



# WPPSEF

WEST PENN POWER  
SUSTAINABLE  
ENERGY FUND

The Pennsylvania State University • EMS Energy Institute • C-211 CUL • University Park, PA 16802-2323 • 814.441.1100 - mobile • [jlm9@psu.edu](mailto:jlm9@psu.edu) - email

May 9, 2016

Secretary Rosemary Chiavetta  
Pennsylvania Public Utilities Commission  
Commonwealth Keystone Building  
2<sup>nd</sup> Floor, Room N-201  
400 North Street  
Harrisburg, PA 17120

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2016 MAY 10 AM 10:57  
ATTN: SECRETARY'S BUREAU

Re: Docket Number: M-00031715F0005

Dear Ms. Chiavetta,

On behalf of the West Penn Power Sustainable Energy Fund (WPPSEF), I am resubmitting this request to modify WPPSEF existing By-Laws. I have been working with the WPPSEF Board and with Scott Gebhardt (PUC Energy Utility & Conservation Analyst) and he has asked me to resubmit the request as follows::

- ✓ Proposed By-Laws Changes (Combined, Redline)
- ✓ Proposed By-Laws Changes (Combined, Clean)

I would like to thank the PUC for all of the guidance and assistance that they have provided to the Fund.

Respectfully submitted,

Joel L. Morrison

Cc: Jim Smith (Economic Growth Connection of Westmoreland), Scott Gebhardt (PA-PUC)

Amended and Restated By-Laws of the

WEST PENN POWER SUSTAINABLE  
ENERGY FUND

A Pennsylvania Nonprofit Corporation

Day, Month, Year

**Preamble**

The West Penn Power Sustainable Energy Fund (the "Fund" or "Corporation") was created and authorized pursuant to the West Penn Power Company ("West Penn") restructuring proceeding and approved by the Pennsylvania Public Utility Commission (the "Commission") in an Order entered on November 3, 1998 in Docket No. R-00973981.

**ARTICLE I – PURPOSE AND FUND MISSION**

1.1 Purpose. The purpose of the Corporation is limited to the purposes set forth in Section 509(a)(3)(A) of the Internal Revenue Code of 1986, as amended. The Corporation is organized, and at all times will be operated, in connection with the ECONOMIC GROWTH CONNECTION OF WESTMORELAND, a nonprofit corporation, which is an organization described in Section 170(b)(1)(A) of the Internal Revenue Code of 1986, as amended. The Corporation is prohibited from engaging in activities not in furtherance of the purposes referred to in Section 509(a)(3)(A) of the Internal Revenue Code of 1986, as amended, and is further prohibited from operating to support or benefit any organization other than the ECONOMIC GROWTH CONNECTION OF WESTMORELAND.

1.2 Mission: The three elements of the Fund's mission are:

- A. To promote the use of renewable and clean energy technologies that can benefit West Penn Power ratepayers.
- B. To promote energy conservation and energy efficiency technologies that can benefit West Penn Power ratepayers.
- C. To promote the education, economic development, and environmental benefit associated with renewal and clean energy technologies and energy conservation and efficiency technologies that can benefit West Penn Power ratepayers.

1.3 Approach: The Fund shall be operated in a business-like and entrepreneurial manner to be a continuing provider of financial assistance for energy conservation, energy efficiency, renewable energy, clean energy and sustainable energy businesses. The Fund shall operate cooperatively with other sustainable energy funds and the

statewide oversight board established by the Commission. In fulfilling its mission, the Fund shall utilize the financial tools of loans, equity investments, deposits into interest bearing accounts, payments to the fund, and grants.

## ARTICLE II – OFFICES

2.1 Registered Office. The registered office of the Corporation shall be such location in Pennsylvania as the Directors may from time to time determine.

2.2 Other Offices. The Corporation may also have offices at such other places as the Directors may select and the business of the Corporation shall require.

## ARTICLE III – MEMBERS

3.1 Membership Corporation. The Corporation shall have no members.

3.2 Honorary Titles. The Directors may create such classes of “membership,” such as contributing members or honorary members, as the Directors see fit, but such persons shall not have the rights of members under the Pennsylvania Nonprofit Corporation Law of 1988, as amended (the “Act”).

## ARTICLE IV – BOARD OF DIRECTORS

4.1 Powers. Unless otherwise provided by statute, all powers vested by law in the Corporation shall be exercised by or under the authority of, and the business and affairs of the Corporation shall be managed under the direction of the Board of Directors.

4.2 Qualification of Directors. Each Director shall be an individual of full age, who need not be a resident of Pennsylvania.

4.3 Number, Appointment and Term of the Board.

A. The Board of Directors (“Board”), will consist of seven individuals that are nominated by the Fund and approved by the Commission. The Board shall strive to have members representative of renewable or clean energy interests, energy conservation or efficiency interests, environmental interests, industrial or commercial interests, and institutional or consumer interests. The term of a Board member shall be three years. A member may continue as a member past the term until the Commission has approved a successor. A member may serve for more than one term.

B. At all times at least one Director shall be an individual who is also a member of the board of directors of the ECONOMIC GROWTH CONNECTION OF WESTMORELAND.

C. In the event that a member of the Board dies, resigns, is removed, becomes disqualified, or becomes incapacitated, the remaining Board members shall nominate an individual to fill the vacancy by majority vote, and shall maintain the representation of the groups or entities set forth above prior to the resignation. The nomination shall be submitted to the Commission for approval.

4.4 Removal. The Commission may remove any individual director from the Board of Directors for cause on its own motion or upon approval of a motion submitted to the Commission by a two-thirds (2/3) majority of the seven-member Board of Directors. A Board motion must clearly identify the stated cause by which the Board relied in reaching its decision.

4.5 Quorum. A majority of all Directors, present in person at any duly convened meeting, shall constitute a quorum of the Board. The acts of a majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Boards of Directors, unless a greater number is required by the Act of these Bylaws.

4.6 Vote. Each Director shall be entitled to one (1) vote.

4.7 Unanimous Consent of Directors in Lieu of Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the Directors in office and shall be filed with the Secretary of the Corporation.

4.8 Meetings. The Board shall hold Quarterly meetings each year. Additional meetings shall be held as necessary. Telephone meetings of the board and participation in board meetings by telephone by individual board members are both allowed. The Secretary shall keep minutes of all Board meetings. Meetings will be conducted in a parliamentary manner.

4.9 Special Meetings. Special meetings of the Directors may be called by the Board Chairman or by one-quarter of the Directors at any time. At least five (5) days' notice stating the time, place and purpose of any special meeting shall be given to the members of the Board.

4.10 Adjourned Meetings. When a meeting is adjourned, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.

4.11 Teleconference Meetings. One or more Directors may participate in a meeting of the Board or any committee thereof by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other.

4.12 Conflict of Interest Standard. The Fund shall adopt a Conflict of Interest Policy. No Board member or Administrator, or any business in which a Board member or Administrator, or his or her immediate family, serves as staff, officer, owner or board member, shall receive any financial assistance from the Fund except if the following two conditions have occurred:

A. Consistent with the Fund Conflict of Interest Policy, the Board member or Administrator has notified the Board in writing of his, her or its potential business or personal interest in the proposed request for financial assistance; and,

B. Said Board member or Administrator abstains from any Board discussion and vote regarding any request for financial assistance in which he, she, it has a business or financial interest.

## ARTICLE V – OFFICERS

### 5.1 Officers Generally.

A. Number, Qualifications and Designation. The Board of Directors may designate one or more officers of the Corporation which may include a President, a Secretary, a Treasurer, and such other officers as may be elected in accordance with the provisions of Section 5.3. Officers may but need not be directors of the Corporation. The Board of Directors may elect from among the members of the Board a Chairman of the Board and a Vice Chairman of the Board who shall be officers of the Corporation. Any number of offices may be held by the same person.

B. Resignations. Any officer may resign at any time upon written notice to the Corporation. The resignation shall be effective upon receipt thereof by the Corporation or at such subsequent time as may be specified in the notice of resignation.

C. Standard of Care. Except as otherwise provided in the articles, an officer shall perform his or her duties as an officer in good faith, in a manner he or she reasonably believes to be in the best interests of the Corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. A person who so performs his or her duties shall not be liable by reason of having been an officer of the Corporation.

5.2 Election and Term of Office. The officers of the Corporation, except those elected by delegated authority pursuant to Section 5.3, shall be elected annually by the Board of Directors, and each such officer shall hold office for a term of one year and until a successor has been selected and qualified or until his or her earlier death, resignation or removal.

5.3 Subordinate Officers, Committees and Agents. The Board of Directors may from time to time elect such other officers and appoint such committees, employees or other agents as the business of the Corporation may require, including, without limitation, any number of Vice Presidents, one or more Assistant Secretaries, and one or more Assistant Treasurers, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board of Directors may from time to time determine. The Board of Directors may delegate to any officer or committee the power to elect subordinate officers and to retain or appoint employees or other agents, or committees thereof and to

prescribe the authority and duties of such subordinate officers, committees, employees or other agents.

5.4 Removal of Officers and Agents. Any officer or agent of the Corporation may be removed by the Board of Directors with or without cause. The removal shall be without prejudice to the contract rights, if any, of any person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

5.5 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause, shall be filled by the Board of Directors and if the office is one for which these bylaws prescribe a term, shall be filled for the unexpired portion of the term.

5.6 Authority. All officers of the Corporation, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided by or pursuant to resolution or orders of the Board of Directors or in the absence of controlling provisions in the resolutions or orders of the Board of Directors, as may be determined by or pursuant to these bylaws.

5.7 The Chairperson and Vice Chairperson of the Board.

A. The Chairperson of the Board shall preside at all meetings of the Board of Directors and shall perform such other duties as may from time to time be requested by the Board of Directors. The Chairperson of the Board shall be the chief executive officer of the Corporation and shall have general supervision over the business and operations of the Corporation, subject however, to the control of the Board of Directors.

B. In the absence of the Chairperson, the Vice Chairperson of the Board shall preside at all meetings of the Board of Directors and shall perform such other duties as may from time to time be requested by the Board of Directors.

C. In the absence of a person serving as the President, the Chairperson or Vice Chairperson (when the Chairperson is otherwise unavailable) shall have authority to execute, sign, deliver and/or acknowledge in the name of the Corporation deeds, mortgages, bonds, contracts or other instruments or documents authorized by the Board of Directors; and, in general, shall perform all duties incident to the office of President and such other duties as from time to time may be assigned by the Board of Directors.

5.8 The President. At the option of the Board, the Board may designate an individual to serve as President. When so designated, the President shall be the chief operating officer of the Corporation and shall have general supervision over the business and operations of the Corporation, subject however, to the control of the Chairman of the Board and the Board of Directors. The President shall have authority to execute, sign, deliver and/or acknowledge in the name of the Corporation, deeds, mortgages, bonds, contracts or other instruments or documents authorized by the Board of Directors, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors, or by these bylaws, to some other officer

or agent of the Corporation; and, in general, shall perform all duties incident to the office of President and such other duties as from time to time may be assigned by the Board of Directors.

5.9 The Secretary. The Secretary or an Assistant Secretary shall attend all meetings of the Board of Directors and shall record all votes of the directors and the minutes of the meetings of the Board of Directors and of committees of the Board in a book or books to be kept for that purpose; shall see that notices are given and records and reports properly kept and filed by the Corporation as required by law; shall be the custodian of seal of the Corporation and see that it is affixed to all documents to be executed on behalf of the Corporation under its seal; and, in general, shall perform all duties incident to the office of Secretary, and such other duties as may from time to time be assigned by the Board of Directors or the President.

5.10 The Treasurer. The Treasurer or an Assistant Treasurer shall have or provide for the custody of the funds or other property of the Corporation; shall collect and receive or provide for the collection and receipt of moneys by or in any manner due to or received by the Corporation; shall deposit all funds in his or her custody as treasurer in such banks or other places of deposit as the Board of Directors may from time to time designate; shall, whenever so required by the Board of Directors, render an account showing all transactions as Treasurer and the financial condition of the Corporation; and, in general, shall discharge such other duties as may from time to time be assigned by the Board of Directors or the President.

5.11 Salaries. The salaries, if any, of the officers elected by the Board of Directors shall be fixed from time to time by the Board of Directors or by such officer as may be designated by resolution of the Board.

## ARTICLE VI – FUND ADMINISTRATOR

6.1 Qualifications and Designation. The Board of Directors shall designate a Fund Administrator (“Administrator”) of the Corporation. The Administrator may, but need not be, an officer of the Corporation. The Administrator may be a corporation or consultant selected by the Board of Directors pursuant to bids or proposals for such services solicited by the Board.

6.2 Duties. The responsibilities of the Administrator will include managing projects and applications for funds. These responsibilities may include but are not limited to:

A. Development of an annual operating plan and budget. Prior to the start of each fiscal year, the Administrator shall draft an annual operating plan and budget to identify the priorities, initiatives, and programs that the Fund will pursue for the following year. The Plan shall be adopted by vote of the Board.

B. Development of a multi-year strategic plan and a multi-year leadership succession plan that will provide the Fund with a long-term vision for planning programs and its operations. The Plan shall be adopted by vote of the Board.

C. Marketing programs and soliciting applicants. Upon approval of the annual operating plan and budget by the Board, the Administrator shall market the Fund's programs and solicit applicants.

D. Preparation of financing application summaries for Board review. The Administrator will regularly prepare for Board review summary information regarding all loan, investment and grant requests for adherence to mission, suitability for financial support, and progress of applications.

E. Reviewing requests for assistance. The Administrator shall review all requests for assistance and provide recommendations to the Board. No funds may be disbursed for loans, equity and near-equity investments, and grants except by approval of the Board. The Board reserves the right to veto any request for assistance.

F. Monitoring and managing all financial assistance. The Administrator shall monitor and manage all financial assistance provided by the Fund to ensure that the Fund's assistance is properly and effectively spent.

G. Reporting. The Administrator shall prepare an annual report on the financial and program accomplishments of the Fund. This report shall be a public document and shared with the Commission.

H. Audit. The Administrator shall propose, and with the Board's approval obtain, the services of an independent auditor to perform an annual audit on all Fund operations. This audit may be conducted at the same time as the Administrator audit, and will be a separate, stand-alone document. This audit shall be a public document and shall be shared with the members of the Board and the Commission.

6.3 Compensation. The Administrator shall be paid a salary or fee as shall be fixed from time to time by the Board of Directors.

## ARTICLE VII – FINANCIAL MATTERS

7.1 Fund Receipts. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or with such other depositories or Fiduciaries as the Board of Directors may approve or designate, and all such funds shall be withdrawn by such person or persons as the Board of Directors or any person authorized by resolution of the Board of Directors may from time to time designate. The Corporation is authorized to accept receipts including but not limited to the following:

A. Lump sum payment by West Penn of \$11,425,721.

B. Money collected by West Penn under its Distribution rates and paid beginning January 1, 2006 until Transmission & Distribution rates are changed on a quarterly basis.

- C. Money collected as payment of principal and interest on loans made by the Fund.
- D. Money collected as dividends, return on equity and near-equity investments made by the Fund.
- E. Money collected as interest on funds it has placed in interest-bearing accounts.
- F. Money received as grants and investments from government, foundations and others.
- G. Money received as grants and investments from private and institutional investors.
- H. Money received as distributions from its Intellectual property rights including licensing fees, royalties and all other related payments.

7.2 Fund Disbursements. Fund disbursements shall be consistent with the Mission of the Fund and/or the Fund's annual operating plan and budget. All checks, notes, bills of exchange or other orders in writing shall be signed by such person or persons as the Board of Directors or any person authorized by resolution of the Board of Directors may from time to time designate. The Corporation is authorized to make disbursements including but not limited to the following:

- A. Loans (at various below-market and at-market interest rates).
- B. Equity and near-equity investments.
- C. Grants, especially recoverable grants.
- D. Operating expenditures.

## **ARTICLE VIII – LIABILITY AND INDEMNIFICATION**

8.1 General Rule. A Director shall not be personally liable for monetary damages as Director for any action taken, or any failure to take any action, unless:

- (1) the Director has breached or failed to perform the duties of Director in accordance with the standard of conduct contained in Section 5712 of the Act and any amendments and successor acts thereto; and
- (2) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness;

Provided, however, the foregoing provision shall not apply to (a) the responsibility or liability of a Director pursuant to any criminal statute or (b) the liability of a Director for the payment of taxes pursuant to local, state or federal law.

8.2 Indemnification. The Corporation shall indemnify any officer, Director, employee or representative of the Corporation who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, (and whether or not by, or in the right of, the Corporation) by reason of the act that such person is or was a representative of the Corporation, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action or proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and with respect to any criminal proceedings, had no reason to believe such conduct was illegal, provided, however, that no persons shall be entitled to indemnification pursuant to this Article in any instance in which the action or failure to take action giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness; and provided, further, however, in instances of a claim by or in the right of the Corporation, indemnification shall not be made under this section in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the Corporation unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the Corporation is located or the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the court of common pleas or other court shall deem proper.

8.3 Procedure. Unless ordered by a court, any indemnification under Section 8.2 or otherwise permitted by law shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because he or she has met the applicable standard of conduct set forth under that Section. Such determination shall be made:

- (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the action or proceedings; or
- (2) if such a quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

8.4 Advancement of Expenses. Expenses incurred by a person entitled to indemnification pursuant to this Article or otherwise permitted by law in defending a civil or criminal action, suit or proceeding shall, in any case required by Section 8.2, and may, in any other case, be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay the amount so advanced if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation.

8.5 Continuing Right to Indemnification. The indemnification and advancement of expense provided pursuant to this Article shall continue as to any person who has ceased to be an officer, director, employee or representative of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such person.

8.6 Other Rights. This Article shall not be exclusive of any other right which the Corporation may have to indemnify any person as a matter of law.

## ARTICLE IX – AMENDMENTS

9.1 The Articles of Incorporation of the Corporation and the Bylaws may be amended by a majority of all Directors at any duly convened meeting of Directors after notice of such purpose has been given, including a copy of the proposed amendment or a summary of the changes to be effected thereby. Amended Articles of Incorporation and Bylaws must be submitted and approved by the Commission. Upon the occurrence of an event, beyond the control of the Corporation, pursuant to which the ECONOMIC GROWTH CONNECTION OF WESTMORELAND loses its tax exempt status, substantially fails or abandons its operations or purpose, merges with another organization, or dissolves, the Directors, at any duly convened meeting after notice of such purpose has been given, may identify and approve by majority vote, a substitute supported organization, in place of the ECONOMIC GROWTH CONNECTION OF WESTMORELAND, which shall be an organization described in Section 170(b)(1)(A) of the Internal Revenue Code of 1986, as amended. Any substitute supported organization shall be approved by the Commission. Upon approval of such substitute supported organization, Amended Articles of Incorporation shall be filed by the Board to document the new affiliation.

## ARTICLE X – MISCELLANEOUS

10.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January and end on the last day of December.

10.2 Headings. In interpreting these Bylaws, the headings of Articles shall not be controlling.

10.3 Bond. If required by the Board, any person shall give bond for the faithful discharge of his or her duty in such sums and with such surety as the Board shall determine.

10.4 Contracts. Except as may otherwise be provided in the Act, the Board of Directors may authorize any officer or agent to enter into any contract or to execute or deliver any instrument on behalf of the Corporation, and such authority may be general or confined to specific instances.

10.5 Subventions. The Corporation shall be authorized, by resolution of the Directors, to accept subventions on terms and conditions not inconsistent with the Act and to issue certificates therefor.

10.6 Corporate Seal. The Corporation shall have a corporate seal in the form of a circle containing the name of the Corporation, the year of incorporation and such other details as may be approved by the Board of Directors.

Amended and Restated By-Laws of the  
WEST PENN POWER SUSTAINABLE  
ENERGY FUND

A Pennsylvania Nonprofit Corporation

Day, Month, Year

**Preamble**

The West Penn Power Sustainable Energy Fund (the "Fund" or "Corporation") was created and authorized pursuant to the West Penn Power Company ("West Penn") restructuring proceeding and approved by the Pennsylvania Public Utility Commission (the "Commission") in an Order entered on November 3, 1998 in Docket No. R-00973981.

Barbara Hajas 8/26/2015 11:27 AM

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1.1 Purpose. The purpose of the Corporation is limited to the purposes set forth in Section 509(a)(3)(A) of the Internal Revenue Code of 1986, as amended. The Corporation is organized, and at all times will be operated, in connection with the ECONOMIC GROWTH CONNECTION OF WESTMORELAND, a nonprofit corporation, which is an organization described in Section 170(b)(1)(A) of the Internal Revenue Code of 1986, as amended. The Corporation is prohibited from engaging in activities not in furtherance of the purposes referred to in Section 509(a)(3)(A) of the Internal Revenue Code of 1986, as amended, and is further prohibited from operating to support or benefit any organization other than the ECONOMIC GROWTH CONNECTION OF WESTMORELAND.

Barbara Hajas 8/26/2015 11:27 AM

Deleted: The purpose of the Fund is to promote the development and use of renewable energy and clean energy technologies, energy conservation and efficiency which promote clean energy. The activities of the Fund shall be administered and managed by the WEST PENN POWER SUSTAINABLE ENERGY FUND (the "Corporation")

1.2 Mission: The three elements of the Fund's mission are:

A. To promote the use of renewable and clean energy technologies that can benefit West Penn Power ratepayers.

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Deleted: among commercial, industrial, institutional and residential customers in the West Penn service territory. Renewable energy includes energy produced from solar, wind, low-impact hydro, sustainable biomass, ocean power and geothermal. Clean energy refers to advanced technologies (such as fuel cells) which use fossil fuels but which have significantly lower emissions and wastes than currently commercialized technologies and fuels that are derived from waste.

B. To promote energy conservation and energy efficiency technologies that can benefit West Penn Power ratepayers.

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C. To promote the education, economic development, and environmental benefit associated with renewal and clean energy technologies and energy conservation and efficiency technologies that can benefit West Penn Power ratepayers.

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1.3 Approach: The Fund shall be operated in a business-like and entrepreneurial manner to be a continuing provider of financial assistance for energy conservation, energy efficiency, renewable energy, clean energy and sustainable energy businesses. The Fund shall operate cooperatively with other sustainable energy funds and the

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C. In the event that a member of the Board dies, resigns, is removed, becomes disqualified, or becomes incapacitated, the remaining Board members shall nominate an individual to fill the vacancy by majority vote, and shall maintain the representation of the groups or entities set forth above prior to the resignation. The nomination shall be submitted to the Commission for approval.

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4.6 Vote. Each Director shall be entitled to one (1) vote.

4.7 Unanimous Consent of Directors in Lieu of Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting if a consent or consents in writing setting forth the action so taken shall be signed by all of the Directors in office and shall be filed with the Secretary of the Corporation.

4.8 Meetings. The Board shall hold Quarterly meetings each year. Additional meetings shall be held as necessary. Telephone meetings of the board and participation in board meetings by telephone by individual board members are both allowed. The Secretary shall keep minutes of all Board meetings. Meetings will be conducted in a parliamentary manner.

4.9 Special Meetings. Special meetings of the Directors may be called by the Board Chairman or by one-quarter of the Directors at any time. At least five (5) days' notice stating the time, place and purpose of any special meeting shall be given to the members of the Board.

4.10 Adjourned Meetings. When a meeting is adjourned, it shall not be necessary to give any notice of the adjourned meeting or of the business to be transacted at an adjourned meeting, other than by announcement at the meeting at which such adjournment is taken.

4.11 Teleconference Meetings. One or more Directors may participate in a meeting of the Board or any committee thereof by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other.

4.12 Conflict of Interest Standard. The Fund shall adopt a Conflict of Interest Policy. No Board member or Administrator, or any business in which a Board member or Administrator, or his or her immediate family, serves as staff, officer, owner or board member.

shall receive any financial assistance from the Fund except if the following two conditions have occurred:

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A. Consistent with the Fund Conflict of Interest Policy, the Board member or Administrator has notified the Board in writing of his, her or its potential business or personal interest in the proposed request for financial assistance; and,

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B. Said Board member or Administrator abstains from any Board discussion and vote regarding any request for financial assistance in which he, she, it has a business or financial interest.

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ARTICLE V – OFFICERS

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5.1 Officers Generally.

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A. Number, Qualifications and Designation. The Board of Directors may designate one or more officers of the Corporation which may include a President, a Secretary, a Treasurer, and such other officers as may be elected in accordance with the provisions of Section 5.3. Officers may but need not be directors of the Corporation. The Board of Directors may elect from among the members of the Board a Chairman of the Board and a Vice Chairman of the Board who shall be officers of the Corporation. Any number of offices may be held by the same person.

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B. Resignations. Any officer may resign at any time upon written notice to the Corporation. The resignation shall be effective upon receipt thereof by the Corporation or at such subsequent time as may be specified in the notice of resignation.

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C. Standard of Care. Except as otherwise provided in the articles, an officer shall perform his or her duties as an officer in good faith, in a manner he or she reasonably believes to be in the best interests of the Corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. A person who so performs his or her duties shall not be liable by reason of having been an officer of the Corporation.

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5.2 Election and Term of Office. The officers of the Corporation, except those elected by delegated authority pursuant to Section 5.3, shall be elected annually by the Board of Directors, and each such officer shall hold office for a term of one year and until a successor has been selected and qualified or until his or her earlier death, resignation or removal.

5.3 Subordinate Officers, Committees and Agents. The Board of Directors may from time to time elect such other officers and appoint such committees, employees or other agents as the business of the Corporation may require, including, without limitation, any number of Vice Presidents, one or more Assistant Secretaries, and one or more Assistant Treasurers, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these bylaws or as the Board of Directors may from time to time determine. The Board of Directors may delegate to any officer or committee the power to elect subordinate

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officers and to retain or appoint employees or other agents, or committees thereof and to prescribe the authority and duties of such subordinate officers, committees, employees or other agents.

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5.4 Removal of Officers and Agents. Any officer or agent of the Corporation may be removed by the Board of Directors with or without cause. The removal shall be without prejudice to the contract rights, if any, of any person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

5.5 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause, shall be filled by the Board of Directors and if the office is one for which these bylaws prescribe a term, shall be filled for the unexpired portion of the term.

5.6 Authority. All officers of the Corporation, as between themselves and the Corporation, shall have such authority and perform such duties in the management of the Corporation as may be provided by or pursuant to resolution or orders of the Board of Directors or in the absence of controlling provisions in the resolutions or orders of the Board of Directors, as may be determined by or pursuant to these bylaws.

5.7 The Chairperson and Vice Chairperson of the Board.

A. The Chairperson of the Board shall preside at all meetings of the Board of Directors and shall perform such other duties as may from time to time be requested by the Board of Directors. The Chairperson of the Board shall be the chief executive officer of the Corporation and shall have general supervision over the business and operations of the Corporation, subject however, to the control of the Board of Directors.

B. In the absence of the Chairperson, the Vice Chairperson of the Board shall preside at all meetings of the Board of Directors and shall perform such other duties as may from time to time be requested by the Board of Directors.

C. In the absence of a person serving as the President, the Chairperson or Vice Chairperson (when the Chairperson is otherwise unavailable) shall have authority to execute, sign, deliver and/or acknowledge in the name of the Corporation deeds, mortgages, bonds, contracts or other instruments or documents authorized by the Board of Directors; and, in general, shall perform all duties incident to the office of President and such other duties as from time to time may be assigned by the Board of Directors.

5.8 The President. At the option of the Board, the Board may designate an individual to serve as President. When so designated, the President shall be the chief operating officer of the Corporation and shall have general supervision over the business and operations of the Corporation, subject however, to the control of the Chairman of the Board and the Board of Directors. The President shall have authority to execute, sign, deliver and/or acknowledge in the name of the Corporation, deeds, mortgages, bonds, contracts or other instruments or documents authorized by the Board of Directors, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors, or by these bylaws, to some other officer

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or agent of the Corporation; and, in general, shall perform all duties incident to the office of President and such other duties as from time to time may be assigned by the Board of Directors.

5.9 The Secretary. The Secretary or an Assistant Secretary shall attend all meetings of the Board of Directors and shall record all votes of the directors and the minutes of the meetings of the Board of Directors and of committees of the Board in a book or books to be kept for that purpose; shall see that notices are given and records and reports properly kept and filed by the Corporation as required by law; shall be the custodian of seal of the Corporation and see that it is affixed to all documents to be executed on behalf of the Corporation under its seal; and, in general, shall perform all duties incident to the office of Secretary, and such other duties as may from time to time be assigned by the Board of Directors or the President.

5.10 The Treasurer. The Treasurer or an Assistant Treasurer shall have or provide for the custody of the funds or other property of the Corporation; shall collect and receive or provide for the collection and receipt of moneys by or in any manner due to or received by the Corporation; shall deposit all funds in his or her custody as treasurer in such banks or other places of deposit as the Board of Directors may from time to time designate; shall, whenever so required by the Board of Directors, render an account showing all transactions as Treasurer and the financial condition of the Corporation; and, in general, shall discharge such other duties as may from time to time be assigned by the Board of Directors or the President.

5.11 Salaries. The salaries, if any, of the officers elected by the Board of Directors shall be fixed from time to time by the Board of Directors or by such officer as may be designated by resolution of the Board.

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### ARTICLE VI – FUND ADMINISTRATOR

6.1 Qualifications and Designation. The Board of Directors shall designate a Fund Administrator (“Administrator”) of the Corporation. The Administrator may, but need not be, an officer of the Corporation. The Administrator may be a corporation or consultant selected by the Board of Directors pursuant to bids or proposals for such services solicited by the Board.

6.2 Duties. The responsibilities of the Administrator will include managing projects and applications for funds. These responsibilities may include but are not limited to:

A. Development of an annual operating plan and budget. Prior to the start of each fiscal year, the Administrator shall draft an annual operating plan and budget to identify the priorities, initiatives, and programs that the Fund will pursue for the following year. The Plan shall be adopted by vote of the Board.

B. Development of a multi-year strategic plan and a multi-year leadership succession plan that will provide the Fund with a long-term vision for planning programs and its operations. The Plan shall be adopted by vote of the Board.

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C. Marketing programs and soliciting applicants. Upon approval of the annual operating plan and budget by the Board, the Administrator shall market the Fund's programs and solicit applicants.

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D. Preparation of financing application summaries for Board review. The Administrator will regularly prepare for Board review summary information regarding all loan, investment and grant requests for adherence to mission, suitability for financial support, and progress of applications.

E. Reviewing requests for assistance. The Administrator shall review, all requests for assistance and provide recommendations to the Board. No funds may be disbursed for loans, equity and near-equity investments, and grants except by approval of the Board. The Board reserves the right to veto any request for assistance.

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F. Monitoring and managing all financial assistance. The Administrator shall monitor and manage all financial assistance provided by the Fund to ensure that the Fund's assistance is properly and effectively spent.

G. Reporting. The Administrator shall prepare an annual report on the financial and program accomplishments of the Fund. This report shall be a public document and shared with the Commission.

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H. Audit. The Administrator shall propose, and with the Board's approval obtain, the services of an independent auditor to perform an annual audit on all Fund operations. This audit may be conducted at the same time as the Administrator audit, and will be a separate, stand-alone document. This audit shall be a public document and shall be shared with the members of the Board and the Commission.

6.3 Compensation. The Administrator shall be paid a salary or fee as shall be fixed from time to time by the Board of Directors.

## ARTICLE VII – FINANCIAL MATTERS

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7.1 Fund Receipts. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or with such other depositories or Fiduciaries as the Board of Directors may approve or designate, and all such funds shall be withdrawn by such person or persons as the Board of Directors or any person authorized by resolution of the Board of Directors may from time to time designate. The Corporation is authorized to accept receipts including but not limited to the following:

A. Lump sum payment by West Penn of \$11,425,721.

B. Money collected by West Penn under its Distribution rates and paid beginning January 1, 2006 until Transmission & Distribution rates are changed on a quarterly basis.

- C. Money collected as payment of principal and interest on loans made by the Fund.
- D. Money collected as dividends, return on equity and near-equity investments made by the Fund.
- E. Money collected as interest on funds it has placed in interest-bearing accounts.
- F. Money received as grants and investments from government, foundations and others.
- G. Money received as grants and investments from private and institutional investors.
- H. Money received as distributions from its Intellectual property rights including licensing fees, royalties and all other related payments.

7.2 Fund Disbursements. Fund disbursements shall be consistent with the Mission of the Fund and/or the Fund's annual operating plan and budget. All checks, notes, bills of exchange or other orders in writing shall be signed by such person or persons as the Board of Directors or any person authorized by resolution of the Board of Directors may from time to time designate. The Corporation is authorized to make disbursements including but not limited to the following:

- A. Loans (at various below-market and at-market interest rates).
- B. Equity and near-equity investments.
- C. Grants, especially recoverable grants.
- D. Operating expenditures.

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**ARTICLE VIII – LIABILITY AND INDEMNIFICATION**

8.1 General Rule. A Director shall not be personally liable for monetary damages as Director for any action taken, or any failure to take any action, unless:

- (1) the Director has breached or failed to perform the duties of Director in accordance with the standard of conduct contained in Section 5712 of the Act and any amendments and successor acts thereto; and
- (2) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness;

Provided, however, the foregoing provision shall not apply to (a) the responsibility or liability of a Director pursuant to any criminal statute or (b) the liability of a Director for the payment of taxes pursuant to local, state or federal law.

8.2 Indemnification. The Corporation shall indemnify any officer, Director, employee or representative of the Corporation who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, (and whether or not by, or in the right of, the Corporation) by reason of the act that such person is or was a representative of the Corporation, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred in connection with such action or proceeding if such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, and with respect to any criminal proceedings, had no reason to believe such conduct was illegal, provided, however, that no persons shall be entitled to indemnification pursuant to this Article in any instance in which the action or failure to take action giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness; and provided, further, however, in instances of a claim by or in the right of the Corporation, indemnification shall not be made under this section in respect of any claim, issue or matter as to which the person has been adjudged to be liable to the Corporation unless and only to the extent that the court of common pleas of the judicial district embracing the county in which the registered office of the Corporation is located or the court in which the action was brought determines upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that the court of common pleas or other court shall deem proper.

8.3 Procedure. Unless ordered by a court, any indemnification under Section 8.2 or otherwise permitted by law shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because he or she has met the applicable standard of conduct set forth under that Section. Such determination shall be made:

- (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the action or proceedings; or
- (2) if such a quorum is not obtainable or if obtainable and a majority vote of a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion.

8.4 Advancement of Expenses. Expenses incurred by a person entitled to indemnification pursuant to this Article or otherwise permitted by law in defending a civil or criminal action, suit or proceeding shall, in any case required by Section 8.2, and may, in any other case, be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay the amount so advanced if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation.

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8.5 Continuing Right to Indemnification. The indemnification and advancement of expense provided pursuant to this Article shall continue as to any person who has ceased to be an officer, director, employee or representative of the Corporation and shall inure to the benefit of the heirs, executors and administrators of such person.

8.6 Other Rights. This Article shall not be exclusive of any other right which the Corporation may have to indemnify any person as a matter of law.

#### ARTICLE IX – AMENDMENTS

9.1 The Articles of Incorporation of the Corporation and the Bylaws may be amended by a majority of all Directors at any duly convened meeting of Directors after notice of such purpose has been given, including a copy of the proposed amendment or a summary of the changes to be effected thereby. Amended Articles of Incorporation and Bylaws must be submitted and approved by the Commission. Upon the occurrence of an event, beyond the control of the Corporation, pursuant to which the ECONOMIC GROWTH CONNECTION OF WESTMORELAND loses its tax exempt status, substantially fails or abandons its operations or purpose, merges with another organization, or dissolves, the Directors, at any duly convened meeting after notice of such purpose has been given, may identify and approve by majority vote, a substitute supported organization, in place of the ECONOMIC GROWTH CONNECTION OF WESTMORELAND, which shall be an organization described in Section 170(b)(1)(A) of the Internal Revenue Code of 1986, as amended. Any substitute supported organization shall be approved by the Commission. Upon approval of such substitute supported organization, Amended Articles of Incorporation shall be filed by the Board to document the new affiliation.

#### ARTICLE X – MISCELLANEOUS

10.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January and end on the last day of December.

10.2 Headings. In interpreting these Bylaws, the headings of Articles shall not be controlling.

10.3 Bond. If required by the Board, any person shall give bond for the faithful discharge of his or her duty in such sums and with such surety as the Board shall determine.

10.4 Contracts. Except as may otherwise be provided in the Act, the Board of Directors may authorize any officer or agent to enter into any contract or to execute or deliver any instrument on behalf of the Corporation, and such authority may be general or confined to specific instances.

10.5 Subventions. The Corporation shall be authorized, by resolution of the Directors, to accept subventions on terms and conditions not inconsistent with the Act and to issue certificates therefor.

10.6 Corporate Seal. The Corporation shall have a corporate seal in the form of a circle containing the name of the Corporation, the year of incorporation and such other details as may be approved by the Board of Directors.