

MARSHALL COUNTY COMMISSION  
AUGUST 19, 2014

NOTICE OF SPECIAL SESSION

The County Commission of Marshall County, West Virginia convened this day pursuant to the following call: Donald K. Mason, President; Brian L. Schambach, Commissioner; Bob Miller, Commissioner; Jan Pest, County Clerk; Betsy Frohnappel, County Administrator; and Jeanne Shook, Deputy Clerk.

The County Commission of Marshall County, West Virginia will meet in Special Session at the Courthouse thereof, on Tuesday, August 19, 2014 at 9:30 A.M. for the following purposes, that is to say:

To Audit Claims  
To Act upon Rebates  
To consider any other matters which  
may properly come before the Commission

Called by the President of the Commission with the concurrence of the other two members.

s/Donald K. Mason, President

Posted at the front door of the Courthouse on the 14<sup>th</sup> day of August, 2014

s/Jan Pest, County Clerk

**MINUTES** –On motion of Commissioner Schambach, seconded by Commissioner Mason, the Commission approved the minutes of the Special Session held August 12, 2014. Motion carried.

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Commissioner Miller was not at the meeting last week and therefore abstained.

**COMMISSIONER COMMENTS –**

COMMISSIONER MILLER sustained a serious concussion from an oak door on the 1<sup>st</sup> of August. He was not able to use electronics or read until August 13, when the doctor released him.

COMMISSIONER SCHAMBACH stated the presentations yesterday on the different indemnifications, ownership regulations and title of Moundsville Power were very informative.

COMMISSIONER MASON chaired the Marshall County Board of Health meeting last week and was re-elected Chairman along with Janet Kendzierski as vice chair.

COMMISSIONER MASON stated the Moundsville Power meeting yesterday was very informative. It was great to hear presentations from attorneys and insurance experts as to how our County can be indemnified from any liability in regards to the Moundsville Power Project. The PILOT agreement and Moundsville Power Lease agreement are on the agenda this morning. Originally the Commission thought the issue might have to be tabled, but after further review and discussions with all involved the issues were resolved.

**GRAND VUE PARK UPDATES** – Craig White, General Manager of Grand Vue Park, appeared before the Commission. Craig stated everything is going well, things are winding up, and invited everyone to come up and ride the zip-line.

**JIM THOMAS, CONCERNED CITIZEN** – Jim Thomas asked the Commission about a problem with the minutes on the County website. Betsy Frohnafel, County Administrator, stated they are having internet issues, a new IT project is now underway and the site will be up and running within 30 days. Mr. Thomas had concerns on insurance limits for Moundsville Power. Mr. Thomas requested to see a contract with RED Partnership and asked Commissioner Mason if he was on the Board of Directors. Betsy Frohnafel will give a copy of the RED Partnership contract to Mr. Thomas tomorrow, and Commissioner Mason stated he is on the Board of Directors of RED Partnership. Mr. Thomas asked Commissioner Schambach about a Power Plant in Morgantown going bankrupt to which Commissioner Schambach replied after speaking with Monongalia Commissioners, he understood the boiler systems were not as efficient as they thought, they were only running at 68%, a new boiler system had to be purchased, and therefore they had to file bankruptcy. Mr. Thomas hopes that won't

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happen here in Marshall County. Commissioner Schambach stated there is \$25 million dollar policy for pollution and environmental insurance and a \$50 million dollar policy for commercial liability insurance.

**GARY SHREVE, CONCERNED CITIZEN** – Gary Shreve attended the Moundsville Power Project presentation yesterday and complained he could not hear the speakers giving presentations.

**CORRESPONDENCE** –

WV Association of Counties – Thank you for membership and support.

WV Rt. 2 & I 68 Authority – invitation to attend evening with WV Secretary of Commerce Keith Burdette. Monday, September 15 @ 6:00 pm, Moundsville Country Club.

State of WV Dept. of Tax & Revenue – 2014 tax year appraisals, recommended appraisal change & circumstances requiring the change.

American Cancer Society Recognition – 2014 Relay for Life of Marshall County.

I Support Moundsville Power – Postcards from Project BEST & Upper Ohio Valley Building Trades.

Marilyn K. Hunt – Letter of complaint on environmental issues & human right abuse.

**FIDUCIARY MATTER** – Tammy Hill, Probate Clerk, submitted an Affidavit and Waiver of Final Settlement for the Estate of George S. Kimberly for approval.

On motion of Commissioner Schambach, seconded by Commissioner Miller, the Commission approved and accepted the final settlement. Motion carried.

**EXONERATIONS** – On motion of Commissioner Miller, seconded by Commissioner Schambach, the Commission approved the following 14 erroneous assessments previously approved by the Prosecuting Attorney and Assessor:

William Storm (Executor)	\$ 31.64
Doug Stenda	447.78
Patirica Mike	2.64
Powless Roofing Inc	499.78
Allen Henderson	197.92
Allen Henderson	308.00
Carl Yoho	348.98
Traci West	521.92

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Traci West	31.54
Judith Burdette	50.46
Allen Smith	185.36
Greg Snider	76.96
Ally Bank	320.98
Lynn Yates	13.40

**AIA DOCUMENT G704 – 2000 - CONTRACT** – Betsy Frohnapfel, County

Administrator, submitted a Certificate of Substantial Completion for approval. The contract is for general construction on the Marshall County Public Safety Building Demo Phase.

On motion of Commissioner Schambach, seconded by Commissioner Miller, the Commission approved the Certificate of Substantial Completion and the President was authorized to sign the same. Motion carried.

**BOWMAN RIDGE COMMUNITY CENTER** – Teresa (Conkle) Hughes submitted a letter to the Commission stating she is currently taking care of the Bowman Ridge Community Center. Mrs. Hughes is requesting previous funds allotted to the Center which were not used.

On motion of Commissioner Schambach, seconded by Commissioner Miller, the Commission approved the request and authorized a check to be sent to the Bowman Ridge Community Center. Motion carried.

**LEPC APPROVAL OF BY-LAWS** – Tom Hart, O.E.M. Director, submitted the 2014 Marshall County Local Emergency Planning Committee by-laws for approval.

On motion of Commissioner Miller, seconded by Commissioner Schambach, the Commission approved the Resolution and the President was authorized to sign the same. Motion carried. The Resolution is as follows:

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**MARSHALL COUNTY COMMISSION**

DONALD K. MASON, PRESIDENT  
BRIAN L. SCHAMBACH  
ROBERT A. MILLER

BETSY WILSON FROHNAPFEL, ADMINISTRATOR  
JAN PEST, COUNTY CLERK

**RESOLUTION**

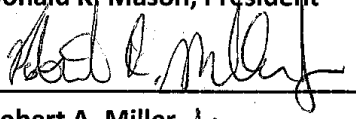
**WHEREAS**, pursuant to West Virginia Code Chapter 15, Article A (West Virginia Emergency Response and Community Right-to-Know Act), each Local Emergency Planning Committee (LEPC) *"shall appoint a chairperson and establish procedural rules by which the committee shall function. Such rules shall include provisions for public notification of committee activities, public meetings to discuss the emergency plan, public comments, response to such comments by the committee, and distribution of the emergency plan."*

**AND WHEREAS**, the West Virginia State Emergency Response Commission has met and approved this Constitution and By-Laws on August 13<sup>th</sup>, 2014.

**Therefore**, upon approval by Marshall County Commission, this 19<sup>th</sup> day of August, 2014, this Constitution and By-Laws shall be the ruling authority for the Marshall County Local Emergency Planning Committee.

**The Marshall County Commission:**

  
Donald K. Mason, President

  
Robert A. Miller, Jr.

  
Brian L. Schambach

P.O. DRAWER B - MOUNDSVILLE, WV 26041

REGULAR SESSIONS FIRST TUESDAY - JANUARY-APRIL-JULY-OCTOBER TELEPHONE - 845-0482 FAX 843-1074

**MOUNDSVILLE POWER PROJECT** – Don Rigby of RED Partnership appeared before the Commission with final documents for Approval of Payment in Lieu of Taxes (PILOT) Agreement and consideration of Moundsville Power Lease Agreement. After the meeting yesterday, all of the attorneys and insurance consultants met and agreed on the amount of insurance coverage needed for the project. A \$25 million dollar policy for pollution and environmental problems and \$50 million dollar umbrella policy for commercial liability. Mr. Rigby stated the County Commission is fully covered and indemnified for this project. Commissioner Miller had several questions which were explained and answered by Mr. Rigby.

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Dan Spitzer of Hodgson & Russ Law Firm stated this plant meets all regulations and requirements and is a State of the Art Plant.

Attorney Craig Griffith of Steptoe & Johnson, stated a cessation of operation plan is embedded in the PILOT agreement and the lease.

The following Resolution was read by Commissioner Mason:

RESOLUTION

WHEREAS, The County Commission of Marshall County, West Virginia (the "County Commission") has previously taken certain actions regarding the acquisition, construction, ownership and leasing of a proposed new 549 megawatt natural gas burning combined cycle power plant (the "Facility") to Moundsville Power, LLC ("Moundsville Power") and to be located in Marshall County;

WHEREAS, on April 22, 2014, The County Commission approved a proposed Payment in Lieu of Taxes Agreement (the "PILOT Agreement") respecting the Facility, whereby the County Commission authorized, approved and directed the President of the County Commission to execute and deliver the final version of the PILOT Agreement if all terms and provisions of the final PILOT Agreement are satisfied and all conditions to the PILOT Agreement becoming effective are satisfied;

WHEREAS, under the PILOT Agreement, the County Commission will take title to, own and lease the Facility to Moundsville Power, and Moundsville Power will make certain payments to the Sheriff, with such payments being distributed to the County Commission and the County Board of Education in lieu of the real and personal property taxes that would be assessed against the Facility if it were not owned by Marshall County;

WHEREAS, the PILOT contemplates that following its exercise of the option to purchase the site of the Facility and the conveyance thereof by Moundsville Power to the County Commission, a lease of the Facility will be entered into, whereby the Facility will be leased by the County Commission to Moundsville Power (the "Lease");

WHEREAS, the County Commission is authorized, pursuant to Chapter 8, Article 19, Sections 1 and 4 of the Code of West Virginia, 1931, as amended, to acquire and hold title to electric power systems, sell, lease or otherwise dispose of all or part of such electric power system, by contract and without the need for public action, and enter into agreements providing for payments in lieu of taxes, upon the approval by the County Commission;

WHEREAS, the County Commission has had presented to it the final form of the PILOT Agreement;

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WHEREAS, the County Commission has had presented to it the Lease, by and between the County Commission, as lessor, and Moundsville Power, as lessee;

WHEREAS, the County Commission has previously approved the Basic Rent schedule for the Lease, which is included as Exhibit B under the Lease, pursuant to a resolution passed at a regular County Commission meeting held on April 29, 2014; and

WHEREAS, the County Commission has reviewed the final version of the PILOT and the Lease, and hereby finds and determines that, following the exercise of its option to purchase such site from Moundsville Power, the conveyance of such site by Moundsville Power to the County Commission for a term of years and the leasing of the Facility by the County Commission to Moundsville Power, will benefit Marshall County and its residents by facilitating the economic development of the County and that the acquisition, construction and equipping of the Project, described in the Lease (the "Project"), will encourage investing in job-producing private development and expand the public tax base of Marshall County and that the proposed Project will result in an increase in the value of the property located in the County and will encourage increased employment within such area and serve a public purpose of the County.

NOW, THEREFORE, BE IT RESOLVED, BY THE COUNTY COMMISSION OF MARSHALL COUNTY, AS FOLLOWS:

1. The County Commission hereby finds that the terms and provisions of the final version of the PILOT Agreement are satisfactory and all conditions to the PILOT Agreement becoming effective have been satisfied, and the County Commission hereby approves the final version of the PILOT Agreement and authorizes, approves and directs the President of the County Commission to execute and deliver the final version of the PILOT Agreement.

2. The County Commission hereby approves the Lease, in the form submitted to this meeting, and the execution and delivery of the Lease by the President of the County Commission on behalf of the County Commission are hereby authorized, approved and directed. The President of the County Commission shall execute and deliver the Lease, execution of the Lease by the President to be conclusive evidence of any approval required hereby.

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3. The President, Clerk and other appropriate officers, employees and agents of the County Commission are hereby authorized and directed to take all further actions necessary to assist in support of the PILOT Agreement and Lease; provided, however, that the County Commission, its officers and employees shall not have any expense, financial liability or financial obligation of any kind in connection with the Project, the Facility or the ownership or leasing thereof.

4. This Resolution shall be effective immediately.

Adopted this August 19, 2014.

By: Donald K. Masoe  
President




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CERTIFICATION

The undersigned, being the duly qualified, elected and acting Clerk of The County Commission of Marshall County, West Virginia, does hereby certify that the foregoing Resolution was duly adopted by the members of The County Commission of Marshall County, West Virginia, at a regular meeting duly held, pursuant to proper notice thereof, on August 19, 2014 in Moundsville, West Virginia.

Dated: Aug. 19, 2014.

By:

  
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Clerk

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Commissioner Miller requested the passing of the Resolution be tabled for further review. Commissioner Mason and Commissioner Schambach declined to table the request.

On motion of Commissioner Schambach, seconded by Commissioner Mason, the Commission adopted the Resolution for the PILOT Agreement and Lease Agreement with a vote of 2-1. Commissioner Schambach and Commissioner Mason voted for the Resolution and Commissioner Miller against. Motion carried.

**RECESS** – On motion of Commissioner Schambach, seconded by Commissioner Miller, the Commission took a short recess. Commission reconvened.

**COURTHOUSE YARD PROJECT BIDS** – The Commission previously tabled two bids for Marshall County Courthouse Site Redevelopment. The bids are as follows:  
Grae-Con Construction, Inc. Steubenville Oh, 43952, for \$ 464,000.  
Waller Corporation, Washington, Pa, 15301, for \$ 479,000.

On motion of Commissioner Miller, seconded by Commissioner Schambach, the Commission rejected both bids. Motion carried.

**CLAIMS AUDITED** – The Commission, this day, approved the following claims:

<u>GENERAL COUNTY FUND</u>	\$ 23,751.87
<u>COAL SEVERANCE FUND</u>	27,762.04
<u>DOG FUND</u>	420.88
<u>MAGISTRATE COURT FUND</u>	45.58
<u>E-911 FUND</u>	976.07

**ADJOURNMENT** – There being no further business to come before the Commission, on motion of Commissioner Schambach, seconded by Commissioner Miller, the meeting was adjourned.

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PRESIDENT