

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JAN 24 3 21 PM '00

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: West Virginia Public Service Commission TITLE NUMBER: 150

RULE TYPE: Procedural; CITE AUTHORITY WV Code §§24-1-7, 24-2-1, 24-2-2, 24-2-3

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 NEW RULE BEING PROPOSED: \_\_\_\_\_

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

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON March 24, 2000 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

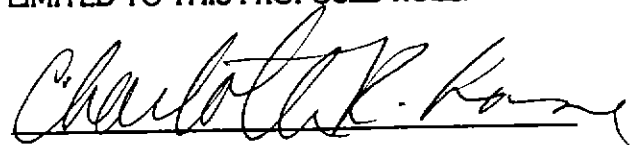
Sandra Squire, Executive Secretary

WV Public Service Commission

P. O. Box 812

Charleston, WV 25323

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.



Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

\$16.80

# 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

January 24, 2000

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

FILED  
JAN 24 3 21 PM '00  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Re: Rules of Practice and Procedure  
150 C.S.R. Series 1

Dear Judy:

Enclosed for filing is the proposed rulemaking regarding the Commission's Rules of Practice and Procedure.

In addition, I have enclosed a fiscal note, a summary of proposed rules, a statement of circumstances and a notice of comment period on proposed rules.

If you have any questions or concerns, please do not hesitate to bring them to my attention as soon as possible.

Sincerely,

*Richard E. Hitt* /cbd

Richard E. Hitt  
General Counsel

REH/cbd  
Enclosure  
rickmisc/cooper24.wpd

**FISCAL NOTE**

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

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

**I. OBJECTIVES OF THE RULE**

The purpose of this rulemaking is to substantially revise the Commission's Rules of Practice and Procedure, including, but not limited to, changes in motion and pleading practice, the requirements for filing certificates of convenience and necessity, and the requirements for filing certificates of need for commercial solid waste facilities.

**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.


**IV. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS**

This rulemaking will have no significant economic impact on the state or its residents.

**DATE:** 1-13-2000

**AGENCY:** Public Service  
Commission

**SIGNATURE OF  
AUTHORIZED REPRESENTATIVE**

  
Charlotte R. Lane, Chairman  
Public Service Commission

### **SUMMARY OF PROPOSED RULE**

The Commission is proposing to substantially revise its Rules of Practice and Procedure, 150 CSR Series 1. The proposed revisions include, but are not limited to, changes in motion and pleading practice before the Commission, requirements for the filing of certificates of convenience and necessity by public utilities, and requirements for the filing of certificates of need by commercial solid waste facilities. The changes in certificate application filing requirements attempt to clarify and make uniform the filing process. In addition, the Commission is proposing rules concerning the types of commercial solid waste facility modification or construction that require certificates of need from the Commission pursuant to West Virginia Code § 24-2-1c.

## **STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE PROPOSED RULE**

The Rules of Practice and Procedure have not been revised in over a decade and are in need of substantial revisions.

Furthermore, following a recent review of the Legislative Auditor and the Commission's own internal review, the Commission has determined that it is necessary to propose certain changes to its Rules of Practice and Procedure.

Among other things, the proposed rules seek to clarify and make uniform the certificate application filing process. In addition the rules propose changes to motion and pleading practice before the Commission, and make certain stylistic changes throughout the rules.

**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 24<sup>th</sup> day of January, 2000.

GENERAL ORDER NO. 182.4

In the matter of a rulemaking to amend the Commission's Rules of Practice and Procedure, 150 C.S.R. Series 1.

**COMMISSION ORDER**

**Background**

By Order issued October 22, 1999, in General Order Nos. 182.3 and 252, the Commission dismissed rulemaking proceedings to determine requirements for the filing of applications for certificates of convenience and necessity, and the filing of certificates of need by commercial solid waste facilities. Both general orders involved amendments to the Commission's Rules of Practice and Procedure, 150 C.S.R. Series 1 (Procedural Rules). The Commission's Order explained that the proceedings were dismissed because the Commission wished to consider comprehensive amendments to the Procedural Rules instead of limiting its consideration to certificate issues. Those proceedings were dismissed with the intention of commencing this proceeding in which the Commission would promulgate new proposed Procedural Rules. As this proceeding will include consideration of the amendments proposed in General Order Nos. 182.3 and 252, all comments filed in those proceedings will be docketed in this case.

IT IS THEREFORE ORDERED that the amendments to the Commission's Procedural Rules, attached hereto, are hereby promulgated as proposed legislative rules.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall give notice of these proposed rules to the West Virginia Department of Environmental Protection, all regulated utilities in the State, and Commission Staff, by service of a copy of this order and the proposed rules, upon them.

IT IS FURTHER ORDERED that the Executive Secretary shall cause a copy of the Notice of Rulemaking attached hereto as Appendix A to be published once, in a newspaper, duly qualified by the Secretary of State, published and of general circulation in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins,


in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser, New Cumberland, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Welch, Wheeling, and Williamson.

IT IS FURTHER ORDERED that the Executive Secretary shall file a copy of these rules and the requisite forms with the Office of the Secretary of State.

IT IS FURTHER ORDERED that a comment period shall be provided with respect to the proposed rules identified in this Order and comments shall be filed with the Commission's Executive Secretary by March 20, 2000, by 4:00 p.m. Any interested party who files comments shall set forth specific comments concerning the proposed rules. Any party seeking a hearing on the proposed rules shall make a specific written request before the close of the comment period and shall explicitly state the grounds upon which the request is made.

IT IS FURTHER ORDERED that the Executive Secretary shall provide copies of these proposed rules to interested parties who address inquiries to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, Post Office Box 812, Charleston, West Virginia 25323.

A True Copy, Teste:



Sandra Squire  
Executive Secretary

Commissioner Reger dissents in part to this decision. A copy of his dissent is attached.

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

GENERAL ORDER NO. 182.4

In the matter of a rulemaking to amend the Commission's  
Rules of Practice and Procedure, 150 C.S.R. Series 1.

COMMISSIONER REGER DISSENTING IN PART

I dissent from the Commission's promulgation of the proposed Rules to the extent the Rules impose a requirement that a corporation must hire an attorney in order to file substantive pleadings with the Commission, and to appear at a Commission hearing.

There are a number of private utility corporations, including motor carrier corporations, that operate in West Virginia. Many of these utilities have a minimal number of shareholders, small capitalization, and just a few employees. These corporations, that essentially operate as small businesses, have limited financial resources in comparison to the large, publicly held utilities that operate in the State. The Commission's rules, or any other government agency's rules, whether State or Federal, in no way should disadvantage or deny a utility due process because of a utility's lack of financial resources to hire an attorney.

Therefore, I specifically object to the following Rules which restrict the activities that an owner of a small corporation can engage in before the Commission. Rule 4.4 limits the filings that a "duly authorized person" may make on behalf of a corporation that is a party or that is seeking party status, to the following: pre-filings, petitions, applications, complaints and answers. Under this Rule, the "duly authorized person" may not file motions, objections, replies, briefs, or discovery requests.

Similarly, Rule 12.7, while not a new rule, requires that appearances of parties in formal Commission proceedings be only by attorneys at law. The only exceptions to this requirement apply to a party wishing to appear for and represent himself or a partner wishing to represent his partnership, and these exceptions are discretionary with the Commission.

In light of my concerns, I look forward to comments on the above provisions from the utilities in the State.

Except as discussed in this opinion, I concur with the other rule amendment proposals promulgated by the majority.

JML/seg  
GO1824c.wpd

APPENDIX A

NOTICE OF RULEMAKING

GENERAL ORDER NO. 182.4

In the matter of a rulemaking to amend the  
Commission's Rules of Practice and Procedure.

By Order issued January 24, 2000, the Public Service Commission of West Virginia commenced a rulemaking to amend its Rules of Practice and Procedure, and issued proposed rules. The rulemaking substantially revises the Rules of Practice and Procedure as a whole, and includes, but is not limited to, changes in motion and pleading practice, discovery, the requirements for the filing of applications for certificates of convenience and necessity and the requirements for the filing of certificates of need for commercial solid waste facilities. This rulemaking replaces two prior proceedings, General Order Nos. 182.3 and 252, which have been dismissed. Any interested person may obtain a copy of the proposed Rules of Practice and Procedure by addressing a request to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, WV 25323. Any interested person or corporation may file specific comments on the proposed rules by March 24, 2000, by 4:00 p.m., with the Executive Secretary. Any party seeking a hearing on the proposed rules shall make a specific written request by the same date and explicitly state the grounds upon which the request for a hearing is made.

TITLE 150  
PROCEDURAL RULES  
PUBLIC SERVICE COMMISSION

SERIES 1  
RULES OF PRACTICE AND PROCEDURE

FILED

JAN 24 3 21 PM '00

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

§150-1-1. General.

1.1. Scope.

The following rules ~~and regulations~~ 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. -- ~~November 13, 1986.~~

1.4. Effective Date. -- ~~January 12, 1987~~

1.5. ~~Filing Requirements~~ -- Pursuant to 29A 2.1 CSRS1 et seq., this series of rules and regulations of the Public Service Commission of West Virginia is being refiled in accordance with revised requirements by the Secretary of State for filing in the State Register. This refileing does not repeal any of the substantive or procedural aspects of the Commission's rules and regulations but merely represents changes in sizing and formatting of the currently effective rules and regulations. As a result of these revisions in the standard format, in particular, those rules which have evolved into terms of art in Commission practice are hereinafter incorporated into the title of each section or subsection heading of the standard format. Amendment of Rules -- These Rules amend prior Rules effective January 12, 1987.

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, application may be made to the Commission for the modification of the rule or for temporary or permanent exemption 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.

~~1.6.~~ 1.7. Rule 1, General offices and hearings.

~~1.6.1.~~1.7.1. The general offices of the Public Service 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 formal docket by the Commission.

~~1.6.2.~~1.7.2. Public sessions of the Commission for hearing motions, evidence or oral argument, or for public conference, 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 he 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. Minute Book, in which shall be recorded all general orders, orders paying salaries of members, orders paying the expenses of the Commission and the salaries, compensations, costs and expenses of its employees, and all orders pertaining to the organization and administration of the Commission, together with such orders as may be directed to be entered therein by the Commission. Separate Minute Books shall be kept and maintained for Utility, Motor Carrier, and Gas Pipeline Safety Divisions.~~

~~3.2. Formal Docket, in which shall be entered each formal case of complaints, 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.~~

~~3.3.~~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 and Gas Pipeline Safety Divisions, and for General

## Orders.

~~3.4. Special Order Books, in which shall be entered all applications for permission to change any rate, rule or regulation on less than statutory notice, and the special or informal order of the Commission made thereon without formal hearing. Separate Special Order Books shall be kept and maintained for Utility, Motor Carrier and Gas Pipeline Safety Divisions.~~

### **§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 copies. 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. Only the original complaint needs to be filed. Only the original of a response to a data request needs to be filed. A pro se complainant need only file originals of any paper filed in a case. Filings may be made by facsimile provided that two copies of each filing are faxed to the Commission, an original with the requisite number of copies is promptly filed thereafter, and the party so filing complies 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. A party may obtain waiver from the requirements of this Rule upon application and for good cause shown.

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 that party is represented by an attorney in which case all filings shall be made by the attorney.

4.4.1. 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 governmental or private 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.

5.8. "Data request" includes interrogatories, requests for information, requests for admission, and data request.

#### **§150-1-6. Rule 6, Complaints.**

##### 6.1. Informal complaints.

6.1.1. Informal Complaints may be made by letter, or other writing, telephone call and ~~as received are filed. Matters thus presented are, if their nature warrants, Informal complaints~~ taken up by correspondence with the utility complained against in an endeavor to bring about satisfaction of the complaint without formal hearing.

6.1.2. ~~No form of informal complaint is prescribed, but in substance the letter or other writing~~ 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 affirmative relief.

6.1.3. This informal procedure is ~~found efficacious recommended~~ in the majority of cases, ~~and is recommended.~~ In the event, ~~however of the failure the informal complaint fails~~ to bring about satisfaction of the complaint ~~because of the inability of the parties to agree as to the facts involved, or from other causes, the proceeding is held to be without prejudice to complainant's right to~~ the complainant may file and prosecute a formal complaint, whereupon and the informal proceeding will be discontinued. The informal complaint procedure does not preclude the filing of a formal complaint.

## 6.2. Formal complaints.

~~6.2.1. Any person, firm, association of persons, public officer, public or private corporation, municipality or county or entity~~ may complain to the Commission by petition substantially in the form ~~hereinafter prescribed (See 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 joint 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.

~~6.2.2. The names of all parties, complainant and defendant,~~ 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.

~~6.2.3. Each formal complaint must be accompanied by copies in sufficient number to enable the Commission to serve one copy on each defendant and retain seven (7) copies for its own use.~~

~~6.2.4.~~ 6.2.3. 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.

~~6.2.5.~~ 6.2.4. All formal complaints must be typewritten or printed on paper not more than ~~8 1/2~~ inches wide and 11 inches long, and must be signed.

~~6.2.6. Formal complaints must be~~ and sworn to substantially in the form ~~hereinafter prescribed (See of Form No. 13)~~ attached to these Rules.

~~6.2.7.~~ 6.2.5. When a formal complaint, ~~together with the requisite number of copies,~~ shall have been filed and ordered 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.

~~6.2.8.~~ 6.2.6. When ~~issues is~~ joined by service of an answer on the complainant are joined, the Commission may set a

time and place for an evidentiary hearing may be set which will be at its offices in the City of Charleston or elsewhere in the state at the discretion of the Commission. The Commission may issue its order on the pleadings, if there are no substantial issues of fact.

~~6.2.9-6.2.7.~~ 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.

~~6.2.10-6.2.8.~~ 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. ~~Investigations by commission.~~ General Investigations

6.3.1. ~~In case of an~~ The Commission may initiate a general investigation of a public utility on motion of the Commission, Commission Staff, or on its own motion. the notice of investigation will take the place of a formal complaint in such proceeding, and shall be served in like manner as a formal complaint unless otherwise ordered. 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.

6.4.1. 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. ~~Time to file.~~ Answer to Formal Complaint.

Within ten (10) days from the date of service of the complaint and order ~~above provided for~~ as provided in Rule 6, the defendant or defendants complained against shall file ~~typewritten~~ answer or answers, duly verified. The period so fixed may be shortened or extended by the Commission when it deems advisable.

### 7.2. Answer to ~~an~~ General Investigation.

An answer to a notice of general investigation on the motion of ~~the~~ Commission Staff or on the Commission's own motion

may be ~~requested~~ required.

### 7.3. Service.

The original answer and ~~seven (7)~~ 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 servicing such answer, personally, or by ~~registered mail~~ 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 ~~proceeding will then be discontinued~~ 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 authorized 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.

~~A The Commission may order a further and better statement of any cause or ground of complaint or defense, or further and better particulars of any matter seated in any pleading, may in any case be ordered at the discretion of the Commission.~~

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

9.1. Motion and Objection.

The original motion or objection and twelve 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.

Any party wishing to respond to a motion or objection must file the original response and twelve copies thereof with the Executive Secretary of the Commission within ten days of the date the motion or objection is served; 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.

9.3. Reply.

Any party wishing to reply to a response to a motion or objection must file the original reply and twelve copies thereof with the Executive Secretary of the Commission within ten 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.

A railroad, or any other public utility or motor carrier, desiring to discontinue any regular passenger train, or her public service facility or service, or to change any regular passenger train schedule or timetable, shall file with the Commission its application for authority so to do, together with ~~seven (7)~~ twelve (12) additional copies thereof, substantially in the form prescribed by the Commission; provided (in the case of train schedule or timetable) uniform rules and regulations for such change have not theretofore been filed by such railroad and approved by the Commission. (See Form No. 3)

10.2. Change of rates.

A public utility or motor carrier desiring to change its rates, rules and/or regulations ~~may file with the Commission its application for authority so to do, together with seven (7) additional copies thereof, substantially in the form prescribed by the Commission. Such application shall set forth accurately and fully all the rates, rules and regulations of the applicant in effect on the date the application is made, also the proposed rates, rules and regulations in full, and the reasons for the change. (See Form No. 4.)~~ should comply with the Commission's Rules for the Construction and Filing of Tariffs, 150 CSR 2.

10.3. Certificate of convenience and necessity.

10.3.1. ~~A public utility, person or corporation desiring to construct any plant, equipment, property or facility for furnishing public utility service or to obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of its existing system in the usual course of business, or to construct an extension of its existing system into new territory shall file with the Commission an application for a certificate that public convenience and necessity require such construction, franchise, license, permit or extension, together with seven (7) additional copies thereof, substantially in the form prescribed by the Commission. Such application shall set forth, or by exhibits attached thereto show, the following: Name and address of petitioner, the city, town or community affected, the nature of the utility service to be furnished, the municipality of other governmental agency from which a franchise, license or permit is to be obtained, a full description of the proposed new construction or extension, including the manner in which the same will be constructed, the names of all public utilities, corporations or persons with whom the proposed new construction or extension is likely to compete, the rates proposed, cost, and estimate of operating revenues and expenses of new construction or extension, the manner, in detail, in which it is proposed to finance the same, and a concise~~

~~statement of the reasons why a certificate should be issued. (See Form No. 5.) Any public utility, person or corporation, 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.)~~

~~10.3.2. Any municipality, governmental agency, or political subdivision desiring to construct a new system or to make major extensions to an existing system shall include in its feasibility study:~~

- ~~a. A complete customer listing, which is cross-referenced to the system or project map showing the location of each customer,~~
- ~~b. Which customers have signed contracts for service,~~
- ~~c. Which customers have paid tap fees,~~
- ~~d. Which houses and buildings are plumbed; and~~
- ~~e. Which customers have a private water supply.~~

Any public service district intending to file an application for a certificate of convenience and necessity shall, at least thirty 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 Pre-Filing Notice in the form of Form No. 15, 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. 15 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. 15 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.

10.3.3. Any public utility, person or corporation, other than a public service district, intending to file an application for a certificate of convenience and necessity shall,

at least thirty 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.

10.3.4. To file an application for a certificate of convenience and necessity, a public utility, person or corporation, shall, thirty days following a pre-filing by a public service district as described in Rule 10.3.2., or the filing of a notice of intent to file a certificate application as described in Rule 10.3.3., 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. 5, attached to these Rules, (ii) a completed Form No. 16 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. 16 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's customers reside, and requiring that the utility separately mail Form 16 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.

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

~~10.3.3.~~10.3.5. 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 with the Commission ~~its an original application for authority to do so, together with seven (7) eight (8) additional copies thereof, substantially in the form prescribed by the Commission.~~ its notice of intent to file an application, and its application for a certificate of convenience and necessity in accordance with Rules 10.3.1, 10.3.3. and 10.3.4. Such application shall include, ~~i~~In addition to the appropriate information required by Rule ~~10.3.1.~~10.3.4. above, the application shall include all of the information required by Rule 9 of the Commission's Rules and Regulations for the Government of Electric Utilities, 150 CSR 3.

~~10.3.4-10.3.6.~~ 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 ~~eight (8)~~ twelve (12) copies thereof, ~~substantially in the form prescribed by the Commission. as identified in section 10.1 et seq. of the Commission's Rules and Regulations for the Government of Motor Carriers of Passengers and Property, 150 CSR 9.~~ Such application shall set forth, or by exhibits attached thereto show, the following: Name and address of the applicant, if a corporation, a copy of the effective charter of incorporation, unless the same has been heretofore filed with the Commission, a description of the type of service to be performed and a description of the area to be served.

10.3.7. 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 Division 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.

a. An owner and/or operator of a commercial solid waste facility shall apply for a certificate of need by filing a completed Form No. 17, attached hereto, together with twelve (12) copies of the same with the Commission's Executive Secretary. In addition to Form No. 17, the utility shall file a completed Form No. 19 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. 19 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 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.

b. 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. 18, 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 Division of Environmental Protection. In addition to Form No. 18, the utility shall file a completed Form No. 19 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. 19 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 commercial solid waste facility provides, or will provide service, as indicated in its certificate application and/or its Division 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.

c. After receiving Form No. 18, 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. 17.

#### 10.4. Operating Contracts between utilities.

10.4.1. 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 its application for authority so to do, together with seven (7) twelve (12) additional copies thereof, substantially in the form prescribed by the Commission. Such petition shall set forth the name and address of the petitioners, the name and address of the utility whose line or plant is to be operated or whose lines or plants are to be operated in connection with the petitioner, the class of service rendered by the petitioner and the utility whose line or plant is to be operated, the location

~~thereof~~, a detailed statement ~~covering~~ describing the operation ~~or connection proposed contract~~, the effect it will have upon the service of the petitioners ~~and the utility involved~~, 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. (See Form No. 6.)

~~NOTE:~~10.4.2. (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 name and address 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 ~~seven (7)~~ twelve (12) additional copies thereof, substantially in the form prescribed by the Commission. 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. (See Form No. 7.)

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 ~~seven (7)~~ twelve (12) additional copies thereof, substantially in the form prescribed by the Commission. 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. (See Form No. 8.)

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 ~~seven (7)~~ twelve (12) additional copies thereof, substantially in the form prescribed by the Commission. 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. (See Form No. 9.)

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 ~~seven (7)~~ twelve additional copies thereof, substantially in the form prescribed by the Commission. 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. (See Form No. 10.)

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 ~~seven (7)~~ twelve (12) additional copies thereof, substantially in the form prescribed by the Commission. 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. (See Form No. 11.)

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 ~~seven (7)~~ twelve (12) additional copies thereof, substantially in the form prescribed by the Commission. 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. (See Form No. 12.)

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.

~~NOTE: (See Appendix for checklists that maybe used as an aid in filing applications for certificates.)~~

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

11.1. When conference may be ~~requested~~ required.

11.1.1. 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, ~~request~~ require all interested parties to attend a preferring conference, teleconference, or mediation. ~~for the purpose of determining the feasibility of settlement or formulating the issues in the proceeding and to determine other matters to aid in its disposition. A commissioner or an administrative law judge shall preside at such conference to consider: simplification of issues; necessity or desirability of amendments to the pleadings; the possibility of obtaining admission of fact and documents which will avoid unnecessary proof; limitations on the number and consolidation of the examination of witnesses; the procedure at the hearing; the distribution of written testimony and exhibits to the parties prior to the hearing; and such other matters as may aid in the disposition of the proceeding, or settlement thereof.~~

11.1.2. Facts disclosed in the course of a preferring 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. Procedure following preferring conference.~~

~~Following the preferring conference a proposed form of the formal hearing, if one is to be had, reciting the action taken at the conference, amendments allowed to the pleadings, and the agreements made by the parties concerning all of the matters considered shall be submitted by mail as specified in these rules for proper service to the parties or their attorneys, or authorized representatives, for approval. If no objection to form of notice is filed within ten days after the date such notice is mailed it shall be deemed to be approved. This notice when so approved, and after due service, shall limit the issues to be heard at the hearing to those not disposed of by admissions or agreements of the parties or their counsel, and will control the subsequent course of the proceeding unless modified at the hearing to prevent manifest injustice: **Provided**, however, That no such limitations on issues by the parties shall prohibit the Commission from enlarging or modifying the issues in any case.~~

~~11.3-11.2. Recessing hearing for conference.~~

In any proceeding the ~~presiding officer~~ Commission may, in ~~his~~ 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 ~~presiding officer~~ Commission shall state on the record the results of such conference.

**§150-1-12. Rule 12, Hearings.**

12.1. General provisions.

12.1.1. The date, time and place location of holding hearings will be ~~set~~ scheduled by the Commission and notice thereof served upon all parties as may be required by statute and/or the Commission's Rules ~~and Regulations~~. Hearings will be held at the Commission's hearing room in the City of Charleston or elsewhere in the State at ~~it's~~ 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.

12.1.2. All hearings will be open to the public.

12.2. Presiding officers.

12.2.1. 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 it's 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."

12.2.2. The ~~presiding officer~~ 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 ~~that do not involve final determination of proceedings~~; and to take such other action as may be necessary and appropriate to the discharge of his 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 name and address in writing to the reporter who will include the same in the record of the hearing. The ~~presiding officer conducting the hearing~~ Commission may, in addition thereto, require appearances to be stated orally, so that the identity and interest 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.

12.4.1. At any hearing, all ~~participants~~ parties, ~~except Protestants~~, shall be entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make argument, and generally participate in the conduct of the proceeding.

12.4.2. 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 ~~presiding officer~~ Commission, file a petition or move orally to do so prior to the close of the period for taking appearances. The ~~presiding officer~~ Commission may, within ~~his~~ its discretion, grant, deny or qualify the extent of participation by such protestant during the evidentiary proceeding and thereafter.

### 12.5. Termination of party status.

Notwithstanding any other provision of these rules

pertaining to party status, and unless specifically authorized by the ~~presiding officer or by order of 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 paragraph 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 by ~~the presiding officer or the~~ Commission.

#### 12.6. Interventions.

12.6.1. 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 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.

#### 12.6.2. Service of petition.

The original petition for leave to intervene and ~~five~~ (5) 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.

#### 12.6.3. Special intervention.

Any person, other than the original parties to the proceeding, who shall desire 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. Petition shall be in the form and content

as 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.

#### 12.6.4. Limitations of intervention.

When two or more intervenors have substantially similar interest and position, the Commission ~~or presiding officer~~ may, in order to expedite the hearing, limit the number of parties who may be permitted to 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 ~~be associated with an active member in good standing of the West Virginia State Bar who shall be a responsible attorney in the action before the Commission, and service of notices and other papers upon such responsible local attorney shall be binding upon the client; 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 a party may appear for and represent himself, or a partner may represent his partnership, upon permission granted in the discretion of the ~~presiding officer~~ 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 ~~presiding officer~~ Commission may, at ~~his~~ 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.

12.13.1. One copy of the transcript of testimony will be furnished by the Commission without charge ~~for the use of the complainant and one copy for the use of the defendant. If two or more complainants or defendants have appeared at the hearing, such complainants or defendants must designate by written notice to the Executive Secretary to whom the copy for their use shall be delivered. A similar course as to parties will be pursued in rate investigation cases, applications to change or discontinue service and similar cases.~~ to each party to a proceeding, unless otherwise ordered.

12.13.2. Additional copies of transcripts of evidence may be obtained by any party in interest from the Executive Secretary by paying therefor at a rate to be determined by agreement between the party requiring the same and the reporter, but in no event to exceed the maximum fixed therefor in the contract between the Commission and the reporter currently governing the subject. Persons desiring extra copies of the transcripts of testimony and proceedings 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 ~~presiding officer~~ Commission, is the best evidence reasonably obtainable, having due regard to its necessity, availability and trustworthiness. In passing upon the admissibility of evidence, the ~~presiding officer~~ 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.

~~In major rate cases the Commission expects the parties to file prepared testimony. Eight copies of such prepared testimony shall be filed with the Secretary of the Commission at~~

~~least twenty (20) days prior to the date of the hearing.~~ 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. Interrogatories Data Requests.

~~13.6.1. A party may file with his complaint or answer, interrogatories in writing, which must be pertinent to substantial issues in the proceeding to be answered under oath by the adverse party for the discovery of facts and documents material in support of or defense against said complaint; and if either party be a corporation, an order may be made requiring such interrogatories to be answered under oath by any named officer of such corporation. No order will be made requiring such interrogatories to be answered unless the same shall be accompanied by oath or affirmation of the party filing the same, his agent or attorney, to the effect that he believes the answers to said interrogatories will be material to the defense or prosecution of his case. The interrogatories shall be answered separately and fully, in writing, under oath. The answer shall state the question, then the answer to said question. Answers to interrogatories shall be filed within ten (10) days after such order shall have been made and served upon the adverse party, or within such specified time as may be fixed by the Commission in~~

such order. Written objections, if any, shall be filed within five (5) days after service of any interrogatories. Answers to interrogatories to which objection is made shall be deferred until the objections are determined by the Commission. If the objections are overruled, the answers shall be served within ten (10) days after notice of the Commission's action. A party may serve data requests in writing upon the attorney for a party, if such party is represented by an attorney. Data requests must be pertinent to substantial issues in the proceeding. If data requests are served upon a corporation, the party serving the data requests may request that they be answered by any named officer of such corporation. Copies of data requests, together with a certificate of service, shall be filed with the Executive Secretary and served upon all parties.

13.6.2. Parties served with data 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 interrogatories, requests for information, requests for admission, and data 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.

13.6.3. Parties filing responses to data requests shall file a certificate of service with respect to the service of responses with the Executive Secretary of the Commission. The party responding shall file any written objections to data requests within ten (10) days after service of data requests. The responding party shall file any Motion to Compel answers to data requests within five (5) days after service of objections to data requests. The responding party may defer responses to data requests to which it has made objection until the Commission rules upon the Motion to Compel. If the 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.

~~13.6.2.13.6.4. Matters relating to answering interrogatories~~ Discovery disputes should only be submitted to the Commission in instances where their propriety is questioned by the party from whom information is sought or when the responding party has made objections to answering specific questions are raised data requests. Parties are encouraged to handle resolve these matters between themselves, if possible, before offering any of them submitting discovery disputes to the

Commission.

13.7. Exhibits.

13.7.1. All maps, prints, writings, statements or documents, exhibited with and made part of any pleading, or filed as part of the testimony of any witness, must be accompanied by a sufficient number of copies to provide a copy for each party to the proceeding and ~~seven (7)~~ twelve (12) copies for use of the Commission. 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 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.

13.7.2. 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. 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 upon the written application of any party, 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. Subpoenás for the production of books, papers or documents may be issued upon written application 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 certified 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 findings and conclusions of parties.**

17.1. Notice.

The ~~presiding officer~~ (~~Commissioner or Administrative Law Judge~~) may require all parties of record to file proposed findings of fact and conclusions of law and/or proposed final orders at the close of testimony in the proceeding. The ~~presiding officer~~ 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. Contents of Proposed Orders.

Each proposed 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 which supports that proposed finding of fact.

17.3. Copies required.

An original and ~~six (6)~~ 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. ~~Enlargement~~ Extensions of time.

Any party may petition the ~~presiding officer~~ Commission for an ~~enlargement~~ 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 ~~presiding officer~~ 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. ~~It is the policy of the Commission to encourage oral argument in lieu of filing of briefs.~~ The requirements of this rule may be altered by agreement of the parties with the consent of the Commission ~~or the presiding officer.~~

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 ~~presiding officer~~ Commission, time permits and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public warrants, ~~such presiding officer~~ the Commission may, either on ~~his~~ 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 ~~presiding officer~~

Commission, or unless briefs are to be filed simultaneously, the party having the burden of proof, such as a complainant, applicant, or respondent and intervenor, as the case may be, shall have twenty (20) days after the receipt of a transcript of the evidence in which to file ~~six (6)~~ twelve (12) copies of its brief with the Commission and to serve a copy thereof on each of the other parties to the case. The defendant, protestant or defending or protesting intervenor shall have ten (10) days after receiving said briefs within which to file ~~six (6)~~ twelve (12) copies of its brief with the Commission and serve a copy thereof on each of the other parties to the proceeding. The complainant, applicant or respondent and intervenor shall file and serve its reply brief as aforesaid within five (5) days thereafter.

18.4. Briefs filed simultaneously.

In any proceeding when in the judgment of the ~~presiding officer~~ Commission the circumstances or exigencies require may direct that briefs be filed simultaneously or otherwise and the ~~presiding officer~~ Commission may require, after having given due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved, that the time for filing of briefs shall commence running at the close of the hearing.

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

19.1. ~~Application by petition.~~

~~Applications for (1) further hearing in a proceeding after the closing of testimony and before final submission on oral argument or brief, for (2) reopening a proceeding after final submission and before decision, or for (3) rehearing or reargument after decision, must be made by petition, duly verified, within ten (10) days after the date of such closing of testimony, final submission or within ten (10) days after the final order was mailed by the Commission to the parties of record, as the case may be. Such petition shall state specifically the grounds relied upon, and shall be filed with the Commission and a copy served by the petitioner upon each adverse party, or his attorney, who appeared at the hearing, or oral argument, if any, or on brief.~~

Exceptions.

A party may file exceptions to a recommended decision within fifteen (15) days from the date the recommended decision was issued and shall serve a copy of the exceptions on the attorney for each adverse party. 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. If the party filing exceptions seeks that a recommended decision be vacated, reversed, or modified, because of matters that have arisen since the hearing, or consequences that would result from compliance with the recommended decision, 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.

19.2. ~~Further hearing, or reopening.~~ Application for Further Hearing.

Applications for further hearing in a proceeding after the closing of testimony and before entry of a recommended decision or Commission Order must be made by petition, duly verified, filed with the Commission within the following time limitations: within ten (10) days from the closing of testimony. 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. If the application be for further hearing before final submission, or for reopening the proceeding to take further evidence after submission and before decision, the nature and purpose of the evidence to be adduced must be briefly stated, and it must appear not be merely cumulative.

19.3. ~~Rehearing or reargument.~~

~~If the application be for rehearing or reargument after decision, the matters claimed to have been erroneously decided must be specified and the alleged errors stated. If thereby any order of the Commission is sought to be vacated, reversed, or modified, by reason of matters which have arisen since the hearing, or by reason of consequences which would result from compliance therewith, 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.~~  
Application for Reconsideration.

Applications 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.

19.4. 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 in change the period of notice thereby

prescribed, must be made by petition ~~seasonably~~ 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 ~~telegram 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 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.~~19.6. Number of copies of exceptions or petition.

19.6.1. Each Exceptions or a petition filed under this rule shall be accompanied by ~~three (3)~~ twelve (12) additional copies thereof for the use of the Commission, and by a certificate showing service upon the parties, of their attorneys who appeared as aforesaid, or their attorneys if represented by legal counsel. Within five (5) days after such service any adverse party may file and serve in like manner a reply to the exceptions or 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 exceptions or a petition at any time after it is filed.

~~19.5.2. Upon the filing of said reply or upon default thereof within the said period, the Commission will make such order with respect to the hearing of said petition, or the granting of the prayer thereof, as it shall deem just and right.~~

**§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 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 ~~eight~~ 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:

20.1.1. A statement showing the class or subclass of plant to which 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.

20.1.2. 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 ~~eight~~ twelve 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 together with the setting of a date for a hearing on the reasonableness of such change by notice to the utility proposing the change in depreciation rates.

**§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 a 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 the fees fixed by law to be paid to a clerk of the circuit court for like service, except that the fee for certifying a copy of any printed document furnished to the Executive Secretary for certification, ~~or a carbon copy of any typewritten document so furnished,~~ shall be one dollar (\$1.00).

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

~~23.1. When an order is made in the office of the Secretary, or by the Commission, without prior notice to, or in the absence of the party against whom the order is made, the Secretary shall, unless otherwise directed by the Commission, forthwith send a copy of such order by mail to such party, or his attorney of record. 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, Ethical responsibilities.**

The Constitution of West Virginia, Article 4, Section 5, requires each Commission member to support the Constitution of the United States and the Constitution of West Virginia and to faithfully discharge the duties of a Commission member to the best of the member's skill and judgment.

West Virginia Code, Chapter 24, Article 1, Section 23, provides that incompetency, neglect of duty, gross immorality or malfeasance in office are grounds for removal from the Commission. This statute provides, also, that (1) no member or employee of the Commission shall at the same time be in the employ of or hold any official relation to any public utility regulated by the Commission, (2) no member or employee of the Commission shall own any securities of or be pecuniarily interested in any public utility regulated by the Commission, (3) no member or employee of the Commission shall receive anything of value either directly or indirectly from any public utility subject to regulation by the Commission, and (4) no member of the Commission shall be candidate for or hold public office or be a member of any political committee.

West Virginia Code, Chapter 24, Article 1, Section 24, provides that any Commissioner or person employed by the Commission as director of any division thereof shall devote full time to the performance of his or her duties as such Commissioner or employee during the regular working hours as set by the Commission.

To supplement and expand on the foregoing constitutional and statutory standards of conduct, the Commission

and professional members of the Staff of the Commission shall observe the high standards of conduct required by the professions to which their activities relate as follows:

The Commission and each of its members in the performance of their quasi-judicial duties as an administrative tribunal or member thereof shall adhere to the Canons of the Code of Judicial Conduct. Hearing Officers-Employees (Administrative Law Judges) of the Commission who are delegated to hold hearings on behalf of the Commission or its members shall conduct themselves in the performance of their delegated quasi-judicial duties as hearing officers under Code, Chapter 24, Article 1, Section 3, pursuant to the Canons of the Code of Judicial Conduct as prescribed for Commissioners in this rule and regulation.

25.1. Adjudicatory function.

25.1.1. The Commissioners shall carry out the functions of decision making and supervision of the Commission itself.

25.1.2. The General Counsel shall act as legal advisor to the Commission; represent the Commission before the Courts and other agencies.

25.1.3. The Division of Administrative Law Judges shall carry out the adjudicatory duties of the Commission as required; hear and decide cases; and establish and maintain a law library.

25.1.4. Law Clerks shall provide legal and administrative assistance to the Commissioners.

25.1.5. Auditors may be assigned to the Office of the Commissioners and Division of Administrative Law Judges to provide expert assistance in rate making decisions.

25.1.6. Support Staff shall include the Executive Secretary's Office and such other Staff as may be necessary for the Commission to carry out its assigned duties.

25.1.7. The Office of the Commissioners, the General Counsel, ~~the Division of Administrative Law Judges~~, Law Clerks, Auditors assigned to the Office of the Commissioners, the Division of Administrative Law Judges and support Staff shall constitute the adjudicatory section of the Commission. The duties of the above shall not include those of advocacy in Commission proceedings.

25.1.8. The Office of the Commissioners and the Division of Administrative Law Judges, Auditors assigned thereto,

Law Clerks and necessary support Staff shall exist independently of the other divisions of the Commission. Ex Parte communications between these offices and other divisions of the Commission whose duties are those of advocacy shall be discouraged.

a. To this end, Commission Staff from the legal Division, the Utilities Division, the Water and Wastewater Division, the Engineering Division, and the Transportation Division assigned to a given case shall be precluded from ex parte communications with the Commissioners or the assigned Administrative Law Judges regarding that case.

b. The Commissioners or Administrative Law Judges assigned shall have full access to Division Directors for counsel regarding issues that may arise in the processing of the case.

25.2. Advocacy function.

25.2.1. The Legal Division, Utilities Division, the Water and Wastewater Division, the Engineering Division, and the Transportation Division shall act as advocates before the Commission for and in the interest of all customers and shall constitute the advocacy section of the Commission.

a. The Legal Division shall represent the other Public Service Commission divisions before the Administrative Law Judges and the Commission itself and may take Exceptions to Administrative Law Judge's Recommended Orders on behalf of the Commission Staff, Petition for Reconsideration of Commission orders, and respond to Exceptions and Petitions presented by other parties to the case, but shall not be authorized to appeal Commission decisions to the Courts.

~~b. Within the Legal Division there shall be established a Federal Unit which will be responsible for analysis of federal issues of significant importance to the Commission. An Associate General Counsel shall be responsible for the supervision of the Federal Unit.~~

25.2.2. The Utilities Division shall be responsible for field and desk audits, compliance audits, rate of return recommendations, economic and financial analysis and forecasting, energy acquisition use and analysis, rate structure recommendations and management audits. In addition, the Utilities Division shall be responsible for supply-demand forecasting, service reliability and maintenance analysis, operations efficiency analysis, and construction management audit and analysis.

a. The said Utilities Division shall be divided into areas of utility responsibilities, which said areas of responsibility shall be as follows, to-wit: Energy, Water and Sewer, Special Studies, Telecommunications, Motor Carrier Rates.

~~b. These operating divisions of the Public Service Commission shall be entrusted with the advocacy functions before the Commission and shall exist independently of other Commission divisions. Ex Parte communications between the advocacy and non advocacy divisions of the Commission are discouraged. To this end, Commission Staff from the Legal Division, and the Utilities Division assigned to a given case shall be precluded from any ex parte communications with the Commissioners or the assigned Administrative Law Judges regarding the case then pending before the Commission or Administrative Law Judges.~~

25.2.3. The Engineering Division shall be responsible for investigating the technical aspects of utilities and developing technical recommendations in cases pending before the Commission. The Engineering Division will work to promote a safe, reliable and cost-efficient utility infrastructure throughout West Virginia.

25.2.4. The Water and Wastewater Division shall be responsible, with respect to public service districts, municipalities, and homeowner associations, for:

a. Investigating formal cases and making recommendations to the Commission.

b. Performing detailed management and operation audits known as Focused Management Audits.

c. Participating in hearings before the Commission and offering evidence and testimony regarding revenue requirements, operating performance, quality of service, and construction activities.

d. Investigating informal complaints and responding to customer requests for information.

e. Responding to water and wastewater utility inquiries for technical, operational, financial, and regulatory assistance.

25.2.5. These operating divisions of the Public Service Commission shall be entrusted with the advocacy functions before the Commission and shall exist independently of other Commission divisions. Ex Parte communications between the

advocacy and non-advocacy divisions of the Commission are discouraged. To this end, Commission Staff from the Legal Division, the Utilities Division, the Water and Wastewater Division, the Engineering Division, and the Transportation Division, assigned to a given case shall be precluded from any ex parte communications with the Commissioners or the assigned Administrative Law Judges regarding the case then pending before the Commission or Administrative Law Judges.

~~25.2.3.~~ 25.2.6. The Commissioners, ~~or the~~ Administrative Law Judges, Auditors, Law Clerks and necessary support Staff assigned to a case shall have full access to the Division Directors for advisory counsel regarding issues that may arise in the processing of the case.

~~25.2.4.~~ 25.2.7. The Legal Division, the Utilities Division, the Water and Wastewater Division, the Engineering Division, and the Transportation Division shall protect the interests of each class of customer by carrying out to the fullest extent possible the advocacy duties entrusted to each division through the preparation of direct testimony and the legal presentation of such testimony. In each case testimony shall explain the impact of the Staff recommendation on each class of customer and whether the particular interest of each class of customer is protected.

~~25.2.5.~~ 25.2.8. Staff Counsel-Employees (Legal Division) of the Commission when functioning or appearing as Staff counsel before the Commission or on behalf of the Staff shall represent all elements of the public and shall be bound by ~~the Canons of the Code of Professional Responsibilities~~ Rules of Professional Conduct as adopted by the Supreme Court of Appeals on ~~June 9, 1970~~ June 30, 1988, and by the Standards of Professional Conduct adopted by the Supreme Court of Appeals on November 22, 1996, in like manner as shall apply to all attorneys who represent their particular clients while practicing before the Commission.

~~25.2.6.~~ 25.2.9. All Staff Engineers and Technical Analysts shall:

a. ~~Be guided in all professional relations by the highest standards of integrity. Adhere to the provisions of West Virginia Code Chapter 30, Article 13, and the Rules of Professional Responsibility, if any, promulgated by the West Virginia State Board of Registration for Professional Engineers, as authorized by said Article.~~

b. Protect the public health, safety and welfare, and regard his or her duty to the public welfare as paramount.

c. Express an opinion of an engineering subject only when founded on adequate knowledge and honest conviction.

d. Perform services only in an area of his or her competence.

e. Avoid any actual or apparent conflict of interests.

f. Not compete unfairly with another engineer by taking advantage of a salaried position.

g. Not associate with or allow the use of his or her name by an enterprise of questionable character, not become professionally associated with engineers who do not conform to ethical practices, or with persons not legally qualified to render the professional services for which the association is intended.

h. Give credit for engineering work to those to whom credit is due, and will recognize the proprietary interests of others.

i. Cooperate in extending the effectiveness of the profession by interchanging information and experience with other engineers and students, and will endeavor to provide opportunity for the professional development and advancement of engineers under his or her supervision.

j. Not use a public position to secure personal advantage and will avoid any act tending to promote his or her own interest at the expense of the dignity and integrity of the professional or the Public Service Commission.

~~25.2.7.~~ 25.2.10. All professional accounting or auditing members of the Staff shall adhere to the applicable portions of the current "Rules of Professional Conduct" of the West Virginia Board of Accountancy, ~~dated November 1, 1964,~~ and the applicable professional ethics as contained in the "AICPA Professional Standards" of the American Institute of Certified Public Accounts which, in general, provide as follows:

a. An Accountant should:

A. Maintain his or her integrity and objectivity.

B. Observe the profession's technical standards and strive to improve his or her competence and quality of service.

C. Be fair and candid with the Commission and all persons and businesses subject to the Commission's regulation.

D. Conduct himself or herself in a manner which will promote cooperation and good professional relations in the public interest and will enhance his or her and the Commission's ability to serve the public.

b. An Accountant should not:

A. Express an opinion on financial matters of an enterprise unless done with impartiality.

B. Sign a report purporting to express a professional opinion as a result of an examination unless the same has been examined by said Staff member or a Staff employee under the direction of the said Staff member.

C. Fail to disclose a material fact known to him or her which is necessary to make the financial statement not misleading.

D. Express an opinion or direction in such a way that the hearer may reasonably be expected to believe that the Staff speaks for the Commission and not as a Staff employee.

c. The enumeration of these rules of ethical conduct should not be construed as a denial of the existence or applicability of other ethical standards not specified.

25.3. ~~The Motor Carrier Division, Gas Pipeline Safety Section, and the Railroad Safety Division are hereby incorporated into a division hereafter to be known and referred to as the Transportation Division and shall continue to be~~ is charged with ~~its~~ duties and responsibilities with regard to motor carriers, gas pipeline operators, and railroad safety. This division shall exist separately from the other divisions of the Commission.

25.4. The Division of Administrative Law Judges shall be charged with the primary responsibility of adjudicating motor carrier cases which go to hearing, consistent with and subject to the provisions of Sections four and nine, Article one, Chapter twenty-four of the Code of West Virginia, as amended, and shall continue as presently constituted.

25.5. The Office of the Executive Secretary shall remain in existence and shall continue to be charged with its present duties and responsibilities.

25.6. The Consumer Advocate Division shall remain in

existence and shall continue to be charged with its present duties and responsibilities.

~~25.7. The Public Service District Division shall remain in existence and shall continue to be charged with its present duties and responsibilities.~~

~~25.8.~~ 25.7. The ~~Customer Relations Division Consumer Affairs Technicians~~ shall be responsible for promoting public awareness of the customer's rights and responsibilities under the Public Utility Laws of the State of West Virginia. It shall provide a forum for the processing of informal complaints.

**~~§150-1-26. Rule 26, Forms prescribed by the Public Service Commission. Appendix~~**

~~(P.S.C. W. Va. forms may be obtained from the Executive Secretary of the Public Service Commission.)~~

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

~~26.1.1. This is a checklist that may be used as an aid by a municipality or public service district in filing an application for a certificate of convenience and necessity and for approval of rates and charges for the construction or improvement of a water or sewer system, where EPA or FHA financing is involved. The information requested should be filed on or before the hearing date and represents the minimum needed.~~

~~a. An application for a certificate of convenience and necessity and for approval of rates for the construction or improvement of a water or sewer system should be filed on Form No. 5 of the prescribed forms of the Rules of Practice and Procedure.~~

~~b. The application should set out specifically, in addition to the information requested therein, all the rates and charges requested, such as usage blocks, the minimum charges, connection fee, delayed payment penalty, multiple occupancy, and mobile home charges, flat rates for non metered customers, user surcharges were applicable, and the proposed rules and regulations, if any.~~

~~c. The application should also request approval of proposed financing.~~

~~d. The application should be accompanied by the following information, if available, and when applicable:~~

~~A. The accounting information required by Rule 42 of the Commission's Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicle.~~

~~B. Preliminary engineering report, including detailed cost estimates.~~

~~C. A copy of any agreement or contract between the applicant and another utility for the purchase or sale of water or sewer services.~~

~~D. 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, as required by Rule 10.3.2. of the Rules of Practice and Procedure.~~

~~E. A copy of the proposed bond and rate ordinance.~~

~~F. Certificates of approval by the State Department of Health and Department of Natural Resources.~~

~~G. A copy of a letter from EPA, FHA, or other source showing commitment of funds for proposed financing.~~

~~H. Information concerning interim financing.~~

~~e. A public officer or official should appear at the hearing on behalf of the applicant, such as its Mayor, Chairman of the Sanitary or Water Board, Chairman or Member of the Public Service District. The applicant should also produce competent witnesses to introduce its engineering and accounting data and reports.~~

~~f. The evidence to be offered at the hearing should concern the areas to be served by the system; the number of customers estimated to be served, initially and in the near future; capacity of the proposed system; number of customers contracting for service; the type of system or expansion to be build; cost estimates; proposed funding and financing, including interim financing, if any; estimated dates of starting and completing construction, proposed operation of the system, including the number of employees, salaries, etc. Sufficient evidence should be presented at the hearing to enable a finding on the following issues:~~

~~A. Whether public convenience and necessity~~

~~require the proposed service.~~

~~B. Whether the proposed system will provide adequate service.~~

~~C. Whether the project is adequately financed.~~

~~D. Whether the project is economically feasible.~~

~~E. Whether the proposed rates are just and reasonable and are not unduly discriminatory.~~

~~g. At the hearing the applicant should be prepared to introduce evidence showing the actual amounts of the construction contracts when let, whether bids are higher than originally estimated, whether additional financing will be required and source thereof. If rates higher than the rates originally requested are needed, an amended application should be filed.~~

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. 5.
2. Verification as per Form No. 13.
3. Rule 42 Accounting information:

a. Existing System

1. The Rule 42 presents the entire system at per books adjusted to going-level.
2. At the discretion of the Commission and for good cause shown, adjustments related to non project related costs may be included in the revenue requirements of the certificate case, subject to Rule 42.
3. All adjustments related to the proposed project are presented at Pro-Forma.

- b. New System - All financial information related to the proposed project is presented at Pro-Forma.
  - c. Project related adjustments to operation and maintenance expenses shown in Rule 42 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.
- 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 all 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.
- b. One electronic copy of the engineering design plans and project maps in AutoCAD format or similar file type. The file(s) should be provided on a 3.5-inch floppy disk or CD-ROM disk.
- c. The plans and maps should show line size, type, length and drawn to scale.
- d. Identification/numbering of customers that have applied for service and identification of customers who may be served by the project.
- e. Identification of property lines for customers to be served and location of service lateral stubs (sewer) or customer service lines and meters (water). (If available)
- 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. 15 attached hereto, pursuant to West Virginia Code §16-13A-25.
19. Proposed Notice of Filing, in the form of Form 16 attached hereto, for review by the Commission. The utility shall not publish this form until directed to do so in a Commission Order.
20. Copy of letter from utility providing thirty (30) day advance notice of filing pursuant to West Virginia Code §24-2-11.
21. If the proposed project requires modification of a public service district boundary, a statement that the county commission process is complete.
22. 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.
23. Evidence of SHPO compliance.
24. Statement showing when bids are anticipated to be let.
25. Other information as needed.
26. Case number and approval date of engineering agreements involving public service district. A copy of the engineering agreements must be submitted for municipalities and private utilities.

~~26.2. APPENDIX CHECKLIST FOR FILING MOTOR CARRIER APPLICATIONS~~

~~This is a checklist that may be used as an aid in filing applications for common carrier operating authority, contract carrier operating authority, amendment of certificates, transfer of certificates, and applications to change rates, tolls and charges.~~

~~26.2.1. APPLICATIONS~~

~~A. All motor carrier applications shall be filed with the Commission on the form prescribed and shall be accompanied by the appropriate filing fee. Forms will be provided by the Motor Carrier Division upon request. If a petition is filed in lieu of a prescribed form, the petition~~

shall contain substantially the same information required by the form. (Filing fees and forms are prescribed by Rules 3.2. and 10., respectively, of the Rules and Regulations for the Government of Motor Carriers of Passengers and Property).

~~-----~~ B. ~~Forms (Rule 10.)~~

~~-----~~ P.S.C. W.Va. M.C. Form No. 5 ~~-----~~ Application for a permit to operate as a contract carrier of property by motor vehicle.

~~-----~~ P.S.C. W.Va. M.C. Form No. 6 ~~-----~~ Application for a certificate of convenience and necessity to operate as a common carrier of property by motor vehicle.

~~-----~~ P.S.C. W.Va. M.C. Form No. 7 ~~-----~~ Application for a certificate of convenience and necessity to operate as a common carrier of passengers in taxicab service.

~~-----~~ P.S.C. W.Va. M.C. Form No. 8 ~~-----~~ Application for a certificate of convenience and necessity to operate as a common carrier of passengers by motor vehicle over regular routes or between termini.

~~-----~~ P.S.C. W.Va. M.C. Form No. 9 ~~-----~~ Application for authority to suspend operation as a common or contract carrier of passengers or property.

~~-----~~ P.S.C. W.Va. M.C. Form No. 10 ~~-----~~ Application for authority to discontinue operation as a common or contract carrier of property or passenger, and for cancellation of the certificate or permit.

~~-----~~ P.S.C. W.Va. M.C. Form No. 11 ~~-----~~ Application for approval of the transfer and assignment of a certificate of convenience and necessity.

~~-----~~ P.S.C. W.Va. M.C. Form No. 12 ~~-----~~ Application for approval of the transfer and assignment of a permit to operate as a contract carrier.

~~-----~~ P.S.C. W.Va. M.C. Form No. 48 ~~-----~~ Application for a change in rates.

~~-----~~ C. ~~Filing Fees (Rule 3.2.)~~

~~-----~~ Application for a certificate of convenience and necessity..... \$20.00

~~-----~~ Application for reinstatement of, and or to resume operations under a certificate..... \$20.00

- ~~Application for transfer of certificate.... \$15.00~~
- ~~Application for amendment of certificate... \$15.00~~
- ~~Application to suspend all of a part of the operations under a certificate..... \$15.00~~
- ~~Petition for reopening a case involving certificate when filed later than 10 days after entry of a final order..... \$15.00~~
- ~~Application for a contract carrier permit.. \$10.00~~
- ~~Application for reinstatement of, and or to resume operations under a permit..... \$10.00~~
- ~~Application for transfer of permit..... \$10.00~~
- ~~Application for amendment of permit..... \$10.00~~
- ~~Application to suspend all or a part of the operations under a permit..... \$10.00~~
- ~~Petition for reopening a case involving a permit when filed later than 10 days after entry of a final order..... \$10.00~~
- ~~Application for authority to adopt or change a trade name under a certificate or permit.... \$5.00~~
- ~~Combined applications for transfer of certificates and/or permits..... \$15.00~~

~~D. Content~~

~~All applications shall contain the name and address of the applicant and the name under which the applicant doing business, if any. The application must be signed by the applicant and acknowledged before a notary public. If the applicant is a corporation, the application shall state the name of the state issuing the charter and the date of issuance. A copy of charter should be attached, if not previously filed with the Commission.~~

~~An application for a certificate to transport property should list the commodities to be transported and describe the territory and/or routes to be served. (Example: General commodities (freight) or low grade commodities, including but not limited to, sand, gravel, road building materials, etc.)~~

~~An application for a certificate to transport passengers in taxicab service or over regular routes of operation (bus) shall in addition to the above general requirements list the names of the existing carriers with which the proposed service is likely to compete.~~

~~An application to change rates, tolls and charges should be filed on P.S.C. W.Va. M.C. Form No. 48 and be accompanied by the financial data required by M.C. Rule No. 42 of the Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicle.~~

~~An application for a contract carrier permit shall be accompanied by a contractor's affidavit P.S.C. W.Va. M.C. Form No. 43, and an affidavit for a waiver of formal hearing.~~

## ~~II. NOTICE~~

~~After an application has been filed and the filing fees paid, the Commission will enter an order setting the application for hearing. The applicant shall publish notice of the time and place of hearing in the form and manner prescribed by the Commission in its order. The cost of publication shall be borne by the applicant. After the publication of notice, the applicant shall secure a certificate(s) of publication from the publisher and file the same with the Commission on or before the date of hearing.~~

## ~~III. HEARINGS~~

~~The time and place of hearings shall be prescribed by the Commission. The applicant shall appear at the time and place of the hearing and be prepared to pursue his application unless he has otherwise obtained a continuance pursuant to the provisions of Rule 12, Para. (1) of the Rules of Practice and Procedure. Failure to appear, without having obtained a continuance, may result in a dismissal of the proceeding.~~

## ~~IV. BURDEN OF PROOF~~

~~A. Application for Certificate and for an Amendment of Certificate.~~

~~1. The burden of proof rests upon the applicant. Upon an application for a certificate of convenience and necessity to transport property or passengers, the applicant must show by preponderance of the~~

evidence that public convenience and necessity require the proposed service. This burden of proof cannot be met solely by the applicant's testimony. The applicant should be prepared to produce public witnesses who can testify on his behalf that there is a public need for the proposed service.

2. The same proof is required for an amendment of an existing certificate.

#### B. Transfer of Certificate

1. Upon an application for approval of the transfer and assignment of a certificate or permit, the certificate or permit holder, i.e., transferor, and the transferee, i.e., the person seeking to acquire said certificate, shall appear at the hearing. The transferor should be prepared to testify as to the nature and extent of his operation under the certificate sought to be transferred, that he has actively been operating under the certificate and that the certificate is not otherwise dormant. The transferee should be prepared to show that he is financially able to provide the service, that he has the experience and the necessary equipment to provide the proposed service, that he is able to secure proper liability insurance on all motor vehicles to be operated, and should give a general description of his proposed operation.

#### C. Contract Carrier Permits

1. Upon the filing of an application for a contract carrier permit, including a contractor's affidavit and affidavit for waiver of formal hearings, the applicant shall publish notice of the filing of said application in the form and manner prescribed by the Commission. The cost of publication shall be borne by the applicant. After the publication of notice, the applicant shall secure a certificate(s) of publication from the publisher and file the same with the Commission. Within three (3) days after the date of publication, and proof thereof, the Commission may grant temporary operating authority providing it has not received written notice of protest. If no written protest is received within ten (10) days of the date of publication, the Commission may grant the authority requested without formal hearing. If written protest is received, the application will be set for hearing.

2. The burden of proof will rest upon the applicant to show that the proposed service will not endanger the safety of the public or unduly interfere with the use of the highways or impair unduly the condition or unduly increase the maintenance cost of such highways,

~~directly or indirectly, or impair the efficient public service of authorized common carrier or common carriers adequately serving the same territory. The applicant shall produce a witness representing the contracting shipper who can testify as to his specialized need for a contract carrier as opposed to the service provided by a common carrier.~~

~~FORMS PRESCRIBED BY PUBLIC SERVICE COMMISSION~~

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 [Here state name and occupation or business of the  
complainant and place of business.]~~

21. That the above-named \_\_\_\_\_,  
defendant, is a public utility engaged in the business of [state the  
public utility business of the defendant] 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.

32. 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.]

Wherefore, the complainant prays that the said defendant \_\_\_\_\_  
\_\_\_\_\_ be required to answer the charges hereinabove set out,  
and that, after due investigation, an order may be made commanding  
the said defendant to cease and desist from the violation of the law  
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 \_\_\_\_\_, 19\_\_\_\_\_.

(Signed) \_\_\_\_\_  
Complainant.

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

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

150CSR2

Form No. 1  
Page 2 of 2

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

Attorney's Address:

\_\_\_\_\_

[Add verification ~~as set out in~~ Form No. 13.]

Form No. 2

**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) \_\_\_\_\_

By \_\_\_\_\_  
President or other officer

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

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

[Add verification ~~as set out in~~ Form No. 13.]

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) \_\_\_\_\_

By

\_\_\_\_\_  
President or other officer

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

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

[Add verification ~~as set out in~~ Form No. 13.]

APPLICATION TO CHANGE RATES

State of West Virginia  
Public Service Commission  
Charleston

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

Application of \_\_\_\_\_

for authority to change rates, tolls and charges for  
\_\_\_\_\_ at \_\_\_\_\_ in the county of \_\_\_\_\_

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

1. That it is a public utility as defined by Chapter 24 (or 24A) of the Code of West Virginia, 1931, as amended, doing business under the laws of the State of West Virginia.

2. That its principal place of business is at \_\_\_\_\_, West Virginia, and that it is engaged in the management and operation of a \_\_\_\_\_ in said \_\_\_\_\_ and that as such public utility, it is subject to the provisions of Chapter 24 (or 24A) of the Code of West Virginia, 1931, as amended, applicable to said class of public service utilities.

3. That at this time it has in effect the following schedule of rates, fares, tolls and charges in effect at the time this application is made: }

4. That it applies to the PUBLIC SERVICE COMMISSION for authority to change its rates for the reason that: [Here state reasons for changing rates and if an advance or decrease in rates, state estimated annual increase or decrease in revenue, making a separate paragraph, if possible, for each reason, and numbering each paragraph consecutively a, b, c, etc.]

5. That application is hereby made for authority to change the rates of said applicant in the county of \_\_\_\_\_, in the State of West Virginia, and to put into effect the following schedule: [Here state in detail all the schedule of rates, fares, tolls and charges, proposed to be substituted for those now in effect.]

6. [State what other public utilities are or may be interested in this schedule or change of rates:]

WHEREFORE, The said \_\_\_\_\_, applicant, prays that after due hearing and investigation, the Public Service Commission may make an order granting the application

~~herein and establishing the proposed rates and charges, or such rates, fares, tolls and charges as it may find to be equitable in the premises.~~

~~\_\_\_\_\_ Dated at \_\_\_\_\_, West Virginia, this  
\_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.~~

~~\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Applicant.~~

~~\_\_\_\_\_ By  
\_\_\_\_\_  
\_\_\_\_\_ President or other  
officer.~~

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

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

~~\_\_\_\_\_ [Add verification as set out in Form 13.]~~

~~**NOTE:** Such application must be accompanied by information required by Rule 42.~~

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. That the following is a full and complete description of  
the new construction or extension, including a description of the  
manner in which the same will be constructed.~~

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

~~4. Names of other public utilities, corporations or persons  
with whom the proposed construction may compete:~~

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

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

~~6. The rates proposed to be charged are as follows:~~

\_\_\_\_\_  
\_\_\_\_\_.

~~7. It is estimated that the proposed construction, etc., will  
cost \$ \_\_\_\_\_.~~

~~8. It is proposed to finance the new construction, etc., as follows:~~

---

---

~~9. Detailed estimate of operating revenues and expenses as follows:~~

---

---

~~10.4.~~ 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.)

~~11.5.~~ A certificate should be issued for the following reasons:

---

---

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

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

By: \_\_\_\_\_  
President or other officer

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

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

[Add verification ~~as set out in~~ Form No. 13.]

**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.

APPLICATION FOR AUTHORITY TO ~~OPERATE PLANT IN CONNECTION~~  
CONTRACT WITH ANOTHER PUBLIC UTILITY

State of West Virginia  
Public Service Commission  
Charleston

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

Application of \_\_\_\_\_, a public utility, and  
~~\_\_\_\_\_~~, a public utility, for authority to ~~operate~~  
~~its line or plan in connection with~~  
~~\_\_\_\_\_~~, a public utility. enter  
into a contract.

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

1. That the name and address of the petitioners are

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

~~2. That the name and address of the utility whose line or~~  
~~plant is to be operated, or whose line or plant is to be operated in~~  
~~connection with the petitioner are~~

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

~~3.2.~~ [State the class of service rendered by the  
petitioners and the utility whose line or plant is to be operated  
and the location thereof.]

~~4.3.~~ [State detailed information covering the operation or  
connection, including description and character of operation or  
connection regarding the proposed contract.]

~~5.4.~~ [State the effect it will have upon the service of  
the petitioners and the utility involved.]

~~6.5.~~ The consideration to be paid for the service to be  
rendered for the operation or connection under the contract is as  
follows: [If the arrangement is by written contract a copy thereof  
A copy of the written contract must be filed as an exhibit attached  
to the petition.]

~~7.6.~~ [State whether or not any other utility will be  
affected by the proposed operation contract.]

~~8.7.~~ [State reasons why the prayer of the petition should  
be granted.]

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

Form No. 6  
Page 2 of 2

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

By

\_\_\_\_\_  
President or other officer

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

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

[Add verification as ~~set out in~~ Form No. 13.]

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 \_\_\_\_\_,  
19\_\_\_\_.

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

Form No. 7  
Page 2 of 2

By \_\_\_\_\_  
President or other officer

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

Address:

\_\_\_\_\_  
[Add verification ~~as set out in~~ Form No. 13.]

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.]

Form No. 8  
page 2 of 2

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 \_\_\_\_\_,  
19\_\_\_\_.

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

By \_\_\_\_\_  
President or other officer

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

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

[Add verification ~~as set out in~~ Form No. 13.]

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 \_\_\_\_\_,  
19\_\_\_\_.

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

By \_\_\_\_\_  
President or other Officer

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

Address:

\_\_\_\_\_

[Add verification ~~as set out in~~ Form No. 13.]

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 \_\_\_\_\_,  
19\_\_\_\_.

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

By \_\_\_\_\_  
President or other officer

150CSR2

Form No. 10  
Page 2 of 2

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

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

[Add verification ~~as set out in~~ Form No. 13.]

**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.]

Form No. 11  
page 2 of 2

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

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

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

By \_\_\_\_\_  
President or other officer

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

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

[Add verification ~~as set out in~~ Form No. 13.]

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 \_\_\_\_\_

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 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: \_\_\_\_\_
is prayed for the following 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 \_\_\_\_\_,
19\_\_\_\_.

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

By \_\_\_\_\_

President or other officer

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

Address:

\_\_\_\_\_  
[Add verification as set out in Form No. 13.]

150CSR2

Form No. 13

**VERIFICATION**

[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  
\_\_\_\_\_, 19 \_\_\_\_.

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

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

**NOTICE OF SCHEDULED TERMINATION OF SERVICE  
AND CUSTOMER RIGHTS**

**State of West Virginia  
Public Service Commission  
Charleston**

We have scheduled your \_\_\_\_\_ service  
provided at \_\_\_\_\_  
(address)  
for termination on or after \_\_\_\_\_.  
(date)

This action has been taken for the following reason(s):

**(Include reason and facts resulting in decision to terminate  
service.)**

If you feel that any portion of your bill is in dispute, that you are being charged for service you are not receiving, that any of the information stated above is incorrect or that you are unable to pay for such service in accordance with the billing or that you are able to pay for such service but only in installments and the termination of service would be especially dangerous to the health or safety of a member of your household, then you have the right to challenge the bill.

If you believe any of the conditions in the preceding paragraph apply to you, notify us before the date of termination, stated above, at this address and/or phone number:

Once you have notified us of the existence of any of the conditions listed above, we will schedule a meeting at the business office nearest to your residence where you can present your position to \_\_\_\_\_, who is authorized to settle the position. If the reason for the meeting is a disputed bill or a charge for service not rendered, you will be required to pay any amount not in dispute. If the reason for the meeting is inability to pay in accordance with our billing or ability to pay but only in installments and you demonstrate that termination of service would be especially dangerous to the health or safety of a member of your household, we will attempt to negotiate a deferred payment plan with you.

150CSR2

Form No. 14  
page 2 of 2

When a decision has been reached on your challenge to the proposed termination, you will have seven days from the date of the decision in which to file an appeal with the Public Service Commission of West Virginia if you are not satisfied with our resolution of the problem. To file an appeal with the PSC, you may write to them at this address:

Public Service Commission of West Virginia  
Post Office Box 812  
201 Brooks Street  
Charleston, West Virginia 25323

or call this toll free telephone number, 1-800-642-8544, and give the necessary information. There is no charge associated with filing an appeal but you will be responsible for payment for service provided during the pendency of such appeal.

If you are in need of assistance to pay your bill you should contact the following agencies (list agencies in service area):

If you desire the assistance of a lawyer with regard to the scheduled termination and are unable to pay for legal counsel, contact one of the following low income legal assistance organizations (list low income legal assistance organizations in service area):

**NOTICE OF PRE-FILING**

State of West Virginia  
Public Service Commission  
Charleston

NOTICE IS HEREBY GIVEN that \_\_\_\_\_, a  
public utility has given notice to the Public Service Commission of its intent to file an  
Application for a Certificate of Convenience and Necessity for the construction,  
operation and maintenance of a \_\_\_\_\_  
to serve approximately \_\_\_\_\_ customers in \_\_\_\_\_  
\_\_\_\_\_ areas of  
\_\_\_\_\_ County, West Virginia.

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 rates for the project are not to exceed the following:

(List proposed rates here)

These rates represent the following increases:

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

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

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

Form No. 15  
Page 2 of 2

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

Form No 16

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

Form No. 16  
page 2 of 2

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to net amount shown. If any bill is not paid within sixty (60) days after date, service to the customer will be disconnected. Service will not be restored until all past due bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

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 increases.

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

(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.

Form No. 16  
page 3 of 3

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

Form No. 17

COMMERCIAL SOLID WASTE FACILITY  
APPLICATION FOR CERTIFICATE OF NEED

State of West Virginia  
Public Service Commission  
Charleston

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

1. Fax No. \_\_\_\_\_ 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?  
\_\_\_\_\_

Form No. 17  
page 2 of 2

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.**

[add verification Form No. 13]



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?

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

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

[add verification Form No. 13]

Form No. 19

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  
served, or to be served, by the commercial solid waste facility, as indicated in its  
certificate application and/or in its State Division of Environmental Protection permit,  
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

Form No. 19  
page 2 of 2

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.