

**TITLE 150
PROCEDURAL RULES
PUBLIC SERVICE COMMISSION**

**SERIES 1
RULES OF PRACTICE AND PROCEDURE**

§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. -- W. Va. Code §24-1-1(f) and 7; and §24-2-1 and 2

1.3. Filing Date. -- November 13, 1986

1.4. Effective Date. -- January 12, 1987

1.5. Rule 1, General Offices and Hearings.

(a) The general offices of the Public Service Commission shall be kept open, in charge of the 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.

(b) 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, Secretary to Furnish Information.

2.1. The Secretary of the Commission will, upon request, advise any party as to the form of

petition, complaint, 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 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 complaint, investigation, application or petition, with a file number corresponding to the number of the case, together with brief chronological notations of the proceedings had in the case.

3.3. Order Book, in which shall be recorded, on the day of their filing, all orders made or passed by the Secretary as of course or by the Commission in any formal case. Separate Order Books shall be kept and maintained for Utility, Motor Carrier and Gas Pipeline Safety Divisions.

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 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 Secretary will not be required to file any paper not so identified.

§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.

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.

§150-1-6. Rule 6, Complaints.

6.1. Informal Complaints.

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

(b) No form of informal complaint is prescribed, but in substance the letter or other writing must contain the essential elements of a 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.

(c) This informal procedure is found efficacious in the majority of cases, and is recommended. In the event, however of the failure 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 file and

prosecute a formal complaint, whereupon the informal proceeding will be discontinued.

6.2. Formal Complaints.

(a) Any person, firm association of persons, public officer, public or private corporation, municipality or county may complain to the Commission by petition substantially in the form hereinafter prescribed (see Form No. 1) of anything done or omitted to be done by the public utility in violation of any of the provisions of the public service commission law of West Virginia. Two or more complainants may join in one complaint if their respective causes of action are against the same defendant or defendants and involve substantially the same violation of law and like set of facts. When any defendant is operated by a receiver or trustee, both the utility and its receiver or trustee must be made defendants.

(b) 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 attorney, if any, must be given.

(c) 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.

(d) 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.

(e) 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.

(f) Formal complaints must be sworn to substantially in the form hereinafter prescribed (see Form No. 13).

(g) 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.

(h) When issue is joined by service of an answer on the complainant, the Commission may set a time and place for an evidentiary hearing 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.

(i) 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.

(j) 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.

(a) In case of an investigation on motion of the Commission, 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.

6.4. Interim Relief.

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

§150-1-7. Rule 7, Answer and Service.

7.1. Time to File.

Within ten (10) days from the date of service of the complaint and order above provided for, 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 Investigation.

An answer to a notice of investigation on the motion of the Commission may be requested.

7.3. Service.

The original answer and seven (7) copies thereof must be filed with the Secretary of the Commission; and, at the same time, a copy of said answer shall be served by the defendant serving such answer, personally, or by registered mail, upon each complainant or his attorney. The said defendant shall certify to the 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.

§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 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).

§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) 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.)

10.3. Certificate of Convenience and Necessity.

(a) 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 or 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.)

(b) 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:

(1) A complete customer listing, which is cross-referenced to the system or project map showing the location of each customer,

(2) Which customers have signed contracts for service,

(3) Which customers have paid tap fees,

(4) Which houses and buildings are plumbed; and

(5) Which customers have a private water supply.

(c) Any public utility desiring to construct a high voltage transmission line of two hundred thousand (200,000) volts or higher, shall file with the Commission its application for authority to do so, together with seven (7) additional copies thereof, substantially in the form prescribed by the Commission. Such application shall include, in addition to the appropriate information required by paragraph (a) above, all of the information required by Rule 9.00 of the Commission's Rules and Regulations for the Government of Electric Utilities.

(d) 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 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 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.

10.4. Operating Contracts Between Utilities.

A public utility, except railroads other than street railroads, desiring 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) shall 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 petition shall set forth the name and address of the petitioner, 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 the operation or connection, the effect it will have upon the service of the petitioner 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: (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, equipment, business or other property of any other utility shall 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 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) 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) 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) 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) 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 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) 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 matter 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 may be used as an aid in filing applications for certificate.)

§150-1-11. Rule 11, Prehearing Conference.

11.1. When Conference may be Requested.

(a) When issues are joined in any formal proceeding the Commission may, on its own

motion or upon petition by any party, with reasonable written notice, request all interested parties to attend a prehearing conference 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.

(b) Facts disclosed in the course of a prehearing conference 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 Prehearing Conference.

Following the prehearing conference a proposed form of notice 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. Recessing Hearing for Conference.

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

§150-1-12. Rule 12, Hearings.

12.1. General Provisions.

(a) The time and place of holding hearings will be set 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 its 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.

(b) All hearings will be open to the public.

12.2. Presiding Officers.

(a) When evidence is to be taken in any proceeding before the Commission, said hearings will be held by one or more of the members of the Commission, or by one or more of its employees that shall have been duly designated by it to hold hearings.

(b) The presiding officer 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 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 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.

(a) At any hearing, all participants, 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.

(b) Any person who is a protestant and who desires to participate in the proceeding, other than as a witness, may, within the discretion of the presiding officer, file a petition or move orally to do so prior to the close of the period for taking appearances. The presiding officer may, within his 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.

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

(b) Service of Petition.

The original petition for leave to intervene and five (5) copies thereof must be filed with the 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 Secretary that said service has been made.

(c) 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.

(d) 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 shall 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; 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.

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 may, at his 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.

(a) 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 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.

(b) Additional copies of transcripts of evidence may be obtained by any party in interest from the 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 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, 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 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, be

stipulation in writing filed with the 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.

(a) 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.

(b) Matters relating to answering interrogatories should only be submitted to the Commission in instances where their propriety is questioned by the party from whom information is sought or when objections to answering specific questions are raised. Parties are encouraged to handle these matters between themselves, if possible, before offering any of them to the Commission.

13.7. Exhibits.

(a) 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) 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 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.

(b) The Secretary shall keep in his 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 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. Subpoenas for the production of books, papers or documents may be issued upon written application by the 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, 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 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.

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) 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 of Time.

Any party may petition the presiding officer for an enlargement 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 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 filing of briefs. When, in the opinion of the presiding officer, 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 may, either on his 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, 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) 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) 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 the circumstances or exigencies require may direct that briefs be filed simultaneously or otherwise and the presiding officer 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, Further Hearing, Reopening, or 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.

19.2. Further Hearing, or Reopening.

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.

19.4. Modification of Order.

Application for modification of orders which seek only change in the date when they shall take effect, or in 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 or otherwise, upon notice thereof to all parties or attorneys who appeared as aforesaid.

19.5. Number of Copies of Petition.

(a) Each petition filed under this rule shall be accompanied by three (3) additional copies thereof for the use of the Commission, and by certificate showing service upon the parties

of their attorneys who appeared as aforesaid. Within five (5) days after such service any adverse party may file and serve in like manner a reply to the petition, the reply so filed to be accompanied by a like number of copies for the use of the Commission.

(b) 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 copies of the following information with respect to each depreciation rate proposed to change on or after the effective date of this rule:

(a) 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.

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

20.2. When the proposed change in rate applicable to any class or subclass of plant (1) amounts to twenty percent (20%) or more of the rate currently applied thereto, or (2) would have changed by one percent (1%) or more the aggregate annual depreciation charges for all depreciable plant if the new rate applicable to such class or subclass had been in effect during the preceding calendar year, the statements required in foregoing paragraph 20.1 shall be

supplemented by copies of supporting data, calculations, and charts underlying the service-life, salvage and cost of removal estimates.

20.3. The foregoing statement shall be accompanied by an exhibit, an original and eight 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 Secretary's office may be obtained by any person desiring the same upon payment to the 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 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.

§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:

Public Service Commission of West Virginia

1 Brooks Street, P. O. Box 812

Charleston, West Virginia 25323

§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 2, 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 3, 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.

(a) The Commissioners shall carry out the functions of decision making and supervision of the Commission itself.

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

(c) 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.

(d) Law Clerks shall provide legal and administrative assistance to the Commissioners.

(e) Auditors may be assigned to the Office of the Commissioners and Division of Administrative Law Judges to provide expert assistance in ratemaking decisions.

(f) 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.

(g) 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.

(h) 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.

(1) To this end, Commission Staff from the Legal Division, the Utilities 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.

(2) 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.

(a) The Legal Division, Utilities 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.

(1) 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.

(2) 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.

(b) 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.

(1) 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.

(2) 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.

(c) The Commissioners or the Administrative Law Judges 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.

(d) The Legal Division, the Utilities 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.

(e) 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 as adopted by the Supreme Court of Appeals on June 9, 1970, in like manner as shall apply to all attorneys who represent their particular clients while practicing before the Commission.

(f) All Staff Engineers shall:

(1) Be guided in all professional relations by the highest standards of integrity.

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

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

(4) Perform services only in an area of his or her competence.

(5) Avoid any actual or apparent conflict of interests.

(6) Not compete unfairly with another engineer by taking advantage of a salaried position.

(7) 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.

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

(9) 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.

(10) 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 profession or the Public Service Commission.

(g) All professional accounting or auditing members of the Staff shall adhere to the applicable portions of the "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 Accountants which, in general, provide as follows:

(1) 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.

(2) 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.

(3) 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 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 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. The Customer Relations Division 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. Forms Prescribed by the Public Service Commission.

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

APPENDIX

CHECKLIST FOR

**APPLICATIONS FOR CERTIFICATES
OF CONVENIENCE AND NECESSITY
AND FOR APPROVAL OF RATES**

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.

(1) 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.

(2) 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 where applicable, and the proposed rules and regulations, if any.

(3) The application should also request approval of proposed financing.

(4) 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-reference 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(c) 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.

(5) 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.

(6) 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 built, 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.

(7) 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.

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.

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 3.02 and 10.00, 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 passengers, 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 3.02)

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 or 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 dress 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.