article.

WV Legislature

§5D-1-13. Bonds lawful investments.

The provisions of sections nine and ten, article six, chapter twelve of this code to the contrary notwithstanding, all bonds issued by either the West Virginia economic development authority or the authority for the purposes of this article shall be lawful investments for the West Virginia state Board of Investments and shall also be lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, and insurance companies, including domestic for life and domestic not for life insurance companies.

WV Legislature

§5D-1-14. Exemption from taxation.

The exercise of the powers granted to the authority by this article will be in all respects for the benefit of the people of the state, for the improvement of their health, safety, convenience and welfare and for the enhancement of their residential, agricultural, recreational, economic, commercial and industrial opportunities and is a public purpose. As the ownership, operation and maintenance of natural gas transmission projects and electric power projects and other energy projects owned and/or operated by the authority will constitute the performance of essential governmental functions, the authority shall not be required to pay any taxes or assessments upon any such project or upon any property acquired or used by the authority or upon the income therefrom. Natural gas transmission projects and electric power projects and other energy projects owned or leased by persons other than governmental agencies shall be subject to any taxes or assessments upon any such project or projects. Bonds issued by either the West Virginia economic development authority or the authority and all interest and income thereon shall be exempt from all taxation by this state, or any county, municipality, political subdivision or agency thereof, except inheritance taxes: Provided, That the authority shall require a fee in substitution of any ad valorem tax exemption to be negotiated by said authority.

WV Legislature

§5D-1-15. Acquisition of property by authority -- Acquisition by purchase, lease or eminent domain; governmental agencies authorized to convey, etc., property; sale of property by authority.

The authority may acquire by purchase, or otherwise, as authorized by this article whenever it deems such acquisition expedient, any land, property, rights, rights-of-way, franchises, easements, leases and other interests in lands it deems necessary or convenient for the construction and operation of any natural gas transmission project, any electric power project, or other energy project.

All governmental agencies, notwithstanding any contrary provision of law, may lease, lend, grant or convey to the authority, at its request, upon such terms as the proper authorities of such governmental agencies deem reasonable and fair, any real property or interest therein, including improvements thereto or personal property which is necessary or convenient to the effectuation of the authorized purposes of the authority, including public roads and other real property or interests therein, including improvements thereto or personal property already devoted to public use.

The authority may sell any land, property, rights, rights-of-way, franchises, easements, leases and other interests in land acquired under the provisions of this section in such manner and upon such terms and conditions as it deems proper.

WV Legislature

§5D-1-16. Authority not public utility and not subject to full jurisdiction of Public Service Commission; authority subject to provisions concerning gas pipeline safety.

Notwithstanding anything contained in this article to the contrary, and specifically notwithstanding any activities of the authority which shall constitute a public service, the authority shall not be considered or deemed a public utility in any respect for purposes of chapter twenty-four of this code, and neither the authority, nor any of its activities or the activities of its agents or employees, nor any project constructed, maintained or operated by the authority, nor any other matters pertaining to the authority, shall be subject to the jurisdiction of the Public Service Commission of West Virginia, either with respect to the powers of said Public Service Commission generally, or with respect to its power over rates, or otherwise: Provided, That the authority and all natural gas transmission projects which it constructs, maintains or operates shall nevertheless be subject to the provisions of chapter twenty-four-b of this code concerning gas pipeline safety.

WV Legislature

§5D-1-17. Transportation of gas from natural gas transportation projects by gas utility pipelines as common carriers.

In conjunction with any natural gas transportation project, and for any other purpose in order to effectuate the policies and intent of this article, the authority may petition the Public Service Commission, pursuant to section three-a, article three, chapter twenty-four of this code, to authorize and require the transportation of natural gas for the authority or for any end-user or other person doing business with the authority, by intrastate pipelines with unused or excess capacity not needed to meet its contractual obligations, by interstate pipelines with unused or excess capacity not needed to meet interstate commerce demands, or by local distribution companies.

WV Legislature

§5D-1-18. Transportation fees and other revenues from natural gas transmission projects owned by the authority.

This section shall apply to any natural gas transmission project or projects which are owned by the authority. The authority may charge, alter and collect transportation fees or other charges for the use or services of any natural gas transmission project, and fix the terms, conditions, transportation fees or other charges for such use or services. Such transportation fees or other charges shall not be subject to supervision or regulation by any other authority, department, commission, board, bureau or agency of the state, including specifically the Public Service Commission.

WV Legislature

§5D-1-19. Financial interest in contracts prohibited; penalty.

No officer, member or employee of the authority shall be financially interested, directly or indirectly, in any contract of any person with the authority, or in the sale of any property, real or personal, to or from the authority. This section does not apply to contracts or purchases of property, real or personal, between the authority and any governmental agency. If any officer, member or employee of the authority has such financial interest in a contract or sale of property prohibited hereby, he shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

WV Legislature

§5D-1-20. Personal liability of members or persons acting on behalf of the authority.

(a) No director or any person acting on behalf of the authority executing any contracts, comments or agreements issued pursuant to this article shall be liable personally upon such contracts, comments or agreements or be subject to any personal liability or accountability by reason thereof; and

(b) No director or any person acting on behalf of the authority shall be personally liable for damage or injury resulting from the performance of his duties hereunder.

WV Legislature

§5D-1-21. Meetings and records of authority to be kept public.

All meetings of the authority shall be open to the public and the records of the authority shall be open to public inspection at all reasonable times, except as otherwise provided in this section. All final actions of the authority shall be journalized and such journal shall also be open to the inspection of the public at all reasonable times. Any records or information relating to secret processes or secret methods of manufacture or production which may be obtained by the authority or other persons acting under authority of this article are confidential and shall not be disclosed.

WV Legislature

§5D-1-22. Liberal construction of article.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

WV Legislature

§5D-1-23. Severability.

If any section, part, provision, subsection, subpart, subdivision, paragraph or subparagraph of this article or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect any other section, part, provision, subsection, subpart, subdivision, paragraph or subparagraph of this article or its application or validity, and to this end the provisions of this article are declared to be severable.

WV Legislature

§5D-1-24.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature