

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

FILED

DEC 10 1991

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 Sections 8-18-23, 16-13A-9, 24-1-7, 24-2-1,

and 24-2-2
RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW
West Virginia Code Section 24-1-7

AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: FIVE

TITLE OF RULE BEING AMENDED: Rules and Regulations for the Government
of Sewer Utilities, Rules 2.04, 4.01A, 4.02, and 4.05

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 December 7, 1991

Bohler

GENERAL ORDER NO. 186.4

Amendment of Rule 2.04, 4.01A,
4.02, and 4.05 of the Commission's
Rules and Regulations for the Government
of Sewer Utilities.

ABSTRACT OF PROMULGATION HISTORY

On April 8, 1989, the West Virginia Legislature passed Enrolled Health Bill 2108 (H.B. 2108) which amended West Virginia Code §16-13A-9. H.B. 2108 was effective from passage.

Specifically, H.B. 2108 amended West Virginia Code §16-13A-9 by adding a provision requiring all users of services of public service districts to designate on every application for service whether or not the applicant is a tenant or owner of the premises to be served. If the applicant is a tenant, the applicant shall state the name and address of the owner of the premises to be served. In addition, H.B. 2108 added a requirement of a fifty dollar (\$50.00) deposit from all new applicants to secure the payment for services and made it mandatory for certain utilities to covenant and contract with each other for the termination of water service for the non-payment of sewer service fees.

Furthermore, the Commission has been made aware of the fact that, under the current deposit rule, districts may be forced to refund an amount over the actual deposit plus interest earned on the deposit as current interest rates are lower than the eight percent (8%) required to be refunded by the Commission's Rules and Regulations for the Government of Sewer Utilities (Sewer Rules).

Also, on April 8, 1989, the Legislature passed Enrolled Committee Substitute for Senate Bill No. 169 (S.B. 169) which was effective ninety (90) days from passage. S.B. 169 added a new Section 23 to Article 18, Chapter 8 (West Virginia Code §8-18-23) of the West Virginia Code which gives municipal sewer systems the authority to require discontinuance of water service by the provider water utility for non-payment of sewer service rates and charges. The Commission recognized that certain sewer utilities had been conducting termination of water service for non-payment of sewer bills under the provision of Chapter 8 and 16 of West Virginia Code and the Commission's Rules and Regulations for the Government of Water Utilities (Water Rules). The current sewer regulations have no provisions which address the procedures and requirements for termination of water for non-payment of sewer bills. As the sewer regulations needed to be updated to address such procedures and requirements and to address issues which had arisen since sewer utilities were given the authority to terminate water service, especially in the area of notice of termination after a customer has entered into a deferred payment agreement. Finally, the Commission recognizes that the current classifications under the uniform system of accounts is outdated. Therefore, the Commission proposed to amend

Rule 2.04 with regard to such classifications. Accordingly, by a Commission order entered March 8, 1991, the Commission issued a rulemaking proceeding in accordance with Chapter 29A of the West Virginia Code in order to promulgate the amendments to Rule 2.04, 4.01A, 4.02, and 4.05 of the Commission's Sewer Rules and the Commission's authority under West Virginia Code §§16-13A-9, 24-1-1, 24-1-7, 24-2-1, and 24-2-2. The Commission further directed that all comments to the Commission's proposed rule be received by the Commission within thirty days (30) of March 8, 1991, the effective date of the Commission's order.

On April 2, 1991, the Sanitary Board for the City of Bluefield filed comments pertaining to Section 4.05(4)(b)(3) and (4).

On April 9, 1991, the City of Madison filed a comment regarding clarification of proposed Rule 4.05(1).

Also, on April 9, 1991, the Sanitary Board of the City of Parkersburg filed comments to proposed Rule Nos. 4.02(1)(a), 4.05(4), and 4.05(5)(b).

After careful review of the comments received, the Commission adopts the proposed rule changes with the modifications hereinafter incorporated as the final rule of the Commission, to become effective sixty (60) days after promulgation in accordance with West Virginia Code §24-1-7.

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PUBLIC SERVICE COMMISSION
 OF WEST VIRGINIA
 LEGISLATIVE RULE
 CHAPTER 24-1
 SERIES 5

TITLE: Rules and Regulations for the Government of Sewer
 Utilities

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TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 5
RULES AND REGULATIONS FOR
THE GOVERNMENT OF
SEWER UTILITIES

FILED
1991 OCT -8 PM 3:44
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

1.00. GENERAL

- (1) Scope - These rules govern the operation and service of sewer utilities subject to the jurisdiction of the Public Service Commission pursuant to West Virginia Code §24-2-1.
- (2) Authority - West Virginia Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2, 16-13A-9, 8-18-23.
- (3) Filing Date - October 8, 1991
- (4) Effective Date - December 7, 1991
- (5) Amendment of Former Rule - This rule amends Rules 2.02(2), 2.04, 4.01A(1) and (3), 4.02(1) (a), (b), (e), (f), and 4.05 of Title 150, Series 5.

1.01 AUTHORIZATION OF RULES

- (1) These rules are intended to insure adequate service to the public, to provide standards for uniform and fair charges and requirements by the utilities and their customers, and to establish the rights and responsibilities of both the utility and the customer.
- (2) The adoption of these rules and regulations in no way preclude the Public Service Commission from altering or amending them in whole or in part, or from requiring any other or additional service, equipment, facility or standard, either upon complaint or upon its own motion, or upon the application of any utility.
- (3) These rules will not relieve in any way a utility from any of its duties under the laws of this State.

1.02 APPLICATION OF RULES

- (1) These rules apply to all sewerage utilities as defined in Regulation 1.03.

- (2) If hardship results from the application of any rule herein prescribed, or if unusual difficulty is involved in immediately complying with any rule, application may be made to the Commission for the modification of the particular rule or for temporary exemption from its provision. No application for such modification or exemption will be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

1.03 DEFINITIONS

- (1) Commission - Whenever in these rules and regulations the words "Commission" or "Public Service Commission" appear, such word, or words, shall, unless a different intent clearly appears from the context, be taken to mean the Public Service Commission of West Virginia.
- (2) A "Governmental Unit" is any municipality or other political sub-division or agency of the State of West Virginia or the Federal Government.
- (3) A "Customer" is any person, firm, corporation or governmental unit served by the utility.
- (4) An "Applicant" is any person, firm, corporation or governmental unit who has made an application for sewer service.
- (5) "Sewer Main" means sewer pipe owned, operated, or maintained by the utility which is used for the purpose of collection of sewage from which service connections with customers are taken.
- (6) "Utility Service Pipe" shall be that portion of the service pipe between the sewer main and the property line, right-of-way or easement line, installed at the cost and expense of the utility.
- (7) "Customer's Service Pipe" shall be that portion of the service pipe from the end of the utility's service pipe to the structure or premises, installed at the cost and expense of the customer.
- (8) A "Temporary Service Connection" is one which is installed for temporary use, provided that the customer's premises is located on a lot having a curb line abutting on that part of a street or public

right-of-way in which there is located a sewer main of the utility extending for the total frontage of the lot on said street or right-of-way, unless otherwise agreed to by the utility.

- (9) "Public Utility" - Except where a different meaning clearly appears from the context, the word, or words, "Utility" or "Public Utility" when used in these rules and regulations shall mean and include any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in business of collecting, transporting, and treating sewage.
- (10) "Service Connection" - The term "service connection" shall be defined to mean the utility's pipe and appurtenances which connect any sewer main in a public right-of-way, street, alley, or private right-of-way with the inlet connection of a customer's service line at the property line.

2.00 RECORDS, REPORTS AND OTHER INFORMATION TO BE SUPPLIED TO THE COMMISSION

2.01 RECORDS AND REPORTS

- (1) Preservation of Records - All records required by these rules shall be preserved by the utility in accordance with General Order No. 117-C of the Public Service Commission of West Virginia, issued September 25, 1972, and entitled "In the Matter of Regulations to Govern the Preservation of Records" to the extent that such order applies to sewerage facilities.
- (2) Location of Records -
 - (a) Such records should be kept at the office or offices of the utility in West Virginia and shall be available during the regular business hours for examination by the Commission or its duly authorized representative.
 - (b) If kept outside the State, they shall be brought to the utility's office in West Virginia upon request of the Commission, or the utility may be required to pay the reasonable traveling expenses

of such Commission employees assigned to the work when it is necessary to examine the records.

- (3) Reports to the Commission - Each utility shall furnish and report to the Commission, when called upon to do so by the Secretary, Director of the Division of Accounts, Finance and Rates, or Director of the Division of Engineering of the Commission, any other and further information in its or their possession respecting rates or practices in conducting its or their service, which may from time to time be required by this Commission, and without formal order of the Commission authorizing such request for said information.

2.02 FILING OF RATE SCHEDULES

- (1) Filing Required - All schedules, rules, regulations, special contracts and other charges for the collection, transportation, and treatment of sewage, shall be filed by each utility in the office of the Secretary of the Commission before they become effective.
- (2) Manner of Filing - Tariffs containing all the rates, rules and regulations of each utility shall be filed in the manner prescribed by the Commission in "Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicle", effective July 31, 1983, 1977, and any amendments or modifications thereafter made by the Commission.
- (3) Forms for Filing - The Commission will, upon application, furnish proper blanks to be used for the filing of tariffs and any changes thereof and additions thereto.
- (4) Utility's Special Rules -
 - (a) A utility desiring to establish any rule or requirements supplementing the rules of the Commission shall first make application to the Commission for authority for such rule or rules, clearly stating in its application the reasons for such establishment.
 - (b) On and after ninety (90) days from the effective date of these rules and regulations, any utility's special rules and regulations now on file with the

Commission which conflict with these rules, will become null and void, unless they have been ratified and approved by the Commission.

- (5) Exemption - A customer who has complied with the rules of the Commission shall not be denied service for failure to comply with the rules of the utility that have been approved by the Commission.

2.03 FINANCIAL AND STATISTICAL REPORT

- (1) (a) Each utility shall file annually a financial and statistical report upon forms to be furnished by the Commission, or in lieu thereof, upon forms approved by the Commission.
- (b) Said report shall be based upon the accounts set up in conformity with the Commission's order and rules as set out in Regulation 2.04 of these rules.
- (c) This report shall be filed on or before March 31st of the year succeeding the year covered by the report.
- (d) For good cause shown, the Commission will grant, through its Secretary, a reasonable extension of time upon application therefor, in writing, to the Secretary, such application to be made before the expiration of the time for filing of such report.
- (2) Exception - Municipally or governmentally owned sewerage utilities having a fiscal year ending June 30th, shall file their annual financial and statistical reports on or before September 30th of the succeeding fiscal year covered by the report.

2.04 UNIFORM SYSTEM OF ACCOUNTS

All sewerage utilities are required to keep their accounts and records in conformity with the Uniform System of Accounts for Sewer Utilities. as prescribed by the Commission and made effective in 1958. Each utility shall keep its accounts in accordance with its own proper classification. The classification of sewer utilities for purposes of keeping accounts in accordance with the Uniform System of Accounts shall be as follows:

<u>Classification</u>	<u>Revenue Level</u>
A	\$800,000 or more
B	\$400,000 - \$799,999
C	\$100,000 - \$399,999
D	less than \$99,999

2.05 MAPS AND RECORDS

- (1) Each utility shall keep on file all available maps, plans, and records showing the entire layout of every pumping station, treatment plant, transmission and collection line, customer's service, and other facilities used in the collection and treatment of sewage.
- (2) In the case of new construction or property acquired by others, the addition to such maps and records should be made by the end of the next calendar year, following the year in which the construction is done on property acquired. All drawings shall be made to a uniform scale.
- (3) In general, where present plans of existing facilities are not entirely up-to-date, special surveys to locate any plant or facilities will not be required.

2.06 MANAGEMENT AUDITS

- (1) Scope -

To establish a procedure for examination of management practices and policies to determine whether the entity being audited is operating with efficiency and utilizing sound management practices. The purpose of a management audit is to disclose operating areas that are efficient or inefficient, to identify areas for improvement, and to form recommendations for changes. The results of a management audit and the response of the utility to the recommendations and implementation plans developed pursuant to a management audit may be a factor in determining just and reasonable rates, as set out herein.

- (2) Types of Management Audits -

The following types of management audit, which vary in scope, may be directed and utilized by the Commission:

- (a) Comprehensive - an investigation characterized by an extensive, detailed analysis of a utility's management and operations.
- (b) Reconnaissance - a broad review, similar in scope to a comprehensive audit, but in less detail. The objective of this type of audit is to identify specific areas for more intensive investigation based upon the magnitude of the problem identified or the potential benefits to be derived.
- (c) Focused - an in-depth investigation of one or several specific areas of a utility's management and operations.

(3) Frequency -

The Commission shall order a management audit of any utility under its jurisdiction whenever the Commission deems it necessary to investigate the operational efficiency of the utility. Such factors as the cost of the management audit and the potential benefits of such audit may be taken into consideration. The Commission may accept or request a management audit performed under the rules of another jurisdiction in satisfaction of this rule when that audit is of the scope contemplated by the Commission, conforms to the standards herein set forth and covers the utility's service functions in its West Virginia jurisdiction.

(4) Conduct and Control -

- (a) The Commission may choose to have the audit performed by its Staff or contracted to a qualified outside auditing firm. In the latter case, the Commission may supervise the selection process. If the management audit is to be conducted by an auditing firm, the Commission's order initiating the audit shall include provision for the development of the request for proposal (RFP), the consultant selection process and Staff's assistance and supervision during the audit.
- (b) The Commission may impose eligibility restrictions upon contractors relating to past, current, and post-audit relationships with the utility.

(c) The utility is expected to cooperate to the fullest extent with the performer of a Commission ordered management audit. A responsible employee shall be appointed by the utility as its management audit coordinator, who shall be responsible to assist in the efficient performance of the management audit.

(5) Costs -

It shall be the responsibility of the audited utility to pay for a contracted audit. The Commission shall include the reasonable cost of conducting the contracted management audit in the cost of service of the utility. The Commission may allow such costs to be recovered in the utility's next general rate case following completion of the audit, or the Commission may order such costs to be amortized over a reasonable period of years, considering the impact of these costs on both the utility and its customers.

(6) Implementation of Recommendations -

(a) Draft report.

1. Upon completion of the audit a draft report shall be submitted to the utility for comments.
2. The auditor and Company representatives shall conduct a draft review meeting subsequent to the distribution of the draft review report.

(b) Final report.

1. A final report shall be submitted to the Commission no later than thirty days after the submission of the draft report to the utility.
2. Within thirty days of the final submission of the management audit report, the utility shall file a document detailing its position on each audit recommendation. This document must state which recommendations are acceptable to the utility and the nature of the utility's disagreement with any recommendations.

- (c) The Commission may, after hearing, issue an order prescribing the recommendations which should be adopted by the utility.
- (d) The utility shall file detailed implementation plans for the Commission's review and approval within the time specified in the Commission's order prescribing which recommendations the utility should adopt. The utility shall not deviate from an approved implementation plan without prior notice to the Commission which specifically states the utility's reasons for departing from the approved plan.
- (e) At the direction of the Commission, a follow-up audit may be performed to review the progress of the utility in implementing the approved plans and the results of previously performed management audits.
- (f) A management audit report and implementation plan adopted pursuant thereto and any follow-up audit may be used by parties in a general rate case subsequent to the management audit. Such audits and implementation plans may be a factor in the determination of just and reasonable rates if introduced as an exhibit and subjected to normal due process procedures.
- (g) The Commission may grant an extension of the time limits established in this section upon a showing of good cause for such extension.

3.00 METER REQUIREMENTS

In general, sewer service charges shall be based upon the volume of water delivered to the customer's property. This volume is measured by the water meter serving the premises. In cases where a significant volume of the water delivered to the premises is not returned to the sanitary sewer system or water from another source is discharged to the sanitary sewer system the customer may request, or the utility may require, special flow measuring devices to properly measure the volume of waste water entering the sanitary sewer system. Such special flow measuring devices shall be furnished, installed, and maintained by and at the expense of the customer with the approval of the utility. In some

situations suitable formulae may be used to determine waste water flow in lieu of special metering devices. Such formulae shall be approved by both the customer and the utility and subject to the approval of the West Virginia Public Service Commission.

4.00 CUSTOMER RELATIONS

4.01 CUSTOMER INFORMATION

- (1) Rates Available - A utility shall, when application is first made for sewer service, furnish to the applicant, upon request, information regarding the schedule of rates which will be applicable to his requirements.
- (2) Posting of Law, Rates, Rules and Regulations -
 - (a) Every utility shall provide in its business office, near the cashier's window, where it may be available to the public, the following:
 1. A copy of the rates, rules and regulations of the utility, and of forms of contracts and applications applicable to the territory served from that office;
 2. A copy of the Public Service Commission Law of this State; and
 3. A copy of these rules and regulations.
 - (b) A suitable placard in large type shall be placed near the cashier's window giving information to customers that a copy of the law, the rules and regulations of the Public Service Commission, and the schedules of rates are available for their inspection.

4.01A APPLICATION FOR SEWER SERVICE

- (1) All customers desiring sewer service must make written application at the office of the utility on printed forms provided therefor. All users of service from a sewer public service district shall be required to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the

applicant is a tenant, he shall state the name and address of the owner or owners of the premises to be served by the district.

- (2) Any change in the identity of the contracting customer at a premises will require a new application for sewer service, and the utility may, after reasonable notice, discontinue sewer service until such new application has been made and accepted, but the former customer shall remain liable for sewer service furnished to said premises until he has given notice in writing to the utility to discontinue sewer service.
- (3) In the event that a publicly or privately owned water utility, city, incorporated town, other municipal corporation or other public service district, owns and operates water facilities within the same service territory as the public service district providing sewer service to the area, then the sewer public service district shall provide the customer with a proper receipt in accordance with Rule 4.02 (1)(d) of these rules and shall instruct the customer to present said receipt to the water utility when application for water service is made.

4.02

CUSTOMER DEPOSITS

(1) Security Deposits

- (a) Security Deposits for Utilities other than Public Service Districts - A utility other than a public service district, may require the applicant or customer to make a deposit as a guarantee of the payment for sewer service. Such deposit shall not be more than one-twelfth (1/12) of the annual estimated charge for residential service and one sixth (1/6) for all other service to secure the utility from loss. The utility shall not be bound to supply sewer service until the above condition is fulfilled. After the customer has paid for service for twelve consecutive months, the utility shall promptly and automatically refund the deposit plus accrued interest. Calculation of the above twelve

months period shall commence from the first regular payment or following the payment of a past due bill or bills. Interest at the rate of five (5) percent per annum or the prevailing passbook rate of interest, whichever is higher, shall be paid from the date of deposit until refund date. The utility shall have a reasonable time, not to exceed thirty (30) days, to ascertain that the obligations of the customer have been fully performed before being required to return any deposit in the case where there has not been an automatic refund.

~~BY//PROVIDED//HOWEVER//THAT//THIS//RULE//SHALL//NOT//AFFECT//RESIDENTIAL//CUSTOMER//SECURITY//DEPOSITS//REQUIRED//BY//A//UTILITY//PRIOR//TO//THE//PASSAGE//OF//WEST//VIRGINIA//CODE//§2A-3-8//ON//MARCH//12//1983//~~

(b) Security Deposits for Public Service Districts - All new applicants for residential service from a sewer or a combined water and sewer public service district shall deposit the greater of one-twelfth (1/12) of the annual estimated charge for residential service or fifty (50) dollars to secure the payment of service rates and charges. All new applicants for service other than residential service from a sewer or a combined water and sewer public service district shall deposit the greater of one-sixth (1/6) of the annual estimated charge for service other than residential service or fifty (50) dollars to secure the payment of service rates and charges. The district shall not be bound to supply sewer service until this condition is fulfilled. In any case where a deposit is forfeited to pay service rates and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit, as described above, has been remitted to the district. After the customer has paid bills for twelve consecutive months, the utility shall promptly and automatically refund the deposit plus the higher of five (5) percent per annum

or the prevailing passbook rate of interest. Calculation of the above twelve month period shall commence from the first regular payment or following the payment of a past due bill or bills. All customer security deposits shall be placed in an interest bearing account at a local federally insured financial institution. Accrued interest shall be paid to the customer at the time of refund of the security deposit. The district shall have a reasonable time, not to exceed thirty (30) days, to read and remove meters and to ascertain that the obligations of the customer have been fully performed before being required to return any deposit in the case where there has not been an automatic refund.

A customer of a public service district who requests service at another location within the service area of the same District, and who has made timely payment of bills for the previous twelve month period, shall not be considered a new applicant for service.

- (c) Record of Deposit - Each utility holding a cash deposit shall keep a record showing: (i) the name and current address of each depositor; (ii) the amount and date of the deposit; and (iii) each transaction concerning the deposit.
- (d) The Receipt - Concurrently with receiving a cash deposit, the utility shall deliver to the applicant for service, or customer, a receipt showing: (i) the date thereof, (ii) the name of the applicant or customer and the address of the premises served or to be served, (iii) the service furnished or to be furnished; and (iv) the amount of the deposit and the rate of interest to be paid thereon. Each utility shall provide automatic means to refund the deposit of a customer, when he is so entitled, if the original receipt cannot be produced. A receipt or proof of payment will not be necessary under the provisions for an automatic refund.

(e) Unclaimed Deposits - Should a utility have retained, through no fault of its own, deposits made by customers, whose service has been discontinued, it shall, on or before the first day of March, in each year, publish a list of such depositors in a newspaper of general circulation in the county in which it operates and in which the deposits were made, showing as of the thirty-first day of December immediately preceding, the amount of each such deposit, together with the interest due thereon, and notifying depositors listed therein that their deposits, together with accrued interest, are being held to their credit and will be returned upon request. The utility will not be liable for any interest on such deposits after publication of such lists. Deposits remaining in the hands of the utility upon the completion of the above procedure shall be considered as derelict property and shall escheat to the State of West Virginia under the provisions of the Code of West Virginia, Chapter 34, Article 2.

(f) Provided, however, that this rule shall not affect residential customer security deposits required by a utility prior to the passage of West Virginia Code §24-3-8 on March 12, 1983.

(2) Guaranty Agreement

(a) A utility may accept, in lieu of the cash deposit, a guaranty agreement signed by a financially responsible guarantor, whereby payment of a specified sum, not exceeding the cash deposit aforesaid, is guaranteed. The guarantor shall receive copies of disconnection notices sent to the customer whose account has been guaranteed. Provided, however, that the limitations herein fixed upon the terms of a guaranty agreement shall not apply to industrial customers.

(b) Guaranty agreements shall terminate after the customer has satisfactorily paid bills for service for twelve consecutive months, or when a customer gives notice to the utility

of the discontinuance of service at the location covered by the guaranty agreement, or three months after discontinuance of service where no notice was given, or at the guarantor's request upon thirty (30) days' written notice to the utility. In any case, after the automatic termination of a security agreement, where experience indicates that a cash deposit or a new guaranty agreement is reasonably necessary to secure the utility from loss, a cash deposit or a new guaranty agreement may be required upon written notice to the customer.

- (c) Application in Cash to Receiver or Trustee - The aforesaid provisions shall apply in the case of a receiver or trustee, operating under court order a business requiring utility service.

4.03 BILLING INFORMATION

- (1) All bills for sewerage service shall state whether the charge is based upon quantities of water consumed at the premises, flat rate or other charge.
- (2) Bills shall be rendered periodically, and they shall show the readings of the water meter at the beginning and end of the period for which the bill is rendered, the date of the water meter readings, the number of cubic feet or gallons of water supplied, and the authorized rate.
- (3) Opening and closing bills, monthly or quarterly, for sewer service rendered for periods of five days more or five days less than the normal billing period will be computed in accordance with the rate applicable to that service, by the amount of sewer blocks, and the minimum charge as set forth in that rate will be prorated on the basis of the number of days in the period in question, to the total number of days in the normal period.
- (4) Utilities desiring to adopt mechanical billing of such nature as to render compliance with all the terms of paragraph 2 impractical, may make application to the Commission for relief from part of these terms. After

consideration of the reasons given when asking for relief, the Commission may allow the omission of part of these requirements.

- (5) On all bills which include any other items than a definite authorized sewer rate, the other factors used in computing the bill shall be clearly stated so that the amount may be readily verified from the information appearing upon the bill.
- (6) Each bill shall bear upon its face the latest date upon which it may be paid without penalty. On all accounts not paid in full within twenty (20) days of the billing date, a penalty of ten percent (10%) may be added to the net amount shown. This provision must be included in the utility's tariff filed with the Commission.

4.04 CUSTOMER DISCONTINUANCE OF SERVICE

Any customer desiring service discontinued shall give at least twenty-four (24) hours' notice thereof to the utility, unless a longer or shorter period shall be incorporated in any standard or special contract mutually agreed upon. Until the utility shall have such notice, the customer may be held responsible for all service rendered.

4.05 UTILITY DISCONTINUANCE OF SERVICE

- (1) Consideration of health and sanitation require that sewer service should not be discontinued because of non-payment of service charges unless the utility has first acquired the approval of the Public Service Commission. The sewer utility shall make use of such legal remedies as may be available for the collection of delinquent accounts prior to application to the Public Service Commission for other relief.

(2) Notice of Discontinuance

- (a) In the case of a sewer utility requesting termination of water service for nonpayment of sewer service, the sewer utility shall provide the customer written notice that the sewer utility will request termination of water service by the water utility within five (5) business days, pursuant to West Virginia Code §16-13A-9, if payment is not made in full or a payment schedule is not established as provided by Rule 4.05(3)(b).

This notice shall contain a provision notifying the customer that in the event water is terminated, the customer will be responsible for and required to pay the fees charged to the public service district by the water utility.

(b) A sewer utility requesting termination of water service for nonpayment of sewer bills shall provide the water utility with a copy of the notice to the customer as provided by Rule 4.05(2)(a).

(c) A sewer utility will provide the water utility with a written request for termination of water service for nonpayment at least twenty-four (24) hours before the end of the 5-day notice period to the customer.

(3) Discontinuance of Water Service for Non-Payment of Sewer Bills.

(a) Inter-Utility Agreements

(1) In the event that any public or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges; provided that proper notice is given and procedures are followed as set forth in Rule 4.05(1) through 4.05(3) of these rules.

(2) Municipal Sewer - When any municipality owns, maintains, operates or provides sewer facilities to its residents and customers and does not own, maintain, operate or provide water facilities to them when the same is provided by any other publicly or privately

owned utility, municipality or public service district, the municipality providing sewer facilities may require the provider of water facilities to discontinue water service to any of its users who are delinquent in the payment of sewer service rates and charges to the municipality. The provider of water facilities is empowered and authorized hereby to discontinue water service upon demand of the municipality for this purpose; however, prior to discontinuance of any water service, the municipality shall contract with the provider of water facilities which contract shall provide that the municipality shall reimburse the provider of water facilities for all costs and expenses incurred in both the termination of water service to the delinquent user of sewer facilities and the subsequent resumption of water service to such user. The contract shall provide for reasonable methods and assurances so that the provider of water facilities will be protected and held harmless from claims and damages when water service is discontinued in error or in violation of the rights of the user through the fault of the municipality providing sewer facilities and making the demand for discontinuance of water service to the user of such sewer facilities.

- (3) The inter-utility agreement should contain specific provisions regarding responsibilities of notice of termination, termination, reconnection and provisions for fair and reasonable compensation.
- (4) Any inter-utility agreement entered into by a public service district pursuant to Rule 4.05(3) shall be submitted to the Public Service Commission for approval prior to any termination of water service for nonpayment of sewer bills under such inter-utility agreements.
- (5) A water utility that has terminated or reconnected service for nonpayment of sewer bills may charge the sewer utility a fee pursuant to Rule 4.05(3)(a) of these rules.

The sewer utility may include this charge in the billing to the delinquent customer, provided that such charge is included in the sewer utility's approved tariff.

- (b) A sewer customer who has been notified that water service is to be terminated for nonpayment of sewer bills shall be given the opportunity to enter into a deferred payment agreement, provided that such customer has demonstrated an inability to make payment in full. The terms of such deferred payment agreement shall be set forth as follows:
- (1) The details of the deferred payment agreement are to be negotiated between the utility and the customer and may consider several factors, including, but not limited to the following: Amount of the bill; ability of the customer to pay; payment history; time the debt has been outstanding; reasons why the debt has been outstanding; and any other relevant factors; provided that the agreement requires payment of the current bill plus a specific amount per month on the arrearage.
 - (2) Once a deferred payment agreement has been established, if the customer's financial conditions change and the existing payment works a hardship, the utility shall renegotiate the payment agreement, consistent with the provisions of Rule 4.05(3)(b)(1) stated above.
 - (3) The deferred payment agreement shall include language informing the customer of the right to appeal the reasonableness of the proposed payments to the Public Service Commission.
 - (4) During such appeal, service may not be terminated, provided, however, that the current bill plus any amount not in dispute on the arrearage must be paid by the customer in order to protect his rights under this rule.
 - (5) If deferred payment is not received, the utility may terminate service only after it

has mailed written notice, by first class mail, to the customer at least five (5) calendar days prior to notifying the water utility to terminate service; provided, that at the option of the utility, either personal contact or telephone contact may be substituted for contact by first class mail. If the customer makes the delinquent payment within that notice period, service shall not be terminated.

- (4) Notice - In the event that the user is not the property owner, public service districts must provide notice of delinquencies to the property owner as provided by Rule 7.00 of the Rules and Regulations for the Government of Public Service Districts.

4.06 REFUSAL TO SERVE APPLICANTS

- (1) Non-compliance with Rules and Regulations - Any utility may decline to serve an applicant until he has complied with State and municipal regulations governing sewer service and the approved rules and regulations of the utility.
- (2) Applicant's Facilities Inadequate - The utility may refuse to serve an applicant if the applicant's installation of sewer piping is hazardous or of such character that satisfactory service cannot be given.
- (3) Applicant's Recourse - In the event that the utility shall refuse to serve an applicant under the provisions of this rule, or any other rule incorporated herein, the utility shall inform the applicant of the basis of its refusal, and the applicant may apply to the Consumer Relations Department of the Public Service Commission for a ruling thereon. The refusal must be in writing with a copy sent to the Consumer Relations Department of the Public Service Commission.

4.07 ACCESS TO PROPERTY

- (1) The utility shall, at all reasonable times, have access to service connections and other property owned by it on customer's premises for purpose of inspection, maintenance and operation.

- (2) Every employee, whose duties require him to enter the customer's premises, shall wear a distinguishing uniform or other insignia identifying him as an employee of the utility.

4.08 SERVICE INTERRUPTIONS

- (1) Record - Each utility shall keep a record of all interruptions of service upon its entire system or major divisions thereof, including a statement of time, duration and cause of such interruptions.
- (2) Notice Required - The State Department of Health, the Public Service Commission and every customer affected shall be notified in advance of any contemplated work which will result in interruption of service for any duration that may cause a health hazard, but such notice shall not be required in case of interruption due to accident, the elements, public enemies, strikes or order of court which are beyond the control of the utility.

4.09 COMPLAINTS

- (1) Investigation of Complaints - Each utility shall make a full and prompt investigation of all complaints made to it by its customers, either directly or through the Commission.
- (2) Record of Complaints - The utility shall keep a record of all complaints received, which record shall show the name and address of the complainant, the date and character of the complaint, and the adjustment or disposal made thereof.
- (3) Disposition of Records - Records of complaints shall not be destroyed until a summary has been prepared for permanent record, showing the character of complaints made, the number of each type received in each month, and the disposition of the complaints.

4.10 DISPUTED BILLS

In the event of a dispute between the customer and the utility respecting any bill, the utility shall make forthwith such investigation as shall be required by the particular case, and report the result thereof to the customer. In the event that the complaint is not adjusted,

the utility shall notify the customer that he has the privilege of appeal to the Public Service Commission.

5.00 ENGINEERING REQUIREMENTS

5.01 ADEQUACY OF FACILITIES

- (1) The collecting system of every sewerage utility shall be designed, constructed, maintained and operated so as to be able to receive and transport the sewage from its customers' outlets to its treatment plant without delay.
- (2) Where the terrain is such that pumping or lift stations must be provided, such facilities must have the approval of the State Department of Health and operated under the rules of the State Department of Health.
- (3) When a new sewerage utility proposes to construct and operate a sewer service business, its entire plant layout shall be approved by the State Department of Health and the Water Resources Division of the Department of Natural Resources.
- (4) Construction and Maintenance of Plant - Each utility shall at all times construct and maintain its entire plant and system in such condition that it will furnish safe, adequate and continuous service.
- (5) Inspection of Plant - Each utility shall inspect its plant and facilities in such manner and with such frequency as may be necessary to insure a reasonably complete knowledge as to their conditions and adequacy at all times. Such inspections must comply with the legally applicable requirements of the Minimum Federal Safety Standards (Federal Occupational Health and Safety Administration) and the State Department of Health.
- (6) Records of Conditions - Records necessary for the proper maintenance of the system and in accordance with the State Department of Health and the Minimum Federal Safety Standards shall be kept of the conditions found. In special cases, a more complete record may be specified by the Commission.

- (7) Records of Operation - Each utility shall keep a record of the operation of its plant, which, so far as practical, shall show such details of plant operation as may be necessary to substantially reproduce its daily operations. The records shall also be maintained in accordance with the requirements of the Minimum Safety Standards and the State Department of Health.
- (8) Report to Commission - Each utility shall, upon request of the Commission, file with the Commission a statement regarding the condition and adequacy of its plant, equipment, and facilities, and of its operations and service in such form as the Commission may require.

5.02 SERVICE LINES

- (1) The utility shall install and maintain that portion of a customer's service line from the main to the boundary line of the easement, public road, street or right-of-way under which said main may be located.
- (2) The customer shall install and maintain that portion of the service line from the end of the utility's portion into the premises served.
- (3) The utility shall determine the location of that portion of the service line installed and maintained by it.
- (4) The portion of the service line installed and maintained by the customer shall conform to all reasonable rules and regulations of the utility.
- (5) Availability Defined - Sewer service will be deemed available to a customer when a main is installed and maintained by the utility in such location and at such distance from the user's premises as may be provided by city ordinance or by the rules of the utility; provided, however, that service shall not be deemed to be available unless the sewage will flow by gravity from the discharge point of the customer's premises into the utility's facilities.

5.03 EXTENSION OF SYSTEM

- (1) A sewer utility, whether municipally or privately owned, is under a public service obligation to extend

its plant and facilities to serve new customers within its service area who may apply for service.

- (2) Extensions shall be made in all cases in which public convenience and necessity require the service, construction problems are not unusual or burdensome, and the extensions appear to be economically feasible.
- (3) For any proposed extension of mains, a reasonable relationship should exist between the per customer investment for serving new customers and the per customer investment for serving old customers.
- (4) Extension for General Sewer Service -

- (a) The utility will, upon written request for service by a prospective customer or group of prospective customers located in the same neighborhood, determine the necessary size of main required to give service and make an estimate of the cost of the proposed extension including pipe, manholes, fittings, all other necessary materials, and all other costs such as labor and permits. The length of the extension required shall be that length required to extend from the new proposed service area to the nearest main having sufficient excess capacity to provide service.

- (b) Where the cost of the extension does not exceed three and one-half (3-1/2) times the estimated normal annual revenue from prospective customers whose service lines will immediately be connected directly to the extension and from whom the utility has received applications for service upon forms provided by the utility for this purpose, the utility will install, at its own cost and expense, the necessary extension, provided that the patronage or demand will be of such permanency as to warrant the capital expenditure involved.

- (5) Extensions Subject to Customer Cost Participation -

If the estimated cost of the proposed extension required in order to furnish general sewer service exceeds three and one-half (3-1/2) times the utility's estimate of immediate normal annual revenue, such extension will be made if the applicant or the applicant's authorized agent shall contract for such

extension and shall deposit in advance with the utility the estimated cost of the extension over and above the free extension limit at end of each fiscal year. The utility will, in such case, for each bona fide customer directly connected to the extension between its original beginning and original terminus within a period of ten (10) years from the making of such extension, refund to the original depositor or depositors an amount equal to three and one-half (3-1/2) times the annual revenue of the new customer, but in no event shall the aggregate refund made to any depositor exceed the original deposit of such depositor.

(6) Adjustment of Cost of Extension -

Should the actual cost of the extension be less than the estimated cost, the utility will refund the difference as soon as the actual cost has been ascertained. When the actual cost of the extension exceeds the estimate cost then the utility will bill the depositor for the difference between the estimated and the actual cost.

- (a) In estimating the cost of an extension, the estimate shall be based on the diameter of the pipe to be used; provided, however, that the estimated cost to the customer or customers shall not be based on a pipe diameter in excess of the size of main from which the extension is to be made, unless actual use estimated for the proposed customer or customers required a larger pipe.
- (b) No interest will be paid by the utility on the applicant's payment or on any unrefunded balances.
- (c) At the expiration of said ten (10) year period, the refund account will be closed, and no further refunds will be made.
- (d) Extensions made under this rule shall be and remain the property of the utility.
- (e) The utility reserves the right to further extend its sewer mains from and beyond the terminus of each sewer main extension made under this rule, and the depositor or the depositor's agent paying for an extension shall not be entitled to any

refund for the attaching of customers to any further extension or branch mains so installed.

- (f) In determining the length of main extensions or of pipe lines to be installed in an urban area when land is subdivided in lots, the main shall be extended to fully cover the frontage of the property or one-hundred lineal feet, whichever is the lesser, and if the last lot to be served is a corner lot, the terminal point of the extension made hereunder shall be located at the nearest street line of the intersecting street. In rural areas or open land areas, the extension required will be that length necessary to adequately serve the applicant or one-hundred lineal feet, whichever is the greater.
- (g) Before sewer lines will be laid hereunder in any new subdivision, it is understood and agreed that the road surface shall be brought to the established sub-grade as determined by the agency having jurisdiction.
- (h) This rule shall not be construed as prohibiting the utility from providing an alternate plan for main extensions so long as no discrimination is practiced between customers whose service requirements are similar.
- (i) Contract for Service - The utility shall not be required to make free extensions or refunds as described in this rule unless those to be served by such extensions shall guarantee to the utility that they will take the service at their premises within thirty (30) days after service is available.
- (j) Construction Conditions - Construction of line extensions, as provided in this rule, will be undertaken promptly after all negotiations have been completed and necessary right-of-way agreements or rights of entry have been delivered to the utility.
- (k) Right-of-Way - With respect to the item "Right-of-Way", it is not the purpose of this rule to require the utility to build extensions over private rights-of-way. If the construction of an

extension involves the use of private right-of-way, then the prospective customer, whenever reasonably possible, shall secure the right-of-way and deliver it to the utility free of cost before construction of the extension is started.

If, however, it is not reasonably possible for the prospective customer or customers to secure the right-of-way, and the construction of an extension involves the utility's incurring expense for right-of-way easements, either by purchase or condemnation, such costs shall be added to the total cost of the extension.

5.04 SERVICE CONNECTIONS

- (1) Where its mains are now or may hereafter be installed, the utility will install the service line and appurtenances between the main in the street up to the property line or right-of-way at or near 90 degrees to the main, provided that the service pipe is required for the immediate and continuous use for general service to premises abutting the public street or right-of-way in which such mains are located; and all such service pipes and appurtenances shall be installed only by the utility unless by prior written agreement.
- (2) The utility shall not make any charge for furnishing and installing any permanent service connection, unless the utility has prior approval of the Public Service Commission for establishing a tap-on or connection fee.
- (3) Temporary service connections for construction or other temporary purposes shall be installed by the utility at the cost of the applicant.
- (4) Each utility shall adopt standard methods of installation where practicable. Such method shall be set out with a written description and with drawing to the extent necessary to a clear understanding of the requirement; all of which shall be submitted to the Commission for its information.
- (5) Service pipes servicing a premise shall not pass through or across any premises or property other than that to be serviced nor across any portion of the property that could practicably be sold separately from

the immediate premise serviced and no pipes or plumbing in any premises shall be extended therefrom to adjacent or other premises.

- (6) The utility will make all connections to its collection mains and will specify the size, kind, quality and location of all materials used in the service line.
- (7) The utility's service pipe from the main to the property line or right-of-way will be furnished, installed and maintained by the utility and shall remain under its sole control and jurisdiction.
- (8) The utility will not, at its own cost and expense, be required to either install or maintain service pipes for temporary service connections.
- (9) The customer's service pipe from the point of service to the customer's premises shall be installed in a workmanlike manner and shall be furnished, installed and maintained by the customer at his own expense and risk.
- (10) The customer's service pipe and all connections and fixtures attached thereto shall be subject to the inspection of the utility before use, and all premises, including any and all fixtures within the said premises, shall at all reasonable hours be subject to inspection by a duly authorized employee of the utility.
- (11) The customer's service pipe shall be laid below the frost line at all points and shall be placed on firm and continuous earth so as to give unyielding and permanent support; shall not be laid in driveways nor pass through premises other than that to be serviced; and shall be installed in a trench at least two feet in a horizontal direction from any other trench wherein gas pipe, water pipe, or other facilities, public or private, are or are to be installed.
- (12) The customer shall install his service pipe to the point of service as designated by the Manager or other authorized employee of the utility, after which the utility will install the service from the main to the designated point of service.

- (13) Where the utility's service pipe is already installed to the point of service, the customer shall connect with the service pipe as installed.
- (14) The customer shall not be expected to make all changes in the customer's service pipe required on account of changes of grade, relocation of mains, and other causes not related to the customer, said changes shall be accomplished by the utility at its expense.
- (15) No fixture shall be attached to, or any branch made in, the service pipe between the service point and the main.
- (16) There shall be no more than one service pipe required to service a single premise and each premise shall be supplied through an independent service pipe, unless otherwise approved by the utility in writing.
- (17) Customer's service pipes must be kept and maintained in good condition and free from all leaks and defects at the customer's cost and expense.
- (18) No plumber, customer, company owner or any of his agents shall connect to the utility's main or to any service pipe, or extend the pipes therefrom to any premises for the purpose of securing sewer service, until application has been made therefor to the utility as provided in these Rules and Regulations, and permission for doing so has been granted by the utility in writing.

6.00 SAFETY REQUIREMENTS

6.01 ACCIDENTS

- (1) Records - Each utility shall keep a record of every accident occurring in connection with the operation of its treatment plant, property and equipment whereby any person shall have been killed or seriously injured, or any substantial amount of property damaged or destroyed, with a full statement of the cause of such accident and the precautions taken to prevent similar accidents in the future.
- (2) Electric Shock - Each utility shall instruct those of its employees engaged in electrical work in the

practice and use of accepted rules and proper procedure for resuscitation from electric shock.

- (3) Asphyxiation - Each utility shall inform those of its employees who must work in manholes and pits of the dangers of asphyxiation and instruct them in the practice and use of accepted rules for detection of dangerous gases, as well as the proper procedure for treating victims.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

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STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

TO: Thorton Cooper

AGENCY: Public Service Commission

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: May 1, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 5 TITLE: 150 Public Service Commission

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: *Richard E. Hitt*

TITLE OF PERSON SIGNING: General Counsel

DATE: 5-20-92

Public Service Commission
Of West Virginia

201 Brooks Street, P. O. Box 312
Charleston, West Virginia 25323



Phone (304) 341-1311
FAX (304) 341-1325

Sewer

October 9, 1991

TO ALL SEWER UTILITIES IN WEST VIRGINIA:

We are enclosing a copy of the Commission's General Order No. 186.4 entered yesterday which amends Rules 2.04, 4.01A, 4.02 and 4.05 of the Commission's Rules and Regulations for the Government of Sewer Utilities, to become effective December 7, 1991.

You will recall that the Commission initiated this proceeding on March 8, 1991 and solicited written comments on the proposed rules at that time.

Please let me know if you have any questions on the enclosed rules.

Respectfully,

Howard M. Cunningham
Howard M. Cunningham
Executive Secretary

HMC/s
Encl.

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 8th day of October, 1991.

GENERAL ORDER NO. 186.4
Amendment of Rule 2.04, 4.01A,
4.02, and 4.05 of the Commission's
Rules and Regulations for the Government
of Sewer Utilities.

COMMISSION ORDER MODIFYING AND ADOPTING RULEMAKING

On April 8, 1989, the West Virginia Legislature passed Enrolled Health Bill 2108 (H.B. 2108) which amended West Virginia Code §16-13A-9. H.B. 2108 was effective from passage.

Specifically, H.B. 2108 amended West Virginia Code §16-13A-9 by adding a provision requiring all users of services of public service districts to designate on every application for service whether or not the applicant is a tenant or owner of the premises to be served. If the applicant is a tenant, the applicant shall state the name and address of the owner of the premises to be served. In addition, H.B. 2108 added a requirement of a fifty dollar (\$50.00) deposit from all new applicants to secure the payment for services and made it mandatory for certain utilities to covenant and contract with each other for the termination of water service for the non-payment of sewer service fees.

Furthermore, the Commission has been made aware of the fact that, under the current deposit rule, districts may be forced to refund an amount over the actual deposit plus interest earned on the deposit as current interest rates are lower than the eight percent (8%) required to be refunded by the Commission's Rules and Regulations for the Government of Sewer Utilities (Sewer Rules).

Also, on April 8, 1989, the Legislature passed Enrolled Committee Substitute for Senate Bill No. 169 (S.B. 169) which was effective ninety (90) days from passage. S.B. 169 added a new Section 23 to Article 18, Chapter 8 (West Virginia Code §8-18-23) of the West Virginia Code which gives municipal sewer systems the authority to require discontinuance of water service by the provider water utility for non-payment of sewer service rates and charges. The Commission recognized that certain sewer utilities had been conducting termination of water service for non-payment of sewer bills under the provision of Chapter 8 and 16 of West Virginia Code and the Commission's Rules and Regulations for the Government of Water Utilities (Water Rules). The current sewer regulations have no

provisions which address the procedures and requirements for termination of water for non-payment of sewer bills. The sewer regulations needed to be updated to address such procedures and requirements and to address issues which had arisen since sewer utilities were given the authority to terminate water service, especially in the area of notice of termination after a customer has entered into a deferred payment agreement. Finally, the Commission recognizes that the current classifications under the uniform system of accounts is outdated. Therefore, the Commission proposed to amend Rule 2.04 with regard to such classifications. Accordingly, by a Commission order entered March 8, 1991, the Commission issued a rulemaking proceeding in accordance with Chapter 29A of the West Virginia Code in order to promulgate amendments to Rule 2.04, 4.01A, 4.02, and 4.05 of the Commission's Sewer Rules pursuant to the Commission's authority under West Virginia Code §§16-13A-9, 24-1-1, 24-1-7, 24-2-1, and 24-2-2. The Commission further directed that all comments to the Commission's proposed rule be received by the Commission within thirty days (30) of March 8, 1991, the effective date of the Commission's order.

On April 2, 1991, the Sanitary Board for the City of Bluefield filed comments pertaining to Section 4.05(4)(b)(3) and (4).

On April 9, 1991, the City of Madison filed a comment regarding clarification of proposed Rule 4.05(1).

Also, on April 9, 1991, the Sanitary Board of the City of Parkersburg filed comments to proposed Rule Nos. 4.02(1)(a), 4.05(4), and 4.05(5)(b).

DISCUSSION

The Commission has made several substantive changes to its originally proposed rulemaking in addition to various grammatical and numbering changes. These substantive changes and the reasons therefore, are outlined below.

Rule 2.02(2)

The effective date of July 31, 1983, of the revisions 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 Vehicles (Tariff Rules) has been included.

Rule 4.02(1)(a)

While the Commission is cognizant of the comments made by the Sanitary Board of the City of Parkersburg regarding security deposit requirements for the municipalities, the Commission would note that it is constrained by West Virginia Code §23-3-8 regarding the size of the public utility residential customer service deposits that may be required. Accordingly, the Commission is unable to accommodate the Sanitary Board of the City of Parkersburg regarding that request. However, the Commission was persuaded by the Sanitary Board of the City of Parkersburg's argument regarding the requirement of an 8

percent interest rate on deposits. Accordingly, the Commission has modified a portion of Rule 4.02(1)(a) to require interest at a rate of 5 percent per annum or the prevailing passbook rate of interest, whichever is higher. The Commission is of the opinion that such a requirement is reasonable.

Rule 4.02(1)(b)

Here too, the Commission is constrained by the provisions of the West Virginia Code. West Virginia Code §16-13A-9 states that all new applicants for service from a public service district shall deposit a minimum of fifty dollars (\$50.00) to secure payment of service rates and charges in the event such applicant should become delinquent in their payments. The Commission's proposed rule implements the fifty dollar (\$50.00) minimum requirement but places a cap on the amount districts can collect over fifty dollars (\$50.00). The Commission is of the opinion that these caps represent a reasonable balance between adequately protecting the districts while at the same time ensuring that deposit requirements remain reasonable. Additionally, the Commission has combined those paragraphs which in the originally promulgated rules dealt separately with deposit requirements for sewer public service districts and combined water and sewer public service districts.

Rule 4.05(1)

The Commission would note in response to the comments filed April 9, 1991, by the City of Madison that Rule 4.05(1) states that sewer service should not be discontinued unless the utility has first acquired the approval of the Public Service Commission. Rule 4.05(1) does not discuss discontinuance of water service.

Rule 4.05(3)

Upon reflection the Commission is of the opinion that proposed Rule 4.05(3) is duplicative and accordingly has deleted it.

Rule 4.05(3)(a) [Originally promulgated as Rule 4.05(4)(a)]

The Commission has renumbered those sections originally promulgated as Rule 4.05(4)(c), (d), and (e) as Rule 4.05(3)(a)(3), (4), and (5) so as to place all references to inter-utility agreements under a single heading.

Rule 4.05(3)(b) [Originally promulgated as Rule 4.05(4)(b)]

Changes to this proposed rule were made in light of comments provided by the Sanitary Board of the City of Parkersburg and the Sanitary Board for the City of Bluefield. Part (1) of this Rule has been modified to require that in instances where a deferred payment agreement has been negotiated between the utility and the customer, that the customer remains liable for the payment of the current bill plus a specific amount per month on the arrearages. Part (2) contains a modification referring the reader back to Rule 4.05(4)(b)(1). Part (3) has been modified to require the utility to include in its

deferred payment agreement language informing the customer of the right to appeal the reasonableness of the proposed payments to the Public Service Commission. Previously part (3) merely required that the utility notify the customer. The Commission is of the opinion that this modification will help to solidify the objective basis of the Rule. Part (4) has been modified to require the current bill plus any amount not in dispute on the arrearages be paid by the customer in order to protect his or her rights during an appeal. Part (5) has been modified to indicate that written notice of termination shall be effective upon being placed in the mail. Part (5) was additionally modified to allow the utility to substitute personal contact or telephone contact for contact by First Class Mail.

FINDINGS OF FACT

1. On March 8, 1991, the Commission issued a rulemaking proceeding in accordance with Chapter 29A of the West Virginia Code in order to promulgate amendments to Rule 2.04, 4.01A, 4.02, and 4.05 of the Commission's Sewer Rules pursuant to the Commission's authority under West Virginia Code §§16-13A-9, 24-1-1, 24-1-7, 24-2-1, and 24-2-2.

2. Comments were filed regarding this rulemaking by the Sanitary Board of the City of Bluefield, the City of Madison, and the Sanitary Board of the City of Parkersburg.

3. Based on those comments received from the above entities and based upon its own evaluations, the Commission has modified its originally promulgated rulemaking.

CONCLUSIONS OF LAW

1. The Commission is constrained by West Virginia Code §23-3-8 regarding the size of the public utility residential customer service deposits that may be required.

2. The Commission is of the opinion that the requirement that a flat eight percent interest rate be paid on deposits by municipal customers creates an unnecessary burden on municipalities and thus modified proposed Rule 4.02(1)(a) accordingly.

3. The Commission is of the opinion that it is reasonable to put a cap on service deposits to be collected by utilities.

4. The Commission is of the opinion that the rule originally promulgated as Rule 4.05(3) is duplicative and accordingly has deleted it.

5. It is reasonable for the Commission to modify the proposed changes to Rule 4.05(3)(a)(2) to limit the reimbursement for termination and resumption of water service to delinquent users of sewer facilities.

6. Portions of the proposed changes to Rule 4.05(3)(b) have been modified to take into account those comments made by the Sanitary Boards for the City of Parkersburg and the City of Bluefield.

7. The Commission is of the opinion that the modifications to its rulemaking promulgated March 8, 1991, are reasonable based upon the comments received and the statutory constraints imposed by the West Virginia Code.

ORDER

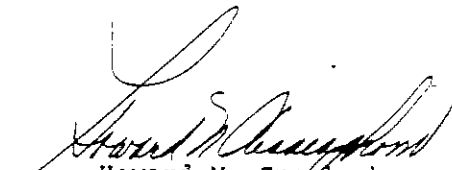
IT IS, THEREFORE, ORDERED that the Rules attached hereto, be, and hereby are, adopted as the final rules of the Commission, to be effective sixty (60) days from the date of this order.

IT IS FURTHER ORDERED that the Commission's Executive Secretary file two copies of these finally adopted rules with the Office of the Secretary of State for inclusion in the State Register, as required by West Virginia Code §29A-1-3(b).

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all sewer utilities in the State of West Virginia by United States First Class Mail and upon Commission Staff by hand delivery.

ARC
JJW:sn

A True Copy, Teste:


Howard M. Cunningham
Executive Secretary