

WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #2

FILED

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

NOTICE OF THE EXTENSION OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Public Service Commission TITLE NUMBER: \_\_\_\_\_

RULE TYPE: Exempt Legislative; CITE AUTHORITY W.Va. Code §§12-1-7, 24-2-1, 24-2-2, 16-13A-9, and 8-18-2.

AMENDMENT TO AN EXISTING RULE: YES X NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Rules and Regulations for the Government of Sewer Utilities.

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

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

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON May 5, 1995 AT 4:30 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Public Service Commission

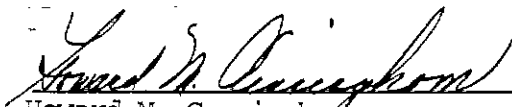
Howard M. Cunningham,

Executive Secretary

P.O. Box 812

Charleston, WV 25323

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

  
Howard M. Cunningham  
Executive Secretary

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

### SUMMARY OF PROPOSED RULES

The amendments to the rule modify deferred payment and billing requirements to allow a carrying charge and other minor changes. They require a leak adjustment policy. The amendments also modify the service extension rules. Finally, the amendments change the method for calculation of interest which utilities pay on customer deposits.

TEXT OF PROPOSED RULES AS AMENDED

## 4.2. Customer deposits.

## 4.2.1. 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 month period shall commence from the first regular payment or following the payment of a past due bill or bills. Interest at the rate as calculated in accordance with 4.2.1.c. below of five (5) percent per annum or the prevailing passbook rate of interest, whichever is higher shall, except for municipal utilities, be paid from the date of deposit until refund date. Municipal utilities shall pay the prevailing passbook rate of interest. 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.

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 (12) 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 (12) 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 or municipal who requests service at another location within the service area of the same ~~District~~ utility, and who has made timely payment of bills for the previous twelve month period, shall not be considered a new applicant for service. The preceding sentence shall not apply to multiple service locations. Multiple service locations shall require multiple deposits.

c. The interest rate to be paid shall be determined as follows. The rate which utilities shall be required to pay shall be the average of the one-year United States Treasury Bill rates for October, November and December of the preceding calendar year. By January 15 of each year, Staff of the Commission shall make the necessary calculations and inform the utilities of the rate to be used for the rest of the calendar year. The simple interest shall be paid at the date of discontinuance of service or at the end of the deposit period.

d. 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.

e. 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.

f. 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.

g. 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.

#### 4.2.2. 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.

#### 4.3 Billing information.

4.3.1. 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.

4.3.2. 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. If the utility must,

for any reason, render an estimated bill, the bill shall be clearly marked as an estimated bill.

4.3.3. Opening and closing bills, monthly or quarterly, for sewer service rendered for periods of five (5) days more or five (5) 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.

4.3.4. Utilities desiring to adopt mechanical billing of such nature as to render compliance with all the terms of paragraph b, 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.

4.3.5. 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.

4.3.6. 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 (10%) percent may be added to the net amount shown. This provision must be included in the utility's tariff filed with the Commission.

4.3.7. Each utility shall develop and implement a written policy concerning the adjustment of customer bills where the bill reflects unusual usage which can be attributed to leakage on the customer's side of the meter. The policy shall be maintained at the utility's office for inspection and shall be applied in a uniform, non-discriminatory manner to all customers. The policy shall provide for an adjustment to reflect the utility's incremental cost of treating the sewage for all amounts above the customer's average usage.

#### 4.5. Utility discontinuance of service.

4.5.1. 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.

#### 4.5.2. Notice of discontinuance --

a. In the case of a sewer utility requesting termination of water service for non-payment of sewer service, the sewer utility shall provide the customer written notice complying with Form 14-S, ten (10) days before the effective termination that the sewer utility will request termination of water service by the water utility 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 4.5.3.b. The written notice must be sent first class mail, address correction requested. 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 sewer utility by the water utility. The written notice shall become void if the utility service has not been discontinued within thirty (30) days of the date indicated on the notice for termination.

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 4.5.2.a.

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

4.5.3. Discontinuance of water service for non-payment of sewer bills --

a. Inter-utility agreements --

A. 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 non-payment of sewer service fees and charges; provided that proper notice is given and procedures are followed as set forth in Rule 4.5.2.a. through 4.5.2.c. of these rules.

B. 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.

C. The inter-utility agreement should contain specific provisions regarding responsibilities of notice of termination, termination, reconnection and provisions for fair and reasonable compensation.

D. Any inter-utility agreement entered into by a public service district pursuant to Rule 4.5.3.a. 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.

E. A water utility that has terminated or reconnected service for non-payment of sewer bills may charge the sewer utility a fee pursuant to Rule 4.5.3.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 non-payment of sewer bills shall be given the opportunity to enter into a deferred payment agreement: Provided, That such customer has demonstrated an ability to pay but only in installments. The customer shall be informed at the time a disconnect notice is issued of the option for a reasonable payment plan. ~~It shall be the option of the customer to make payment in full.~~ The terms of such deferred payment agreement shall be set forth as follows:

A. 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.

B. Once a deferred payment agreement has been established, if the customer's financial conditions significantly change and the existing payment works a hardship, the utility shall renegotiate the payment agreement, consistent with the provisions of Rule 4.5.3.b.A. stated above. However, during the renegotiation period the customer must timely pay the current bill and make some payment on the arrearage.

C. 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.

D. 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.

E. 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 excluding postal holidays 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 ~~D~~delinquent payment within that notice period, service shall not be terminated.

F. 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 of the Rules and Regulations for the Government of Public Service Districts.

G. Utilities shall be allowed to collect a carrying charge of 6% on any outstanding balance subject to a deferred payment agreement: Provided, however That any utility which charges interest on unpaid balances pursuant to its tariff shall be precluded from charging additional interest pursuant to this rule.

#### 4.6 Refusal to serve applicants.

4.6.1. 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.

4.6.2. 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.

4.6.3. 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.

### 5.3. Extension of system.

5.3.1. A sewer utility, whether municipally or privately owned, is under a public service obligation to extend its plant and facilities to serve new customer within its service area who may apply for service.

5.3.2. Extensions shall be made in all cases in which the public convenience and necessity require the service, construction problems are not unusual or burdensome, and the extensions appear to be economically feasible.

5.3.3. 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.

### 5.3.4. 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 written estimate shall be provided to the customer no more than thirty (30) days from the receipt by the utility of the written request for service. Further, the utility shall provide a copy of the main extension rule to the prospective customer and obtain a written acknowledgement from the customer that a copy of the rule has been furnished to the customer. The utility shall keep a written record of the customer's acknowledgement. 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.

5.3.5. 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 shall be made if the applicant or the applicant's authorized agent shall contracts for such extension and shall deposits in advance with the utility the estimated cost of the extension over and above the free extension limit/ of end of each fiscal year. The utility shall make the extension after receiving the above-referenced cash deposit. The utility will shall, in each case/ for each bona fide new customer who later directly connects 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(s) an amount equal to three and one-half (3-1/2) times the estimated gross annual revenue of the new customer, but in no event shall the aggregate refund made to any depositor the depositors exceed the original deposit of each depositor: Provided, however, That the utility may elect, in lieu of such refund, to aggregate an amount equal to fifty percent (50%) of the actual monthly gross revenue from new customers and refund such amounts accumulated no less frequently than every six (6) months to the original depositor(s) for a period of seven (7) years or until the full amount of the original deposit has been refunded, whichever comes first.

5.3.6. Alternate depositor-financed extension plan --

The above requirements notwithstanding, the utility may decline to finance the free extension portion of a requested extension if it can demonstrate that it has no cash to make the extension and that it has no prospect of reasonable external financing either through commercial loans or through an installment arrangement with an entity installing the extension or providing the necessary materials. If the utility declines to finance the free extension portion of a requested extension, the utility shall file for a waiver of the free extension rule within twenty (20) days of the written request. A request for a waiver by the utility shall be accompanied by supporting documentation justifying its request. If the Commission finds that the utility has reasonably declined to finance the free extension portion of the requested line, the Commission shall authorize the use of the alternate depositor-financed extension plan as follows:

Under the alternate depositor-financed extension plan, the utility shall make the extension after receiving a cash deposit equal to the full amount of the extension cost; and

agreeing to give the depositor(s), who is a customer, a monthly bill credit totaling one hundred percent (100%) of their estimated monthly bill(s) for three and one-half (3-1/2) years from the date service is initiated. This estimate shall be made at the time the extension plan is finalized and shall not be changed based on subsequent actual usage. Further, the utility shall, for each bona fide new customer who later directly connects to the extension between its original beginning and the original terminus within a period of ten (10) years from the making of such extension, refund to the original depositor(s), an amount equal to three and one-half (3-1/2) times the estimated gross annual revenue of the new customer, but in no event shall the aggregate refund made to the depositor(s) exceed the original deposit of such depositor. Provided, however, That the utility may elect, in lieu of such refund, to aggregate an amount equal to the fifty percent (50%) of the actual monthly gross revenue from new customers and to refund such amounts accumulated no less frequent than every six (6) months to the original depositor(s) for a period of seven (7) years or until the full amount of the original deposit has been refunded, whichever comes first.

5.3.7. 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. However, such alternate plan shall be filed with and approved by the Public Service Commission prior to the implementation of the alternate plan by any of the parties. Failure to obtain Public Service Commission approval will result in the loss of the right to obtain reimbursement from the utility. If an entity other than the utility constructs the extension, upon completion of construction and proper utility inspection of the extension, the utility shall initiate service only after proper transfer of title of all facilities including property, plant and rights-of-way incidental to the furnishing of utility service.

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.

1. The Commission shall consider, upon filing of a tariff rate case by the utility, the inclusion of an impact fee to be assessed against customers that will create a significant impact on the utility's capacity.