

**WEST VIRGINIA  
SECRETARY OF STATE  
JOE MANCHIN, III  
ADMINISTRATIVE LAW DIVISION**

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FILED

2004 JUL 13 P 2:12

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Form #5

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE  
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Public Service Commission of West Virginia TITLE NUMBER: 150

CITE AUTHORITY: W. Va. Code 24-1-1(f); 24-1-7; 24-2-1; 24-2-2

RULE TYPE: PROCEDURAL  INTERPRETIVE

EXEMPT LEGISLATIVE RULE

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W. Va. Code 24-1-7

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1

TITLE OF RULE BEING AMENDED: Rules of Practice and Procedure

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS September 13, 2004

  
Authorized Signature

**FISCAL NOTE**

**P.S.C.  
Series 1**

In the matter of a rule making to amend the Commission's Rules of Practice and Procedure, 150 CSR 1.

**I. OBJECTIVE OF THE RULE**

The purpose of this rulemaking has been to revise the Commission's Rules of Practice and Procedure, as they relate to contracts for the provision of engineering, design or feasibility studies by public service districts. These amendments have been made so as to conform to the amended W. Va. Code § 16-13A-25, which became effective June 5, 2003.

**II. COST OF IMPLEMENTING THE PROPOSED RULE**

There will be no significant implementation cost relating to this rulemaking for the State of West Virginia. The Commission does not anticipate additional costs to be incurred as a result of the rulemaking.

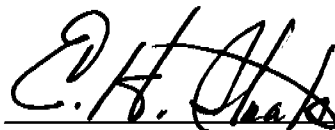
**III. THE EFFECT THIS MEASURE WILL HAVE ON THE COSTS OR REVENUES OF STATE GOVERNMENT (Information required by fiscal notes for either house of the Legislature).**

This rulemaking will have no effect on the costs or revenues of state government.

DATE: 7-13-04

AGENCY: Public Service Commission

**SIGNATURE OF AUTHORIZED  
REPRESENTATIVE**



\_\_\_\_\_  
E.H. Staats, Chairman  
Public Service Commission

## **SUMMARY OF RULE AMENDMENTS**

On March 7, 2003, the West Virginia Legislature passed House Bill 3068 to amend and reenact W. Va. Code § 16-13A-25, relating to contracts for the provision of engineering, design or feasibility studies by public service districts. The amended W. Va. Code § 16-13A-25, effective June 5, 2003, now exempts from Commission jurisdiction the need to approve or waive the provision of prior consent and approval for certain categories of engineering agreements. Furthermore, House Bill 3068 modified the statute by deleting pre-filing requirements.

In accordance with W. Va. Code § 16-13A-25, as modified by House Bill 3068, the Commission finds it to be in the public interest to modify the Rules of Practice and Procedure, 150 C.S.R. 1, by amending rules relating to pre-filing notice provisions, specifically including amending Procedural Rule 10.3.b., repealing Procedural Rule 26.1.18., and amending Procedural Form No. 13. It is also in the public interest to amend Procedural Rule 26.1.26., which relates to the engineering agreement provisions.

**STATEMENT OF CIRCUMSTANCES WHICH  
REQUIRE THE RULE AMENDMENTS**

On March 7, 2003, the West Virginia Legislature passed House Bill 3068 to amend and reenact W. Va. Code § 16-13A-25, relating to contracts for the provision of engineering, design or feasibility studies by public service districts. The amended W. Va. Code § 16-13A-25, effective June 5, 2003, now exempts from Commission jurisdiction the need to approve or waive the provision of prior consent and approval for certain categories of engineering agreements. Furthermore, House Bill 3068 modified the statute by removing pre-filing notice requirements. Thus, the Commission finds it to be in the public interest to modify the Rules of Practice and Procedure, 150 C.S.R. 1, by amending rules relating to pre-filing notice provisions, specifically including amending Procedural Rule 10.3.b., repealing Procedural Rule 26.1.18., and amending Procedural Form No. 13. It is also in the public interest to amend Procedural Rule 26.1.26., which relates to the engineering agreement provisions.

# Public Service Commission

Richard E. Hitt, General Counsel



201 Brooks Street, P.O. Box 812  
Charleston, West Virginia 25323

Phone: (304) 340-0317  
FAX: (304) 340-0372

July 13, 2004

Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
1900 Kanawha Blvd. E.  
Charleston, WV 25305-0771

Re: Rules of Practice and Procedure  
150 CSR Series 1

Dear Judy:

Enclosed for filing is a copy of the Commission's final rules in the referenced series. Included is a notice of adoption, a fiscal note, a summary of the rule, and the statement of circumstances.

In addition, a diskette has been enclosed containing the final rules in both the strike-through and underlined version as well as a clean version. If there are any problems with the submittal, please bring them to my attention immediately. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt".

Richard E. Hitt  
General Counsel

REH/ljm  
Enclosure

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 13<sup>th</sup> day of July, 2004.

**GENERAL ORDER NO. 182.07**

In the matter of proposed rules to amend the Commission's Rules of Practice and Procedure relating to engineering agreements and pre-filing notice requirements for public service districts.

**COMMISSION ORDER ADOPTING FINAL RULES**

By Order issued January 21, 2004, the Commission promulgated proposed amendments to its Rules of Practice and Procedure (Procedural Rules). To conform to the amended W. Va. Code § 16-13A-25, which became effective June 5, 2003, this proceeding encompassed amendments to the Procedural Rules, as they relate to contracts for the provision of engineering, design or feasibility studies by public service districts. Specifically, the amendments relate to the pre-filing notice provisions, specifically by amending Procedural Rule 10.3.b., repealing Procedural Rule 26.1.18., and amending Procedural Form No. 13. The Commission also found it to be in the public interest to amend Procedural Rule 26.1.26 (renumbered as rule 26.1.25), which relates to the engineering agreement provisions. The Commission provided for a thirty-day comment period.

The Executive Secretary caused a notice of this rulemaking and the thirty-day comment period to be published in newspapers, duly qualified by the Secretary of State, published and of general circulation in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Grafton, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling, and Williamson. Affidavits and/or certificates of publication were received by the Commission indicating that the notice was published.

Comments from interested parties were filed and received. Subsequent to an Order entered on May 5, 2004, the Commission was advised by the commenting parties that a hearing was neither requested nor necessary, as the questions presented concerned legal and policy matters which could be developed through the filing and consideration of written comments.

As was apparent with the proposed rules, this rulemaking accomplishes conformity to the amended W. Va. Code § 16-13A-25, which became effective June 5, 2003. In making these amendments, the Commission has carefully considered all written comments. The Commission concludes that the attached rules reflect sound policies, serve the public interest, and reasonably resolve the issues raised by the parties.

Accordingly, this Order adopts the final rules attached hereto in both blackline and clean versions. The blacklined version reflects all changes from the previous Procedural Rules.

The following addresses the amendments which are adopted and responds to the filed comments:

Procedural Rule 10.3.b. – This rule deletes the publication requirements, in conformity with amended W. Va. Code § 16-13A-25's removal of the same, and changes the name of the title of Form No. 13.

Procedural Rule 26.1.18 – This rule is repealed so as to conform to the amended W. Va. Code § 16-13A-25, which removed the requirement of a Class A publication thirty days prior to filing of a public service district certificate case.

Procedural Rule 26.1.26 (renumbered as rule 26.1.25) – Rule 26.1 sets forth a filing requirement checklist for applications for certificates of convenience and necessity for water and sewer utilities. Rule 26.1.26 (renumbered as rule 26.1.25) as amended, requires, in those instances in which an engineering agreement is exempt from approval by W. Va. Code § 16-13A-25, that a copy of such agreement shall nevertheless be provided. Various public service districts filed comments, taking the position that engineering agreements which are exempt from Commission approval should not be required to be filed as part of a certificate application. The Commission is not persuaded by the public service districts' arguments and disagrees. The rule does not require the filing of all exempt engineering contracts, rather only those agreements which are related to projects which require a certificate. The Commission believes that the amendment to this rule reflects the Commission's experience that while approval of certain engineering agreements will not be necessary, the submission of such exempt engineering agreements

provides relevant documents which may be used in the processing of a certificate case. Therefore, the Commission will not change the proposed rule.

Form No. 13 – Commenting public service districts argued they should not be required to file the substantial financial information as contained in the proposed Form No. 13. The commenting public service districts urged that such requirement was unduly burdensome. The Commission is persuaded by the public service districts' arguments and has revised Form No. 13, in accordance with that proposed by certain public service districts. The revised Form No. 13 removes the substantial financial information and requires only basic pre-filing information pertaining to the forthcoming certificate filing.

### **FINDINGS OF FACT**

1. By Order issued January 21, 2004, the Commission promulgated proposed amendments to its Procedural Rules and the forms attached thereto. To conform to the amended W. Va. Code § 16-13A-25, which became effective June 5, 2003, this proceeding encompassed amendments to the Procedural Rules, as they relate to contracts for the provision of engineering, design or feasibility studies by public service districts.
2. The Commission provided for a thirty-day comment period.
3. The Executive Secretary caused a notice of this rulemaking and the thirty-day comment period to be published in newspapers, duly qualified by the Secretary of State, published and of general circulation in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Grafton, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling, and Williamson.
4. Affidavits and/or certificates of publication were received by the Commission indicating that the notice was published.
5. Comments from interested parties were filed and received.
6. Subsequent to an Order entered on May 5, 2004, the Commission was advised by the commenting parties that a hearing was neither requested nor necessary, as the questions presented concerned legal and policy matters which could be developed through the filing and consideration of written comments.
7. This rulemaking accomplishes conformity to the amended W. Va. Code § 16-13A-25, which became effective June 5, 2003.

8. Procedural Rule 10.3.b, amended to delete the publication requirements, now conforms to amended W. Va. Code § 16-13A-25.

9. Procedural Rule 26.1.18 is repealed so as to conform to the amended W. Va. Code § 16-13A-25.

10. The Commission's amendments to Procedural Rule 26.1.26 (renumbered as rule 26.1.25) reflect the Commission's experience that while approval of certain engineering agreements will not be necessary, a review of such exempt engineering agreements is essential in the processing of a certificate case.

11. Form No. 13, as revised, removes the pre-filing of substantial financial information and requires only basic pre-filing information pertaining to the forthcoming certificate filing.

### **CONCLUSION OF LAW**

The attached rules, in both blackline and clean versions, and forms reflect sound policies, serve the public interest, and reasonably resolve the issues raised by the parties.

### **ORDER**

IT IS, THEREFORE, ORDERED that the attached Rules of Practice and Procedure, 150 C.S.R. 1, and the forms attached thereto, in both blackline and clean versions, are hereby adopted as final rules.

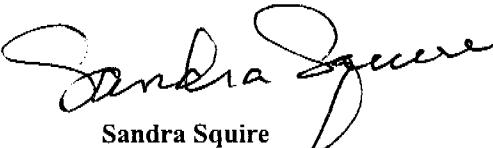
IT IS FURTHER ORDERED that the new Rules of Practice and Procedure, and the forms attached thereto, shall be effective sixty days from the date of this Order, or on September 13, 2004.

IT IS FURTHER ORDERED that, upon entry hereof, the Commission's Executive Secretary shall file a copy of this order and the rules, in both blackline and clean versions, together with the required forms, with the Secretary of State of West Virginia.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order and the attached blacklined version of the rules and Form No. 13 upon all parties of record in this proceeding, by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:



Sandra Squire  
Executive Secretary

TBS/ljm  
go18207cb.wpd



**NOTICE INFORMATION OF PRE-FILING**

State of West Virginia  
Public Service Commission  
Charleston

NOTICE IS HEREBY GIVEN that \_\_\_\_\_, a public utility has given gives notice to the Public Service Commission of its intent to file, no less than thirty days from the date of this document, an Application for a Certificate of Convenience and Necessity for the construction, operation and maintenance of a \_\_\_\_\_ [brief description of project] in \_\_\_\_\_ County, and as further described in the engineering study submitted herewith. to serve approximately \_\_\_\_\_ customers in \_\_\_\_\_ areas of \_\_\_\_\_ County, West Virginia.

The estimated total project cost is approximately \$ \_\_\_\_\_. The District intends to fund the project through \_\_\_\_\_ [set forth proposed sources and amounts of funding]. The project will consist of \_\_\_\_\_ and \_\_\_\_\_ miles/feet of \_\_\_\_\_ inch lines with the costs of the project not to exceed \$ \_\_\_\_\_.

The District intends to finance the project by the following means (Describe fully, the proposed financing here. For example, the issuing of revenue bonds through \_\_\_\_\_ in the amount not to exceed \$ \_\_\_\_\_ with the remaining funding for the project to be provided as grants from the \_\_\_\_\_). During construction, the utility will enter into an arrangement with \_\_\_\_\_ to provide up to \$ \_\_\_\_\_ interim financing for construction advances at an interest rate not to exceed \_\_\_\_\_ %).

\_\_\_\_\_ The proposed project-related rates for the project are not to exceed the following:

\_\_\_\_\_ (List proposed rates here)

\_\_\_\_\_ These rates represent the following increases.

	(\$) INCREASE	(%) INCREASE
Residential	_____	_____
Commercial	_____	_____
Industrial	_____	_____
Resale	_____	_____
Other	_____	_____

\_\_\_\_\_ (If no rate increase involved, concisely describe nature of filing)

\_\_\_\_\_ Rate increases may also be proposed for non project-related costs. Non project-related rate increases are not to exceed the following.

~~(List proposed rates here)~~

~~These rates represent the following increases.~~

	<del>(\$)</del> INCREASE	<del>(%)</del> INCREASE
<del>Residential</del>	<del>_____</del>	<del>_____</del>
<del>Commercial</del>	<del>_____</del>	<del>_____</del>
<del>Industrial</del>	<del>_____</del>	<del>_____</del>
<del>Resale</del>	<del>_____</del>	<del>_____</del>
<del>Other</del>	<del>_____</del>	<del>_____</del>

~~Resale customers of \_\_\_\_\_~~  
~~include \_\_\_\_\_ (list all resale customers by name).~~

~~(If no rate increase involved, concisely describe nature of filing)~~

~~The proposed increased rates and charges will produce approximately~~  
~~\$\_\_\_\_\_ annually in additional revenue, an increase of \_\_\_\_\_%.~~

~~The increases shown are based on averages of all customers in the~~  
~~indicated class. Individual customers may receive increases that are greater~~  
~~or less than average. Furthermore, the requested rates and charges are only~~  
~~a proposal and are subject to change (increases or decreases) by the Public~~  
~~Service Commission in its review of this filing.~~

~~(List Tap Fees and Customer Security Deposits Here).~~

~~Any increase in rates and charges will not become effective until~~  
~~authorized and approved by the Public Service Commission in the Certificate~~  
~~of Convenience and Necessity Application. Following the filing of the formal~~  
~~Application there will be an additional public notice and opportunity for the~~  
~~submission of public protest. It is anticipated that the formal Application~~  
~~will be filed within 30 days of the publication of this notice.~~

\_\_\_\_\_, a public utility in \_\_\_\_\_  
County.

\_\_\_\_\_  
Name of Officer

Date: \_\_\_\_\_

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 13<sup>th</sup> day of July, 2004.

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4. Affidavits and/or certificates of publication were received by the Commission indicating that the notice was published.

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### **CONCLUSION OF LAW**

The attached rules, in both blackline and clean versions, and forms reflect sound policies, serve the public interest, and reasonably resolve the issues raised by the parties.

### **ORDER**

IT IS, THEREFORE, ORDERED that the attached Rules of Practice and Procedure, 150 C.S.R. 1, and the forms attached thereto, in both blackline and clean versions, are hereby adopted as final rules.

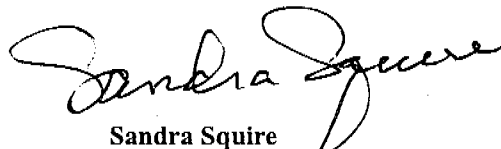
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IT IS FURTHER ORDERED that, upon entry hereof, the Commission's Executive Secretary shall file a copy of this order and the rules, in both blackline and clean versions, together with the required forms, with the Secretary of State of West Virginia.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order and the attached blacklined version of the rules and Form No. 13 upon all parties of record in this proceeding, by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:



Sandra Squire  
Executive Secretary

TBS/ljm  
go18207cb.wpd



TITLE 150  
PROCEDURAL RULES  
PUBLIC SERVICE COMMISSION

FILED

2004 JUL 13 P 2:12

SERIES 1  
RULES OF PRACTICE AND PROCEDURE

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

§150-1-1. General.

1.1. Scope.

The following rules govern the organizational operations of the Public Service Commission, and set forth the various requirements for the administrative process and procedures followed by the Commission and all parties wishing to make use of the Commission as an administrative forum.

1.2. Authority -- West Virginia Code §24-1-1(f), §24-1-7, §24-2-1, and §24-2-2.

1.3. Filing Date. -- ~~June 29, 2001~~ July 13, 2004

1.4. Effective Date. -- ~~August 28, 2001~~ September 13, 2004

1.5. Amendment of Rules -- These Rules amend prior Rules effective ~~January 12, 1987~~ August 28, 2001. Upon the effective date of these rules, the following (which were filed on June 26, 2001, and effective August 28, 2001) are modified: Rule 10.3.b., Rule 26.1.26, and Form No. 13; and prior Rule 26.1.18 is repealed as null and void.

1.6. Application of rules.

If hardship results from the application of any rule contained within these Rules of Practice and Procedure, or if unusual difficulty is involved in immediately complying with any rule, or upon other good cause shown, application may be made to the Commission for the modification of the rule or for temporary or permanent

exemption or waiver from its provisions. Provided, That no application for modification or exemption will be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

1.7. Rule 1, General offices and hearings.

1.7.a. The general offices of the Commission shall be kept open, in charge of the Executive Secretary, or some other competent person, each working day from 9 a.m. until 5 p.m., for the purpose of filing complaints, applications and petitions, issuing and returning notices, and making and directing interlocutory motions, orders, rules and other proceedings preparatory to the hearing of cases on the Commission's formal docket.

1.7.b. Public sessions of the Commission for hearing motions, evidence or oral argument, or for public conference, shall be held at the Commission's offices at 201 Brooks Street, Charleston, WV, or such other places as may be designated by it, at such time as may be set upon notice by the Commission, subject to change upon such notice as may be practical.

**§150-1-2. Rule 2, Executive Secretary to furnish information.**

2.1. The Executive Secretary of the Commission will, upon request, advise any party as to the form of petition, complaints, answer or other paper desired to be filed in any case; and will make available from the files of the Commission any information required for a full presentation of the facts material to any controversy, investigation or other proceeding.

**§150-1-3. Rule 3, Records.**

The Executive Secretary shall keep the following record book, suitably indexed:

3.1. Formal Docket, in which shall be entered each formal case of complaint, investigation, application or petition, with a file number corresponding to the number of

the case, together with brief chronological notations of the proceedings had in the case.

3.2. Order Book, in which shall be recorded, on the day of their filing, all orders made or passed by the Executive Secretary as of course or by the Commission in any formal case. Separate Order Books shall be kept and maintained for utility and motor carrier orders, and for General Orders.

**§150-1-4. Rule 4, Filing papers.**

4.1. Communications addressed to the Commission and all petitions, applications, answers and other pleadings, all reports, exhibits, depositions, transcripts, orders and other papers or documents, shall be filed in the general offices kept by the Executive Secretary, and shall be stamped showing the date of the receipt thereof.

4.2. All papers, of whatever character, offered for filing in any case shall show the title and style of the case and the docket number. The Executive Secretary will not be required to file any paper not so identified.

4.3. All papers, other than complaints and engineering plans and specifications, offered for filing in any case shall include an original and twelve (12) copies. The foregoing requirement applies to discovery requests. A party shall file two copies of its engineering plans and specifications, except public service districts making pre-filing, in which case only one copy of the plans and specifications is required. A party shall file only the original complaint. A party shall file only the original of a response to a discovery request. A pro se complainant shall only file originals of any paper filed in a case. A party may make filings by facsimile provided that two (2) copies of each filing are faxed and addressed to the Executive Secretary and the fax includes a certificate that the filer mailed the original to the Executive Secretary on the same day that the facsimile was sent. The original mailed to the Executive Secretary must be accompanied by the requisite number of copies. The party so filing must comply with all other notice and service requirements. A party may obtain a date-stamped copy of its filing by a request which

includes an additional copy of the filing along with a stamped, self-addressed envelope.

4.3.a. RESERVED FOR ELECTRONIC FILING RULES.

4.4. A party or an entity seeking party status, that is not a corporation or limited liability company, may make any filings with the Commission by either a duly authorized person or by an attorney at law. A party or entity seeking party status that is a corporation or limited liability company, may file preliminary filings by either a duly authorized person or an attorney at law. A party or entity seeking party status that is a corporation or limited liability company making filings that are not preliminary filings must do so by an attorney at law. Professionals, other than attorneys as provided herein, retained by a party or an entity seeking party status may not file pleadings with the Commission but may file responses to data requests, unless the party is represented by an attorney, in which case all filings shall be made by the attorney.

4.4.a. For purposes of this rule, the following definitions apply: (1) the term "a party or an entity seeking party status" is defined as an individual, partnership, association, cooperative, limited liability company, or corporation; (2) the term "attorney at law" includes attorneys admitted to practice before the Courts of this State, before the Courts of last resort of other states, or before the Supreme Court of the United States; provided that attorneys filing pleadings before the Commission who are not licensed to practice in West Virginia shall have sought and obtained permission to practice before the Commission in compliance with Rule 8.0 of the Rules for Admission to the Practice of Law of the State of West Virginia; (3) the term "preliminary filings" includes pre-filings, petitions, applications, complaints, and answers; (3) the term "duly authorized person" is defined as the individual when an individual is a party or seeks party status, a partner in a partnership, the president of an association, or cooperative, or the chairman of the board, chief executive officer, or general manager of a corporation, or other entity.

**§150-1-5. Rule 5, Parties and Protestants.**

Parties to proceedings before the Commission are known as applicants, petitioners, complainants, defendants, respondents, and intervenors.

5.1. "Complainants" means any party in a formal complaint who complains of anything done or omitted to be done in violation of any law, rule, regulation or order administered or promulgated by the Commission.

5.2. "Defendant" means any party subject to the laws, rules, regulations and orders administered by the Commission against whom any complaint is filed.

5.3. "Intervenor" means any person permitted by the Commission to intervene as a party in any proceeding. Commission Staff need not petition to intervene and will be considered a party in any case in which it chooses to participate.

5.4. "Respondent" means any party subject to the jurisdiction of the Commission to whom the Commission issues notice instituting a proceeding or investigation or inquiry of the Commission; and any party in interest or person ordered before any pending proceeding of the Commission.

5.5. "Applicant" means any party who files an application with the Commission for approval, determination, consent, certification or authorization of the Commission.

5.6. "Petitioner" means any party on whose behalf a petition is made for approval, determination, consent, certification or authorization of the Commission.

5.7. "Protestant" means any person who objects on the grounds of public or private interest to the approval, determination, consent, certification or authorization of any application, proposed tariff change, or petition which the Commission may have under consideration, and who is not a party to the proceeding (a protestant in a motor carrier case who wishes to participate as a party to a case must seek intervenor status).

§150-1-6. Rule 6, Complaints.

6.1. Informal complaints.

6.1.a. Informal Complaints may be made by letter, other writing, telephone or any other form of direct contact with Commission staff. Informal complaints are then taken up by correspondence or other form of communication between Commission staff and the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

6.1.b. An informal complaint need not be in a specific format but must contain the essential elements of a formal complaint, including name and address of complainant, the correct name of the utility against which complaint is made, a clear and concise statement of the facts involved, and a request for relief. If Commission Staff takes an informal complaint over the telephone, Staff shall make a record of the foregoing essential elements.

6.1.c. The utility shall provide a response to Commission staff by letter, other writing, telephone call or any other form of direct contact with staff within ten (10) days of the Commission staff's contact with the utility.

6.1.d. This informal procedure is recommended in the majority of cases. In the event the informal complaint fails to bring about satisfaction of the complaint the complainant may file and prosecute a formal complaint, and the informal proceeding will be discontinued. The informal complaint procedure does not preclude the filing of a formal complaint.

6.2. Formal complaints.

6.2.a. Any person or entity may complain to the Commission by petition substantially in the form of Form No. 1 attached to these Rules of anything done or omitted to be done by the public utility in violation of any of the provisions of the Public Service Commission law of West Virginia. Two or more complainants may join in one complaint if their respective causes of action are against the same defendant or defendants and involve substantially the same violation of law and like set of facts. When any defendant

is operated by a receiver or trustee, both the utility and its receiver or trustee must be made defendants.

6.2.b. The names of all parties must be stated in full without abbreviation, and the address of each complainant with the name and address of his/her attorney, if any, must be given.

6.2.c. Formal complaints should be so drawn as to fully and completely advise the defendant or defendants and the Commission wherein the provisions of the law have been, are, or will be violated. Each distinct charge should be stated concisely in a separate paragraph. The complaint should also state specifically the relief sought.

6.2.d. All formal complaints must be signed and sworn to as set forth on Form No. 1.

6.2.e. When a formal complaint has been filed and ordered to be investigated, the Commission will cause a copy of such complaint to be served upon each defendant, together with a copy of an order requiring the defendant or defendants to satisfy the said complaint or make answer thereto within ten (10) days. Such service shall be by certified mail unless otherwise ordered.

6.2.f. When issues are joined, the time and place for an evidentiary hearing may be set which will be held at the Commission's offices in the City of Charleston or elsewhere in the state at the discretion of the Commission. The Commission may issue its order based on the information contained in the file, if there are no substantial issues of fact.

6.2.g. The complainant must in all cases establish the facts alleged to constitute a violation of the law, unless the defendant admits the same or fails to answer the complaint.

6.2.h. In case of failure to answer, the Commission may hear such proof of facts as it may deem proper and reasonable, and may make such investigation and enter such order as the facts justify and the circumstances may require.

6.3. General Investigations.

6.3.a. The Commission may initiate a general investigation of a public utility, or of any general issue affecting public utilities or other entities, on motion of the Commission, Commission staff, or any other person. Any motion, other than the Commission's own motion, to initiate a general investigation should be served on the utility in the same manner as a formal complaint is served.

6.4. Interim relief.

6.4.a. Request for interim relief may be included in a complaint. The title must clearly indicate that interim relief is requested. The pleading must allege such extraordinary facts of immediate and irreparable injury or public interest as would justify the Commission granting interim relief prior to a final decision.

**§150-1-7. Rule 7, Answer and service.**

7.1. Answer to Formal Complaint.

Within ten (10) days from the date of service of the complaint and order as provided in Rule 6, the defendant or defendants complained against shall file answer or answers, duly verified, substantially in the form of Form No. 2. The period so fixed may be shortened or extended by the Commission when it deems advisable.

7.2. Answer to General Investigation.

The Commission may require an answer to a motion for initiation of a general investigation made by the Commission, Commission Staff, any other person.

7.3. Service.

The original answer and twelve (12) copies thereof must be filed with the Executive Secretary of the Commission; and, at the same time, a copy of said answer shall be served by the defendant personally, or by first class mail, upon each complainant or his attorney. The said

defendant shall certify to the Executive Secretary that said service has been made.

7.4. Content.

All answers shall be drawn as to fully and completely advise the parties and the Commission of the nature of the defense, and should admit or deny specifically and in detail each material allegation of the pleading answered.

7.5. Satisfaction.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant and defendant must be filed, setting forth when and how the complaint has been satisfied. The Commission will then consider whether the proceeding should be dismissed.

7.6. Computation of Time.

In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When calculating a period of time from the date of service of a notice or other paper, the date of service shall be the date the sender certified in writing that he or she mailed an item by first class mail, or the date of personal service.

**§150-1-8. Rule 8, Amendments.**

8.1. Any application, complaint, document or other pleading may be amended prior to notice of the hearing. After notice of a hearing a written motion for leave to amend any pleading or document may be filed with the Commission and may be granted in the discretion of the Commission. Any amendment shall contain the notification of service upon all known interested parties. Amendments to

any application, complaint, document or other pleading shall not unduly broaden the scope of the issues originally filed with the Commission, unless the Commission shall in its discretion allow such amendments.

8.2. Technical forms and allegations in pleadings are not required to be observed in complaints, answers or other papers filed.

8.3. Further statements.

The Commission may order a further pleading.

**§150-1-9. Rule 9. Motions, Objections, Responses, Replies.**

9.1. Motion and Objection.

The original motion or objection and twelve (12) copies thereof must be filed with the Executive Secretary of the Commission; and, at the same time, a copy of said motion or objection shall be served upon the attorney for each party. The party filing the motion or objection shall certify to the Executive Secretary that said service has been made.

9.2. Response.

Unless otherwise ordered by the Commission, any party wishing to respond to a motion or objection must file the original response and twelve (12) copies thereof with the Executive Secretary of the Commission within ten (10) days of the date the motion or objection is served, or as otherwise ordered by the Commission; and, at the same time, a copy of said response shall be served upon the attorney for each party. The party filing the response shall certify to the Executive Secretary that said service has been made. The Commission need not await the filing of responses to motions and may issue an order ruling on a motion at any time after it is filed.

9.3. Reply.

Unless otherwise ordered by the Commission, any party wishing to reply to a response to a motion or objection must file the original reply and twelve (12) copies thereof with

the Executive Secretary of the Commission within ten (10) days of the date the response to the motion or objection is served; and, at the same time, a copy of said reply shall be served upon the attorney for each party. The party filing the reply shall certify to the Executive Secretary that said service has been made.

**§150-1-10. Rule 10, Applications for authority or permission.**

10.1. Change or discontinue service.

Any public utility or motor carrier subject to the Commission's jurisdiction, desiring to discontinue any regular service shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 3 attached hereto.

10.2. Change of rates.

A public utility or motor carrier desiring to change its rates, rules and/or regulations shall comply with the Commission's Rules for the Construction and Filing of Tariffs, 150 CSR 2.

10.3. Certificate of convenience and necessity.

10.3.a. Any public utility, person or corporation, or other entity required by statute to obtain from the Commission a certificate of convenience and necessity or a certificate of need, shall comply with the following as applicable. (For motor carrier certificates of convenience and necessity, see 150 CSR 9.)

10.3.b. Any public service district intending to file an application for a certificate of convenience and necessity shall, at least thirty (30) days prior to the date it intends to file its application, pre-file with the Commission's Executive Secretary, an original and twelve (12) copies of, a letter from the public service district attaching a completed Information of Pre-Filing Notice in the form of Form No. 13, attached hereto, and a report describing the scope of the proposed project. (This report

may be an engineering report if such report is available at the time of pre-filing.) (Only one copy of the engineering report is necessary.) ~~At the same time that the public service district pre-files its application with the Commission, it shall, (1) give notice to the public of its pre-filing by publishing its Pre-Filing Notice in the form of Form No. 13 as a Class II legal advertisement in a qualified newspaper(s), published and of general circulation in each county where the public service district's customers reside, and (2) separately mail Form No. 13 to each of its resale customers, via certified mail, return receipt requested. The public service district shall file affidavits of publication provided by the newspaper(s) with the Commission as soon as possible after the Pre-filing Notice of Filing is published.~~

10.3.c. Any public utility, person or corporation, or other entity, other than a public service district, intending to file an application for a certificate of convenience and necessity pursuant to W.Va. Code §24-2-11 shall, at least thirty (30) days prior to the date it intends to file its application, give the Commission notice of its intent to file an application by filing with the Commission's Executive Secretary, an original and two (2) copies of, a letter of notification. The Commission may modify or waive this requirement.

10.3.d. To file an application for a certificate of convenience and necessity pursuant to W.Va. Code §24-2-11, a public utility, person or corporation, or other entity, shall, thirty (30) days following a pre-filing by a public service district as described in Rule 10.3.b., or the filing of a notice of intent to file a certificate application as described in Rule 10.3.c., file with the Commission's Executive Secretary, an original and twelve (12) copies of, its application for a certificate of convenience and necessity. To be acceptable, an application shall include; (i) a completed Form No. 4, attached to these Rules, (ii) a completed Form No. 14 with the exception that the utility shall leave blank the date of the order and the case number, and (iii) for water and sewer utilities - all information included on the checklist appearing at Rule 26.1 of these Rules. When the Executive Secretary's office has assigned a case number, a completed Form No. 14 will be

issued to the utility as an order requiring publication of the Notice of Filing as a Class I legal advertisement in a qualified newspaper(s), published and of general circulation in each county where the utility provides service, and requiring that the utility separately mail Form No. 14 to each of its resale customers, via certified mail, return receipt requested. The utility shall file affidavits of publication provided by the newspaper(s) with the Commission as soon as possible after the Notice of Filing is published. Furthermore, whenever a utility seeks a rate increase in a certificate application, the utility shall, within thirty (30) days of the date the Commission issues the completed Form No. 14, have completed the mailing of separate notices to each of its customers by one or a combination of the following methods: (i) inclusion of Form No. 14 as a bill insert; (ii) separately mailing Form No. 14; or (iii) only for utilities that bill by postcard instead of in an envelope, and who elect not to separately mail Form 14, inclusion of a statement on a postcard billing as follows: "This utility is seeking a rate increase. Details available in newspaper publications or at the utility office after [utility to insert date application filed with Commission] by calling [utility to insert utility office telephone number]."

**NOTE: (See section 26.1 Appendix checklist for water and sewer utilities filing applications for certificates of convenience and necessity.)**

10.3.e. Any public utility, person or corporation, desiring to construct a high voltage transmission line of two hundred thousand (200,000) volts or higher, shall file its notice of intent to file an application, and its application for a certificate of convenience and necessity in accordance with Rules 10.3.a, 10.3.c. and 10.3.d. In addition to the information required by Rule 10.3.d., the application shall include all of the information required by Rule 9 of the Commission's Rules for the Government of Electric Utilities, 150 CSR 3, and by W.Va. Code §24-2-11a.

10.3.f. Any person, association, firm or corporation desiring to operate as a common or contract carrier by motor vehicle in the transportation of persons or

property for hire over the public highways of this State shall file an application for a certificate of convenience and necessity or a permit to operate as a common or contract motor carrier, together with twelve (12) copies thereof, in the form identified in section 10.1 et seq. of the Commission's Rules for the Government of Motor Carriers of Passengers and Property, 150 CSR 9.

10.3.g. An owner and/or operator of a commercial solid waste facility must obtain a certificate of need before commencing any additional or new commercial solid waste facility activities not explicitly authorized by an existing certificate of need, regardless of whether such additional or new activities would require a major permit modification from the West Virginia Department of Environmental Protection, when such activities would have a significant impact upon rates, upon the applicant, upon the applicant's competitors, or upon the public. Such additional or new commercial solid waste activities include, but are not limited to, the following -- composting activities, recycling activities, and transfer station activities -- regardless of the location of such activities relative to the currently permitted commercial solid waste activity.

1. An owner and/or operator of a commercial solid waste facility shall apply for a certificate of need by filing a completed Form No. 15, attached hereto, together with twelve (12) copies of the same with the Commission's Executive Secretary. In addition to Form No. 15, the utility shall file a completed Form No. 17 with the exception that the utility shall leave blank the date of the order and the case number. When the Executive Secretary's office has assigned a case number, a completed Form No. 17 will be issued to the utility as an order requiring publication of the Notice of Filing as a Class I legal advertisement in a qualified newspaper(s), published and of general circulation in each county in the wasteshed where the commercial solid waste facility is or will be located, and in a newspaper certified by the Secretary of State to have statewide circulation. The utility shall file affidavits of publication provided by the newspaper(s) with the Commission as soon as possible after the Notice of Filing is published.

2. An owner and/or operator of an existing commercial solid waste facility may file an application for an amendment of a certificate of need and for expedited processing, in the form attached hereto as Form No. 16, together with twelve (12) copies of the same, and receive expedited processing of its application, if the owner and/or operator seeks to engage in additional activities within the facility's permitted acreage, if the activity is determined not to have a significant impact upon rates, upon the applicant, upon the applicant's competitors, or upon the public, regardless of whether the new activities have been classified as a major modification by the Department of Environmental Protection. In addition to Form No. 16, the utility shall file a completed Form No. 17 with the exception that the utility shall leave blank the date of the order and the case number. When the Executive Secretary's office has assigned a case number, a completed Form No. 17 will be issued to the utility as an order requiring publication of the Notice of Filing as a Class I legal advertisement in a qualified newspaper(s), published and of general circulation in each county in the watershed where the commercial solid waste facility provides, or will provide service, as indicated in its certificate application and/or its Department of Environmental Protection permit. The utility shall file affidavits of publication provided by the newspaper(s) with the Commission as soon as possible after the Notice of Filing is published.

3. After receiving Form No. 16, the Commission may issue the applicant an amended certificate of need without a hearing, unless the Commission determines that the planned expansion or construction has a significant impact upon rates, upon the applicant, upon the applicant's competitors, or upon the public. In the alternative the Commission may, if appropriate, issue an order requiring the applicant to file a standard application for a certificate of need in the form of Form No. 15.

#### 10.4. Contracts between utilities.

10.4.a. Whenever a public utility, except railroads other than street railroads, desires to enter into any contract with any other utility to operate its line or plant or to enter into any contract to operate their lines or

plants in connection with each other (except physical connections between utilities supplying the same service or commodity for temporary purposes only) the utilities shall file a joint petition with the Commission for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 5. Such petition shall set forth the names and addresses of the petitioners, a detailed statement describing the proposed contract, the effect it will have upon the service of the petitioners, the consideration to be paid for the service to be rendered, whether or not any other utility will be affected by the proposed operation and a statement why the prayer of the petition should be granted.

10.4.b. If the connection is physical between utilities supplying the same service for temporary purposes only, the parties thereto shall immediately give notice to the Commission, in writing, of such connection. Said notice shall state the names and addresses of the parties, the utility service in which they are engaged, the location of the physical connection and a description thereof and the reason it was made.

10.5. To control or acquire property of another utility.

A public utility, except railroads other than street railroads, desiring to purchase, lease or in any other manner acquire control, direct or indirect, over the franchise, licenses, permits, plant, equipments, business or other property of any other utility shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 6. Such petition shall set forth the name and address of the petitioner, the name and address of the utility whose property, etc., is sought to be acquired, the financial condition of the petitioner and of the utility whose property, etc., is sought to be acquired, the property, etc., to be acquired and location thereof, the terms and conditions of the proposed transaction, the effect of the proposed transaction upon the service of the parties thereto, the method of financing the transaction and whether or not any other utility will be affected, and, if so, in

what respect, and a statement of the reasons why the prayer of the petition should be granted.

10.6. Sale of franchises, permits and plant.

A public utility, except railroads other than street railroads, desiring to assign, transfer, lease, sell or otherwise dispose of its franchises, licenses, permits, plants, equipment, business or other property, or any part thereof, (except tangible personal property not necessary or useful, nor which will become necessary or useful in the future, in the performance of its duties to the public), shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 7. Such petition shall set forth the name and address of the petitioner, the name and address of the person, firm, corporation or utility to whom it desires to assign, transfer, sell, etc., its franchises, licenses, equipment, etc., the financial condition of the petitioner, brief statement of the history and corporate makeup and financial condition, if available, of the person, corporation, etc., to whom the franchises, licenses, etc., are to be sold, assigned, etc., the terms and conditions of the proposed transfer, sale, etc., a description of the franchises, licenses, etc., which are to be assigned, sold, etc., the effect of the proposed transaction on the service of the petitioner, the method by which the proposed assignment, sale, etc., is to be financed, whether or not any other utility will be affected and, if so, in what respect, and a statement why the prayer of the petition should be granted.

10.7. Merger or consolidation.

A public utility, except railroads other than street railroads, desiring by any means, direct or indirect, to merge or consolidate its franchises, licenses, permits, plants, equipment, business or other property with that of any other public utility, shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 8. Such petition shall set forth the name and address of the persons forming the merger or consolidation, the financial condition of the parties to the consolidation,

the franchises, licenses, permits, plants, equipment, business and other property which are the subject of the consolidation, the effect of the proposed transaction upon the service of the parties thereto, the method by which the consolidation will be financed, including a detailed statement of the common stocks, preferred stocks, and bonds that are proposed to be issued, if any, whether or not any other utility will be affected and, if so, in what respect, a general statement of the physical property of each of the merging parties and value thereof, and a statement of the reasons why the prayer of the petition should be granted, including the name of the merged or consolidated company.

10.8. Purchase of stock, bonds, etc., of another utility.

A public utility, except railroads other than street railroads, desiring to purchase, acquire, take or receive any stock, stock certificates, bonds, notes or other evidence of indebtedness of any other public utility, shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 9. Such petition shall set forth the name and address of the petitioner, the name and address of the company or companies whose stock, stock certificates, bonds, notes or other evidence of indebtedness is sought to be purchased, etc., the kind, character, description, in detail, and amount, by classes, of the stocks, bonds, notes or other evidence of indebtedness that is to be purchased, etc., the price proposed to be paid for said stocks, etc., and the terms of payment, the financial condition of the petitioner, the effect of the proposed purchase upon the service, rates, and capital structure of the petitioner, the effect the proposed transaction will have upon the service of the petitioner and the utility whose stocks, etc., are to be acquired, and the reasons why the approval and consent of the Commission should be given to the proposed purchase, etc.

10.9. Management contract between affiliates.

A public utility, except railroads other than street railroads, desiring by any means, direct or indirect, to enter into any contract or arrangement for management,

construction, engineering, supply or financial services, or for the furnishing of any other service, property or thing, with any affiliated corporation, person or interest, shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 10. Such petition shall set forth the name and address of the affiliated corporation, person or interest with whom the contract or arrangement is to be made, a copy of the contract or arrangement is to be made, a full description of the nature and character of service, property or things to be rendered the petitioner, the compensation to be paid and the terms thereof, the financial condition of the petitioner and the affiliated corporation, person or interest, the effect of the proposed arrangement upon the service of the petitioner, and, if the affiliate corporation is a utility under the jurisdiction of the Commission, the effect of the proposed transaction upon its service, and a statement of the reasons why the prayer of the petition should be granted.

10.10. Consent in advance to exemption from requirements of Section 12, Article 2, Chapter 24 of the Code.

A public utility desiring consent of the Commission in advance or exemption from the requirements of subsections (a), (b), (c), (d), (e), and (f) of Section 12 of Article 2, of Chapter 24 of the Code of West Virginia, and subsections 10.4, 10.5, 10.7, 10.8, and 10.9, of this rule with reference thereto, shall file with the Commission its petition for consent in advance or exemption from the requirements of said section, together with twelve (12) additional copies thereof, substantially in the form of Form No. 11. Such petition shall set forth the name and address of the petitioner, a statement of the subsection of Section 12 from the requirements of which consent in advance or exemption is sought, including the reasons therefor, the effect thereof upon the service of the petitioner and any other public utility operating in this state, if any, a statement that neither party thereto is given an undue advantage over the other and the reasons therefor, a statement why the prayer of the petition should be granted and its effect upon the public in this state. If, however, consent is prayed for in advance to do any of the things

provided for in subsections 10.4, 10.5, 10.6, 10.7, 10.8, and 10.9 of this rule, the petitioner shall also adhere substantially to the form and requirements of the appropriate subsection.

10.11. Notice and hearing.

When any such applications shall be filed, the applicant will be required to give notice of the time and place set by the Commission for hearing thereon. Said hearing shall be conducted substantially in the manner prescribed in Rule 12 hereof, except that the Commission may, for good cause shown, grant the authority prayed for without formal notice and hearing.

**§150-1-11. Rule 11, Prehearing Conference and Mediation.**

11.1. When conference may be required.

11.1.a. When issues are joined in any formal proceeding the Commission may, on its own motion or upon petition by any party, with reasonable written notice, require all interested parties to attend a prehearing conference, teleconference, or mediation.

11.1.b. Facts disclosed in the course of a prehearing conference, teleconference or mediation, are privileged and, except by agreement, shall not be used against participating parties before the Commission unless fully substantiated by other evidence.

11.2. Recessing hearing for conference.

In any proceeding the Commission may, in its discretion, call the parties together for a conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purpose of this rule. The Commission shall state on the record the results of such conference.

**§150-1-12. Rule 12, Hearings.**

12.1. General provisions.

12.1.a. The date, time and location of hearings will be scheduled by the Commission and notice thereof served upon all parties as may be required by statute and/or the Commission's Rules. Hearings will be held at the Commission's hearing room in the City of Charleston or elsewhere in the State at the Commission's discretion. An effort will be made to set all formal hearings sufficiently in advance so that all parties will have a reasonable time to prepare their cases, and so that continuances will be reduced to a minimum.

12.1.b. All hearings will be open to the public.

12.2. Presiding officers.

12.2.a. When evidence is to be taken in any proceeding before the Commission, said hearings will be held by one or more of the members of the Commission, an Administrative Law Judge, or by one or more of the Commission's employees that shall have been duly designated by it to hold hearings. Presiding officers shall be referred to in these rules as simply "the Commission."

12.2.b. The Commission shall have the duty to conduct full, fair and impartial hearings; to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order; and he/she shall possess all powers necessary to that end, including the following: To administer oaths and affirmations; to issue subpoenas and to provide for other methods of discovery; to receive evidence and rule upon all objections and motions; and to take such other action as may be necessary and appropriate to the discharge of his/her duties, consistent with the statutory authority and with the rules, regulations and policies of the Commission.

12.3. Appearances.

Parties shall enter their appearances at the beginning of the hearing by giving their names and addresses in writing to the reporter who will include the same in the record of the hearing. The Commission may, in addition thereto, require appearances to be stated orally, so that the identities and interests of all parties present will be

known to those at the hearing. Any further notice, pleading, or order in the matter which is required to be served upon parties to the proceeding may be served upon the attorney or representative of a party so represented and such service shall be effective as service upon the party.

12.4. Rights of Parties and Protestants.

12.4.a. At any hearing, all parties, shall be entitled to enter appearances, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.

12.4.b. Any person who is a protestant and who desires to participate in the proceeding, other than as a witness, may, within the discretion of the Commission, file a petition or move orally to do so prior to the close of the period for taking appearances. The Commission may, within its discretion, grant, deny or qualify the extent of participation by such protestant during the evidentiary proceeding and thereafter. Such participation does not give a protestant party status.

12.5. Termination of party status.

Notwithstanding any other provision of these rules pertaining to party status, and unless specifically authorized by the Commission for good cause shown, no person shall be a party to any proceeding in which such person has failed to enter an appearance at any hearing in the manner as prescribed in Rule 12.3; the party status of any person failing to enter an appearance shall terminate at the close of the period for taking of appearances unless otherwise ordered.

12.6. Interventions.

12.6.a. Any person having a legal interest in the subject matter of any hearing or investigation pending before the Commission may petition or move orally for leave to intervene in such proceeding prior to or at the time it is called for hearing, but not thereafter except for good cause shown. If leave is granted, the petitioner becomes an intervenor and a party to the proceeding with the right to

have notice of and appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard on the argument of the case.

The petition or motion shall disclose the name of the party intervening, the name and address of his/her attorney, if any, a clear and concise statement of the grounds for the proposed intervention, the position and interest of the petitioner or movant in the proceeding, and concise statement of the relief desired. Leave will not be granted except on allegations reasonably pertinent to the issues already presented and which do not unduly broaden them.

12.6.b. Service of petition.

The original petition for leave to intervene and twelve (12) copies thereof must be filed with the Executive Secretary of the Commission, and at the same time a copy of said petition shall be served by the petitioner, personally, or by registered mail or certified mail, return receipt requested, upon all known parties of record. The petitioner shall certify to the Executive Secretary that said service has been made.

12.6.c. Special intervention.

Any person, other than the original parties to the proceeding, who desires to appear and participate in any proceeding before the Commission, and who desires to broaden the issues of the original proceeding, shall petition in writing for leave to intervene in the proceeding, which petition shall be filed with the Commission and copies thereof shall be served on all known parties of record at least ten (10) days prior to the date of the hearing. The petition shall contain the information required by these rules. There shall also be attached to said petition a properly verified complaint or answer, as the case may be, setting forth clearly and concisely the facts supporting the relief sought.

Such petitions shall be considered first at all hearings, or may be acted upon prior to hearing and an opportunity shall be afforded the original parties to be

heard thereupon. If it appears, after consideration, that the petition discloses a substantial interest in the subject matter of the hearing, or that participation of the petitioner may be in the public interest, the Commission may grant the same, which may be done by order or oral ruling at the time of the hearing. Thereafter such petitioner shall become a party to the proceeding and shall be known as an "intervenor" with the same rights as other parties to the proceeding.

12.6.d. Limitations of intervention.

When two or more intervenors have substantially similar interests and positions, the Commission may, in order to expedite the hearing, limit the number of parties who may cross-examine, make and argue motions, or object on behalf of such intervenors.

12.7. Representation of parties and practice before Commission.

Representation or appearance of parties in all formal proceedings pending before the Commission shall be only by attorneys at law admitted to practice before the Courts of this State, before the Courts of last resort of other states, or before the Supreme Court of the United States; provided that attorneys appearing before the Commission who are not licensed to practice in West Virginia shall have sought and obtained permission to practice before the Commission in compliance with Rule 8.0 of the Rules for Admission to the Practice of Law of the State of West Virginia; provided, however, that an individual may appear for and represent himself, or a partner may represent his partnership, upon permission granted in the discretion of the Commission.

12.8. Notice.

Following the entry of appearances, all notice, pleadings and orders thereafter served shall be served upon such attorneys, representatives or parties of record, as defined in these rules, entering an appearance, and such service shall be considered valid service for all purposes upon the party represented.

12.9. Continuance of hearings.

After date for hearing has been set continuances will not be granted by the Commission except for good and sufficient cause. A party who desires a continuance shall, immediately upon receipt of notice of the hearing, or as soon thereafter as facts requiring such continuance comes to his knowledge, file a written motion with the Commission stating in detail the reasons why such continuance is necessary. Such motion shall be filed at least five (5) days prior to the date of hearing. In cases of hardship or other good cause a party may by oral motion move for a continuance at the time the proceeding is called for hearing. The Commission may grant such a continuance and may at any time order a continuance upon its own motion.

12.10. Failure to appear.

When any proceeding has been properly set for hearing and due notice given and any applicant, petitioner or complainant fails to appear without having obtained a continuance in the manner specified above, the Commission may dismiss the petition, application, or complaint with or without prejudice or may upon good cause shown, recess such hearing for a further period to be set by the Commission to enable said applicant, petitioner, or complainant to attend.

12.11. Conduct at hearings.

All parties to hearings, their counsel, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind at hearings shall not be permitted. The Commission may, at its discretion, recess or continue any hearing in which the parties, attorneys, witnesses or spectators, conduct themselves in a disrespectful, disorderly or contemptuous manner which interferes with or prevents the proper conduct of such hearing.

12.12. Consolidated hearings.

The Commission, upon its own motion, or upon motion by any party, may order two or more proceedings involving a similar question of law or fact to be consolidated for

hearing where the rights of the parties or the public interest will not be prejudiced by such procedure.

12.13. Transcripts.

12.13.a. One copy of the transcript of testimony will be furnished by the Commission to each party to a proceeding, unless otherwise ordered.

12.13.b. Additional copies of transcripts of testimony may be obtained by any party in interest from the Executive Secretary by paying therefor at a rate to be determined by the party requiring the same and the reporter, but in no event to exceed the maximum fixed therefor in the then-current contract between the Commission and the reporter. Persons desiring extra copies of the transcripts of testimony shall make request therefor to the Executive Secretary of the Commission at the time of hearing.

**§150-1-13. Rule 13, Evidence.**

13.1. General.

In the investigations, preparations and hearings of cases, the Commission shall not be bound by the technical rules of pleadings and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justice of the matters before it. Evidence may be received which, in the opinion of the Commission, is the best evidence reasonably obtainable, having due regard to its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the Commission shall give consideration to, but shall not be bound to follow the rules of evidence governing general civil procedures in courts of this State.

13.2. Testimony under oath.

All testimony to be considered by the Commission in formal hearings, except matters administratively noticed or entered by stipulation, shall be by sworn or affirmed testimony.

13.3. Prepared testimony.

Prepared testimony may be identified, marked and received as an exhibit. Admissibility shall be subject to the rules governing oral testimony. The party submitting prepared testimony shall supply copies to all parties of record.

13.4. Stipulation of facts.

The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the Executive Secretary, or entered in the record, agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be binding upon the parties thereto and may be regarded and used by the Commission as evidence at the hearing. It is desirable that the facts be thus agreed upon whenever practical. The Commission may, however, require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

13.5. Depositions.

The testimony of any witness may be taken by deposition at the instance of a party, in any proceeding or investigation at any time after the same is at issue, by the consent of the Commission. The Commission may, on its own motion, order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such deposition shall be taken in the manner prescribed by the laws of West Virginia for taking deposition in civil cases in courts of record.

13.6. Discovery Requests.

13.6.a. "Discovery requests" as used in these Rules, include interrogatories, requests for the production of documents and things, and requests for admissions. Discovery requests do not include Staff or Commission requests made pursuant to statutory authority.

13.6.b. A party may serve discovery requests in writing upon the attorney for a party, if such party is represented by an attorney, or directly upon unrepresented parties, by first class mail or by hand delivery. Discovery requests must be pertinent to substantial issues in the proceeding. Copies of discovery requests, together with a certificate of service, shall be filed with the Executive Secretary and served upon all parties.

13.6.c. Parties served with discovery requests shall respond to each request separately and fully, in writing. The responses shall re-state each request, and give the response to that request. The party responding shall verify the responses. If responses prepared by several persons are compiled by one person the person compiling the responses shall verify the responses one time. Responses to discovery requests shall be served within twenty (20) days after such data requests were served, or within such specified time as may be fixed by the Commission. Responses shall be served only upon the requesting party and any other party that has made a written request for the responses. The party responding shall file one (1) copy with the Executive Secretary.

13.6.d. The party responding to discovery requests shall file any written objections to discovery requests within fourteen (14) days after service of discovery requests or such shorter time as directed by the Commission. The responding party may defer responses to discovery requests to which it has made objection until the Commission rules on any Motion to Compel. If a Motion to Compel is granted, the responses shall be served within ten (10) days after notice of the Commission's action, or as otherwise ordered by the Commission.

13.6.e. Objections to discovery requests not timely filed are waived, except for good cause shown.

13.6.f. The Commission will not become involved in resolving discovery disputes unless a motion is filed seeking Commission action. The parties have the responsibility to file timely discovery motions, including motions to compel the production of information or motions seeking protective orders.

13.7. Record of the case.

13.7.a. Exhibits at hearing. All maps, prints, writings, statements or documents, to be used as an exhibit at a hearing, must be accompanied by four (4) copies when a case is before the Commissioners and two (2) copies when a case is before an ALJ, in addition to copies needed for other parties to a case, unless the parties were previously served with the exhibit.

13.7.b. Staff Reports. Reports of investigation made in any case by the Commission, or by any employee of the Commission, whether made before or after the hearing, will become a part of the record in the case and be considered by the Commission. Upon the submission of any such report to the Commission, a copy thereof will be furnished by the Executive Secretary to each party to the proceeding. Should such party take exception to or desire to be heard further upon, or to give further evidence with regard to such report, he shall notify the Commission in writing within five (5) days from the receipt thereof. Whereupon the Commission will set the matter for further hearing or take such action as the circumstances of the case may require.

13.7.c. Original Documents. The Executive Secretary shall keep in his/her custody and be responsible for the original, or one counterpart, of all maps, prints, writings, statements or documents made a part of the record as aforesaid.

13.8. Objections.

Any evidence offered in whatever form shall be subject to appropriate and timely objection. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the Commission. The Commission, in its discretion, either with or without objection, may exclude inadmissible, incompetent, cumulative, or irrelevant evidence, or order the presentation of such evidence discontinued. Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered. The evidence to be admitted at hearing shall be

competent material and relevant to the issue. Formal exceptions to rulings are not necessary and need not be taken.

**§150-1-14. Rule 14, Subpoenas for witnesses and documents.**

14.1. Upon application of any party, or on the Commission's own action, subpoenas requiring the attendance of witnesses at any designated place of hearing before the Commission, or a member thereof, or any employee of the Commission which it shall have designated to hold such hearings, for the purpose of taking the testimony of such witness, may be issued by the Executive Secretary or any member of the Commission or any employee of the Commission which it shall have designated to hold hearings as provided by law. Such written application must be verified by affidavit and set forth reasons supporting the issuance of the subpoena for the attendance of the witness or witnesses.

14.2. Upon written application of any party, or on the Commission's own action, subpoenas for the production of books, papers or documents may be issued by the Executive Secretary or any member of the Commission or any employee of the Commission which it shall have designated to hold hearings as provided by law. Such application must be verified by affidavit and set forth and identify specifically the books, papers or documents sought to be produced and the reasons therefore.

**§150-1-15. Rule 15, Witness fees.**

15.1. Witness fees necessary and incident to hearings before the Commission shall be paid by the party at whose instance the witness is summoned. No witness fees will be allowed except on subpoena. In all cases the fee allowed will be the same as that allowed by the circuit courts of this state.

**§150-1-16. Rule 16, Service of subpoena and notice.**

16.1. All subpoenas for parties, witnesses, records or papers, and all notices relating to a subpoena, shall be served by delivering a copy thereof personally or by mail to

the party to be served, or in the manner prescribed by law for service of like processes issuing out of the circuit courts of this state.

16.2. Service of subpoenas and the cost incident to the service is the responsibility of the party(ies) requesting the subpoenas.

**§150-1-17. Rule 17, Proposed orders.**

17.1. The Commission may require all parties of record to file proposed orders containing findings of fact and conclusions of law at the close of testimony in the proceeding. The Commission shall immediately fix the time in which such proposed findings and conclusions or proposed final orders shall be filed. No decision, report or recommended order shall be made until after the expiration of the time so fixed.

17.2. If the parties file proposed orders, findings of fact and conclusions of law shall be clearly and concisely stated and numbered. Each statement shall show specifically the testimony by appropriate transcript reference, if available, or other items of record which support that proposed finding of fact.

17.3. An original and twelve (12) copies of the findings of fact, conclusions of law and/or proposed final order accompanied by a certificate of service shall be filed with the Commission and one copy shall be filed with each attorney of record or each party.

17.4. Any party may petition the Commission for an extension of time in which to file proposed findings of fact, conclusions of law and/or proposed final order.

**§150-1-18. Rule 18, Briefs and oral argument.**

18.1. General.

A party may file a brief or present oral argument in any proceeding before the Commission. The Commission may require the filing of briefs or the presentation of oral argument or both by the parties. Requests for the filing of

briefs or oral arguments shall be made before or at the conclusion of the taking of evidence. The requirements of this rule may be altered by agreement of the parties with the consent of the Commission.

18.2. Oral arguments.

Oral argument may be presented in lieu of or in addition to the filing of briefs. When, in the opinion of the Commission, time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants, the Commission may, either on its own motion or at the request of a party or Staff counsel at or before the close of the taking of testimony allow and fix a time for the presentation of oral argument, imposing such limits of time on the argument as deemed appropriate in the proceeding. Such argument shall be transcribed and bound with the transcript of testimony.

18.3. Time for filing.

Unless otherwise ordered by the Commission, briefs are to be filed simultaneously. Initial briefs shall be served 25 days after the transcript is mailed. Reply briefs shall be served 15 days after the initial briefs are mailed. Responsive briefs shall be served 10 days after the reply briefs are mailed.

**§150-1-19. Rule 19, Exceptions, Reconsideration, Further hearing, or reopening.**

19.1. Exceptions.

A party may file exceptions to a recommended decision within fifteen (15) days from the date the recommended decision was mailed and shall serve a copy of the exceptions on the attorney for each adverse party or directly upon unrepresented parties. The exceptions must state the findings of fact and/or conclusion of law claimed to have been erroneously decided, and may be accompanied by a brief in support thereof.

19.1.a. Reply to Exceptions.

Within ten (10) days after such service any party may file and serve in like manner a reply to the exceptions. The reply so filed must be accompanied by a like number of copies for the use of the Commission and a certificate showing service upon the attorneys of the parties. However, the Commission may issue an order ruling on exceptions at any time after it is filed.

19.2. Application for Further Hearing.

If a party seeks a new hearing because of matters that have arisen since the hearing, or due to facts that were not known by the party at the time of the hearing, the matters relied upon by the party must be fully set forth. Applications for further hearing in a proceeding after the closing of testimony and before entry of a recommended decision, if the case is before an ALJ, or Commission Order, if the case is before the Commission, must be made by petition, duly verified, filed with the Commission. Such petition shall state specifically the grounds relied upon, and shall be filed with the Commission and a copy served by the petitioner upon the attorney for each adverse party. The nature and purpose of the evidence to be adduced must be briefly stated, and it must not be merely cumulative.

19.3. Petition for Reconsideration.

Petitions for reconsideration after entry of a Commission order must be made by petition, duly verified, filed with the Commission within ten (10) days from the date of mailing by certified mail of the Commission order. Such petition shall state specifically the grounds relied upon, and shall be filed with the Commission and a copy served by the petitioner upon the attorney for each adverse party.

19.3.a. Within ten (10) days after such service any party may file and serve in like manner a reply to the petition. The reply so filed to be accompanied by a like number of copies for the use of the Commission and a certificate showing service upon the attorneys of the parties. However, the Commission may issue an order ruling on the petition at any time after it is filed.

19.4. Application for Modification of order.

Application for modification of orders which seek only to correct clerical errors, change in the date when they shall take effect, or change the period of notice thereby prescribed, must be made by petition filed and served in like manner as other applications under this rule, except that, in case of unforeseen emergency satisfactorily shown by the applicant, such relief may be sought informally, by facsimile or otherwise, upon notice thereof to all parties or attorneys who appeared as aforesaid.

19.5. Application for Reopening.

An application for reopening of a proceeding more than ten (10) days after the entry of a commission order must be made by petition of a party to the proceeding at the time of entry of the Commission order, duly verified, accompanied by a certificate showing service upon the attorneys of the other parties. If thereby any Commission order is sought to be vacated, reversed, or modified, by reason of matters which have arisen since the hearing, or by reason of facts not in possession of the petitioner at the time of the hearing, the matter so relied upon by the petitioner must be fully set forth in the petition.

19.5.a. Within ten (10) days after such service any party may file and serve in like manner a reply to the application. The reply so filed to be accompanied by a like number of copies for the use of the Commission and a certificate showing service upon the attorneys of the parties. However, the Commission may issue an order ruling on the application at any time after it is filed.

**§150-1-20. Rule 20, Change of depreciation rates.**

20.1. Each public utility subject to the jurisdiction of this Commission shall, with respect to any proposed change in its depreciation rates, and at least sixty (60) days prior to the last day of the month in which the accounts for which the effect of such change is first recorded, file with the Commission twelve (12) copies of the following information with respect to each depreciation rate proposed to change on or after the effective date of this rule:

20.1.a. A statement showing the class or subclass of plant to which the proposed changed depreciation rates are applicable, the effective date of the proposed change, the rates in effect immediately before and after such change, and the corresponding service-life, salvage and cost of removal estimates.

20.1.b. A general statement describing the method or methods employed in the development of the service-life, salvage and cost of removal estimates, and the reasons for the proposed change in the rate.

20.2. When the proposed change in rate applicable to any class or subclass of plant (1) amounts to twenty percent (20%) or more of the rate currently applied thereto, or (2) would have changed by one percent (1%) or more the aggregate annual depreciation charges for all depreciable plant if the new rate applicable to such class or subclass had been in effect during the preceding calendar year, the statements required in foregoing paragraph 20.1 shall be supplemented by copies of supporting data, calculations, and charts underlying the service-life, salvage and cost of removal estimates.

20.3. The foregoing statement shall be accompanied by an exhibit, an original and twelve (12) copies, showing the expected net change in the annual depreciation charges resulting from the revised depreciation rates and indicating the basis of determining the expected net change.

20.4. A utility proposing such a change in depreciation rates may at the end of the sixty day period put such changed rates into effect providing, however, that during the sixty day period the Commission does not order the suspension of such rates and set a date for a hearing on the reasonableness of such change.

**§150-1-21. Rule 21, Financial condition defined.**

Whenever, by these rules, a petitioner or utility is required to state its financial condition, the statement shall include the following information.

21.1. Amount and class of stock authorized by the certificate of incorporation and by any other public authority;

21.2. Amount and class of stock issued and outstanding;

21.3. Terms of preference of all preferred stock;

21.4. Brief description of each mortgage upon any property of the applicant giving date of execution, name or mortgagor, name and address of mortgagee or trustee, amount of indebtedness authorized to be secured thereby, amount of indebtedness actually accrued, amount of principal outstanding, amount of interest due and unpaid, and brief description of mortgaged property;

21.5. Number and amount of bonds authorized and issued, giving name of issuing company, describing each class separately, giving date of issue, par value, rate of interest, date of maturity and how secured; and, if convertible debentures are authorized or outstanding, also the dates when the conversion privilege accrues and expires, and the securities into which and the rate at which conversion may be made;

21.6. Other indebtedness, giving name of classes and describing security, if any;

21.7. Amount of interest paid during previous calendar year and rate thereof; if different rates were paid, the amount paid at each rate;

21.8. Rate and amount of dividends paid upon each class of stock during previous five years; and

21.9. Detailed income statement and balance sheet for latest calendar year.

A reference in the petition to annual or other reports filed or to be filed with the Commission will not be deemed compliance with the provisions of this rule.

**§150-1-22. Rule 22, Certified copies.**

22.1. Withdrawal of papers.

No original paper in any case shall be withdrawn from the file, except upon special order of the Commission.

22.2. Certified copies.

Certified copies of papers on file in the Executive Secretary's office may be obtained by any person desiring the same upon payment to the Executive Secretary of a copying fee plus a fee for certifying such copy, as established by the Executive Secretary's office.

**§150-1-23. Rule 23, Notice of orders.**

23.1. The Executive Secretary shall serve copies of all orders issued by the Commission upon the parties of record.

**§150-1-24. Rule 24, Address.**

24.1. All official communications to the Commission and all correspondence in relation thereto should be delivered or mailed to:

Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street, P. O. Box 812  
Charleston, West Virginia 25323-0812

**§150-1-25. Rule 25, RESERVED**

**§150-1-26. Rule 26, Appendix**

26.1. CHECKLIST FOR APPLICATIONS FOR CERTIFICATES OF CONVENIENCE AND NECESSITY FOR WATER AND SEWER UTILITIES

The following checklist will aid applicants for certificates of convenience and necessity in assuring that they have submitted all information that the Commission needs for proper review. Water and Sewer Utilities may apply for a waiver of any provision of this checklist for good cause, provided, that no application for a waiver will

be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

1. Application as per Form No. 4.
2. Verification as per Form No. 4 or Form No. 12.
3. Tariff Rule 42 Accounting information:
  - a. Existing System
    1. The Tariff Rule 42 exhibit presents the entire system at per books adjusted to going-level.
    2. Subject to the requirements of Tariff Rule 42, non project-related adjustments may be included in the revenue requirements of the certificate case. If the rate increase relating to non-project related adjustments is proposed to go into effect prior to a rate increase relating to project-related adjustments, then the applicant must separately set forth the proposed increases.
    3. All adjustments related to the proposed project are presented at Pro-Forma.
  - b. New System
    1. All financial information related to the proposed project is presented at Pro-Forma.
  - c. Project related adjustments to operation and maintenance expenses shown in the Tariff Rule 42 exhibit must agree with, and be supported by, detailed engineering calculations.
4. Proposed Rate Structure in tariff form.
5. Existing Rate Structure (if applicable) in tariff form.

6. Facility Plan or feasibility study (if applicable).
7. Agreements between Applicant and Other Utilities (as applicable).
8. A project map(s) showing the location of each customer cross-referenced to a complete customers list indicating which customers have signed contracts for service and paid connection fees, which houses and buildings are plumbed and which customers have a private water supply.
9. Proposed bond and/or municipal rate ordinances (as applicable)
10. Permits and/or approvals
  - a. Letter from applicant stating that applications for all necessary permits and/or approvals have been made.
  - b. It is preferable that any required permits are granted prior to the final order, but if the permits are not available the certificate may, for good cause shown, be issued contingent on receipt of the permit.
11. Letters showing funding sources
  - a. Privately owned utilities - statement of projected sources of funds from the project. If debt funds are included show the expected source and cost of debt.
  - b. Publicly owned utilities - Letters showing commitment of funds for all grants and loans. Terms and conditions for all loans must also be shown.
12. Interim Financing Information including funding sources and terms and conditions of funding.
13. Name, Classification, and License No. of Operator(s) (as applicable).

- a. Identification of initial or additional utility personnel required for the project and/or estimated overtime hours, as the case may be.

#### 14. Engineering Report

- a. Population Projections (if not identified in preliminary report).
- b. Number of existing, potential, and future customers. Applicants shall mail single copies of signed user agreements for water projects to the Commission's Engineering Division. The user agreements shall not be made a part of the case file.
- c. Existing and estimated future water consumption or wastewater flows related to the project.
- d. Design criteria and system hydraulic information.
- e. Itemized construction and total project cost estimates.
- f. Detailed Operation and Maintenance budget including supporting information and calculations.
- g. Description of all maintenance requirements associated with the project.
- h. Identification of need for renewal and replacement reserves.
- i. Existing and future conditions.
- j. Identification of need for the utility service to be provided, including supporting documentation such as enforcement actions from appropriate agencies.

- k. Alternative analysis of reasonably available alternatives that could fulfill the need, including present worth analysis of the capital, operation and maintenance expenses over each of the alternatives expected service life. Benefits and detriments of each alternative should be discussed. The selection of the preferred alternative should be explained.
  
- l. If water and sewerage treatment service is to be purchased by the applicant, the filing should include documentation from the seller of such services that adequate capacity exists and projections of the duration of such adequacy. The utility filing for the certificate of convenience and necessity should be required to simultaneously file the purchased services contract with this Commission to allow the Commission to determine whether or not adequate capacity exists.
  
- m. Information concerning increase in operating times of existing treatment facilities that will result from the project.

#### 15. Project Plan Drawings

- a. One paper copy of the engineering design plans and project maps, or, one electronic copy of the engineering design plans and project maps in a format compatible with the Commission's electronic technology.
  
- b. The plans and maps should show line size, type, length and drawn to scale.
  
- c. Identification/numbering of customers that have applied for service and identification of customers who may be served by the project.

- d. Identification of property lines for customers to be served and location of utility service lateral stubs (sewer) or utility service lines and meters (water).
- f. Water storage tank and booster station drawings.
- g. Sewer lift station drawings.
- h. Master metering location and detailed information.
- i. Treatment facility drawings.

16. Specifications

- a. Bid quantities.
- b. Equipment sizing/specifications.

17. Maximum Service Elevation Information (water systems only).

~~18. For public service districts - affidavit of publication of Class II legal advertisement notice of pre-filing, in the form of Form No. 13 attached hereto, pursuant to West Virginia Code §16-13A-25.~~

~~18.~~ 18. Proposed Notice of Filing, in the form of Form 14 attached hereto, for review by the Commission. The utility shall not publish this form until directed to do so in a Commission Order.

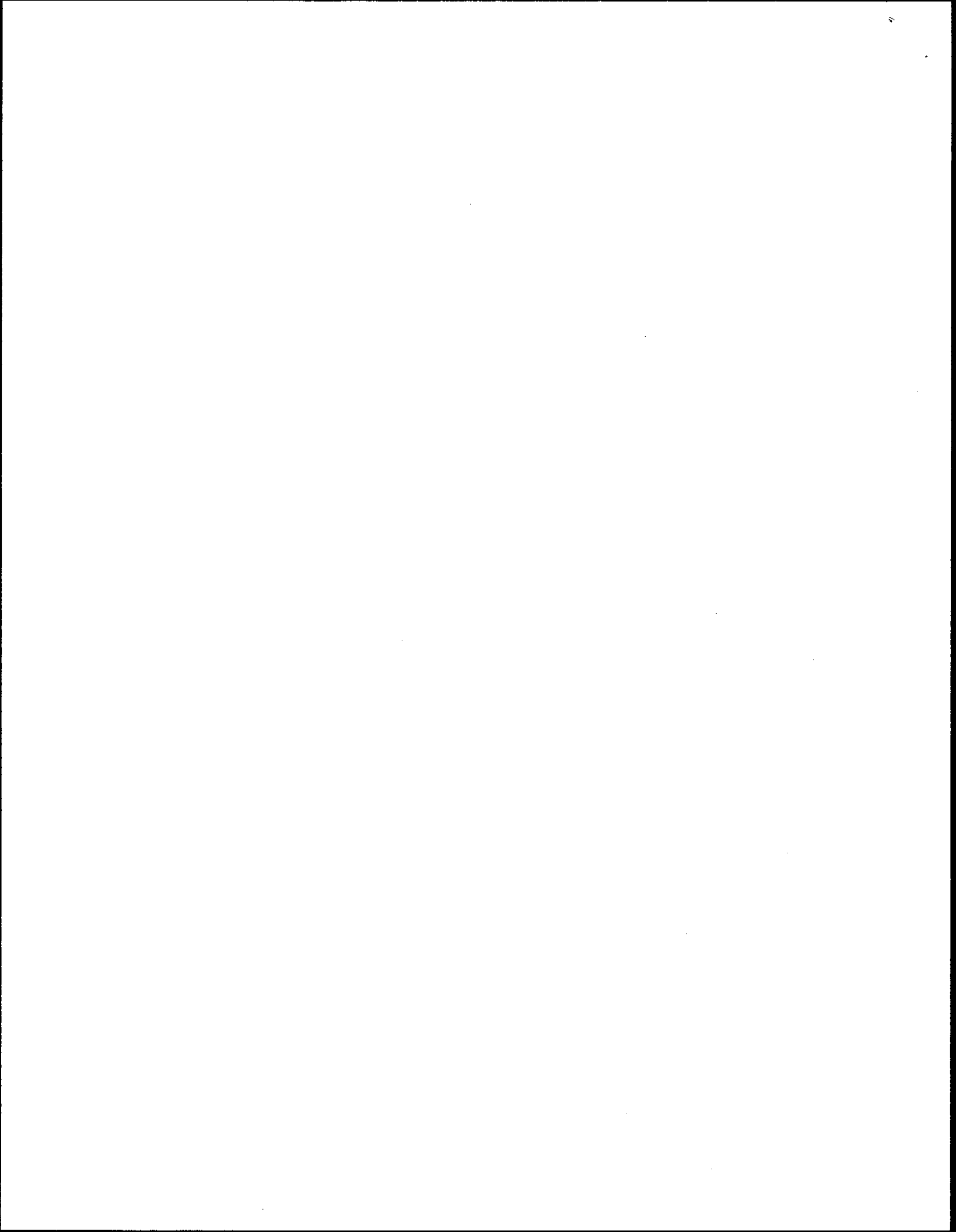
~~20~~19. Copy of letter from utility providing thirty (30) day advance notice of filing pursuant to West Virginia Code §24-2-11.

~~21~~20. If the proposed project requires modification of a public service district boundary, a statement that the county commission process is complete.

~~22~~21. If the proposed project will infringe upon any other utility's service area or affect any other

utility financially or otherwise, a statement to that effect.

- 2322. Evidence of SHPO compliance.
- 2423. Statement showing when bids are anticipated to be let.
- 2524. Other information as needed.
- 2625. Case number and approval date of engineering agreements involving public service district, where such approval is not exempted by West Virginia Code § 16-13A-25. If an engineering agreement involving public service districts is exempt by West Virginia Code § 16-13A-25, a copy of such agreement shall be provided.



Form No. 1  
COMPLAINT  
State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

\_\_\_\_\_, Complainant  
vs.

\_\_\_\_\_, Defendant

The petition of the above-named \_\_\_\_\_,  
complainant, respectfully shows:

1. That the above-named \_\_\_\_\_, defendant, is a public utility engaged in the business of [state the public utility business of the defendant, i.e. gas, electric telephone, etc.] at \_\_\_\_\_, in the State of West Virginia, and as such is subject to the provisions of Chapter 24 (or 24A) of the Code of West Virginia, 1931, as amended, and the provisions thereof applicable to said class of public utilities.

2. That the said defendant has violated the laws of the State of West Virginia, governing said public utility business, in the following particulars, to-wit:

- (a) [Here state concisely the matters complained of.]
- (b) Here state the remedy you seek

Wherefore, the complainant prays that the said defendant \_\_\_\_\_ be required to answer the charges herein above set out, and that, after due investigation, an order may be made commanding the said defendant to cease and desist from the wrongful conduct aforesaid, and for such other and further order as the Public Service Commission of West Virginia may deem necessary, reasonable and just in the premises.

[Prayer may ask for the ascertainment of lawful rates of practices, and an order requiring the defendant to conform thereto.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Signed) \_\_\_\_\_  
Signature of Complainant

(Address) \_\_\_\_\_

(Phone) \_\_\_\_\_

\_\_\_\_\_, Attorney, if applicable.

Attorney's Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary

[If Complainant is signing out-of-state, please use verification Form  
No.12]

ANSWER

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

\_\_\_\_\_, Complainant

vs.

\_\_\_\_\_, Defendant

The above-named defendant, for answer (or, for answer in the nature of a cross petition) to the complaint in this proceeding, says:

1. That [Here state allegations of fact by way of admission, avoidance, or denial of the allegations of fact contained in the complaint, designating each paragraph, (a), (b), (c), etc.]

Wherefore, the said defendant prays that the complaint in this proceeding be dismissed (or, prays for such affirmative relief as the facts alleged may justify).

(Signed) \_\_\_\_\_  
Signature of authorized representative of Defendant

By \_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary

(If Defendant is signing out-of-state, please use verification Form No.12)

APPLICATION FOR AUTHORITY TO DISCONTINUE SERVICE

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

\_\_\_\_\_  
(Name of applicant)

Application for authority to discontinue \_\_\_\_\_ service  
at \_\_\_\_\_

The undersigned, engaged in the public utility business of operating \_\_\_\_\_ at \_\_\_\_\_, with the State of West Virginia, with its principal office at \_\_\_\_\_, hereby makes application to the Public Service Commission for authority to discontinue the following service, to-wit:

[Here state nature of service.]

at \_\_\_\_\_ in \_\_\_\_\_ County, West Virginia, for the following reasons: [Here state facts upon which application is based.]

(Signed) \_\_\_\_\_  
Signature of authorized representative of applicant

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney.

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary

[If Applicant is signing out-of-state, please use verification Form No.12]

APPLICATION FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

Application of \_\_\_\_\_  
for a certificate of convenience and necessity to \_\_\_\_\_,  
at \_\_\_\_\_,  
in the County of \_\_\_\_\_.

Comes now the above-named \_\_\_\_\_,  
the petitioner herein, and respectfully shows the Commission as follows:

1. That the name and address of the petitioner are \_\_\_\_\_.

2. That the applicant proposes to \_\_\_\_\_  
at \_\_\_\_\_, in the County of \_\_\_\_\_,  
(city or town)  
and furnish \_\_\_\_\_ service.

3. Service is (is not) now rendered by an existing utility,  
corporation or person \_\_\_\_\_.

4. Attached hereto is a copy of the effective charter of  
incorporation of the applicant. (If charter has heretofore been filed, state  
style and case number; if applicant is a municipality, give citation to  
legislative or governmental act where charter may be found.)

5. A certificate should be issued for the following reasons:  
\_\_\_\_\_  
\_\_\_\_\_.

**NOTE:** This application must be accompanied by information required by Rule 42.  
Water and Sewer utilities must include information required by the  
Checklist set forth in Rule 26.1 of the Commission's Rules of Practice  
and Procedure.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed) \_\_\_\_\_  
Signature of authorized representative of applicant

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney.

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary

[If Applicant is signing out-of-state, please use verification Form No.12]

APPLICATION FOR AUTHORITY TO  
CONTRACT WITH ANOTHER PUBLIC UTILITY

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

Application of \_\_\_\_\_, a public utility, for  
authority to operate its line or plant in connection with  
\_\_\_\_\_, a public utility (collectively,  
petitioners.)

Comes now the above-named petitioners and respectfully show the  
Commission as follows:

1. That the name and address of the petitioners are  
\_\_\_\_\_  
\_\_\_\_\_

2. [State the class of service rendered by the petitioners.]

3. [State detailed information regarding the proposed contract.]

4. [State the effect it will have upon the service of the  
petitioners.]

5. The consideration to be paid for the service to be rendered  
under the contract is as follows: A copy of the written contract must be  
filed as an exhibit attached to the petition.]

6. [State whether or not any other utility will be affected by the  
proposed contract.]

7. [State reasons why the petition should be granted.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_,

(Signed) \_\_\_\_\_  
Signature of authorized representative of applicant

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney.

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

(Official signature and official seal of notary

[If Applicant is signing out-of-state, please use verification Form No.12]

FORM OF PETITION FOR PURCHASE, LEASE OR OTHERWISE  
ACQUIRING CONTROL OF ONE PUBLIC UTILITY  
BY ANOTHER PUBLIC UTILITY

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

Petition of \_\_\_\_\_ for  
the consent and approval to the (purchase, lease, etc.) of the  
\_\_\_\_\_.

Comes now the above-named \_\_\_\_\_,  
petitioner herein and respectfully shows the Commission as follows:

1. That the name and address of the petitioner are  
\_\_\_\_\_.

2. That the name and address of the utility whose property, etc.,  
is sought to be acquired are  
\_\_\_\_\_.

3. That the financial condition of the petitioner and of the  
utility whose property, etc., is sought to be acquired is  
\_\_\_\_\_.

[Petitioner will adhere to the provisions of Rule 21 and may give the  
information therein required either as a part of its petition or as an  
exhibit attached hereto.]

4. That the petitioner desires to (purchase, lease, etc.) the  
(franchises, licenses, property, etc.) at \_\_\_\_\_,  
as follows: \_\_\_\_\_

5. [State the terms and conditions of the sale, lease, etc., with  
copy of any agreements attached as an exhibit to the petition.]

6. [State the effect of the proposed transaction upon the service  
of the parties thereto.]

7. [State the method of financing the proposed transaction.]

8. [State whether or not any other utility will be affected and,  
if so, in what respect.]

9. [State the reasons why the prayer of the petition should be  
granted.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed) \_\_\_\_\_

Signature of authorized representative of petitioner

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney.

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary

[If Petitioner is signing out-of-state, please use verification Form No.12]

FORM OF PETITION FOR ASSIGNMENT, TRANSFER, LEASE, SALE OR  
OTHER DISPOSITION OF THE FRANCHISES, LICENSES, PERMITS,  
PLANTS OR BUSINESS OF A PUBLIC UTILITY TO ANY OTHER  
PERSON OR CORPORATION

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

Petition of \_\_\_\_\_  
for the consent and approval to the (assignment, transfer, sales, etc.) of  
the \_\_\_\_\_  
to \_\_\_\_\_.

Comes now the above-named \_\_\_\_\_,  
petitioner herein and respectfully shows the Commission as follows:

1. That the address of the petitioner is  
\_\_\_\_\_.
2. That the name and address of the assignee, lessee, purchaser,  
etc, are \_\_\_\_\_.
3. That the financial condition of the petitioner is  
\_\_\_\_\_.

[Petitioner will adhere to the provisions of Rule 21 and may give the  
information therein required either as a part of its petition or as an  
exhibit attached thereto.]

4. That the assignee, lessee, or purchaser is  
\_\_\_\_\_  
[Give brief description of the assignee, purchaser, etc., including  
the financial condition, if available, corporate history, etc.]

5. [State the franchises, licenses, permits, plants, equipment,  
business or other property sought to be assigned, sold, etc.]

6. [State the terms and conditions of the proposed assignment,  
sale, lease, etc., with copy of said agreement attached as an exhibit to  
the petition.]

7. [State the effect of the proposed transaction upon the service  
of the petitioner.]

8. [State the method by which the proposed assignment, lease,  
sale, etc., is to be financed.]

9. [State whether or not any other utility will be affected and, if so, in what respect.]

10. [State the reasons why the prayer of the petition should be granted.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed) \_\_\_\_\_  
Signature of authorized representative of petitioner

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney.

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary

[If Petitioner is signing out-of-state, please use verification Form No.12]

FORM OF PETITION FOR APPROVAL OF CONSOLIDATION OR  
MERGER OF PUBLIC UTILITY COMPANIES

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

Petition of \_\_\_\_\_  
for consent and approval to the merger or consolidation of the  
\_\_\_\_\_ of said companies into a new  
corporation to be known as \_\_\_\_\_.

Comes now the above-named \_\_\_\_\_,  
petitioners herein, and respectfully shows the Commission as follows:

1. That the name and address of the petitioner are \_\_\_\_\_.

2. That the financial condition of each of the petitioners is \_\_\_\_\_.

[Petitioners will adhere to the provisions of Rule 21 and may give the information therein required either as a part of their petition or as an exhibit attached thereto.]

3. [State franchises, licenses, permits, plants, equipment, business or other property that is the subject of the merger or consolidation.]

4. [State the terms and conditions of the proposed merger or consolidation, with copy of said merger agreement attached as an exhibit to the petition.]

5. [State the effect of the proposed merger or consolidation upon the service of the parties thereto.]

6. [State the method by which the proposed merger or consolidation will be financed and add as a part of the petition, or as an exhibit attached thereto, a statement in respect to each kind of securities or evidence of indebtedness to be issued as follows:

- (a) Total number of shares authorized
- (b) Total number of shares to be issued
- (c) Par value per share
- (d) Total par value to be issued, or, without par value, the amount of the stated capital

- (e) Voting power
- (f) If preferred stock, state dividend rate, whether cumulative or participating, and terms of preference over other issues
- (g) If stock, or any part thereof, is to be held by the consolidated company or by an affiliate, trustee or other agency, state the name of such company, trustee or agency
- (h) Give the same information with respect to any bonds and other indebtedness or obligations of the new company
- (i) If the securities of the new company are to be exchanged for those of the merging companies, state in detail the method employed in evaluating each kind of security for exchange purposes.]

7. [State whether or not any other utility will be affected and, if so, in what respect.]

8. [Give a general statement of the physical property of each of the merging companies and the value thereof.]

9. [State the reasons why the prayer of the petition should be granted and the name of the consolidated or merged company.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed) \_\_\_\_\_  
Signature of authorized representative of petitioner

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney.

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary

[If Petitioner is signing out-of-state, please use verification Form No.12]

FORM OF PETITION FOR CONSENT TO AND APPROVAL OF THE  
PURCHASE BY ONE UTILITY OF THE STOCK AND  
BONDS OF ANOTHER UTILITY

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

Petition of \_\_\_\_\_  
for consent and approval to the purchase of the stock, etc., of \_\_\_\_\_

Comes now the above-named \_\_\_\_\_,  
petitioner herein, and respectfully shows the Commission as follows:

1. That the name and address of the petitioner are \_\_\_\_\_
2. That the name and address of the public utility whose stock, etc., are to be purchased are \_\_\_\_\_
3. [State the kind, character, and description, in detail, and the amount, by classes, of the stocks, bonds, notes, etc., to be purchased.]
4. [State the price proposed to be paid for said stock, etc., and the terms and conditions of sale. If sale is by written agreement, a copy of the agreement must be attached to the petition as an exhibit.]
5. That the financial condition of the petitioner is \_\_\_\_\_  
[Petitioner will adhere to the provisions of Rule 21 and may give the information therein required either as a part of its petition or as an exhibit attached thereto.]
6. [State the effect of the proposed purchase upon the service and rates of the petitioner and the utility whose stock, etc., are sought to be acquired.]
7. [State the reasons why the Commission's consent and approval should be given to the proposed purchase.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed) \_\_\_\_\_  
Signature of authorized representative of petitioner

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney.

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary

[If Petitioner is signing out-of-state, please use verification Form No.12]

FORM OF PETITION FOR CONSENT TO AND APPROVAL OF THE  
ENTERING INTO OF SERVICE CONTRACT BETWEEN A PUBLIC  
UTILITY AND AN AFFILIATED CORPORATION, PERSON OR INTEREST

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

Petition of \_\_\_\_\_  
for consent and approval of a contract for management (or other) services,  
with \_\_\_\_\_ an affiliated \_\_\_\_\_

Comes now the above-named \_\_\_\_\_,  
petitioner herein, and respectfully shows the Commission as follows:

1. That the name and address of the petitioner are \_\_\_\_\_  
\_\_\_\_\_.
2. That the name and address of the affiliate with whom the  
petitioner desires to enter into a \_\_\_\_\_ contract are  
\_\_\_\_\_; that it is incorporated under the laws of the State of  
\_\_\_\_\_.

[If a foreign corporation, attach to the petition as an exhibit a  
certified copy of the articles of incorporation.]

3. That the \_\_\_\_\_, an affiliate of the  
petitioner, agrees to render the following services, property or thing:  
[State the nature and character of the services, property or thing to be  
rendered, in detail, and attach to the petition as exhibit a copy of the  
proposed contract.]

4. That in consideration of the services aforesaid, the petitioner  
agrees to pay \_\_\_\_\_ the following: [State amount to  
be paid and terms thereof, in detail.]

5. That the financial condition of the petitioner and the  
affiliate,  
\_\_\_\_\_, is \_\_\_\_\_.

[Petitioner will adhere to the provisions of Rule 21 and may give the  
information therein required either as a part of the petition or as an  
exhibit attached thereto.]

6. [State the effect of the proposed arrangement upon the service  
of the petitioner, and, if the affiliate is a utility subject to the  
jurisdiction of the Public Service Commission of West Virginia, the effect  
of the proposed arrangement upon its service.]

7. [State the reasons why the prayer of the petition should be granted.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed) \_\_\_\_\_  
Signature of authorized representative of petitioner

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary

[If Petitioner is signing out-of-state, please use verification Form No.12]

APPLICATION FOR CONSENT IN ADVANCE OR EXEMPTION FROM  
THE REQUIREMENTS OF SECTION 12, ARTICLE 2, OF  
CHAPTER 24 OF THE CODE, AS AMENDED

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_

Application of \_\_\_\_\_  
for consent in advance or exemption from the requirements of \_\_\_\_\_

C o m e s            n o w            t h e            a b o v e - n a m e d  
\_\_\_\_\_, petitioner herein, and  
respectfully shows the Commission as follows:

1.     That the name and address of the petitioner are  
\_\_\_\_\_

2.     That consent in advance or exemption from the requirements of  
subsection \_\_\_\_\_ of section 12 of article 2 of chapter 24 of the Code,  
which reads as follows:  
i s     p r a y e d            f o r            t h e            f o l l o w i n g  
reasons: \_\_\_\_\_

3.     [State the effect thereof upon the service of the petitioner  
and any other utility operated in this state, if any.]

4.     [State whether or not either party thereto is given an undue  
advantage over the other and the reasons therefor.]

5.     [If consent in advance is prayed for to do any of the things  
provided for in subsections (d), (e), (f), (g), (h), and (i) of Rule 11,  
the petitioner shall here insert such pertinent and applicable provisions  
set forth in the appropriate rule and form.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed) \_\_\_\_\_  
Signature of authorized representative of applicant

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary

[If Applicant is signing out-of-state, please use verification Form No.12]

VERIFICATION

State of West Virginia  
Public Service Commission  
Charleston

[To be added to all complaints, answers, applications and petitions.]

State of \_\_\_\_\_.

County of \_\_\_\_\_, ss.

\_\_\_\_\_, the \_\_\_\_\_

of \_\_\_\_\_, the \_\_\_\_\_ named in  
the foregoing

\_\_\_\_\_ being duly sworn, says that the facts and  
allegations therein contained are true, except so far as they are therein  
stated to be on information, and that, so far as they are therein stated to  
be on information, he believes them to be true.

\_\_\_\_\_  
Affiant.

Taken, sworn to and subscribed before me this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for said County.

My commission expires on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

INFORMATION OF PRE-FILING

State of West Virginia  
Public Service Commission  
Charleston

\_\_\_\_\_, gives notice to the Public Service Commission of its intent to file, no less than thirty days from the date of this document, an Application for a Certificate of Convenience and Necessity for the construction, operation and maintenance of a \_\_\_\_\_ [brief description of project] in \_\_\_\_\_ County, and as further described in the engineering study submitted herewith.

The estimated total project cost is approximately \$\_\_\_\_\_. The District intends to fund the project through [set forth proposed sources and amounts of funding].

\_\_\_\_\_, a public utility in \_\_\_\_\_ County.

\_\_\_\_\_  
Name of Officer

Date: \_\_\_\_\_

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered by the Public Service Commission of West Virginia, in the City of Charleston on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CASE NO. \_\_\_\_\_

NAME OF APPLICANT:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Application for a Certificate of Convenience and Necessity to construct \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTICE OF FILING

WHEREAS, on \_\_\_\_\_, \_\_\_\_\_, the \_\_\_\_\_ filed an application, duly verified, for a Certificate to construct certain additions and improvements to the \_\_\_\_\_ system in \_\_\_\_\_ County. The application is on file with and available for public inspection at the Public Service Commission, 201 Brooks Street, in Charleston, West Virginia.

WHEREAS, the \_\_\_\_\_ (Applicant) estimates that construction will cost approximately \$\_\_\_\_\_. It is proposed that the construction will be financed as follows (state sources of funding here):  
\_\_\_\_\_ in the amount of \$\_\_\_\_\_;  
\_\_\_\_\_ in the amount of \$\_\_\_\_\_;  
\_\_\_\_\_ in the amount of \$\_\_\_\_\_.  
\_\_\_\_\_ in the amount of \$\_\_\_\_\_.

WHEREAS, the utility anticipates charging the following \_\_\_\_\_ rates for its customers:

[insert appropriate chart]

MINIMUM MONTHLY BILL for \_\_\_\_\_ [insert unit of measurement]  
\$ \_\_\_\_\_ per month

DELAYED PAYMENT PENALTY

The above tariff is net. On all accounts not paid in full within twenty (20) days of the latest pay date, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

CONNECTION CHARGE (if applicable)

Prior to construction - \$\_\_\_\_\_.  
After construction passes the premises to be served, charge for connection to system - \$\_\_\_\_\_.

These rates represent the following project-related increases:

	(\$) INCREASE	(%) INCREASE
Residential	_____	_____
Commercial	_____	_____
Industrial	_____	_____
Resale	_____	_____
Other	_____	_____

These rates represent the following non project-related increases:

	(\$) INCREASE	(%) INCREASE
Residential	_____	_____
Commercial	_____	_____
Industrial	_____	_____
Resale	_____	_____
Other	_____	_____

(If no rate increase involved, concisely describe nature of filing)

Resale customers of \_\_\_\_\_ include \_\_\_\_\_ (list all resale customers by name).

The proposed increased rates and charges will produce approximately \$ \_\_\_\_\_ annually in additional revenue, an increase of \_\_\_\_\_ %.

The increases shown are based on averages of all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing.

Pursuant to §24-2-11, West Virginia Code, IT IS ORDERED that the \_\_\_\_\_ give notice of the filing of said application, by publishing a copy of this order once in a newspaper duly qualified by the Secretary of State, published and of general circulation in \_\_\_\_\_ County, making due return to this Commission of proper certification of publication immediately after publication. Anyone desiring to protest or intervene should file a written protest or notice of intervention within 30 days following the date of this publication unless otherwise modified by Commission order. Failure to timely protest or intervene can affect your right to protest aspects of this certificate case, including any associated rate increases, or to participate in future proceedings. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure. All protests and interventions should be addressed to Sandra Squire, Executive Secretary, P. O. Box 812, Charleston, West Virginia 25323.

IT IS FURTHER ORDERED that if no protests are received within said thirty (30) day period, the Commission may waive formal hearing and grant the application based on the evidence submitted with said application and its review thereof.

FOR THE COMMISSION

\_\_\_\_\_  
Executive Secretary

COMMERCIAL SOLID WASTE FACILITY  
APPLICATION FOR CERTIFICATE OF NEED

State of West Virginia  
Public Service Commission  
Charleston

Case No. \_\_\_\_\_ (leave blank)

Fax No. \_\_\_\_\_

1. Applicant Name \_\_\_\_\_ Phone No. \_\_\_\_\_

2. Name in which certificate of need will read (if different from No. 1).  
\_\_\_\_\_

3. Is proposed certificate holder a sole proprietorship \_\_\_\_\_,  
partnership \_\_\_\_\_, corporation \_\_\_\_\_, or limited liability company  
\_\_\_\_\_? (If holder is a corporation, attach list of stockholders owning  
five percent (5%) or more of the stock with addresses.)

4. Does proposed certificate holder hold any other authority from the  
Public Service Commission pertaining to operation of commercial solid  
waste facilities or solid waste collection companies? \_\_\_\_\_. If so,  
please describe.  
\_\_\_\_\_  
\_\_\_\_\_

5. Is application for new construction \_\_\_\_\_, operation  
\_\_\_\_\_, expansion \_\_\_\_\_, or major modification  
\_\_\_\_\_?

6. Location and address of proposed or existing facility, including phone  
and Fax numbers, if applicable:

Fax No. \_\_\_\_\_

Phone No. \_\_\_\_\_

Street or P.O. Box \_\_\_\_\_

City \_\_\_\_\_

County \_\_\_\_\_

Zip \_\_\_\_\_

7. Describe the proposed and/or existing geographic area served by the  
facility.  
\_\_\_\_\_  
\_\_\_\_\_

8. What is the approximate number of proposed and/or existing customers served?  
\_\_\_\_\_
9. What is the average monthly tonnage of solid waste which is presently being disposed of at the facility, if applicable? \_\_\_\_\_
10. What is the average monthly tonnage of solid waste which the applicant proposes to dispose of at the facility?  
\_\_\_\_\_
11. What is the total monthly tonnage of solid waste for which the facility is currently authorized by the Division of Environmental Protection and the Public Service Commission, if applicable? \_\_\_\_\_
12. What is the total monthly tonnage of solid waste for which the applicant seeks Public Service Commission authorization? \_\_\_\_\_
13. What is the status of the applicant's permit application at the Division of Environmental Protection, if applicable? (Attach copies of any permits or operating authority which has been issued by DEP to the applicant).  
\_\_\_\_\_  
\_\_\_\_\_
14. What is the projected lifespan of the facility? \_\_\_\_\_
15. What are the current capacities and lifespans of any other solid waste facilities within the State of West Virginia with which the current or proposed facility competes or will compete for solid waste disposal business? \_\_\_\_\_
16. Provide the name, address, phone number and Fax number of the person to whom requests for further information should be directed.  
\_\_\_\_\_  
\_\_\_\_\_
17. Provide any preliminary engineering studies addressing at a minimum the following areas: (a) cell life calculations; (b) pre-development and development cost estimates; (c) preliminary site plan.

**ATTENTION: THIS APPLICATION MUST BE ACCOMPANIED BY FINANCIAL DATA WHICH CONFORM WITH RULE 42 OF THE COMMISSION'S RULES FOR THE CONSTRUCTION AND FILING OF TARIFFS.**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Signed) \_\_\_\_\_

Signature of authorized representative of applicant

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary)

[If Applicant is signing out-of-state, please use verification Form No.12]

COMMERCIAL SOLID WASTE FACILITY APPLICATION  
FOR CERTIFICATE OF NEED  
AND FOR EXPEDITED PROCESSING

State of West Virginia  
Public Service Commission  
Charleston

CASE NO. \_\_\_\_\_ (leave blank)

FAX No. \_\_\_\_\_

1. Applicant Name \_\_\_\_\_ Phone No. \_\_\_\_\_

Contact Person \_\_\_\_\_

Street or P.O. Box \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ Zip \_\_\_\_\_

2. Is this application for a new certificate \_\_\_\_\_, operation \_\_\_\_\_, or major modification \_\_\_\_\_? (Attach full description).

3. Name and address of proposed certificate holder, if different.

4. Describe the proposed and/or existing geographic area served by the facility, if different from area currently served. (Attach additional pages as necessary).

5. Will the new activity have any impact upon rates, upon the applicant, other commercial solid waste facilities, the applicant's competitors, or the public? (Attach additional pages as necessary).

6. What is the number of proposed and/or existing customers served, if different from current customer base? \_\_\_\_\_

7. What is the average monthly tonnage presently disposed of, or proposed to be disposed of, at the facility? \_\_\_\_\_

8. What is the total monthly tonnage of solid waste for which the facility is permitted, and/or is seeking a permit from the Division of Environmental Protection? \_\_\_\_\_

9. What is the status of the permitting process, if any, at the Division of Environmental Protection? \_\_\_\_\_

(Attach copies of any permits or operating authority issued by DEP).

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

(Signed) \_\_\_\_\_  
Signature of authorized representative of applicant

\_\_\_\_\_  
Title of signer (President or other officer)

\_\_\_\_\_, Attorney

Address: \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Official signature and official seal of notary)

[If Applicant is signing out-of-state, please use verification Form No.12]

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered by the Public Service commission of West Virginia in the City  
of Charleston on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CASE NO. \_\_\_\_\_

NAME OF APPLICANT:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Application for a Certificate of Need.

NOTICE OF FILING

WHEREAS, on \_\_\_\_\_, \_\_\_\_\_, the \_\_\_\_\_  
filed an application, duly verified, for a Certificate to construct  
\_\_\_\_\_ at \_\_\_\_\_ County. The application is  
on file with and available for public inspection at the Public Service  
Commission, 201 Brooks Street, in Charleston, West Virginia.

Rates are proposed as follows:

Residential MSW: \_\_\_\_\_ per ton

Commercial Waste: \_\_\_\_\_ per ton

Minimum Charge: \_\_\_\_\_

Other: \_\_\_\_\_ (attach additional explanation if  
necessary)

Pursuant to §24-2-11, West Virginia Code, IT IS ORDERED that the  
\_\_\_\_\_ give notice of the  
filing of said application, by publishing a copy of this order once in a  
newspaper duly qualified by the Secretary of State, published and of general  
circulation in each county in the wasteshed where the commercial solid waste  
facility is or will be located, as indicated in its certificate application  
and/or in its State Division of Environmental Protection permit, [and in a

newspaper certified by the Secretary of State to have statewide circulation,<sup>1</sup> making due return to this Commission of proper certificate of publication immediately after publication. Anyone desiring to protest or intervene should file a written protest or notice of intervention within 30 days following the date of this publication unless otherwise modified by Commission order. Failure to timely protest or intervene can affect your right to protest aspects of this certificate case, including any associated rate increases, or to participate in future proceedings. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure. All protests and interventions should be addressed to Sandra Squire, Executive Secretary, P. O. Box 812, Charleston, West Virginia 25323.

IT IS FURTHER ORDERED that if no protests are received within said thirty (30) day period, the Commission may waive formal hearing and grant the application based on the evidence submitted with said application and its review thereof.

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<sup>1</sup> Bracketed text only applicable to applications for a certificate of need pursuant to Rule 10.3.g.1. and is not applicable for applications for amendments of a certificate of need pursuant to Rule 10.3.g.2.

TITLE 150  
PROCEDURAL RULES  
PUBLIC SERVICE COMMISSION

FILED

2004 JUL 13 P 2:22

SERIES 1  
RULES OF PRACTICE AND PROCEDURE

WEST VIRGINIA  
SECRETARY OF STATE

§150-1-1. General.

1.1. Scope.

The following rules govern the organizational operations of the Public Service Commission, and set forth the various requirements for the administrative process and procedures followed by the Commission and all parties wishing to make use of the Commission as an administrative forum.

1.2. Authority -- West Virginia Code §24-1-1(f), §24-1-7, §24-2-1, and §24-2-2.

1.3. Filing Date. - July 13, 2004

1.4. Effective Date. - September 13, 2004

1.5. Amendment of Rules -- These Rules amend prior Rules effective August 28, 2001. Upon the effective date of these rules, the following (which were filed on June 26, 2001, and effective August 28, 2001) are modified: Rule 10.3.b., Rule 26.1.26, and Form No. 13; and prior Rule 26.1.18 is repealed as null and void.

1.6. Application of rules.

If hardship results from the application of any rule contained within these Rules of Practice and Procedure, or if unusual difficulty is involved in immediately complying with any rule, or upon other good cause shown, application may be made to the Commission for the modification of the rule or for temporary or permanent exemption or waiver from its provisions. Provided, That no application for modification or exemption will be considered

by the Commission unless there is submitted therewith a full and complete justification for such action.

1.7. Rule 1, General offices and hearings.

1.7.a. The general offices of the Commission shall be kept open, in charge of the Executive Secretary, or some other competent person, each working day from 9 a.m. until 5 p.m., for the purpose of filing complaints, applications and petitions, issuing and returning notices, and making and directing interlocutory motions, orders, rules and other proceedings preparatory to the hearing of cases on the Commission's formal docket.

1.7.b. Public sessions of the Commission for hearing motions, evidence or oral argument, or for public conference, shall be held at the Commission's offices at 201 Brooks Street, Charleston, WV, or such other places as may be designated by it, at such time as may be set upon notice by the Commission, subject to change upon such notice as may be practical.

**§150-1-2. Rule 2, Executive Secretary to furnish information.**

2.1. The Executive Secretary of the Commission will, upon request, advise any party as to the form of petition, complaints, answer or other paper desired to be filed in any case; and will make available from the files of the Commission any information required for a full presentation of the facts material to any controversy, investigation or other proceeding.

**§150-1-3. Rule 3, Records.**

The Executive Secretary shall keep the following record book, suitably indexed:

3.1. Formal Docket, in which shall be entered each formal case of complaint, investigation, application or petition, with a file number corresponding to the number of the case, together with brief chronological notations of the proceedings had in the case.

3.2. Order Book, in which shall be recorded, on the day of their filing, all orders made or passed by the Executive Secretary as of course or by the Commission in any formal case. Separate Order Books shall be kept and maintained for utility and motor carrier orders, and for General Orders.

**§150-1-4. Rule 4, Filing papers.**

4.1. Communications addressed to the Commission and all petitions, applications, answers and other pleadings, all reports, exhibits, depositions, transcripts, orders and other papers or documents, shall be filed in the general offices kept by the Executive Secretary, and shall be stamped showing the date of the receipt thereof.

4.2. All papers, of whatever character, offered for filing in any case shall show the title and style of the case and the docket number. The Executive Secretary will not be required to file any paper not so identified.

4.3. All papers, other than complaints and engineering plans and specifications, offered for filing in any case shall include an original and twelve (12) copies. The foregoing requirement applies to discovery requests. A party shall file two copies of its engineering plans and specifications, except public service districts making pre-filing, in which case only one copy of the plans and specifications is required. A party shall file only the original complaint. A party shall file only the original of a response to a discovery request. A pro se complainant shall only file originals of any paper filed in a case. A party may make filings by facsimile provided that two (2) copies of each filing are faxed and addressed to the Executive Secretary and the fax includes a certificate that the filer mailed the original to the Executive Secretary on the same day that the facsimile was sent. The original mailed to the Executive Secretary must be accompanied by the requisite number of copies. The party so filing must comply with all other notice and service requirements. A party may obtain a date-stamped copy of its filing by a request which includes an additional copy of the filing along with a stamped, self-addressed envelope.

4.3.a. RESERVED FOR ELECTRONIC FILING RULES.

4.4. A party or an entity seeking party status, that is not a corporation or limited liability company, may make any filings with the Commission by either a duly authorized person or by an attorney at law. A party or entity seeking party status that is a corporation or limited liability company, may file preliminary filings by either a duly authorized person or an attorney at law. A party or entity seeking party status that is a corporation or limited liability company making filings that are not preliminary filings must do so by an attorney at law. Professionals, other than attorneys as provided herein, retained by a party or an entity seeking party status may not file pleadings with the Commission but may file responses to data requests, unless the party is represented by an attorney, in which case all filings shall be made by the attorney.

4.4.a. For purposes of this rule, the following definitions apply: (1) the term "a party or an entity seeking party status" is defined as an individual, partnership, association, cooperative, limited liability company, or corporation; (2) the term "attorney at law" includes attorneys admitted to practice before the Courts of this State, before the Courts of last resort of other states, or before the Supreme Court of the United States; provided that attorneys filing pleadings before the Commission who are not licensed to practice in West Virginia shall have sought and obtained permission to practice before the Commission in compliance with Rule 8.0 of the Rules for Admission to the Practice of Law of the State of West Virginia; (3) the term "preliminary filings" includes pre-filings, petitions, applications, complaints, and answers; (3) the term "duly authorized person" is defined as the individual when an individual is a party or seeks party status, a partner in a partnership, the president of an association, or cooperative, or the chairman of the board, chief executive officer, or general manager of a corporation, or other entity.

**§150-1-5. Rule 5, Parties and Protestants.**

Parties to proceedings before the Commission are known as applicants, petitioners, complainants, defendants, respondents, and intervenors.

5.1. "Complainants" means any party in a formal complaint who complains of anything done or omitted to be done in violation of any law, rule, regulation or order administered or promulgated by the Commission.

5.2. "Defendant" means any party subject to the laws, rules, regulations and orders administered by the Commission against whom any complaint is filed.

5.3. "Intervenor" means any person permitted by the Commission to intervene as a party in any proceeding. Commission Staff need not petition to intervene and will be considered a party in any case in which it chooses to participate.

5.4. "Respondent" means any party subject to the jurisdiction of the Commission to whom the Commission issues notice instituting a proceeding or investigation or inquiry of the Commission; and any party in interest or person ordered before any pending proceeding of the Commission.

5.5. "Applicant" means any party who files an application with the Commission for approval, determination, consent, certification or authorization of the Commission.

5.6. "Petitioner" means any party on whose behalf a petition is made for approval, determination, consent, certification or authorization of the Commission.

5.7. "Protestant" means any person who objects on the grounds of public or private interest to the approval, determination, consent, certification or authorization of any application, proposed tariff change, or petition which the Commission may have under consideration, and who is not a party to the proceeding (a protestant in a motor carrier case who wishes to participate as a party to a case must seek intervenor status).

**§150-1-6. Rule 6, Complaints.**

6.1. Informal complaints.

6.1.a. Informal Complaints may be made by letter, other writing, telephone or any other form of direct contact with Commission staff. Informal complaints are then taken up by correspondence or other form of communication between Commission staff and the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

6.1.b. An informal complaint need not be in a specific format but must contain the essential elements of a formal complaint, including name and address of complainant, the correct name of the utility against which complaint is made, a clear and concise statement of the facts involved, and a request for relief. If Commission Staff takes an informal complaint over the telephone, Staff shall make a record of the foregoing essential elements.

6.1.c. The utility shall provide a response to Commission staff by letter, other writing, telephone call or any other form of direct contact with staff within ten (10) days of the Commission staff's contact with the utility.

6.1.d. This informal procedure is recommended in the majority of cases. In the event the informal complaint fails to bring about satisfaction of the complaint the complainant may file and prosecute a formal complaint, and the informal proceeding will be discontinued. The informal complaint procedure does not preclude the filing of a formal complaint.

6.2. Formal complaints.

6.2.a. Any person or entity may complain to the Commission by petition substantially in the form of Form No. 1 attached to these Rules of anything done or omitted to be done by the public utility in violation of any of the provisions of the Public Service Commission law of West Virginia. Two or more complainants may join in one complaint if their respective causes of action are against the same defendant or defendants and involve substantially the same violation of law and like set of facts. When any defendant

is operated by a receiver or trustee, both the utility and its receiver or trustee must be made defendants.

6.2.b. The names of all parties must be stated in full without abbreviation, and the address of each complainant with the name and address of his/her attorney, if any, must be given.

6.2.c. Formal complaints should be so drawn as to fully and completely advise the defendant or defendants and the Commission wherein the provisions of the law have been, are, or will be violated. Each distinct charge should be stated concisely in a separate paragraph. The complaint should also state specifically the relief sought.

6.2.d. All formal complaints must be signed and sworn to as set forth on Form No. 1.

6.2.e. When a formal complaint has been filed and ordered to be investigated, the Commission will cause a copy of such complaint to be served upon each defendant, together with a copy of an order requiring the defendant or defendants to satisfy the said complaint or make answer thereto within ten (10) days. Such service shall be by certified mail unless otherwise ordered.

6.2.f. When issues are joined, the time and place for an evidentiary hearing may be set which will be held at the Commission's offices in the City of Charleston or elsewhere in the state at the discretion of the Commission. The Commission may issue its order based on the information contained in the file, if there are no substantial issues of fact.

6.2.g. The complainant must in all cases establish the facts alleged to constitute a violation of the law, unless the defendant admits the same or fails to answer the complaint.

6.2.h. In case of failure to answer, the Commission may hear such proof of facts as it may deem proper and reasonable, and may make such investigation and enter such order as the facts justify and the circumstances may require.

6.3. General Investigations.

6.3.a. The Commission may initiate a general investigation of a public utility, or of any general issue affecting public utilities or other entities, on motion of the Commission, Commission staff, or any other person. Any motion, other than the Commission's own motion, to initiate a general investigation should be served on the utility in the same manner as a formal complaint is served.

6.4. Interim relief.

6.4.a. Request for interim relief may be included in a complaint. The title must clearly indicate that interim relief is requested. The pleading must allege such extraordinary facts of immediate and irreparable injury or public interest as would justify the Commission granting interim relief prior to a final decision.

**§150-1-7. Rule 7, Answer and service.**

7.1. Answer to Formal Complaint.

Within ten (10) days from the date of service of the complaint and order as provided in Rule 6, the defendant or defendants complained against shall file answer or answers, duly verified, substantially in the form of Form No. 2. The period so fixed may be shortened or extended by the Commission when it deems advisable.

7.2. Answer to General Investigation.

The Commission may require an answer to a motion for initiation of a general investigation made by the Commission, Commission Staff, any other person.

7.3. Service.

The original answer and twelve (12) copies thereof must be filed with the Executive Secretary of the Commission; and, at the same time, a copy of said answer shall be served by the defendant personally, or by first class mail, upon each complainant or his attorney. The said

defendant shall certify to the Executive Secretary that said service has been made.

7.4. Content.

All answers shall be drawn as to fully and completely advise the parties and the Commission of the nature of the defense, and should admit or deny specifically and in detail each material allegation of the pleading answered.

7.5. Satisfaction.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant and defendant must be filed, setting forth when and how the complaint has been satisfied. The Commission will then consider whether the proceeding should be dismissed.

7.6. Computation of Time.

In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When calculating a period of time from the date of service of a notice or other paper, the date of service shall be the date the sender certified in writing that he or she mailed an item by first class mail, or the date of personal service.

**§150-1-8. Rule 8, Amendments.**

8.1. Any application, complaint, document or other pleading may be amended prior to notice of the hearing. After notice of a hearing a written motion for leave to amend any pleading or document may be filed with the Commission and may be granted in the discretion of the Commission. Any amendment shall contain the notification of service upon all known interested parties. Amendments to

any application, complaint, document or other pleading shall not unduly broaden the scope of the issues originally filed with the Commission, unless the Commission shall in its discretion allow such amendments.

8.2. Technical forms and allegations in pleadings are not required to be observed in complaints, answers or other papers filed.

8.3. Further statements.

The Commission may order a further pleading.

**§150-1-9. Rule 9. Motions, Objections, Responses, Replies.**

9.1. Motion and Objection.

The original motion or objection and twelve (12) copies thereof must be filed with the Executive Secretary of the Commission; and, at the same time, a copy of said motion or objection shall be served upon the attorney for each party. The party filing the motion or objection shall certify to the Executive Secretary that said service has been made.

9.2. Response.

Unless otherwise ordered by the Commission, any party wishing to respond to a motion or objection must file the original response and twelve (12) copies thereof with the Executive Secretary of the Commission within ten (10) days of the date the motion or objection is served, or as otherwise ordered by the Commission; and, at the same time, a copy of said response shall be served upon the attorney for each party. The party filing the response shall certify to the Executive Secretary that said service has been made. The Commission need not await the filing of responses to motions and may issue an order ruling on a motion at any time after it is filed.

9.3. Reply.

Unless otherwise ordered by the Commission, any party wishing to reply to a response to a motion or objection must file the original reply and twelve (12) copies thereof with

the Executive Secretary of the Commission within ten (10) days of the date the response to the motion or objection is served; and, at the same time, a copy of said reply shall be served upon the attorney for each party. The party filing the reply shall certify to the Executive Secretary that said service has been made.

**§150-1-10. Rule 10, Applications for authority or permission.**

10.1. Change or discontinue service.

Any public utility or motor carrier subject to the Commission's jurisdiction, desiring to discontinue any regular service shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 3 attached hereto.

10.2. Change of rates.

A public utility or motor carrier desiring to change its rates, rules and/or regulations shall comply with the Commission's Rules for the Construction and Filing of Tariffs, 150 CSR 2.

10.3. Certificate of convenience and necessity.

10.3.a. Any public utility, person or corporation, or other entity required by statute to obtain from the Commission a certificate of convenience and necessity or a certificate of need, shall comply with the following as applicable. (For motor carrier certificates of convenience and necessity, see 150 CSR 9.)

10.3.b. Any public service district intending to file an application for a certificate of convenience and necessity shall, at least thirty (30) days prior to the date it intends to file its application, pre-file with the Commission's Executive Secretary, an original and twelve (12) copies of, a letter from the public service district attaching a completed Information of Pre-Filing in the form of Form No. 13, attached hereto, and a report describing the scope of the proposed project. (This report may be an

engineering report if such report is available at the time of pre-filing.) (Only one copy of the engineering report is necessary.)

10.3.c. Any public utility, person or corporation, or other entity, other than a public service district, intending to file an application for a certificate of convenience and necessity pursuant to W.Va. Code §24-2-11 shall, at least thirty (30) days prior to the date it intends to file its application, give the Commission notice of its intent to file an application by filing with the Commission's Executive Secretary, an original and two (2) copies of, a letter of notification. The Commission may modify or waive this requirement.

10.3.d. To file an application for a certificate of convenience and necessity pursuant to W.Va. Code §24-2-11, a public utility, person or corporation, or other entity, shall, thirty (30) days following a pre-filing by a public service district as described in Rule 10.3.b., or the filing of a notice of intent to file a certificate application as described in Rule 10.3.c., file with the Commission's Executive Secretary, an original and twelve (12) copies of, its application for a certificate of convenience and necessity. To be acceptable, an application shall include; (i) a completed Form No. 4, attached to these Rules, (ii) a completed Form No. 14 with the exception that the utility shall leave blank the date of the order and the case number, and (iii) for water and sewer utilities - all information included on the checklist appearing at Rule 26.1 of these Rules. When the Executive Secretary's office has assigned a case number, a completed Form No. 14 will be issued to the utility as an order requiring publication of the Notice of Filing as a Class I legal advertisement in a qualified newspaper(s), published and of general circulation in each county where the utility provides service, and requiring that the utility separately mail Form No. 14 to each of its resale customers, via certified mail, return receipt requested. The utility shall file affidavits of publication provided by the newspaper(s) with the Commission as soon as possible after the Notice of Filing is published. Furthermore, whenever a utility seeks a rate increase in a certificate application, the utility shall, within thirty (30) days of the date the Commission issues the completed

Form No. 14, have completed the mailing of separate notices to each of its customers by one or a combination of the following methods: (i) inclusion of Form No. 14 as a bill insert; (ii) separately mailing Form No. 14; or (iii) only for utilities that bill by postcard instead of in an envelope, and who elect not to separately mail Form 14, inclusion of a statement on a postcard billing as follows: "This utility is seeking a rate increase. Details available in newspaper publications or at the utility office after [utility to insert date application filed with Commission] by calling [utility to insert utility office telephone number]."

**NOTE:** (See section 26.1 Appendix checklist for water and sewer utilities filing applications for certificates of convenience and necessity.)

10.3.e. Any public utility, person or corporation, desiring to construct a high voltage transmission line of two hundred thousand (200,000) volts or higher, shall file its notice of intent to file an application, and its application for a certificate of convenience and necessity in accordance with Rules 10.3.a, 10.3.c. and 10.3.d. In addition to the information required by Rule 10.3.d., the application shall include all of the information required by Rule 9 of the Commission's Rules for the Government of Electric Utilities, 150 CSR 3, and by W.Va. Code §24-2-11a.

10.3.f. Any person, association, firm or corporation desiring to operate as a common or contract carrier by motor vehicle in the transportation of persons or property for hire over the public highways of this State shall file an application for a certificate of convenience and necessity or a permit to operate as a common or contract motor carrier, together with twelve (12) copies thereof, in the form identified in section 10.1 et seq. of the Commission's Rules for the Government of Motor Carriers of Passengers and Property, 150 CSR 9.

10.3.g. An owner and/or operator of a commercial solid waste facility must obtain a certificate of need before commencing any additional or new commercial solid waste facility activities not explicitly authorized by an

existing certificate of need, regardless of whether such additional or new activities would require a major permit modification from the West Virginia Department of Environmental Protection, when such activities would have a significant impact upon rates, upon the applicant, upon the applicant's competitors, or upon the public. Such additional or new commercial solid waste activities include, but are not limited to, the following -- composting activities, recycling activities, and transfer station activities -- regardless of the location of such activities relative to the currently permitted commercial solid waste activity.

1. An owner and/or operator of a commercial solid waste facility shall apply for a certificate of need by filing a completed Form No. 15, attached hereto, together with twelve (12) copies of the same with the Commission's Executive Secretary. In addition to Form No. 15, the utility shall file a completed Form No. 17 with the exception that the utility shall leave blank the date of the order and the case number. When the Executive Secretary's office has assigned a case number, a completed Form No. 17 will be issued to the utility as an order requiring publication of the Notice of Filing as a Class I legal advertisement in a qualified newspaper(s), published and of general circulation in each county in the wasteshed where the commercial solid waste facility is or will be located, and in a newspaper certified by the Secretary of State to have statewide circulation. The utility shall file affidavits of publication provided by the newspaper(s) with the Commission as soon as possible after the Notice of Filing is published.

2. An owner and/or operator of an existing commercial solid waste facility may file an application for an amendment of a certificate of need and for expedited processing, in the form attached hereto as Form No. 16, together with twelve (12) copies of the same, and receive expedited processing of its application, if the owner and/or operator seeks to engage in additional activities within the facility's permitted acreage, if the activity is determined not to have a significant impact upon rates, upon the applicant, upon the applicant's competitors, or upon the public, regardless of whether the new activities have been

classified as a major modification by the Department of Environmental Protection. In addition to Form No. 16, the utility shall file a completed Form No. 17 with the exception that the utility shall leave blank the date of the order and the case number. When the Executive Secretary's office has assigned a case number, a completed Form No. 17 will be issued to the utility as an order requiring publication of the Notice of Filing as a Class I legal advertisement in a qualified newspaper(s), published and of general circulation in each county in the watershed where the commercial solid waste facility provides, or will provide service, as indicated in its certificate application and/or its Department of Environmental Protection permit. The utility shall file affidavits of publication provided by the newspaper(s) with the Commission as soon as possible after the Notice of Filing is published.

3. After receiving Form No. 16, the Commission may issue the applicant an amended certificate of need without a hearing, unless the Commission determines that the planned expansion or construction has a significant impact upon rates, upon the applicant, upon the applicant's competitors, or upon the public. In the alternative the Commission may, if appropriate, issue an order requiring the applicant to file a standard application for a certificate of need in the form of Form No. 15.

#### 10.4. Contracts between utilities.

10.4.a. Whenever a public utility, except railroads other than street railroads, desires to enter into any contract with any other utility to operate its line or plant or to enter into any contract to operate their lines or plants in connection with each other (except physical connections between utilities supplying the same service or commodity for temporary purposes only) the utilities shall file a joint petition with the Commission for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 5. Such petition shall set forth the names and addresses of the petitioners, a detailed statement describing the proposed contract, the effect it will have upon the service of the petitioners, the consideration to be paid for the service to be rendered, whether or not any other utility will be affected by the

proposed operation and a statement why the prayer of the petition should be granted.

10.4.b. If the connection is physical between utilities supplying the same service for temporary purposes only, the parties thereto shall immediately give notice to the Commission, in writing, of such connection. Said notice shall state the names and addresses of the parties, the utility service in which they are engaged, the location of the physical connection and a description thereof and the reason it was made.

10.5. To control or acquire property of another utility.

A public utility, except railroads other than street railroads, desiring to purchase, lease or in any other manner acquire control, direct or indirect, over the franchise, licenses, permits, plant, equipments, business or other property of any other utility shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 6. Such petition shall set forth the name and address of the petitioner, the name and address of the utility whose property, etc., is sought to be acquired, the financial condition of the petitioner and of the utility whose property, etc., is sought to be acquired, the property, etc., to be acquired and location thereof, the terms and conditions of the proposed transaction, the effect of the proposed transaction upon the service of the parties thereto, the method of financing the transaction and whether or not any other utility will be affected, and, if so, in what respect, and a statement of the reasons why the prayer of the petition should be granted.

10.6. Sale of franchises, permits and plant.

A public utility, except railroads other than street railroads, desiring to assign, transfer, lease, sell or otherwise dispose of its franchises, licenses, permits, plants, equipment, business or other property, or any part thereof, (except tangible personal property not necessary or useful, nor which will become necessary or useful in the future, in the performance of its duties to the public),

shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 7. Such petition shall set forth the name and address of the petitioner, the name and address of the person, firm, corporation or utility to whom it desires to assign, transfer, sell, etc., its franchises, licenses, equipment, etc., the financial condition of the petitioner, brief statement of the history and corporate makeup and financial condition, if available, of the person, corporation, etc., to whom the franchises, licenses, etc., are to be sold, assigned, etc., the terms and conditions of the proposed transfer, sale, etc., a description of the franchises, licenses, etc., which are to be assigned, sold, etc., the effect of the proposed transaction on the service of the petitioner, the method by which the proposed assignment, sale, etc., is to be financed, whether or not any other utility will be affected and, if so, in what respect, and a statement why the prayer of the petition should be granted.

#### 10.7. Merger or consolidation.

A public utility, except railroads other than street railroads, desiring by any means, direct or indirect, to merge or consolidate its franchises, licenses, permits, plants, equipment, business or other property with that of any other public utility, shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 8. Such petition shall set forth the name and address of the persons forming the merger or consolidation, the financial condition of the parties to the consolidation, the franchises, licenses, permits, plants, equipment, business and other property which are the subject of the consolidation, the effect of the proposed transaction upon the service of the parties thereto, the method by which the consolidation will be financed, including a detailed statement of the common stocks, preferred stocks, and bonds that are proposed to be issued, if any, whether or not any other utility will be affected and, if so, in what respect, a general statement of the physical property of each of the merging parties and value thereof, and a statement of the reasons why the prayer of the petition should be granted, including the name of the merged or consolidated company.

10.8. Purchase of stock, bonds, etc., of another utility.

A public utility, except railroads other than street railroads, desiring to purchase, acquire, take or receive any stock, stock certificates, bonds, notes or other evidence of indebtedness of any other public utility, shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 9. Such petition shall set forth the name and address of the petitioner, the name and address of the company or companies whose stock, stock certificates, bonds, notes or other evidence of indebtedness is sought to be purchased, etc., the kind, character, description, in detail, and amount, by classes, of the stocks, bonds, notes or other evidence of indebtedness that is to be purchased, etc., the price proposed to be paid for said stocks, etc., and the terms of payment, the financial condition of the petitioner, the effect of the proposed purchase upon the service, rates, and capital structure of the petitioner, the effect the proposed transaction will have upon the service of the petitioner and the utility whose stocks, etc., are to be acquired, and the reasons why the approval and consent of the Commission should be given to the proposed purchase, etc.

10.9. Management contract between affiliates.

A public utility, except railroads other than street railroads, desiring by any means, direct or indirect, to enter into any contract or arrangement for management, construction, engineering, supply or financial services, or for the furnishing of any other service, property or thing, with any affiliated corporation, person or interest, shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 10. Such petition shall set forth the name and address of the affiliated corporation, person or interest with whom the contract or arrangement is to be made, a copy of the contract or arrangement is to be made, a full description of the nature and character of service, property or things to be rendered the petitioner, the compensation to be paid and the terms thereof, the financial condition of the petitioner and the

affiliated corporation, person or interest, the effect of the proposed arrangement upon the service of the petitioner, and, if the affiliate corporation is a utility under the jurisdiction of the Commission, the effect of the proposed transaction upon its service, and a statement of the reasons why the prayer of the petition should be granted.

10.10. Consent in advance to exemption from requirements of Section 12, Article 2, Chapter 24 of the Code.

A public utility desiring consent of the Commission in advance or exemption from the requirements of subsections (a), (b), (c), (d), (e), and (f) of Section 12 of Article 2, of Chapter 24 of the Code of West Virginia, and subsections 10.4, 10.5, 10.7, 10.8, and 10.9, of this rule with reference thereto, shall file with the Commission its petition for consent in advance or exemption from the requirements of said section, together with twelve (12) additional copies thereof, substantially in the form of Form No. 11. Such petition shall set forth the name and address of the petitioner, a statement of the subsection of Section 12 from the requirements of which consent in advance or exemption is sought, including the reasons therefor, the effect thereof upon the service of the petitioner and any other public utility operating in this state, if any, a statement that neither party thereto is given an undue advantage over the other and the reasons therefor, a statement why the prayer of the petition should be granted and its effect upon the public in this state. If, however, consent is prayed for in advance to do any of the things provided for in subsections 10.4, 10.5, 10.6, 10.7, 10.8, and 10.9 of this rule, the petitioner shall also adhere substantially to the form and requirements of the appropriate subsection.

10.11. Notice and hearing.

When any such applications shall be filed, the applicant will be required to give notice of the time and place set by the Commission for hearing thereon. Said hearing shall be conducted substantially in the manner prescribed in Rule 12 hereof, except that the Commission

may, for good cause shown, grant the authority prayed for without formal notice and hearing.

**§150-1-11. Rule 11, Prehearing Conference and Mediation.**

11.1. When conference may be required.

11.1.a. When issues are joined in any formal proceeding the Commission may, on its own motion or upon petition by any party, with reasonable written notice, require all interested parties to attend a prehearing conference, teleconference, or mediation.

11.1.b. Facts disclosed in the course of a prehearing conference, teleconference or mediation, are privileged and, except by agreement, shall not be used against participating parties before the Commission unless fully substantiated by other evidence.

11.2. Recessing hearing for conference.

In any proceeding the Commission may, in its discretion, call the parties together for a conference prior to the taking of testimony, or may recess the hearing for such a conference, with a view to carrying out the purpose of this rule. The Commission shall state on the record the results of such conference.

**§150-1-12. Rule 12, Hearings.**

12.1. General provisions.

12.1.a. The date, time and location of hearings will be scheduled by the Commission and notice thereof served upon all parties as may be required by statute and/or the Commission's Rules. Hearings will be held at the Commission's hearing room in the City of Charleston or elsewhere in the State at the Commission's discretion. An effort will be made to set all formal hearings sufficiently in advance so that all parties will have a reasonable time to prepare their cases, and so that continuances will be reduced to a minimum.

12.1.b. All hearings will be open to the public.

12.2. Presiding officers.

12.2.a. When evidence is to be taken in any proceeding before the Commission, said hearings will be held by one or more of the members of the Commission, an Administrative Law Judge, or by one or more of the Commission's employees that shall have been duly designated by it to hold hearings. Presiding officers shall be referred to in these rules as simply "the Commission."

12.2.b. The Commission shall have the duty to conduct full, fair and impartial hearings; to take appropriate action to avoid unnecessary delay in the disposition of proceedings, and to maintain order; and he/she shall possess all powers necessary to that end, including the following: To administer oaths and affirmations; to issue subpoenas and to provide for other methods of discovery; to receive evidence and rule upon all objections and motions; and to take such other action as may be necessary and appropriate to the discharge of his/her duties, consistent with the statutory authority and with the rules, regulations and policies of the Commission.

12.3. Appearances.

Parties shall enter their appearances at the beginning of the hearing by giving their names and addresses in writing to the reporter who will include the same in the record of the hearing. The Commission may, in addition thereto, require appearances to be stated orally, so that the identities and interests of all parties present will be known to those at the hearing. Any further notice, pleading, or order in the matter which is required to be served upon parties to the proceeding may be served upon the attorney or representative of a party so represented and such service shall be effective as service upon the party.

12.4. Rights of Parties and Protestants.

12.4.a. At any hearing, all parties, shall be entitled to enter appearances, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.

12.4.b. Any person who is a protestant and who desires to participate in the proceeding, other than as a witness, may, within the discretion of the Commission, file a petition or move orally to do so prior to the close of the period for taking appearances. The Commission may, within its discretion, grant, deny or qualify the extent of participation by such protestant during the evidentiary proceeding and thereafter. Such participation does not give a protestant party status.

12.5. Termination of party status.

Notwithstanding any other provision of these rules pertaining to party status, and unless specifically authorized by the Commission for good cause shown, no person shall be a party to any proceeding in which such person has failed to enter an appearance at any hearing in the manner as prescribed in Rule 12.3; the party status of any person failing to enter an appearance shall terminate at the close of the period for taking of appearances unless otherwise ordered.

12.6. Interventions.

12.6.a. Any person having a legal interest in the subject matter of any hearing or investigation pending before the Commission may petition or move orally for leave to intervene in such proceeding prior to or at the time it is called for hearing, but not thereafter except for good cause shown. If leave is granted, the petitioner becomes an intervenor and a party to the proceeding with the right to have notice of and appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard on the argument of the case.

The petition or motion shall disclose the name of the party intervening, the name and address of his/her attorney, if any, a clear and concise statement of the grounds for the proposed intervention, the position and interest of the petitioner or movant in the proceeding, and concise statement of the relief desired. Leave will not be granted except on allegations reasonably pertinent to the issues already presented and which do not unduly broaden them.

12.6.b. Service of petition.

The original petition for leave to intervene and twelve (12) copies thereof must be filed with the Executive Secretary of the Commission, and at the same time a copy of said petition shall be served by the petitioner, personally, or by registered mail or certified mail, return receipt requested, upon all known parties of record. The petitioner shall certify to the Executive Secretary that said service has been made.

12.6.c. Special intervention.

Any person, other than the original parties to the proceeding, who desires to appear and participate in any proceeding before the Commission, and who desires to broaden the issues of the original proceeding, shall petition in writing for leave to intervene in the proceeding, which petition shall be filed with the Commission and copies thereof shall be served on all known parties of record at least ten (10) days prior to the date of the hearing. The petition shall contain the information required by these rules. There shall also be attached to said petition a properly verified complaint or answer, as the case may be, setting forth clearly and concisely the facts supporting the relief sought.

Such petitions shall be considered first at all hearings, or may be acted upon prior to hearing and an opportunity shall be afforded the original parties to be heard thereupon. If it appears, after consideration, that the petition discloses a substantial interest in the subject matter of the hearing, or that participation of the petitioner may be in the public interest, the Commission may grant the same, which may be done by order or oral ruling at the time of the hearing. Thereafter such petitioner shall become a party to the proceeding and shall be known as an "intervenor" with the same rights as other parties to the proceeding.

12.6.d. Limitations of intervention.

When two or more intervenors have substantially similar interests and positions, the Commission may, in

order to expedite the hearing, limit the number of parties who may cross-examine, make and argue motions, or object on behalf of such intervenors.

12.7. Representation of parties and practice before Commission.

Representation or appearance of parties in all formal proceedings pending before the Commission shall be only by attorneys at law admitted to practice before the Courts of this State, before the Courts of last resort of other states, or before the Supreme Court of the United States; provided that attorneys appearing before the Commission who are not licensed to practice in West Virginia shall have sought and obtained permission to practice before the Commission in compliance with Rule 8.0 of the Rules for Admission to the Practice of Law of the State of West Virginia; provided, however, that an individual may appear for and represent himself, or a partner may represent his partnership, upon permission granted in the discretion of the Commission.

12.8. Notice.

Following the entry of appearances, all notice, pleadings and orders thereafter served shall be served upon such attorneys, representatives or parties of record, as defined in these rules, entering an appearance, and such service shall be considered valid service for all purposes upon the party represented.

12.9. Continuance of hearings.

After date for hearing has been set continuances will not be granted by the Commission except for good and sufficient cause. A party who desires a continuance shall, immediately upon receipt of notice of the hearing, or as soon thereafter as facts requiring such continuance comes to his knowledge, file a written motion with the Commission stating in detail the reasons why such continuance is necessary. Such motion shall be filed at least five (5) days prior to the date of hearing. In cases of hardship or other good cause a party may by oral motion move for a continuance at the time the proceeding is called for

hearing. The Commission may grant such a continuance and may at any time order a continuance upon its own motion.

12.10. Failure to appear.

When any proceeding has been properly set for hearing and due notice given and any applicant, petitioner or complainant fails to appear without having obtained a continuance in the manner specified above, the Commission may dismiss the petition, application, or complaint with or without prejudice or may upon good cause shown, recess such hearing for a further period to be set by the Commission to enable said applicant, petitioner, or complainant to attend.

12.11. Conduct at hearings.

All parties to hearings, their counsel, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind at hearings shall not be permitted. The Commission may, at its discretion, recess or continue any hearing in which the parties, attorneys, witnesses or spectators, conduct themselves in a disrespectful, disorderly or contemptuous manner which interferes with or prevents the proper conduct of such hearing.

12.12. Consolidated hearings.

The Commission, upon its own motion, or upon motion by any party, may order two or more proceedings involving a similar question of law or fact to be consolidated for hearing where the rights of the parties or the public interest will not be prejudiced by such procedure.

12.13. Transcripts.

12.13.a. One copy of the transcript of testimony will be furnished by the Commission to each party to a proceeding, unless otherwise ordered.

12.13.b. Additional copies of transcripts of testimony may be obtained by any party in interest from the Executive Secretary by paying therefor at a rate to be determined by the party requiring the same and the reporter,

but in no event to exceed the maximum fixed therefor in the then-current contract between the Commission and the reporter. Persons desiring extra copies of the transcripts of testimony shall make request therefor to the Executive Secretary of the Commission at the time of hearing.

**§150-1-13. Rule 13, Evidence.**

13.1. General.

In the investigations, preparations and hearings of cases, the Commission shall not be bound by the technical rules of pleadings and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justice of the matters before it. Evidence may be received which, in the opinion of the Commission, is the best evidence reasonably obtainable, having due regard to its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the Commission shall give consideration to, but shall not be bound to follow the rules of evidence governing general civil procedures in courts of this State.

13.2. Testimony under oath.

All testimony to be considered by the Commission in formal hearings, except matters administratively noticed or entered by stipulation, shall be by sworn or affirmed testimony.

13.3. Prepared testimony.

Prepared testimony may be identified, marked and received as an exhibit. Admissibility shall be subject to the rules governing oral testimony. The party submitting prepared testimony shall supply copies to all parties of record.

13.4. Stipulation of facts.

The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the Executive Secretary, or entered in the record,

agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be binding upon the parties thereto and may be regarded and used by the Commission as evidence at the hearing. It is desirable that the facts be thus agreed upon whenever practical. The Commission may, however, require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

#### 13.5. Depositions.

The testimony of any witness may be taken by deposition at the instance of a party, in any proceeding or investigation at any time after the same is at issue, by the consent of the Commission. The Commission may, on its own motion, order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such deposition shall be taken in the manner prescribed by the laws of West Virginia for taking deposition in civil cases in courts of record.

#### 13.6. Discovery Requests.

13.6.a. "Discovery requests" as used in these Rules, include interrogatories, requests for the production of documents and things, and requests for admissions. Discovery requests do not include Staff or Commission requests made pursuant to statutory authority.

13.6.b. A party may serve discovery requests in writing upon the attorney for a party, if such party is represented by an attorney, or directly upon unrepresented parties, by first class mail or by hand delivery. Discovery requests must be pertinent to substantial issues in the proceeding. Copies of discovery requests, together with a certificate of service, shall be filed with the Executive Secretary and served upon all parties.

13.6.c. Parties served with discovery requests shall respond to each request separately and fully, in writing. The responses shall re-state each request, and give the response to that request. The party responding shall

verify the responses. If responses prepared by several persons are compiled by one person the person compiling the responses shall verify the responses one time. Responses to discovery requests shall be served within twenty (20) days after such data requests were served, or within such specified time as may be fixed by the Commission. Responses shall be served only upon the requesting party and any other party that has made a written request for the responses. The party responding shall file one (1) copy with the Executive Secretary.

13.6.d. The party responding to discovery requests shall file any written objections to discovery requests within fourteen (14) days after service of discovery requests or such shorter time as directed by the Commission. The responding party may defer responses to discovery requests to which it has made objection until the Commission rules on any Motion to Compel. If a Motion to Compel is granted, the responses shall be served within ten (10) days after notice of the Commission's action, or as otherwise ordered by the Commission.

13.6.e. Objections to discovery requests not timely filed are waived, except for good cause shown.

13.6.f. The Commission will not become involved in resolving discovery disputes unless a motion is filed seeking Commission action. The parties have the responsibility to file timely discovery motions, including motions to compel the production of information or motions seeking protective orders.

13.7. Record of the case.

13.7.a. Exhibits at hearing. All maps, prints, writings, statements or documents, to be used as an exhibit at a hearing, must be accompanied by four (4) copies when a case is before the Commissioners and two (2) copies when a case is before an ALJ, in addition to copies needed for other parties to a case, unless the parties were previously served with the exhibit.

13.7.b. Staff Reports. Reports of investigation made

in any case by the Commission, or by any employee of the Commission, whether made before or after the hearing, will become a part of the record in the case and be considered by the Commission. Upon the submission of any such report to the Commission, a copy thereof will be furnished by the Executive Secretary to each party to the proceeding. Should such party take exception to or desire to be heard further upon, or to give further evidence with regard to such report, he shall notify the Commission in writing within five (5) days from the receipt thereof. Whereupon the Commission will set the matter for further hearing or take such action as the circumstances of the case may require.

13.7.c. Original Documents. The Executive Secretary shall keep in his/her custody and be responsible for the original, or one counterpart, of all maps, prints, writings, statements or documents made a part of the record as aforesaid.

#### 13.8. Objections.

Any evidence offered in whatever form shall be subject to appropriate and timely objection. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the Commission. The Commission, in its discretion, either with or without objection, may exclude inadmissible, incompetent, cumulative, or irrelevant evidence, or order the presentation of such evidence discontinued. Parties objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered. The evidence to be admitted at hearing shall be competent material and relevant to the issue. Formal exceptions to rulings are not necessary and need not be taken.

#### §150-1-14. Rule 14, Subpoenas for witnesses and documents.

14.1. Upon application of any party, or on the Commission's own action, subpoenas requiring the attendance of witnesses at any designated place of hearing before the Commission, or a member thereof, or any employee of the Commission which it shall have designated to hold such

hearings, for the purpose of taking the testimony of such witness, may be issued by the Executive Secretary or any member of the Commission or any employee of the Commission which it shall have designated to hold hearings as provided by law. Such written application must be verified by affidavit and set forth reasons supporting the issuance of the subpoena for the attendance of the witness or witnesses.

14.2. Upon written application of any party, or on the Commission's own action, subpoenas for the production of books, papers or documents may be issued by the Executive Secretary or any member of the Commission or any employee of the Commission which it shall have designated to hold hearings as provided by law. Such application must be verified by affidavit and set forth and identify specifically the books, papers or documents sought to be produced and the reasons therefore.

**§150-1-15. Rule 15, Witness fees.**

15.1. Witness fees necessary and incident to hearings before the Commission shall be paid by the party at whose instance the witness is summoned. No witness fees will be allowed except on subpoena. In all cases the fee allowed will be the same as that allowed by the circuit courts of this state.

**§150-1-16. Rule 16, Service of subpoena and notice.**

16.1. All subpoenas for parties, witnesses, records or papers, and all notices relating to a subpoena, shall be served by delivering a copy thereof personally or by mail to the party to be served, or in the manner prescribed by law for service of like processes issuing out of the circuit courts of this state.

16.2. Service of subpoenas and the cost incident to the service is the responsibility of the party(ies) requesting the subpoenas.

**§150-1-17. Rule 17, Proposed orders.**

17.1. The Commission may require all parties of record to file proposed orders containing findings of fact

and conclusions of law at the close of testimony in the proceeding. The Commission shall immediately fix the time in which such proposed findings and conclusions or proposed final orders shall be filed. No decision, report or recommended order shall be made until after the expiration of the time so fixed.

17.2. If the parties file proposed orders, findings of fact and conclusions of law shall be clearly and concisely stated and numbered. Each statement shall show specifically the testimony by appropriate transcript reference, if available, or other items of record which support that proposed finding of fact.

17.3. An original and twelve (12) copies of the findings of fact, conclusions of law and/or proposed final order accompanied by a certificate of service shall be filed with the Commission and one copy shall be filed with each attorney of record or each party.

17.4. Any party may petition the Commission for an extension of time in which to file proposed findings of fact, conclusions of law and/or proposed final order.

**§150-1-18. Rule 18, Briefs and oral argument.**

18.1. General.

A party may file a brief or present oral argument in any proceeding before the Commission. The Commission may require the filing of briefs or the presentation of oral argument or both by the parties. Requests for the filing of briefs or oral arguments shall be made before or at the conclusion of the taking of evidence. The requirements of this rule may be altered by agreement of the parties with the consent of the Commission.

18.2. Oral arguments.

Oral argument may be presented in lieu of or in addition to the filing of briefs. When, in the opinion of the Commission, time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants, the

Commission may, either on its own motion or at the request of a party or Staff counsel at or before the close of the taking of testimony allow and fix a time for the presentation of oral argument, imposing such limits of time on the argument as deemed appropriate in the proceeding. Such argument shall be transcribed and bound with the transcript of testimony.

18.3. Time for filing.

Unless otherwise ordered by the Commission, briefs are to be filed simultaneously. Initial briefs shall be served 25 days after the transcript is mailed. Reply briefs shall be served 15 days after the initial briefs are mailed. Responsive briefs shall be served 10 days after the reply briefs are mailed.

**§150-1-19. Rule 19, Exceptions, Reconsideration, Further hearing, or reopening.**

19.1. Exceptions.

A party may file exceptions to a recommended decision within fifteen (15) days from the date the recommended decision was mailed and shall serve a copy of the exceptions on the attorney for each adverse party or directly upon unrepresented parties. The exceptions must state the findings of fact and/or conclusion of law claimed to have been erroneously decided, and may be accompanied by a brief in support thereof.

19.1.a. Reply to Exceptions.

Within ten (10) days after such service any party may file and serve in like manner a reply to the exceptions. The reply so filed must be accompanied by a like number of copies for the use of the Commission and a certificate showing service upon the attorneys of the parties. However, the Commission may issue an order ruling on exceptions at any time after it is filed.

19.2. Application for Further Hearing.

If a party seeks a new hearing because of matters that have arisen since the hearing, or due to facts that were not known by the party at the time of the hearing, the matters relied upon by the party must be fully set forth. Applications for further hearing in a proceeding after the closing of testimony and before entry of a recommended decision, if the case is before an ALJ, or Commission Order, if the case is before the Commission, must be made by petition, duly verified, filed with the Commission. Such petition shall state specifically the grounds relied upon, and shall be filed with the Commission and a copy served by the petitioner upon the attorney for each adverse party. The nature and purpose of the evidence to be adduced must be briefly stated, and it must not be merely cumulative.

19.3. Petition for Reconsideration.

Petitions for reconsideration after entry of a Commission order must be made by petition, duly verified, filed with the Commission within ten (10) days from the date of mailing by certified mail of the Commission order. Such petition shall state specifically the grounds relied upon, and shall be filed with the Commission and a copy served by the petitioner upon the attorney for each adverse party.

19.3.a. Within ten (10) days after such service any party may file and serve in like manner a reply to the petition. The reply so filed to be accompanied by a like number of copies for the use of the Commission and a certificate showing service upon the attorneys of the parties. However, the Commission may issue an order ruling on the petition at any time after it is filed.

19.4. Application for Modification of order.

Application for modification of orders which seek only to correct clerical errors, change in the date when they shall take effect, or change the period of notice thereby prescribed, must be made by petition filed and served in like manner as other applications under this rule, except that, in case of unforeseen emergency satisfactorily shown by the applicant, such relief may be sought

informally, by facsimile or otherwise, upon notice thereof to all parties or attorneys who appeared as aforesaid.

19.5. Application for Reopening.

An application for reopening of a proceeding more than ten (10) days after the entry of a commission order must be made by petition of a party to the proceeding at the time of entry of the Commission order, duly verified, accompanied by a certificate showing service upon the attorneys of the other parties. If thereby any Commission order is sought to be vacated, reversed, or modified, by reason of matters which have arisen since the hearing, or by reason of facts not in possession of the petitioner at the time of the hearing, the matter so relied upon by the petitioner must be fully set forth in the petition.

19.5.a. Within ten (10) days after such service any party may file and serve in like manner a reply to the application. The reply so filed to be accompanied by a like number of copies for the use of the Commission and a certificate showing service upon the attorneys of the parties. However, the Commission may issue an order ruling on the application at any time after it is filed.

**§150-1-20. Rule 20, Change of depreciation rates.**

20.1. Each public utility subject to the jurisdiction of this Commission shall, with respect to any proposed change in its depreciation rates, and at least sixty (60) days prior to the last day of the month in which the accounts for which the effect of such change is first recorded, file with the Commission twelve (12) copies of the following information with respect to each depreciation rate proposed to change on or after the effective date of this rule:

20.1.a. A statement showing the class or subclass of plant to which the proposed changed depreciation rates are applicable, the effective date of the proposed change, the rates in effect immediately before and after such change, and the corresponding service-life, salvage and cost of removal estimates.

20.1.b. A general statement describing the method or methods employed in the development of the service-life, salvage and cost of removal estimates, and the reasons for the proposed change in the rate.

20.2. When the proposed change in rate applicable to any class or subclass of plant (1) amounts to twenty percent (20%) or more of the rate currently applied thereto, or (2) would have changed by one percent (1%) or more the aggregate annual depreciation charges for all depreciable plant if the new rate applicable to such class or subclass had been in effect during the preceding calendar year, the statements required in foregoing paragraph 20.1 shall be supplemented by copies of supporting data, calculations, and charts underlying the service-life, salvage and cost of removal estimates.

20.3. The foregoing statement shall be accompanied by an exhibit, an original and twelve (12) copies, showing the expected net change in the annual depreciation charges resulting from the revised depreciation rates and indicating the basis of determining the expected net change.

20.4. A utility proposing such a change in depreciation rates may at the end of the sixty day period put such changed rates into effect providing, however, that during the sixty day period the Commission does not order the suspension of such rates and set a date for a hearing on the reasonableness of such change.

**§150-1-21. Rule 21, Financial condition defined.**

Whenever, by these rules, a petitioner or utility is required to state its financial condition, the statement shall include the following information.

21.1. Amount and class of stock authorized by the certificate of incorporation and by any other public authority;

21.2. Amount and class of stock issued and outstanding;

21.3. Terms of preference of all preferred stock;

21.4. Brief description of each mortgage upon any property of the applicant giving date of execution, name or mortgagor, name and address of mortgagee or trustee, amount of indebtedness authorized to be secured thereby, amount of indebtedness actually accrued, amount of principal outstanding, amount of interest due and unpaid, and brief description of mortgaged property;

21.5. Number and amount of bonds authorized and issued, giving name of issuing company, describing each class separately, giving date of issue, par value, rate of interest, date of maturity and how secured; and, if convertible debentures are authorized or outstanding, also the dates when the conversion privilege accrues and expires, and the securities into which and the rate at which conversion may be made;

21.6. Other indebtedness, giving name of classes and describing security, if any;

21.7. Amount of interest paid during previous calendar year and rate thereof; if different rates were paid, the amount paid at each rate;

21.8. Rate and amount of dividends paid upon each class of stock during previous five years; and

21.9. Detailed income statement and balance sheet for latest calendar year.

A reference in the petition to annual or other reports filed or to be filed with the Commission will not be deemed compliance with the provisions of this rule.

**§150-1-22. Rule 22, Certified copies.**

22.1. Withdrawal of papers.

No original paper in any case shall be withdrawn from the file, except upon special order of the Commission.

22.2. Certified copies.

Certified copies of papers on file in the Executive Secretary's office may be obtained by any person desiring the same upon payment to the Executive Secretary of a copying fee plus a fee for certifying such copy, as established by the Executive Secretary's office.

**§150-1-23. Rule 23, Notice of orders.**

23.1. The Executive Secretary shall serve copies of all orders issued by the Commission upon the parties of record.

**§150-1-24. Rule 24, Address.**

24.1. All official communications to the Commission and all correspondence in relation thereto should be delivered or mailed to:

Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street, P. O. Box 812  
Charleston, West Virginia 25323-0812

**§150-1-25. Rule 25, RESERVED**

**§150-1-26. Rule 26, Appendix**

26.1. CHECKLIST FOR APPLICATIONS FOR CERTIFICATES OF CONVENIENCE AND NECESSITY FOR WATER AND SEWER UTILITIES

The following checklist will aid applicants for certificates of convenience and necessity in assuring that they have submitted all information that the Commission needs for proper review. Water and Sewer Utilities may apply for a waiver of any provision of this checklist for good cause, provided, that no application for a waiver will be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

1. Application as per Form No. 4.
2. Verification as per Form No. 4 or Form No. 12.

3. Tariff Rule 42 Accounting information:
  - a. Existing System
    1. The Tariff Rule 42 exhibit presents the entire system at per books adjusted to going-level.
    2. Subject to the requirements of Tariff Rule 42, non project-related adjustments may be included in the revenue requirements of the certificate case. If the rate increase relating to non-project related adjustments is proposed to go into effect prior to a rate increase relating to project-related adjustments, then the applicant must separately set forth the proposed increases.
    3. All adjustments related to the proposed project are presented at Pro-Forma.
  - b. New System
    1. All financial information related to the proposed project is presented at Pro-Forma.
  - c. Project related adjustments to operation and maintenance expenses shown in the Tariff Rule 42 exhibit must agree with, and be supported by, detailed engineering calculations.
4. Proposed Rate Structure in tariff form.
5. Existing Rate Structure (if applicable) in tariff form.
6. Facility Plan or feasibility study (if applicable).
7. Agreements between Applicant and Other Utilities (as applicable).
8. A project map(s) showing the location of each customer cross-referenced to a complete customers list

indicating which customers have signed contracts for service and paid connection fees, which houses and buildings are plumbed and which customers have a private water supply.

9. Proposed bond and/or municipal rate ordinances (as applicable)
10. Permits and/or approvals
  - a. Letter from applicant stating that applications for all necessary permits and/or approvals have been made.
  - b. It is preferable that any required permits are granted prior to the final order, but if the permits are not available the certificate may, for good cause shown, be issued contingent on receipt of the permit.
11. Letters showing funding sources
  - a. Privately owned utilities - statement of projected sources of funds from the project. If debt funds are included show the expected source and cost of debt.
  - b. Publicly owned utilities - Letters showing commitment of funds for all grants and loans. Terms and conditions for all loans must also be shown.
12. Interim Financing Information including funding sources and terms and conditions of funding.
13. Name, Classification, and License No. of Operator(s) (as applicable).
  - a. Identification of initial or additional utility personnel required for the project and/or estimated overtime hours, as the case may be.
14. Engineering Report

- a. Population Projections (if not identified in preliminary report).
- b. Number of existing, potential, and future customers. Applicants shall mail single copies of signed user agreements for water projects to the Commission's Engineering Division. The user agreements shall not be made a part of the case file.
- c. Existing and estimated future water consumption or wastewater flows related to the project.
- d. Design criteria and system hydraulic information.
- e. Itemized construction and total project cost estimates.
- f. Detailed Operation and Maintenance budget including supporting information and calculations.
- g. Description of all maintenance requirements associated with the project.
- h. Identification of need for renewal and replacement reserves.
- i. Existing and future conditions.
- j. Identification of need for the utility service to be provided, including supporting documentation such as enforcement actions from appropriate agencies.
- k. Alternative analysis of reasonably available alternatives that could fulfill the need, including present worth analysis of the capital, operation and maintenance expenses over each of the alternatives expected service life. Benefits and detriments of each alternative should be discussed. The

selection of the preferred alternative should be explained.

- l. If water and sewerage treatment service is to be purchased by the applicant, the filing should include documentation from the seller of such services that adequate capacity exists and projections of the duration of such adequacy. The utility filing for the certificate of convenience and necessity should be required to simultaneously file the purchased services contract with this Commission to allow the Commission to determine whether or not adequate capacity exists.
- m. Information concerning increase in operating times of existing treatment facilities that will result from the project.

#### 15. Project Plan Drawings

- a. One paper copy of the engineering design plans and project maps, or, one electronic copy of the engineering design plans and project maps in a format compatible with the Commission's electronic technology.
- b. The plans and maps should show line size, type, length and drawn to scale.
- c. Identification/numbering of customers that have applied for service and identification of customers who may be served by the project.
- d. Identification of property lines for customers to be served and location of utility service lateral stubs (sewer) or utility service lines and meters (water).
- f. Water storage tank and booster station drawings.

- g. Sewer lift station drawings.
  - h. Master metering location and detailed information.
  - i. Treatment facility drawings.
16. Specifications
- a. Bid quantities.
  - b. Equipment sizing/specifications.
17. Maximum Service Elevation Information (water systems only).
18. Proposed Notice of Filing, in the form of Form 14 attached hereto, for review by the Commission. The utility shall not publish this form until directed to do so in a Commission Order.
19. Copy of letter from utility providing thirty (30) day advance notice of filing pursuant to West Virginia Code §24-2-11.
20. If the proposed project requires modification of a public service district boundary, a statement that the county commission process is complete.
21. If the proposed project will infringe upon any other utility's service area or affect any other utility financially or otherwise, a statement to that effect.
22. Evidence of SHPO compliance.
23. Statement showing when bids are anticipated to be let.
24. Other information as needed.
25. Case number and approval date of engineering agreements involving public service district, where such approval is not exempted by West Virginia Code § 16-13A-25. If an engineering agreement involving public service

districts is exempt by West Virginia Code § 16-13A-25,  
a copy of such agreement shall be provided.