

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE March 30, 1993
ADMINISTRATIVE

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

AGENCY: Public Service Commission TITLE NUMBER: 150

CITE AUTHORITY: West Virginia Code §§24-1-1, 24-2-1, 24-2-2 and 24-2-4a

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

West Virginia Code §24-1-7

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicle.

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: _____

TITLE OF RULE BEING ADOPTED: _____

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE EFFECTIVE DATE OF THIS RULE IS May 29, 1993


BOYCE GRIFFITH, Chairman

150 CSR 2

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 2

RULES AND REGULATIONS FOR
THE GOVERNMENT OF THE
CONSTRUCTION AND FILING OF TARIFFS
OF PUBLIC UTILITIES AND
COMMON CARRIERS BY MOTOR VEHICLE

§150-2-1 GENERAL

- 1.1 Scope - These rules govern the construction and filing of tariffs of public utilities in West Virginia subject to the jurisdiction of the Public Service Commission of West Virginia pursuant to West Virginia Code §24-2-1.
- 1.2 Authority - West Virginia Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2 and 24-2-4a.
- 1.3 Filing Date - March 30, 1993
- 1.4 Effective Date - May 29, 1993

§150-2-13 ACCELERATED RATE PROCEDURE FOR GAS, WATER AND ELECTRIC UTILITIES AND COMMON CARRIERS OF SOLID WASTE.

13.5 Rule 30-F. The following accelerated procedure may be used by a qualified water utility for changing rates to recover operating costs necessary to comply with 42 U.S.C. §§300f, 300-g, 300g-1 to g-6, 300h, 300h-1 to h-7, 300-i, 300i-1, 300j and 300j-1 to j-9 (hereinafter the Safe Drinking Water Act or Act) and subsequent amendments thereto.

For purposes of this rule, a qualified water utility shall be defined as a water utility which is subject to the rate setting requirements of West Virginia Code §24-2-4a and which is either a Public Service District, is qualified as a small utility pursuant to tariff rule 19-A or serves 3300 or fewer people.

Section A. If any qualified water utility incurs increased operating costs which are directly related to compliance with provisions of the Safe Drinking Water Act and the current rates of the utility are insufficient to cover such costs, the utility may petition for commission approval of rates and charges designed to produce additional revenues to offset such increased operating costs. The utility shall be required to attest at the time of petitioning that its current rates are insufficient to cover such costs.

The Commission may investigate the justness and reasonableness of the new rates so sought by the utility and the issues in such investigation shall be limited to:

- (1) Whether the increase in operating costs is required due to provisions of the Safe Drinking Water Act;
- (2) Whether the current rates of the utility are insufficient to cover such increased operating costs.
- (3) Whether the increase in rates filed by the utility is no more than sufficient to offset such increased costs;
- (4) The effective date of such increased costs and the nature and permanency thereof; and
- (5) The possibility that the costs underlying the rate increase may decrease in the future, to the point that the utility should file, or be required to file, a subsequent decrease in rates.

The filing requirements of tariff rule 42 are waived for a rate filing under this rule, and the utility will not be required to provide information in its initial filing pertaining to any element of cost of service except the change in operating costs related to the Safe Drinking

Water Act. Any party to a proceeding implemented pursuant to this rule, other than the utility, may present evidence pertaining to any element of the utility's cost of service not related to the Safe Drinking Water Act, to demonstrate that the utility's current rates are sufficient to cover operating costs related to the Act. Nothing herein shall be construed as shifting the burden of proof as set forth in West Virginia Code §24-2-4b. If the utility has received a Safe Drinking Water Act facilities sanitary survey or engineering report from the Department of Health, the report must be filed with the utility's petition under this rule. Further, any utility petitioning the Commission pursuant to this rule must have on file with the Commission a properly completed current annual report.

This rule is not intended to provide utilities the opportunity to increase rates due to increased operating costs that are not directly related to the Safe Drinking Water Act. Furthermore, this rule is not intended to provide direct funding or to cover increased debt service for major capital improvements which are necessary to satisfy requirements of the Act and which require the Commission's approval of a certificate of convenience and necessity pursuant to West Virginia Code §24-2-11.

Section B. Any utility which has implemented increased rates pursuant to this rule shall fund a separate bank account which shall be used solely to pay for those

increased operating costs which have been approved by the Commission in a final order issued pursuant to this rule. The utility shall maintain sufficient records to readily disclose, on a monthly basis, the amounts collected and deposited into said account and the withdrawals from said account. These records shall also readily disclose the purpose and ultimate disposition of withdrawn funds and shall be subject to review by Commission Staff. Any excess accumulated in said account shall not be used for purposes other than those specifically approved by the Commission.

Within the disposition of a rate case affecting any utility which has received a rate increase pursuant to this rule, the Commission, in its discretion, may release the utility from the obligation to fund the separate account as required by the preceding paragraph.

Section C. When any utility which has increased its rates pursuant to proceedings under this rule experiences a decrease in the costs which were the basis for the increase or has, in any year, collected revenues pursuant to this rule in excess of related expenditures for that year, said utility shall report promptly to the Commission the amount of the reduced costs and/or excess collections. Whereupon, this Commission will conduct an investigation and issue such further rate and/or refund order as is determined to be appropriate. Unless otherwise ordered by the Commission, the issues and evidence for such investigation

will be limited to:

(1) The amount of the cost reduction and/or excess collection;

(2) The effective date of the cost reduction;

(3) The extent to which the utility shall amend or adjust its tariff to give effect to cost reductions and/or past or continuing excess collections; and

(4) The extent to which, or if, the utility shall make refunds of past excess collections.

Any utility which invokes the proceedings under Section A hereof shall be deemed to have consented in advance to the proceedings and requirements of Sections B and C.

Public Service Commission
Of West Virginia

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



Phone: (304) 340-0300
FAX: (304) 340-0325

March 30, 1993

Judy Cooper
Building 1, Suite 157K
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770

RE: Tariff Rule 30-F

Dear Ms. Cooper:

Enclosed, please find a copy of the order, with attached rule, entered by the Public Service Commission promulgating and adopting Rule 30-F 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. This rule is specifically found at Section 150-2-13.5 of the CSR. Please note that Rule 30-F does not involve any revision of the Commission's current rules but is simply an addition to the tariff rules.

If you have any questions, please do not hesitate to call.

Sincerely,

Howard M. Cunningham
Executive Secretary
(304) 340-0426

HMC/CRC:dt

Enclosure

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MAR 30 3 58 PM '93

FILED

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 30th day of March, 1993.

CASE NO. 92-0742-PWD-W-GI

SMALL WATER UTILITIES SECTION, AMERICAN WATER WORKS
ASSOCIATION

Petition for promulgation of rule to expedite
rate treatment to small water utilities to
comply with the Safe Drinking Water Act.

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

MAR 30 3 58 PM 1993

FILED

COMMISSION ORDER ADOPTING RULES

On November 9, 1992, the Commission entered an order promulgating, as a proposed legislative rule, an amendment to 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 (Tariff Rules). This amendment, Rule 30-F, implemented an accelerated procedure to be used by a qualified water utility to change rates to recover operating costs necessary to comply with the Safe Drinking Water Act Amendments of 1986 (Safe Drinking Water Act or Act).

The November 9, 1992 order directed that all qualified water utilities, as defined in the proposed rule, be notified of the establishment of the rulemaking proceeding. The Commission also afforded interested parties sixty days from the date of the order to submit comments on the proposed rule. In addition, the order directed the Commission's Executive Secretary to publish notice of the proposed rulemaking and comment period in a newspaper, published and of general circulation, in the cities of Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Grafton, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling and Williamson.

Comments were received within the sixty day period from the Berkeley Springs Water Department (Berkeley Springs), West Virginia Department of Health and Human Resources (DHHR), Small Systems Committee of American Water Works Association (SSC/AWWA), Consumer Advocate Division (CAD), West Virginia Rural Water Association (WVRWA) and Public Service Commission Staff (Staff).

The Commission has reviewed the proposed rule, considered the comments filed by interested parties and concludes that the rule should be approved, as amended herein, for submission to the Legislature.

DISCUSSION OF COMMENTS BY
INTERESTED PARTIES AND AMENDMENTS.

Berkeley Springs commented only that it was in favor of the proposed rule.

The DHHR and the WVRWA both suggested that the definition of a qualified utility be expanded to include one that serves 3300 or fewer people. It was noted that this criteria defines a small utility in the Safe Drinking Water Act. The Commission finds this suggestion to be reasonable and, accordingly, the proposed rule has been so amended.

The DHHR, SSC/AWWA, WVRWA and Staff each suggested that the word "new" be deleted from the proposed rule when referring to the Act provisions. Staff and DHHR suggest that the use of this descriptive could lead to confusion should additional provisions of the Act be enacted, while the SSC/AWWA commented that the rule should apply to all provisions of the Act. The WVRWA simply commented that the deletion should be made to avoid confusion as to the applicability of the rule.

The Commission is of the opinion that the word "new" should be deleted from the rule. In addition, the Commission has more specifically defined those sections of the Safe Drinking Water Act, specifically the amendments of 1986, which are subject to the proposed rule.

The DHHR, SSC/AWWA, and WVRWA each requested that a specific time period be designated in which the accelerated procedure, which is the subject of proposed rule, must be completed. The Commission is of the opinion that such a designation is unnecessary. The Commission has historically processed expedited proceedings, such as the one now proposed, in a timely manner. However, each case must be investigated and processed based upon its specific facts and circumstances and it would be unwise to guarantee a specific time limitation by Rule.

The DHHR also requested that the term "audit report" in the proposed rule be changed to "sanitary survey or engineering report". This revision is made in final rule. Finally, the DHHR has suggested that the term "operating costs" be more specifically defined. The Commission is of the opinion, however, that such specificity would be unwise inasmuch as the type of operating costs which a utility may present to Commission pursuant to this proposed rule may vary considerably from utility to utility. It is better to review operating costs on a case by case basis, as specific facts and needs present themselves.

The most ardent opposition to the proposed rule was presented by CAD. First, CAD asserts that the Fiscal Note (Note), attached to the proposed rule does not comply with the statutory mandate, inasmuch as it states "there will be no significant implementation cost relating to the rulemaking for the State of West Virginia or for the persons affected by the proposed rules" and continues that "the Commission foresees that there may be some unpredictable positive impact of this rule on the State and on its residents". The Commission simply notes that the implementation cost referred to in the Note considers only the costs

involved in the actual administrative implementation of this rule. These costs are de minimus. However, this is not to say that the Commission does not recognize that this rule may result in the customers of qualified utilities paying increased rates. This increase to ratepayers results, however, from the implementation of amendments to the Safe Drinking Water Act, which are the underlying subject of the proposed rule, and not as a result of the proposed rule itself. In addition, the possible positive impact of this proposed rule refers only to the fact that this expedited procedure may make compliance with the Safe Drinking Water Act less burdensome for qualified utilities. This may, in turn, benefit the health and welfare of the residents of the state.

CAD also objects to the proposed rule because it leaves any investigation of the justness and reasonableness of the new rates sought by a qualified utility to the discretion of the Commission and, further, due to the waiving of Rule 42 filing requirements, is ambiguous regarding the information a utility must submit before it can be deemed entitled to a rate increase pursuant to the proposed rule. CAD also notes that the rule does not explicitly require a utility to justify its requested rate increase by affirmatively demonstrating it receives insufficient funds from its current rates and revenues to comply with the Safe Drinking Water Act. CAD strenuously objects to that language in the proposed rule which places the burden of proof upon a party challenging a utility's assertion that a rate increase is necessary to comply with the Act. CAD states that such a shifting of the burden violates the mandate of West Virginia Code §24-2-4a, which places upon a petitioning utility the burden of showing the justness and reasonableness of a proposed increased rate.

Upon consideration of CAD's comments, the Commission has made certain revisions to the rule in an effort to address these concerns without undermining the intended benefits of the rule. First, the rule now requires a petitioning utility to attest to the fact, at the time of application, that its current rates are insufficient to cover the costs of complying with the Act. In addition, this assertion is now specifically listed as an area of inquiry which the Commission may address in its investigation of the new rates sought. The petitioning utility must also have its current annual report filed with the Commission at the time a petition is made, which will provide any interested party basic information regarding the utility's costs and revenues. Furthermore, although a utility will not be required to file information in its petition pertaining to any element of cost of service except the change in operating costs related to the Act due to the fact that the procedure contemplated by the rule is intended to be expeditious, the Commission has revised the rule to reflect that any party may present evidence to show that the utility's current rates are sufficient to cover such costs. The Commission further clarifies that the burden remains upon the petitioning utility to show the justness and reasonableness of its proposed rate increase.

Although the Commission's investigation of the justness and reasonableness of an increased rate sought by a utility remains discretionary, the Commission is of the opinion that these revisions, taken in toto, will provide any interested party with the necessary

framework to bring to the Commission's attention any questionable rate increase sought.

The CAD also requested that the phrase "increased operating, costs which were contemplated to be covered by the rate increase," found in Section B of the proposed rule, be clarified. The Commission has revised this language to ensure that it is understood that the operating costs referred to are only those which have been specifically approved by the Commission in an order issued pursuant to the proposed rule.

Finally, CAD argues that there is no factual support in the record to make a finding that any utility has insufficient funds under its current rates to cover the cost of complying with the Safe Drinking Water Act and, thus, the entire proposed rulemaking is unnecessary. The Commission is of the opinion, however, that the proposed expedited rate treatment is in the public interest and simply notes that the Commission, in its discretion, may revisit this proposed rule at any time and amend the rule if it appears that such action would best serve the public interest.

The WVRWA presented other comments which, for the most part, go to the checks and balance system built into the proposed rule to ensure that any rate increase granted pursuant to the rule will, in fact, be used only to enable a utility to comply with the Act. WVRWA suggests that Section A(4) and B be deleted, as well as the self-policing provision of Section C, and that Section C be revised to set forth an annual review and true-up procedure. The Commission is of the opinion that such extensive modifications to rule would not be prudent inasmuch as the rule, as proposed, represents a careful balancing of the need a utility may have for an expedited increase and the Commission's mandate to ensure that the public is protected in a rate proceeding.

The WVRWA has also suggested that the rule be extended to municipal water utilities. However, while this expedited procedure may benefit these utilities, as the WVRWA points out, the current statutory framework simply does not allow for the availability of this procedure to municipalities.

Staff's comments have been considered and adopted by the Commission. Specifically the rule now states in Section B that a utility shall fund, rather than must agree to fund, a separate account and that Staff shall be able to review the records of such account. In addition, a paragraph has been added to Section B allowing the Commission, in its discretion, to release a utility from its obligation to fund this separate account, within the disposition of a rate case.

Finally, the Commission notes that West Virginia Code §24-1-7 provides that any rule finally adopted by the Public Service Commission may not become effective sooner than sixty (60) days after the filing of the finally adopted rules in the State Register.

FINDINGS OF FACT

1. On November 9, 1992, the Commission entered an order promulgating, as a proposed legislative rule, an amendment to 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 (Tariff Rules) which added Rule 30-F, an accelerated procedure to be used by a qualified water utility for changing rates to recover operating costs necessary to comply with the Safe Drinking Water Act Amendments of 1986.

2. Interested parties were afforded sixty days from the date of the order to submit comments on the proposed rule.

3. The Commission has reviewed the proposed rule and considered the comments filed by interested parties.

4. West Virginia Code §24-1-7 provides that any rule finally adopted by the Public Service Commission may not become effective sooner than sixty (60) days after the filing of the finally adopted rules in the State Register.

CONCLUSIONS OF LAW

1. The Commission concludes that as the modifications to the proposed rule contained herein are either clarifying in nature or are being made pursuant to various statutory provisions of the West Virginia Code, further publication and comment is not required.

2. The Commission concludes that it is in the public interest to adopt the proposed rule as the final rule of the Commission and that notice of the approval should be filed in the State Register.

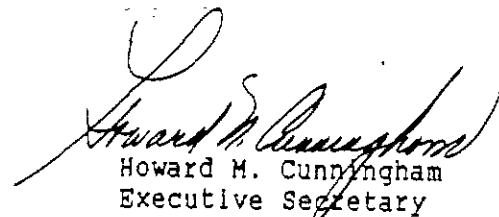
ORDER

IT IS, THEREFORE, ORDERED that the proposed rule as amended, a copy of which is attached hereto, is approved.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:

ARC
CRC/dt
920742.2


Howard M. Cunningham
Executive Secretary