

Preliminary Performance Review

Public Energy Authority

**The Public Energy Authority and the
Public Energy Authority Board Do
Not Serve the Public Interest**



**October 2003
PE03-18-293**

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John Sylvia
Director

October 19, 2003

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable J.D. Beane
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Preliminary Performance Review of the *Public Energy Authority*, which will be presented to the Joint Committee on Government Operations on Sunday, October 19, 2003. The issue covered herein is "The Public Energy Authority and the Public Energy Authority Board do not Serve the Public Interest."

We transmitted a draft copy of the report to the Public Energy Authority on October 3, 2003. The Authority opted not to have an exit conference. The Public Energy Authority did not provide a response to the report.

Let me know if you have any questions.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/wsc

Joint Committee on Government and Finance

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Executive Summary

Issue 1 The Public Energy Authority and the Public Energy Authority Board Do Not Serve the Public Interest.

Since its creation in 1985, the Public Energy Authority successfully completed one project, in 1989. However, since 1989, the Public Energy Authority has had little involvement and no impact on the state's energy industry.

The Public Energy Authority and the Public Energy Authority Board were created in 1985 to market incremental energy to other states and to facilitate the construction of power plants and transmissions lines. Since the Public Energy Authority issued bonds for the 1989 Morgantown Energy Associates Power plant on the Monongahela river, the authority has not been involved in any other project.

The Legislative Auditor attempted to contact all nine board members, as listed on documents from the Governor's and Secretary of State's Offices. The Legislative Auditor received responses from five members and was never able to schedule a meeting with the Chairman. The Board has not met annually, as required by law, however, it has met five times since 1995 to address issues relating to its outstanding bonds.

The state's energy industry has successfully developed transmission and generation facilities in the state without the assistance or even awareness of the Public Energy Authority. The Legislative Auditor has determined that due to the lack of leadership and direction, as well as the Board's failure to comply with several statutory mandates, the Public Energy Authority and the Public Energy Authority Board should be terminated.

Recommendations

- 1. The Legislature should consider terminating the Public Energy Authority and the Public Energy Authority Board.*
- 2. The Legislature should consider transferring the remaining bond functions of the Public Energy Authority to the State Treasurer, the Investment Management Board or the Development Authority.*

Review Objective, Scope and Methodology

This Preliminary Performance Review of the Public Energy Authority and the Public Energy Authority Board is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10, Section 5 of the West Virginia *Code* as amended.

Objective

The objective of this audit is to determine if the Public Energy Authority is necessary for the economic health of West Virginia or the stability of the state's energy industry.

Scope

The Legislative Auditor examined the activities of the Public Energy Authority and the Public Energy Authority Board from its creation in 1985 to the present.

Methodology

The Legislative Auditor examined state *Code* requirements for the PEA and the Board. The Legislative Auditor also conducted personal and telephone interviews with Board members, The State treasurer's Office, the Public Service Commission and Development Office staff. The Legislative Auditor's staff corresponded with bond counsel and attended the most recent Public Energy Authority Board meeting. Every aspect of this report complies with Generally Accepted Government Accounting Standards (GAGAS) as set for by the Comptroller General of the United States.

Issue 1

The Public Energy Authority and the Public Energy Authority Board Do Not Serve the Public Interest.

Issue Summary

Since 1989 the Authority has not engaged in any project, nor has the Authority been consulted on other energy projects.

The Public Energy Authority was created in 1985 to market incremental energy to other states and to facilitate the construction of power plants and transmission lines in the state. **The Authority has successfully completed only one project since its creation** and has never requested funding, staff, an office, a telephone number or a director. Since the issuance of \$129,000,000 in bonds for a power plant constructed by the Morgantown Energy Associates in 1989, the Authority has not engaged in any other project, nor has the Authority been consulted on other energy projects. Although the Authority, through the Public Energy Authority Board, has acted when needed to address issues related to its role as issuer of bonds for its only project, it is the opinion of the Legislative Auditor that these functions can and should be transferred to another existing state agency.

Authority Not Necessary for Success of State's Energy Industry

Since the Authority's issuance of bonds for the 1989 project, the Public Service Commission (PSC) has certified (the term used to indicate official approval) nine new generation and transmission sites. Furthermore, five generation projects have been undertaken in the state since the creation of the Authority which did not require PSC approval because they were authorized by the federal Public Utility Regulatory Policies Act. In addition to these 14 generation projects, the PSC reports that there have been 35 new transmission projects constructed in the same time period. **The Public Energy Authority has not been involved in any of the 49 projects undertaken in West Virginia since its creation.** It is the opinion of the Legislative Auditor that the private sector has proven to be willing and able to invest and enter into generation and transmission projects without the assistance of the Public Energy Authority.

The West Virginia Public Service Commission informed the Legislative Auditor that West Virginia has improved its transmission capabilities and infrastructure since 1984, even though the Authority has not engaged in a single transmission project. Although the Authority has not marketed incremental energy to other states, as it is permitted to do by statute, 70% of all electrical power generated in West Virginia is transmitted to markets in other

states. The Authority was created in 1985 in response to the energy crises of the 1970's and to foreseen energy needs in the future. The Public Service Commission maintains that there was a concern that the certification and permitting process for power plants were overly complex. It was also feared that the private sector would not assume the costs of research, planning and development.

Authority Not Consulted On State's Future Energy Plans

In 2001, Governor Wise created an Energy Task Force by Executive Order. The Task Force was charged with defining goals and strategies to serve as a framework for an Energy Roadmap and to develop specific recommendations in order to achieve its goals. The 38 members of the Task Force did not include a representative of the Public Energy Authority. The Governor stated that:

The task force should be governed by the vision of advanced technologies for using coal, natural gas, oil, and renewable resources to produce a flexible output of electric power, fuels, chemicals, other high value products, and energy efficiencies through clean energy technologies and advanced power generation systems with limited pollution while generating economic development and job creation.

It is the opinion of the Legislative Auditor that had the Public Energy Authority been active in or relevant to issues facing West Virginia, that the Governor would have incorporated the Authority into the Roadmap's development.

Public Energy Authority Retains Broad Powers

The Authority retains broad powers which are not utilized for the development of the energy industry and may pose financial risks to the State. West Virginia Code §5D-1-6(4) allows the Public Energy Authority to:

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

The Legislative Auditor is concerned that the Authority possesses broad powers which could lead to improper or financially inadvisable agreements, which could be entered into without oversight or consensus. The Board also

The Authority retains broad powers which are not utilized for the development of the energy industry and may pose financial risks to the State.

retains its ability to:

- service existing bonds;
- foster mineral development in the state;
- engage in strategic planning to assist the state in coping with changes affecting the mineral development industry;
- maintain, lease, sell or otherwise dispose of, repair and operate any electric generating projects or transmission facilities it may have that were constructed or acquired prior to July 1, 1994;
- request the issuance of bonds by the Economic Development Authority for certain projects;
- initiate, acquire, construct, reconstruct, enlarge, maintain, repair, improve, furnish, equip, lease or rent, and operate natural gas transmission projects and facilities in the state;
- issue bonds for financing natural gas transmission projects.

Despite the aforementioned powers, the Authority remains inactive in current energy issues facing West Virginia. The Authority retains authority to service existing bonds totaling approximately \$107 million. The Board has met five times since 1995 to resolve issues surrounding the bonds issued for the Morgantown Energy Associates power plant on the Monongahela River. According to bond counsel, the Morgantown Energy Associates is responsible for the debt service on the bonds, which are backed by bank letters of credit. Responsibilities relating to the outstanding bonds can be transferred to an existing state agency with bond authority.

Public Energy Authority Board Is Unable To Carry Out Duties

West Virginia Code §5D-1-4 provides that the Public Energy Authority “be controlled, managed and operated” by a nine member board. The Legislative Auditor attempted to contact all nine Board members and to schedule a meeting with the Chairman of the Public Energy Authority Board. The Legislative Auditor received responses from five Board members and was never able to schedule a meeting with the chairman.

All responding Board members indicated that they have never been reimbursed for expenses or paid a per diem for their service to the Authority. The Chairman indicates in his response that neither the Board nor the Authority have the funding necessary to engage in strategic planning or other activities within its statutory scope. There is no evidence that the Authority has ever been funded.

No board member has given bond as required by the statute.

The Legislative Auditor questioned the Board Chairman about the Board's compliance with its statutory mandates. In his response, the Chairman indicated that out of 24 mandates, the Board has not accomplished or complied with 22. The Board has not met annually, as required by statute. Information available from the Secretary of State's Administrative Law Division indicates the Board met 5 times since 1995. These meetings were in compliance with the Open Governmental Proceedings Act. In 1999, meeting minutes indicate that the Board recognized the problems the Legislative Auditor found in this audit. Despite the fact that the Board recognized this, it did nothing to remedy the situation. Board members are required by §5D-1-4 to give bond in the sum of \$25,000. No board member has given bond as required by the statute. Bond requirements exist in statute to protect the State from individuals who would violate their fiduciary duties. Given the broad powers still available to the Board, bond should be posted for members if the Board and the Authority are continued.

Public Energy Authority Lacks Leadership and Direction

The Legislative Auditor found no evidence that the Board attempted to secure funding or requested that any gubernatorial administration appoint a director.

The Public Energy Authority is required by §5D-1-4 to have a director, appointed by the governor with consent of the Senate. The director is to be responsible for *managing and administering the daily functions of the authority and for performing any and all other functions necessary or helpful to the effective functioning of the authority, together with all other functions and powers as may be delegated by the board*. A director has never been appointed to the Authority, nor was the Legislative Auditor presented with any evidence that the Board sought a director. Although the Authority has not received funding, the Legislative Auditor found no evidence that the Board attempted to secure funding or requested that any gubernatorial administration appoint a director.

Since 1997, the State Treasurer has been authorized by §5F-2-6(a) to provide financial services, technical staff services, support staff services and for the sharing of office space for the Public Energy Authority. These services are to be provided at the request of the presiding officer of the Public Energy Authority. The Treasurer's Office does provide minimal administrative assistance to the Authority. However, the Legislative Auditor determined that language in Chapter 5F of West Virginia State Code, which deals with the reorganization of government, would not preclude the Legislature from transferring the remaining responsibilities of the Authority to another entity.

Bond Authority May Be Transferred To Another State Agency

The transfer of the Public Energy Authority's bonding authority should be to another entity which has bonding authority.

Bond counsel advises that duties related to servicing the existing bonds require bonding authority. Therefore, the transfer of the Public Energy Authority's bonding authority should be to another entity which has bonding authority. In order to transfer the rights, responsibilities and obligations in connection with the outstanding bonds, without adversely affecting the bonds, it would be necessary for bond counsel to provide a supplemental remarketing memorandum. Bond counsel for the Morgantown Energy Associates estimates that transferring bond authority would not cost more than \$5,000. Morgantown Energy Associates, not the State, would bear the costs of transferring authority to another state entity with tax-exempt bond authority.

Conclusion

Generation plants are located in West Virginia because it is economical for the private sector to locate them close to fuel sources and rivers. The majority of the state's electric power is transmitted to markets in other states. **The Public Energy Authority was created in response to potential problems which did not materialize.** The private sector has engaged in several energy projects without the assistance of the Public Energy Authority. Also, the Governor's Task Force developed a twenty year energy road map for the state of West Virginia without input from the Authority. The Authority is not accessible to the public or to the industry which it is designed to assist. Finally, the Authority has been completely inactive in current energy projects and issues. Therefore, it is the opinion of the Legislative Auditor that the Public Energy Authority and the Public Energy Authority Board do not serve a need or a purpose.

Recommendations

1. *The Legislature should consider terminating the Public Energy Authority and the Public Energy Authority Board.*
2. *The Legislature should consider transferring the remaining bond functions of the Public Energy Authority to the State Treasurer, the Investment Management Board or the Development Authority.*

Appendix A: Transmittal Letter to Agency

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John Sylvia
Director

October 3, 2003

Ronald G. Stovash, Chairman
WV Public Energy Authority Board
1800 Washington Road
Pittsburgh, PA 15241

Dear Mr. Stovash

This is to transmit a draft copy of the Performance Review of the West Virginia Public Energy Authority and the Public Energy Authority Board. This report is scheduled to be presented during the October interim meeting of the Joint Committee on Government Operations. The meeting will be held sometime during the interim meetings which are scheduled from October 19 - 21, 2003. We will inform you of the exact time and location once the information becomes available. It is expected that a representative from your agency be present at the meeting to respond to the report and answer any questions the committee may have.

If you would like to schedule an exit conference to discuss any concerns you may have with the report, please notify Shannon Riley, Research Analyst. We need your written response by noon on October 9, 2003, in order for it to be included in the final report. If your agency intends to distribute additional materials to committee members at the meeting, please contact the House Committee on Government Organization at 340-3192 by Thursday, October 16, 2003 to make arrangements.

We request that your personnel treat the draft report as confidential and that it not be disclosed to anyone not affiliates with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

Enclosure

Joint Committee on Government and Finance

Appendix B: Agency Response

**The Public Energy Authority Did Not
Provide an Agency Response for this Report.**

