

**WEST VIRGINIA  
SECRETARY OF STATE  
NATALIE E. TENNANT  
ADMINISTRATIVE LAW DIVISION**

Form #5

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**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: W.Va. Code §24-2-2

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE \_\_\_\_\_ X \_\_\_\_\_

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

W.Va. Code §29A-1-3

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

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: Rules For The Government Of Sewer Utilities

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

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

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS May 8, 2011

  
Authorized Signature

**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 9<sup>th</sup> day of March 2011.

**GENERAL ORDER NO. 186.22**

In the matter of a rulemaking to amend the Commission's Rules and Regulations for the Government of Sewer Utilities.

**GENERAL ORDER NO. 188.28**

In the matter of a rulemaking to amend the Commission's Rules and Regulations for the Government of Water Utilities.

**COMMISSION ORDER**

The Commission promulgates final rule amendments to its water and sewer rules.

**BACKGROUND**

By Order issued August 15, 2008, the Commission promulgated proposed amendments to the *Rules for the Government of Sewer Utilities*, 150 C.S.R. 5 (*Sewer Rules*) and *Rules for the Government of Water Utilities*, 150 C.S.R. 7 (*Water Rules*). The Order required the Executive Secretary to publish notice of the proceeding in specified cities in West Virginia and to provide individual notice of the proceeding to all water and sewer utilities in West Virginia. The notice instructed interested persons to file comments by October 31, 2008. The notice further instructed that requests for hearing should be made by the same date.

The Order advised that the purpose of the proposed rulemakings were to bring the *Sewer Rules* and *Water Rules* into compliance with statutory changes including: (i) effective June 6, 2003, the West Virginia Legislature amended W.Va. Code §16-13A-9(a)(2) pertaining to security deposits for new applicants for service of a public service district; (ii) effective June 10, 2004, the West Virginia Legislature amended W.Va. Code §§8-19-12a (water), 16-13-16 (sewer), and 8-20-10 (combined water and sewer) pertaining to security deposits for new applicants for service of sewer utilities, water utilities, or combined water and sewer utilities; (iii) effective July 8, 2005, the West Virginia Legislature created W.Va. Code §22-28-1 et seq. eliminating the requirement for a certificate of convenience and

necessity for certain water and sewer projects pursuant to “community infrastructure agreements;” (iv) effective July 8, 2005, the West Virginia Legislature amended W.Va. Code § 16-13A-2 changing from mandatory to permissive the responsibility of the Commission to provide a hearing, in the affected county or counties, on its review of a proposed public service district modification; (v) effective June 6, 2008, the West Virginia Legislature amended W.Va. Code §§ 16-13-16 and 16-13A-9, adding storm water utilities as entities that may have water service terminated for non-payment of storm water fees; and (vi) effective June 11, 2010, the West Virginia Legislature amended W.Va. Code §§ 16-13-16, 16-13A-9, 8-19-12A, 8-20-10, and 24-3-10 clarifying that utilities are not required to accept payment at the customer’s premises in lieu of disconnecting service for a delinquent bill. Other proposed changes were made as noted in the August 15, 2008 Order.

The case file contains affidavits of publication from newspapers of circulation in Taylor, Ohio, Greenbrier, Mineral, Mingo, Mason, Monongalia, Marshall, Harrison, Raleigh, Marion, Hancock, Logan, Cabell, Kanawha, Mineral, Wood, McDowell, Mercer, Berkeley, and Randolph counties.

Eighteen entities filed comments pertaining to the proposed *Sewer Rules* including (i) the Harrison County Commission; (ii) Berkeley County Public Service Sewer District; (iii) Greenbrier County Public Service District No. 1; (iv) the West Virginia Municipal Water Quality Association; (v) James Kelsh, Esquire, on behalf of Greenbrier County Public Service District No. 2, Gilmer County Public Service District, Jane Lew Public Service District, Jefferson County Public Service District, Jefferson Utilities, Inc., Mason County Public Service District, Moundsville Water Board, and Summit Park Public Service District; (vi) Commission Staff; (vii) Timothy P. Stranko, Esquire, on behalf of the Morgantown Utility Board and the Putnam County Public Service District; (viii) West Virginia American Water Company (WVAWC); (ix) Parkersburg Utility Board; and (x) the Lubeck Public Service District (Lubeck PSD).

Nineteen entities filed comments pertaining to the proposed *Water Rules* including (i) Berkeley County Public Service Sewer District; (ii) James Kelsh, Esquire, on behalf of Greenbrier County Public Service District No. 2, Gilmer County Public Service District, Jane Lew Public Service District, Jefferson County Public Service District, Jefferson Utilities, Inc., Mason County Public Service District, Moundsville Water Board, and Summit Park Public Service District; (iii) Staff; (iv) Timothy P. Stranko, Esquire on behalf of the Morgantown Utility Board and the Putnam County Public Service District; (v) WVAWC; (vi) Parkersburg Utility Board; (vii) West Virginia Rural Water Association; (viii) Lubeck PSD; (ix) Berkeley County Public Service Water District (Berkeley County PSWD); (x) Grant Public Service District; and (xi) Tomlinson Public Service District.

## DISCUSSION

Based on the filed comments and continued review of the Rules, the Commission reconsidered several of the proposed rule amendments and made further revisions, both substantive and editorial, to the *Sewer Rules* and *Water Rules*. Lubeck PSD was the only commentor to request a hearing on the proposed rulemakings. The Commission finds that Lubeck PSD's concerns have been addressed in these comments and revisions to the rulemakings and a hearing is not necessary.

### *Sewer Rules*

#### **A. Commission Response to the Comments Received**

Rule 1.7.b.3. The Commission considered the comments of Mr. Kelsh, on behalf of multiple clients, and WVAWC requesting that the delinquent bill date be the same twenty days for all utilities. Historically, the Commission has used thirty days for this date. The twenty day delinquent date for public service districts and municipal systems was legislatively set and cannot be changed by the Commission. The Commission believes, at this time, that it is prudent to maintain the historic date of thirty days for a delinquent bill for private systems.

Rule 2.4. Staff noted an inconsistency in the dates provided in the proposed rule and the Commission Order entered on August 15, 2008. Staff requested that electronic filing requirements go into effect two years after the effective date of the rule. Because all parties have had sufficient notice of proposed electronic filing requirements and many utilities currently are filing reports electronically, the Commission will require mandatory electronic reporting to begin on July 1, 2011. Additionally, the Commission has left open the possibility that the annual report may be filed in hard copy as well.

Rule 2.5. Mr. Kelsh, on behalf of several clients, recommended that utilities should be required to maintain their accounts in compliance with the 1996 Uniform System of Accounts beginning with a utility's first full fiscal year commencing after adoption of the rules. The Commission agrees with this comment and changed the proposed rule accordingly.

Rule 4.1.f.4. Berkeley County Public Service Sewer District requested relief from the implementation of the proposed change or, at least, granting a grace period for implementation of the rule. The proposed change merely clarifies what is already required by the rule and the Commission declines to act on the comment.

Rule 4.2.a.5. Although many comments supported the two percent interest proposed in this section, the Commission changed the interest rate to one percent in consideration of current interest rates and comments filed.

Rule 4.8.b.4.<sup>1</sup> Based on multiple comments received, the Commission removed proposed language requiring that the telephone calls include contact “with a responsible adult member of the household.” As the subsection now reads, the attempts at telephone calls could include speaking with a person, leaving a message on the customer’s voice answering device or dialing the telephone number and receiving a busy signal or no answer. The Commission notes that a utility is only required to make two attempts at personal contact, as defined in the rule. Additionally, the Commission clarified that the attempts at personal contact must be made on separate business days. Although the Commission received some comments indicating that two attempts to contact were excessive and redundant, we believe that customers should continue to receive two attempts at contact to allow an opportunity to rectify non-payment and possibly prevent disconnection of service.

WVAWC requested that language be added to this section placing on the utility seeking termination the responsibility of contacting the delinquent customer. The Commission modified this section to allow either the sewer utility or the water utility to attempt to contact the customer before disconnecting the service.

Rule 4.11.c. The Commission reviewed the numerous comments received in response to the proposed rule. In consideration of the comments, the Commission modified and clarified this rule. By this rule, the Commission allows the sewer utility to determine when notification is necessary. The notice requirements are not unnecessarily burdensome. Utilities are allowed to choose from the listed methods of public notification as appropriate, and are not necessarily required to use all of the methods. Furthermore, the Commission removed two of the items previously included in this list: (i) 4.11.c.D. (renumbered Rule 4.11.d. in the final rule) requires actual notice to certain facilities; and (ii) 4.11.c.G. (renumbered Rule 4.11.e. in the final rule) requires coordination with certain emergency management agencies. These two requirements are not compatible with the remainder of the list as they require specific action in consultation with governmental agencies rather than being a part of a list of acceptable public/customer notification methods.

Rule 5.4. The Commission has considered the comments received on the proposed rule and deleted the proposed rule because it was vague. The Commission notes that the issue of long service lines is covered elsewhere in these rules.

Rule 5.5.g.5. The Commission deletes this proposed subsection as unnecessary. The Commission, however, is concerned by comments received from the West Virginia Municipal Water Quality Association and the Berkeley County Public Service Sewer District suggesting that disputes over the terms of a main line extension agreement are not within the jurisdiction of the Commission. Commission jurisdiction over disputes between a utility and a customer or potential customer is clearly set forth in W.Va. Code §24-2-7.

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<sup>1</sup>The comments and discussion pertain to Rule 4.8.b.4. as proposed on August 15, 2008. Because of editing and renumbering, this rule is located in the final rules at Rule 4.8.b.3.

Rule 5.5.h.11. The Berkeley County Public Service Sewer District requested that the Commission delete the term “impact” from the rule because use of the term may be legally problematic for the Commission or the utility. The Commission has used this term in many orders, clearly using the term as a fee or charge intended to be used for utility improvements. The Commission, however, will remove the term “impact” from the rule and replace it with the term “improvement.”

Rule 5.5.i. The Greenbrier County Public Service District No. 1 commented that W.Va. Code §§22-28-1 et seq., in its entirety, should be repeated in this rule. It is not necessary to repeat a statute in its entirety in these rules. Any utility seeking to find the statute may easily find it by its reference in these rules. The Commission, however, did revise the proposed rule for clarity, adding more of the statutory language.

Rule 7.3. a. Mr. Kelsh, on behalf of several clients, recommended that a portion of this rule be eliminated as redundant and the section merely reference Form No. 8. The Commission has decided to retain the explanatory language in this rule to clearly state what is required for publication of the notice of a proceeding under this section.

## **B. Commission Edits and Clarifying Changes**

Rule 4.2.a.3. The Commission changed the proposed language to make this section clearer and consistent with 4.2.a.4.

Rule 4.2.a.7. The Commission eliminated this section because it duplicates the modified 4.2.a.5.

Rule 4.2.a.10.<sup>2</sup> This section is deleted because it merely restates statutory language.

Rule 4.8.b.1. This section is modified for clarity and to consolidate 4.8.b.1. and 4.8.b.3.

Rule 4.8.b.3. The language in this section was combined with 4.8.b.1. and this section is deleted.

Rule 4.8.b.7.<sup>3</sup> Although the Commission did not propose any changes to this subsection, the Commission notes that the West Virginia Legislature modified statutes at W.Va. Code §§16-13-16, 16-13A-9, 8-19-12A, 8-20-10, and 24-3-10, all for the purpose of clarifying that utilities are not required to accept payment at the customer’s premises in lieu

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<sup>2</sup>The rule number reflects the proposed rule as proposed on August 15, 2008.

<sup>3</sup>The rule number reflects the proposed rule as proposed on August 15, 2008. The final rule is found at 4.8.b.6.

of disconnecting service for a delinquent bill. *See*, S.B. 465, effective June 11, 2010. The Commission modified the rule to be in compliance with the statutory change.

Rule 4.8.b.8.<sup>4</sup> The Commission modified this section to clarify that the utility, if it elects to contact the customer by telephone or in person, must make actual contact.

Rule 5.5.g.1.C. The Commission made changes to this subsection to clarify the documentation required by the rule.

Form 8 Changes were made to make the form consistent with statutory language.

### *Water Rules*

#### **A. Commission Response to the Comments Received**

Rule 1.7.b.3. The Commission considered the comments of Mr. Kelsh, on behalf of multiple clients, and WVAWC requesting that the delinquent bill date be the same twenty days for all utilities. Historically, the Commission has used thirty days for this date. The twenty day delinquent date for public service districts and municipal systems was legislatively set and cannot be changed by the Commission. The Commission believes, at this time, that it is prudent to maintain the historic date of thirty days for a delinquent bill for private systems.

Rule 2.4. Staff noted an inconsistency in the dates provided in the proposed rule and the Commission Order entered on August 15, 2008. Staff requested that electronic filing requirements go into effect two years after the effective date of the rule. Because all parties have had sufficient notice of proposed electronic filing requirements and many utilities currently are filing reports electronically, the Commission will require mandatory electronic reporting to begin on July 1, 2011. Additionally, the Commission has left open the possibility that the annual report may be filed in hard copy as well.

Rule 2.5. Mr. Kelsh, on behalf of several clients, recommended that utilities should be required to maintain their accounts in compliance with the 1996 Uniform System of Accounts beginning with a utility's first full fiscal year commencing after adoption of the rules. The Commission agrees with this comment and changed the proposed rule accordingly.

Rule 3.3.2. The Commission thanks the Berkeley County PSWD for its comments pertaining to master metering for mobile home parks and similar facilities, but finds that these comments raise concerns and issues that go beyond the scope of the proposed rule making, and, therefore, will not address the comments at this time.

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<sup>4</sup>The rule number reflects the proposed rule as proposed on August 15, 2008. The final rule is found at Rule 4.8.b.7.

Rule 4.1.g.1. Comments were received from the Berkeley County PSWD even though the Commission did not propose any changes to this rule. The Commission finds that these comments go beyond the scope of the proposed rule making and will not be addressed at this time.

Rule 4.1.g.2. In response to comments from Mr. Stranko and Staff, the Commission clarified that the applicant is responsible for the cost of the testing. The Commission disagrees with the remaining comments made by Mr. Stranko and declines to act on those comments.

Rule 4.1.g.7. Mr. Kelsh recommended deletion of some language pertaining to service line cost allocation because it duplicated other language found in the rule. The Commission agrees that the changes make the rule clearer and eliminates duplication from other sections while not substantially changing the rule. The Commission disagrees with comments received from Staff, Berkeley County PSWD, Parkersburg Utility Board, and Mr. Stranko that the rule unfairly shifts costs away from those generating the costs.

Rule 4.2.a.4. Pursuant to comments received by the Lubeck PSD, the Commission changed the proposed language to make this section consistent with 4.2.a.4 of the *Sewer Rules*.

Rule 4.2.a.5. Although some comments supported the two percent interest proposed in this section, the Commission changed the interest rate to one percent in consideration of current interest rates and comments received from Lubeck PSD.

Rule 4.8.a.4.<sup>5</sup> Based on multiple comments received, the Commission removed proposed language requiring that the telephone calls include contact “with a responsible adult member of the household.” As the subsection now reads, the attempts at telephone calls could include speaking with a person, leaving a message on the customer’s voice answering device or dialing the telephone number and receiving a busy signal or no answer. The Commission notes that a utility is only required to make two attempts at personal contact, as defined in the rule. Additionally, the Commission clarified that the attempts at personal contact must be made on separate business days. Although the Commission received some comments indicating that two attempts to contact were excessive and redundant, we believe that customers should continue to receive two attempts at contact to allow an opportunity to rectify non-payment and possibly prevent disconnection of service.

Rule 4.12.d The Commission reviewed the numerous comments received and notes that, by this rule, the Commission intends to require notification as a customer service issue and not a health issue, which would be addressed by the Bureau for Public Health; therefore,

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<sup>5</sup>The comments and discussion pertain to Rule 4.8.a.4. as proposed on August 15, 2008. Because of editing and renumbering, this rule is located in the final rules at Rule 4.8.a.3.

the Commission has the authority to impose notice requirements for the utilities regulated by it. Furthermore, the notice requirements are not unnecessarily burdensome. Utilities are allowed to choose from the listed methods of public notification as appropriate and are not necessarily required to use all of the methods. The Commission notes that two of the methods previously included in this list were made separate items in the final version of the rules: (i) 4.12.d.D. requires actual notice to certain facilities (renumbered 4.12.e. in the final rule); and (ii) 4.12.d.G. requires coordination with certain emergency management agencies (renumbered 4.12.f. in the final rule). These two requirements are not compatible with the remainder of the list as they require specific action in consultation with governmental agencies rather than being a part of a list of acceptable public/customer notification methods.

Rule 5.5.g.5. The Commission deletes this proposed subsection as unnecessary. Commission jurisdiction over disputes between a utility and a customer or potential customer is clearly set forth in W.Va. Code §24-2-7.

Rule 5.7. Modifications to the proposed changes in the heading and subsection 5.7.a. were made to clarify the rule and correct typographical errors. The Commission reviewed the comments received from Tomlinson Public Service District, Berkeley County PSWD, West Virginia Rural Water Association, Staff, Grant Public Service District, and clients represented by Mr. Kelsh and pertaining to proposed subsection 5.7.b. The Commission has decided to delete this section because it is unnecessary to add this language to the rules. In proposing 5.7.b., our main concern was that utilities not unnecessarily require individuals to install expensive backflow prevention equipment when it was not necessary to do so. However, the Commission notes that any utility practice concerns covered in proposed subsection 5.7.b. duplicate protections afforded by W.Va. Code §24-2-7 as well as other statutes and case law governing utility regulation.

Rule 8.3. Mr. Kelsh, on behalf of several clients, recommended that a portion of this rule be eliminated as redundant and the section merely reference Form No. 8. The Commission has decided to retain the explanatory language in this rule to clearly state what is required for publication of the notice of a proceeding under this section.

## **B. Commission Edits and Clarifying Changes**

Rule 4.2.a.3. The Commission changed the proposed language to make this section clearer and consistent with 4.2.a.4.

Rule 4.2.a.7. The Commission eliminated this section because it duplicates the modified 4.2.a.5.

Rule 4.2.a.10.<sup>6</sup> This section is deleted because it merely restates statutory language.

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<sup>6</sup>The rule number reflects the proposed rule as filed on August 15, 2008.

Rule 4.4.c.1. This section is modified by correcting a misspelled word.

Rule 4.8.a.1. This section is modified for clarity and to consolidate 4.8.a.1. and 4.8.a.3.

Rule 4.8.a.3. The language in this section was combined with 4.8.a.1. and this section is deleted.

Rule 4.8.a.7.<sup>7</sup> Although the Commission did not propose any changes to this subsection, the Commission notes that the West Virginia Legislature modified statutes at W.Va. Code §§16-13-16, 16-13A-9, 8-19-12A, 8-20-10, and 24-3-10, all for the purpose of clarifying that utilities are not required to accept payment at the customer's premises in lieu of disconnecting service for a delinquent bill. *See*, S.B. 465, effective June 11, 2010. The Commission modified the rule to be in compliance with the statutory change.

Rule 4.8.a.8.<sup>8</sup> The Commission modified this section to clarify that the utility, if it elects to contact the customer by telephone or in person, must make actual contact.

Rule 5.5.g.1.C. The Commission made changes to this subsection to clarify the documentation required by the rule.

Rule 5.5.i. To make this section consistent with changes made to *Sewer Rule 5.5.i.* and for clarity, the Commission modified this section.

Form 8 Changes were made to make the form consistent with statutory language.

*Comments received on rules wherein no changes were proposed*

Rule 5.5.f. The Commission did not propose changes to this rule, but is concerned by comments received from Timothy P. Stranko, Esq. on behalf of the Morgantown Utility Board. In comments filed on October 31, 2008, the Morgantown Utility Board requested changes to these rules because the current rules result in refunds to developers far in excess of the actual short term net revenue realized by the utility. The Commission notes that the intent of the rule is, in fact, to require an investment by the utility in a line extension to serve new customers equal to five times the annual net revenue generated by new customers. This investment will not be recovered by the utility for five years. The Commission, however, has provided a cushion and cash source for associations, public service districts, and municipalities by further providing that the entities may use the new net revenue to provide

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<sup>7</sup>The rule number reflects the proposed rule as filed on August 15, 2008. The final rule is found at 4.8.a.6.

<sup>8</sup>The rule number reflects the proposed rule as filed on August 15, 2008. The final rule is found at 4.8.a.7

cash for the required refunds. Associations, public service districts, and municipalities are allowed, by the rule, to elect to make the refund over a period of five years. If the utility continues to be concerned about these rules, it should contact Staff or propose on its own motion changes for a future rulemaking.

Rule 5.5.h.7. The Commission notes that Staff filed comments concerning *Water Rule* and *Sewer Rule 5.5.h.7.* even though the Commission did not propose any changes to this rule. Staff recommended changes to this section that would have been outside of the scope of the proposed rules. Staff may consider raising these concerns in a future rulemaking or a request for a future rule making.

### **FINDINGS OF FACT**

1. On August 15, 2008, the Commission issued proposed rule amendments to its *Sewer Rules* and *Water Rules* and established a public comment period.
2. Comments were received.
3. Lubeck PSD requested a hearing.
4. The Commission has considered the filed comments and made revisions as needed.

### **CONCLUSIONS OF LAW**

1. It is appropriate to adopt final rules in this proceeding to bring the *Sewer Rules* and *Water Rules* into conformance with recent statutory changes codified at W.Va. Code §§8-19-12a, 8-20-10, 16-13-16, 16-13A-2, 16-13A-9, 22-28-1 *et seq.*, and 24-3-10.
2. Recent statutory changes (i) modified language pertaining to security deposits for new applicants for service in public service districts, sewer utilities, water utilities and combined water and sewer utilities; (ii) eliminated the requirement for a certificate of convenience and necessity for certain water and sewer projects pursuant to community infrastructure agreements; (iii) changed from mandatory to permissive the Commission's responsibility to provide a hearing in an affected county or counties when reviewing a proposed public service district modification; (iv) added storm water utilities as entities that may have water service terminated for non-payment of storm water fees; and (v) clarified that utilities are not required to accept payment at the customer premise in lieu of disconnecting service for a delinquent bill.
3. A hearing is not necessary in this case because the Commission addressed the comments of the only party that requested a hearing.

4. The final revised rules should be adopted because the revisions address the statutory changes and make other appropriate revisions to the *Sewer Rules* and *Water Rules*.

### **ORDER**

IT IS THEREFORE ORDERED that the Executive Secretary of the Commission shall submit the final *Rules for the Government of Sewer Utilities*, 150 C.S.R. 5 and the *Rules for the Government of Water Utilities*, 150 C.R.S. 7, attached hereto, to the Secretary of State.

IT IS FURTHER ORDERED that the final *Rules* shall be effective May 8, 2011.

IT IS FURTHER ORDERED that Attachment A hereto shows the modifications of the *Rules for the Government of Sewer Utilities* comparing the currently effective *Rules* to the final *Rules*.

IT IS FURTHER ORDERED that Attachment B hereto shows the modifications of the *Rules for the Government of Water Utilities* comparing the currently effective *Rules* to the final *Rules*.

IT IS FURTHER ORDERED that the Rules submitted to the Secretary of State shall be accompanied by the required Form No. 5 "Notice of Agency Adoption of a Procedural or Interpretive Rule or a Legislative Rule Exempt from Legislative Review."

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this order with attachments A and B on the parties that filed comments in this proceeding, by United States mail and on Staff by hand delivery.


IT IS FURTHER ORDERED that the Executive Secretary provide copies of the final Rules to the interested parties who address inquires to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P. O. Box 812, Charleston, WV 25323.

IT IS FURTHER ORDERED that the Executive Secretary cause a true and accurate copy of the final Rules to be posted upon the Commission website.

IT IS FURTHER ORDERED that on entry of this Order this case shall be removed from the Commission docket of open cases.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order, including Attachments A and B, on all regulated water and sewer utilities in the State by electronic mail, or, if electronic mail is not available, by United States Mail, and on Staff by hand delivery.

A True Copy. Teste:

  
Sandra Squire  
Executive Secretary

SMS/slc  
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FILED

TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION

2011 MAR -9 PM 3: 28

SERIES 5  
RULES FOR THE GOVERNMENT OF  
SEWER UTILITIES

OFFICE OF THE VIRGINIA  
SECRETARY OF STATE

§150-5-1. General.

1.1. Scope. -- These rules govern the operation and service of sewer utilities subject to the jurisdiction of the Public Service Commission pursuant to W.Va. Code §24-2-1.

1.2. Authority. -- W.Va. Code §§24-1-1, 24-1-7, 24-2-1, and 24-2-2 ~~24-2-5, 24-2-7, 24-2-8, 24-2-9, 24-3-2, 24-3-5, 16-13A-2, 16-13A-9, 8-18-23~~

1.3. Filing Date. -- ~~August 25, 2003~~: March 9, 2011.

1.4. Effective Date. -- ~~October 24, 2003~~: May 8, 2011.

1.5. General.

1.5.a. ~~This rulemaking repeals the Commission's current Rules and Regulations for the Government of Public Service Districts, 150CSR17, and incorporates portions of those rules within these Sewer Rules. Portions of Series 17 will be incorporated into the Commission's Rules for the Government of Water Utilities, 150CSR7, by separate proceeding. This rulemaking addresses legislative changes, and makes changes for stylistic and clarification purposes. These rules replace rules that went into effect on October 24, 2003.~~

1.5.b. 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 utilities and customers.

1.5.c. The adoption of these rules in no way precludes the 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.

1.5.d. These rules will not relieve in any way a utility from any of its duties under the laws of this State.

1.6. Application of rules.

1.6.a. These rules apply to all public utilities as defined in Rule 1.7.

1.6.b. If hardship results from the application of any Sewer Rule or if unusual difficulty is involved in immediately complying with any rule, application may be made to the Commission for the modification of the rule or for temporary or permanent exemption from its provisions. Provided, that no application for

modification or exemption will be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

1.7. Definitions.

1.7.a. "Applicant" -- A person, firm, corporation, municipality, public service district or any other entity that applies for sewer service.

1.7.b. "Available sewer service" -- 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, that service shall not be deemed to be available unless the sewage will flow by gravity or be transported by such other methods approved by the Bureau for Public Health including, but not limited to, vacuum and pressure systems, approved under W. Va. Code §16-1-9, from the customer's point of service into the utility service pipe.

1.7.c. Billing Related Dates.

1.7.c.1. "Bill due date" -- The date when the utility mails the bill.

1.7.c.2. "Latest pay date" -- The last date, which shall be no sooner than the 20<sup>th</sup> day following the date the utility mails the bill, that the bill may be paid without incurring a late payment penalty. Such date must be stated on the face of the bill.

1.7.c.3. "Delinquent bill" -- Any bill issued by a public service district or a municipal system that has not been paid within twenty (20) days of the bill due date; or any bill issued by a sewer utility that is not a public service district or a municipal system within thirty (30) days of the bill due date. Such date must be stated on the face of the bill.

1.7.d. "Commercial Service" -- Means service to each separate business enterprise, occupation or institution occupying for its exclusive use any units or units of space as an entire building, entire floor, suite of rooms or a single room, and using water for such incidental use as the schedule of rates applicable to the particular installation may permit. Commercial service shall apply to all stores, offices, hotels, wholesale houses, garages, display windows, signs, theaters, barber and beauty shops, churches, opera houses, auditoriums, lodge halls, school houses, banks, bakeries and any other space occupied for commercial purposes. Any rooming house, lodging house, resort, inn or tavern renting more than four (4) rooms to strangers or transients without any previous agreement for accommodation or as to the duration of stay shall be classed as a hotel and as such it comes under the commercial classification.

1.7.e. "Commission" -- Whenever in these rules 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.

1.7.f. "Customer" -- Shall mean and include any such person, firm, corporation, municipality, public service district or any other entity who purchases a product or services of any utility and shall include any such person, firm, corporation, municipality, public service district or any other entity who purchases such services or product for resale.

1.7.g. "Customer's Service Pipe" -- Shall be that portion of the service pipe from the point of service to the structure or premises, installed at the cost and expense of the customer.

1.7.h. "Governmental Unit" -- Any municipality or other political subdivision or agency of the State of West Virginia or the Federal Government.

1.7.i. "Moratorium" -- A condition imposed on a utility by the Commission prohibiting service connections and/or reactivation of service for an entire system, or a portion thereof.

1.7.j. "Payment" -- Payment is made by cash, check, credit card, debit card, or voucher accepted by the utility.

1.7.k. "Point of service" -- Means the utility's pipe and appurtenances which connect any utility service pipe with the inlet connection of a customer's service pipe at the customer's property line or elsewhere on the customer's property if provided for in a user's agreement. The utility shall own and maintain all facilities located between the point of service and the main.

1.7.l. "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 shall mean and include any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in the business of collecting, transporting, and/or treating sewage.

1.7.m. "Residential Service" -- Means service to a householder or a tenant, living in a separate house or separate apartment in an apartment building, using water and sewer for general household service. Should the owner of a multiple apartment building undertake to furnish water to his tenants as a part of their monthly rent, then such service shall be classed as "Commercial." In cases where a householder or tenant devotes some portion of the occupied building to commercial use and uses the remainder as a residence then the predominate use of water shall constitute the basis for classification as either residential or commercial.

1.7.n. "Sewer Main" -- Means sewer pipe owned, operated, or maintained by the utility located in a public right-of-way, street, alley, or private right-of-way, used for the purpose of collecting sewage and from which service connections for customers are taken. Any sewer pipe extending through a utility right-of-way across private property shall be a sewer main. Costs to install a sewer main across private property are subject to the cost-sharing provisions of Rule 5.5.

1.7.o. "Temporary Service Connection" -- 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 utility sewer main extending along the total frontage of the lot on said street or right-of-way, unless otherwise agreed to by the utility.

1.7.p. "Utility Service Pipe" -- Shall be that portion of the service pipe between the sewer main and the point of service, installed at the cost and expense of the utility.

## **§150-5-2. Records, Reports and Other Information to be Supplied to the Commission.**

### **2.1. Records and reports.**

2.1.a. Preservation of records -- All records required by these rules shall be preserved by the utility in the manner prescribed by the Commission.

2.1.b. Location of records.

2.1.b.1. Such records should be kept at the office or offices of the utility in West Virginia and shall be available during regular business hours for examination by the Commission or its duly authorized representative.

2.1.b.2. If kept outside the State, such records 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 Commission employees assigned to examine the records.

2.1.c. Reports to the Commission -- Upon Commission request, a utility shall furnish to the Commission the results of any test or tests required to be made, or the information contained in any records required to be kept by the utility, or any further information in its possession respecting its rates, charges, or practices, without formal order of the Commission requiring the release of such information.

## 2.2. Filing of rate schedules.

2.2.a. Tariffs containing rates and rules of each utility shall be filed in the manner prescribed by the Commission in "*Rules for the Government and Filing of Tariffs*", 150CSR2 effective as amended or modified by the Commission.

2.2.b. Municipal rates -- Rates for municipal sewer and combined water and sewer utilities shall be adopted, and tariffs shall be filed, in accordance with the Commission's "Rule for the Government and Filing of Tariffs," 150CSR2, effective as amended or modified by the Commission.

## 2.3. Utility's special rules.

2.3.a. A utility desiring to establish any rule(s), supplementing the rules of the Commission shall first make application to the Commission for authority to establish such a rule(s), clearly stating the reasons for the rule(s).

2.3.b. On and after ninety (90) days from the effective date of these Rules, 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 subsequently have been ratified and approved by the Commission.

2.3.c. 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 not been approved by the Commission.

## 2.4. Financial and statistical report.

2.4.a. Each utility shall file annually a financial and statistical report upon forms to be furnished by the Commission. The report shall be based upon the accounts set up in conformity with Rule 2.5. The report shall be filed on or before three (3) months following the end of the utility's fiscal year or on such date as the Commission may direct. In addition to the form requirement specified in the annual letter sent by the Commission to utilities, for all reports due to be filed after July 1, 2011, an electronic copy of the report shall be filed utilizing the form template and filing instructions that can be found on the Commission web site.

2.4.b. Upon written request and for good cause shown, the Commission may approve or disapprove, through its Executive Secretary, by letter, a reasonable extension of time to file the financial and statistical report. Such application is to be made before the expiration of the time for filing the report.

2.5. Uniform system of accounts.

2.5.a. All sewer utilities shall maintain their accounts and records in compliance with the Uniform System of Accounts as promulgated in ~~1958~~ 1996 by the National Association of Regulatory Utility Commissioners for Class A, and B, ~~sewer utilities~~ and Class C and ~~D~~ sewer utilities.

2.5.b. Observance of the system of accounts applicable to the utility by appropriate class is obligatory upon all persons having direct charge of the books and accounts of the utility. For the purpose of securing uniformity in the applications of this system, all questions of doubtful interpretation of accounting rules are to be submitted to the Commission for consideration and decision.

2.5.c. 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	<del>\$800,000</del> <u>\$1,000,000</u> or more
B	<del>\$400,000 -- \$799,999</del> <u>\$200,000 - 999,999</u>
C	<del>\$100,000 -- \$399,999</del> <u>less than \$200,000</u>
<del>D</del>	<del>less than \$100,000</del>

These modified classifications and revenue levels will not take affect until the first full fiscal year after the adoption of these rules.

2.6. Maps and records.

2.6.a. Each utility shall keep on file suitable maps, plans, and records showing the entire layout of every pumping station, treatment plant, transmission and collection line, with the location, size and capacity of each plant, size of each transmission and collection line, and customer's service, and other facilities used in the collection and treatment of sewage.

2.6.b. In the case of new construction or property acquired from 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 or property acquired. All drawings shall have the scale clearly shown and be of sufficient detail to accurately depict the project or property.

2.6.c. In general, where present maps of existing facilities are not entirely up-to-date, special surveys to locate any plant or facilities will not be required immediately, but maps must be updated as prescribed by the Commission.

2.7. Management audits.

2.7.a. Scope -- To establish a procedure for examination of management practices and policies to determine whether the utility 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.

2.7.b. Types of management audits -- The following types of management audits, which vary in scope, may be directed and utilized by the Commission:

2.7.b.1. Comprehensive -- An investigation characterized by an extensive, detailed analysis of a utility's management and operations.

2.7.b.2. 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.

2.7.b.3. Focused -- An in-depth investigation of one (1) or several specific areas of a utility's management and operations.

2.7.c. 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.

2.7.d. Conduct and control.

2.7.d.1. 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.

2.7.d.2. The Commission may impose eligibility restrictions upon contractors relating to past, current, and post-audit relationships with the utility.

2.7.d.3. 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.

2.7.e. 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.

2.7.f. Implementation of recommendations.

2.7.f.1. Draft report.

2.7.f.1.A. Upon completion of the audit a draft report shall be submitted to the utility for comments.

2.7.f.1.B. The auditor and Company representatives shall conduct a draft review meeting subsequent to the distribution of the draft review report.

2.7.f.2. Final report.

2.7.f.2.A. A final report shall be submitted to the Commission no later than thirty (30) days after the submission of the draft report to the utility.

2.7.f.2.B. Within thirty (30) 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.

2.7.f.3. The Commission may, after hearing, issue an order prescribing the recommendations which should be adopted by the utility.

2.7.f.4. 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.

2.7.f.5. 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.

2.7.f.6. 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.

2.7.f.7. The Commission may grant an extension of the time limits established in this section upon a showing of good cause for such extension.

**§150-5-3. Meter Requirements.**

3.1. Scope -- 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 are subject to the approval of the Commission. All flow meters used in serving bulk or resale customers shall be owned and operated by the utility providing service to the bulk or resale customer.

3.2. Sewer flow measuring devices -- Where sewer flow measuring devices are used for billing purposes, the utility shall test these devices for accuracy on an annual basis. The measuring devices shall

also be maintained in good working order and shall be adjusted or repaired to be as nearly correct as is commercially practicable.

### 3.3. Prohibitions on master metering.

#### 3.3.1.a. Reserved.

3.3.2.b. Mobile home parks -- For mobile home parks constructed on or after ~~the effective date of these rules~~ October 24, 2003, each mobile home in a mobile home park shall be individually sewerer with taps installed at the lot line of each mobile home. The lot owner shall be responsible for payment of any applicable tap fees. All utility easements and mains constructed within the mobile home park will become the property of the utility by agreement between the (i) owner of the mobile home park or the lot owner, whichever is applicable, and (ii) the utility. The agreement must be approved by Order of the Commission prior to construction of any main. Lines extending from the mobile home to the tap will be considered customer service lines and maintenance of those lines will be the responsibility of the applicable lot owner.

## §150-5-4. Customer Relations.

### 4.1. Customer information.

4.1.a. Information as to service -- Each utility shall, upon request, give its customers such information and assistance as is reasonable, in order that customers may enjoy safe and efficient service.

4.1.b. Explanation of computing bills -- Each utility shall adopt some means of informing its customers as to the method of computing bills, either by printed description on its bills, or by a notice to the effect that the method will be explained at the office of the utility upon request.

4.1.c. Explanation of rates -- It shall be the duty of the utility to explain to the customer at the beginning of service, or whenever the customer shall request the utility to do so, the utility's rates applicable to the type of service furnished to the customer and all other classes of customers, and to assist him in obtaining the best rate for his service requirements. The responsibility for the selection, however, rests with the applicant. In the event the customer's use of service changes such that a rate schedule other than the one initially selected becomes favorable, the responsibility for requesting a change in rate schedule, consistent with the provisions of the service agreement, shall rest with the customer. The utility shall, on its periodic statements, annually inform its customers that, if they so request, it shall supply them with a copy of the utility's rate or rates applicable to the type of service to be furnished to all classes of customers with a concise written explanation of the rates, and an identification of any classes of customer for whom rates are not summarized.

#### 4.1.d. Posting of law, rates, rules, and collection agents.

##### 4.1.d.1. Every utility shall maintain in its office for inspection by the public, the following:

4.1.d.1.A. 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;

4.1.d.1.B. A copy of the Public Service Commission Law of this State; and

4.1.d.1.C. A copy of these rules.

4.1.d.2. A suitable placard in large type shall be conspicuously posted in the utility's business office giving information to customers that a copy of the law, the rules of the Commission, and the schedules of rates are available for their inspection.

4.1.d.3. Once a year, or as often as a utility changes collection agents, each utility shall publicize by newspaper or bill insert to its customers its collection agents to whom customers may deliver payment of sewer bills.

4.1.e. Application for sewer service.

4.1.e.1. All applicants desiring sewer service may be required to make written application at the office of the utility on printed forms provided therefor setting forth in said application all purposes for which sewer will be used upon their premises. The utility may require the applicant to provide identification at the time of application for service. All applicants for service 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.

4.1.e.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. In the event the customer of record has died or has become incapable of being responsible for sewer service, that individual's spouse may become the customer of record without being required to complete a new application for sewer service, or paying a new deposit.

4.1.e.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 and shall instruct the customer to present said receipt to the water utility when application for water service is made.

4.1.f. Public service district's notice of availability of sewer service and billing after notice.

4.1.f.1. Notice by publication -- When sewer service is made available by a public service district to customers in an area which has not previously been served by the district, the district shall publish a notice in a newspaper of general circulation in the area affected once a week for two consecutive weeks, with the second notice being published at least thirty (30) days prior to the date that the district intends to begin billing for services. The notice shall state, at a minimum, the following information: (1) that sewer services are available; (2) the date that the district will begin billing for services as authorized by W.Va. Code §16-13A-9 and Rule 4.3. of the Commission's *Rules for the Government of Sewer Utilities*; (3) the district's rates; (4) that W.Va. Code §16-13A-9 authorizes the district to petition the circuit court to compel connection to the sewer system; (5) the location and telephone number of the district's business office; and (6) the amount of the bill to be rendered as provided by W.Va. Code §16-13A-9, in the event a customer does not connect to the system.

4.1.f.2. Publication is not required when service is extended to a single customer at the customer's request.

4.1.f.3. Personal notice -- In addition to notice by publication, when sewer service is made available to customers in an area which has not previously been served by the district, the district shall provide notice with at least the information as described in Section 1. above, to all potential new customers by certified mail, return receipt requested, by personal service with signed and dated receipt, or by posting a notice on the premises. If the premises to be served is not inhabited by the owner, notice shall be given to the owner by certified mail, return receipt requested, in addition to giving notice to the customer inhabiting the premises. In the event that the district is not able to effect personal notice after a good faith effort, or if the district believes that the requirements of this section create an undue hardship on the district, the district may petition the Commission for a waiver of the requirements of personal notice provided in this section.

4.1.f.4. Customers of public service sewer districts who are not connected to the sewer system after appropriate notice has been given of availability of service pursuant to W. Va. Code §16-13A-9 and Rule 4.1.f. shall be billed based on actual water consumption or the average monthly water consumption based upon the owner's, tenant's, or occupants's specific customer class. These charges must be included in the utility's tariff filed with the Commission.

#### 4.2. Customer deposits.

##### 4.2.a. Security deposits.

4.2.a.1. 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 with it initially, and from time to time, to secure payment of sewer service rates and charges. Except for municipal sewer systems, such deposit shall not be more than one-twelfth (1/12) of the annual estimated charge for residential service and or one-sixth (1/6) of the annual estimated charge for all other service. For a municipal sewer system only, the deposit shall not be more than either fifty dollars (\$50) or two-twelfths (2/12) of the average annual usage of the applicant's specific customer class, whichever is greater. For combined water and sewer municipal systems the deposit shall not be more than either one hundred dollars (\$100) or two-twelfths (2/12) of the average annual usage of the applicant's specific customer class, whichever is greater. This provision must be included in the utility's tariff filed with the Commission. The utility shall not be bound to supply sewer service until this condition is fulfilled. ~~After the customer has paid bills for service for twelve (12) consecutive months without a delinquency, the utility shall promptly and automatically refund the deposit plus accrued interest. Calculation of the above twelve (12) month period shall commence from the first regular payment or following the payment of a delinquent bill or bills. Interest at the rate as calculated in accordance with Rule 4.2.a.7. below, shall be paid from the date of deposit until the date of refund of the security deposit.~~ 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.

4.2.a.2. Security deposits for public service districts -- All new applicants for residential or other sewer service from a public service district shall make a deposit of (i) fifty dollars (\$50), or (ii) two-twelfths (2/12) of the ~~annual estimated charge~~ average annual usage for the applicant's specific customer class for sewer service, whichever is greater, with the district to secure the payment of sewer service rates and charges. For combined water and sewer public service districts such deposit shall not be more than either one hundred dollars (\$100) or two-twelfths (2/12) of the average annual usage of water service and wastewater service for the applicant's specific customer class, whichever is greater. 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. This provision must be included in the utility's tariff filed with the Commission.

4.2.a.3. Return of deposit to customers ~~who are not tenants~~ -- Except as otherwise provided in 4.2.a.4., ~~A~~ after a customer ~~who is not a tenant~~ has paid bills for service for twelve (12) consecutive months without a delinquency, the utility shall promptly and automatically refund the deposit plus accrued interest. Calculation of the above twelve (12) months<sup>2</sup> period shall commence from the first regular payment or following the payment of a delinquent bill or bills.

4.2.a.4. Return of deposit by public service districts and municipal systems only for to a customer who is a tenant -- By statute ~~A public service districts and municipal systems is are~~ not required to return a deposit to a customer who is a tenant until the time the tenant discontinues service with the district or municipal system. After a customer who is a tenant discontinues service with the district or municipal system, the utility shall promptly and automatically refund the deposit plus accrued interest. The public service district or municipal system 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.

4.2.a.5. Unless otherwise ordered by the Commission by general order, simple interest of 1% per year at the rate as determined in accordance with Rule 4.2.a.8- shall be paid from the date of deposit until the date of refund of the security deposit. All customer security deposits shall be placed in an interest bearing account at a local federally insured financial institution. ~~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.~~

4.2.a.6. ~~Rule 4.2.a.5. requires~~ Public service districts and municipal systems to must segregate security deposits in interest bearing accounts at federally insured institutions. Upon proper showing by complaint or otherwise, the Commission may require any other utility to likewise segregate customer deposits.

~~7. The interest rate to be paid by all sewer utilities other than public service districts 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 file with the Commission its calculations. The Commission will issue an order setting the rate to be paid by the utilities until the next annual Commission order. The simple interest shall be paid at the date of discontinuance of service or at the end of the deposit period.~~

~~8. The interest rate to be paid by public service districts shall be determined as follows: The Staff of the Commission shall determine a rate which a typical small investor could receive at federally insured banks in West Virginia. in the last quarter of each calendar year. The Staff shall by January 15 of each year report to the Commission its rate with supporting information. The Commission will issue an order setting the rate to be paid until the next annual Commission order. The simple interest shall be paid at the date of discontinuance of service or at the end of the deposit period.~~

4.2.a.7.9: A current customer of a public service district or a municipal system who requests service at another location within the jurisdiction of the district and who has made payment of bills for the previous twelve (12) months without a delinquency, is not required to pay a deposit for service at the new

location because that customer is not a new applicant for service under W.Va. Code §§16-13A-9, 8-20-10, or 16-13-16. The preceding sentence shall not apply to multiple service locations. Multiple service locations shall require multiple deposits. In the event the customer of record has died, or has become incapable of being responsible for sewer service, that individual's spouse may become the customer of record without being required to complete a new application for sewer service, or paying a new deposit.

~~10. All new applicants for residential or other service from a combined water and sewer public service district shall deposit (i) a minimum of fifty dollars (\$50.00), or (ii) two-twelfths (2/12) of the annual estimated charge for sewer service, whichever is greater, for each of the services to be rendered:~~

~~4.2.a.8.11.~~ 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.

~~4.2.a.9.12.~~ 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 fact that interest will be paid at a Commission determined rate. Each utility shall provide automatic means to refund the deposit of a customer, when 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.

~~4.2.a.10.13.~~ Unclaimed deposits -- Should a utility have retained, through no fault of its own, deposits made by customers whose service has been discontinued during any calendar year, it shall, on or before the first day of March, in each year, mail to the customer's last known address a check as refund of the deposit plus accrued interest, or at the utility's option, publish a list of such depositors in a newspaper published and of general circulation in each of the county(ies) in which it operates and in which the deposits were made, showing as of the thirty-first (31<sup>st</sup>) 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 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. Upon completion of the above procedure, the utility shall follow the provisions of the Uniform Unclaimed Property Act, codified in the W.Va. Code §36-8-1 et seq., with regard to the disposition of any unclaimed deposit.

~~4.2.a.11.14.~~ This rule shall not affect residential customer security deposits required by a utility prior to the passage of W.Va. Code §24-3-8 on March 12, 1983.

~~4.2.a.12.15.~~ All utilities that collect security deposits must do so in a non-discriminatory manner.

#### 4.2.b. Guaranty agreement.

~~4.2.b.1.~~ A utility, other than a public service district, 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 may, upon request, receive copies of disconnection notices sent to the customer whose account has been guaranteed; provided that the limitations herein fixed upon the terms of a guaranty agreement shall not apply to industrial customers.

~~4.2.b.2.~~ A guaranty agreement shall terminate after the customer has satisfactorily paid bills for service for twelve (12) consecutive months, or when the customer gives notice to the utility of discontinuance

of service at the location covered by the guaranty agreement, or six (6) 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. Upon termination of a guaranty agreement, or whenever the utility deems the same insufficient as to amount of surety, a cash deposit or a new or additional guaranty may be required upon reasonable written notice to the customer.

4.2.b.3. Application in case of receiver or trustee -- The aforesaid provisions shall apply in the case of a receiver or trustee, operating a business under court order that requires utility service.

#### 4.3. Billing information.

4.3.a. All bills for sewer service shall state whether the charge is based upon quantities of water consumed at the premises, flat rate or other charge. Bills shall be rendered periodically, and if based upon metered water consumption 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. All bills shall state "This utility is regulated by the Public Service Commission of West Virginia" and "Rates available upon request."

4.3.b. First and last 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.c. Utilities desiring to adopt mechanical billing of such nature as to render compliance with all the terms of Rule 4.3.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.d. On all bills which include charges for items other than authorized sewer charges, the other factors used in computing the bill shall be clearly stated so that the amount may be readily verified from the information appearing on the bill.

4.3.e. Each bill shall bear on its face the latest pay date and the date it shall be a delinquent bill if not paid. On all current usage billings not paid in full by the latest pay date, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate. This provision must be included in the utility's tariff filed with the Commission.

4.3.e.1. When a utility receives a customer payment at a time when both a delinquent bill and a current bill are outstanding, the utility will apply the payment first to the current bill, and apply any leftover amounts to the delinquency. Provided, that this rule shall not apply to payments from customers whose delinquencies have been addressed in a deferred payment agreement. If a termination notice has been issued then the payment should first be applied to the delinquent amount that is the subject of the termination notice.

#### 4.4. Adjustment of bills.

4.4.a. Fast meters -- If the water utility makes a refund to the customer pursuant to Rule 4.4.a. of the Commission's "*Rules for the Government of Water Utilities*," 150CSR37, the sewer utility will make a corresponding adjustment to the sewer charges associated with the same period of time based on the corrected meter reading and the applicable sewer rates.

4.4.b. Dead Meters -- At any time that a water utility calculates water usage and bills for water service pursuant to the provisions in Rule 4.4.b. of the Commission's "*Rules for the Government of Water Utilities*," 150CSR37, the sewer utility will bill for sewer service for the corresponding time period based on the water usage calculated and billed by the water utility.

4.4.c. Leaks on the customer's side of the meter.

4.4.c.1. Each utility shall develop and implement a written policy concerning the adjustment of customer bills where they are based upon metered water consumption or are actually metered sewer lines, and the bill reflects unusual water usage which can be attributed to leakage on the customer's side of the point of service. Leaking commodes, dripping faucets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill. The policy shall be maintained in the utility's office for inspection by the public and shall be applied in a non-discriminatory manner to all customers. The reasonableness of the utility's policy or practice with respect to a policy shall be subject to Commission review in a formal complaint proceeding.

4.4.c.2. The policy shall provide for a recalculated bill to reflect the utility's incremental cost of treating or purchasing the treatment of the sewage, as contained in the utility's tariff, for all amounts above the customer's historic usage. Historic usage shall be defined as the average usage of the preceding twelve (12) months or actual period of service if less than twelve (12) months. If using the historic usage would result in an unreasonable calculation, adjustments may be made. If such adjustments are made, the utility should advise its customer that a dispute regarding such adjustments may be taken to the Commission in the form of an informal complaint. Any amounts which the customer can prove did not enter the sanitary sewer system shall be credited at full tariff rates.

4.4.c.3. As an alternative to using the incremental cost of treating or purchasing the treatment of the sewage, the utility may, at its option, use an adjustment which allows it to recover the Commission's estimate of "typical incremental cost" per thousand gallons of sewage on usage above the historic usage. The Commission shall from time to time establish its estimate of "typical incremental cost" by order.

4.4.c.4. However, in future rate cases the utility's incremental cost of treating or purchasing the treatment of the sewage shall be determined and the rate placed in an appropriate tariff as the leak adjustment rate. After a rate has been determined in a rate case, the utility shall not have the option to use the Commission's estimate of "typical incremental cost" found in Rule 4.4.c.3.

#### 4.5. Complaints.

4.5.a. 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. In the event that the complaint is not resolved, the utility shall, before service is discontinued, notify the customer that he may file an informal or formal complaint with the Commission.

4.5.b. 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.

4.5.c. 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.

4.6. Disputed bills.

4.6.a. In the event of a dispute between the customer and the utility respecting any bill, the utility shall conduct an investigation and report the result thereof to the customer. In the event that the complaint is not resolved, the utility shall, before water or sewer service is discontinued, notify the customer that he may file an informal or formal complaint with the Commission.

4.7. Customer discontinuance of service.

4.7.a. Any customer requesting service to be discontinued shall give notice thereof to the utility during regular business hours. Unless a different period shall be mutually agreed upon by written contract, service will be discontinued by the end of the next business day. Until the utility shall have such notice, the customer may be held responsible for all service rendered.

4.8. Utility discontinuance of service.

4.8.a. 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 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 Commission for other relief.

4.8.b. Notice of discontinuance.

4.8.b.1. In the case of a sewer utility requesting termination of water service for non-payment of sewer service, service shall actually be discontinued no sooner than ten (10) days following the date that a sewer utility has mailed to a customer a statement that sewer bills are delinquent written notice of scheduled termination of service, in compliance with Sewer Form No. 1 attached to these rules. Where written notice is required it must be sent first class mail, address service requested. The written notice shall become void if the utility service has not discontinued within thirty (30) days of the date indicated on the notice.

4.8.b.2. Where conditions hazardous to life or property are found to exist on the customer's premises, or where the utility's regulating, measuring or collection equipment or facilities have been tampered with, the water may be shut off without notice in advance.

~~3. Where written notice is required it must be sent first class mail, address service requested. Written notice shall comply with Sewer Form No. 1, attached to these rules. 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:~~

~~4.8.b.3.4:~~ Prior to disconnecting water service for non-payment of a sewer bill, ~~the water utility shall make~~ at least two (2) attempts to notify the customer through personal contact shall be required. ~~First, the water utility shall either telephone or visit the customer at least 24-hours prior to a scheduled disconnection. Second, the water utility shall knock on the customer's door immediately prior to a disconnection.~~ Either the sewer utility or the water utility shall make two (2) attempts to notify by personal contact on two (2) separate business days at least twenty-four (24) hours prior to the scheduled termination unless it is reasonably established that the premises are not permanently inhabited. For the purpose of this rule, personal contact includes both face-to-face meetings and telephone calls. The inability to make personal contact shall not prevent the water utility from terminating service.

~~4.8.b.4.5:~~ Service shall not be discontinued on a Saturday, or Sunday, any day that is a federal or state holiday, a day on which either the water utility's or the sewer utility's business office is not open to accept payment, or on the day before such days, unless an emergency exists.

~~4.8.b.5.6:~~ All disconnections shall be performed between the hours of 8 a.m. and 4 p.m.

~~4.8.b.6.7:~~ The water utility ~~shall~~ may, but is not required to, accept payment at the customer's premises in lieu of discontinuing service for a delinquent sewer bill. ~~The payment must be for the entire amount of the delinquency to prevent termination. However, a utility may refuse payment by check if the customer has, during the previous twelve (12) months, attempted to make a payment by a check subsequently returned by the bank for insufficient funds.~~

~~4.8.b.7.8:~~ If a customer has received notice of a scheduled termination, and, to avoid such termination, makes payment by check which is subsequently dishonored by the bank, the sewer utility may then request the water utility to terminate service only after it has mailed notice, by first class mail, to the customer at least five (5) calendar days, excluding state or federal holidays, prior to termination; provided that at the option of the utility, ~~either personal contact or telephone contact may be substituted for contact by first class mail~~ in lieu of mailing the notice, the utility may contact the customer either in person or by telephone. For purposes of subsection 4.8.b.7, if the utility elects to contact the customer either in person or by telephone, an attempt to contact shall not be considered sufficient – actual contact must be made.

~~4.8.b.8.9:~~ If a landlord of a single-unit dwelling or a master-metered mobile home park, apartment building, motel, hotel or other multiple or single-unit dwelling is responsible for payment of a utility bill, written notice of termination in the form of Sewer Form No. 2 shall be placed at a location readily available for public inspection on the premises at least five (5) days prior to the scheduled termination of service to that mobile home park, apartment building, motel, hotel or other multiple or single-unit dwelling in order to provide notice of the scheduled termination to the tenants of said mobile home park, apartment building, motel, hotel or other multiple or single-unit dwelling. If the billing address for any single-unit service is different than the service location, a written notice in the form of Sewer Form No. 2 shall be delivered or posted at a visible location on the premises where the service is to be terminated at least five (5) days prior to the scheduled termination. This notice shall inform the occupant(s) of the date on or after which termination of service will occur and shall state the steps the occupant(s) can take to avoid termination of service.

~~4.8.b.9.10:~~ 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 availability of a reasonable payment plan.

4.8.b.9.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 delinquency; ability of the customer to pay; payment history; time the delinquency has been outstanding; reasons why the delinquency has been outstanding; and any other relevant factors.

4.8.b.9.B. The deferred payment agreement shall include language informing the customer of the right to challenge the reasonableness of the proposed payments to the Commission.

4.8.b.9.C. During the challenge, the utility may not terminate service; provided that the current bill must be paid by the customer on time and in full in order to protect his rights under this rule.

4.8.b.9.D. Once a deferred payment agreement has been established, the customer must pay the current bill on time and in full and make timely payments in accordance with the deferred payment agreement.

4.8.b.9.E. If the customer's financial condition significantly changes and the existing payment agreement results in hardship, the utility shall renegotiate the payment agreement, consistent with the provisions of Rule 4.8.b.10.A. The customer shall provide documentation in support of his claim that his financial condition has changed. During the renegotiation period the customer must continue to pay the current bill on time and in full and make some payment on the delinquency.

4.8.b.9.F. If the deferred payment is not received in accordance with the terms of the agreement, or the payment is made with a check subsequently dishonored by the bank, 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 state or federal holidays, prior to notifying the water utility to terminate service provided that at the option of the utility, either personal contact or telephone contact with the customer may be substituted for contact by first class mail. If the customer pays the delinquent payment within that notice period, service shall not be terminated. However, if the customer has, during the previous twelve (12) months, attempted to make payment by a check which was subsequently dishonored by the bank, the utility may refuse the customer's check and immediately terminate service without additional notice.

4.8.b.10.+1: A sewer utility requesting termination of water service for non-payment of sewer bills shall provide the water utility with a copy of the notice provided to the customer as required by Rule 4.8.b.1.

4.8.b.11.+2: 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 ten-day notice period to the customer.

4.8.c. Once a disconnected customer has paid his delinquency in full, or the utility has agreed to enter into a deferred payment agreement with the customer, and all disconnect and or reconnect fees have been paid, the utility shall reconnect the customer's water service as soon as possible, but no later than twenty-four (24) hours from the time the customer pays all disconnect and reconnect fees.

4.8.d. Charge for reconnection.

4.8.d.1. Whenever the supply of water is turned off for non-payment of sewer bills, the water utility may make a charge as provided for in Rule 4.8.c. of the Commission's *Rules for the Government of Water Utilities*, 150CSR7.

4.8.e. The utility shall not refuse, deny or discontinue service to an applicant or present customer due to a delinquency in payment for service by a previous occupant of the premises to be served unless such applicant or present customer and such previous occupant are members of the same household and were members of the same household at the time the delinquent bill was incurred.

4.8.f. Combined water and sewer public service districts -- Any public service district providing water and sewer service to its customers shall have the right to terminate water service for delinquency in payment of either water or sewer bills; provided that proper notice is given and procedures followed as set out in these rules.

4.8.g. Inter-utility Agreements regarding discontinuance of water service for non-payment of sewer bills.

4.8.g.1. In the event that any utility (whether public, private, city, incorporated town, municipal corporation or public service district) owns and operates either water facilities or sewer facilities, and a separate utility owns and operates the other kind of facilities, either water or sewer, then the two utilities 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 4.8.b.

4.8.g.2. Municipal sewer -- When sewer facilities are municipally owned and water facilities are not, the municipality providing sewer service may require the water utility to discontinue water service to any customer who is delinquent in the payment of sewer service rates and charges to the municipality. The water utility shall 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 water utility which contract shall provide that the municipality shall reimburse the water utility for all costs and expenses incurred in both the termination of water service to the delinquent sewer customer and the subsequent resumption of water service to such customer. The contract shall provide for reasonable methods and assurances so that the water utility 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 customer through the fault of the municipal sewer utility.

4.8.g.3. The inter-utility agreement should contain specific provisions regarding responsibilities of notice of termination, termination, reconnection, and reasonable fees based on fair and reasonable compensation.

4.8.g.4. Any inter-utility agreements pursuant to Rule 4.8.g.1. shall be submitted to the Commission for approval prior to any termination of water service for non-payment of sewer bills under such agreements.

4.8.g.5. A water utility that has terminated or reconnected service for non-payment of sewer bills, or that has made a visit to the customer's premises to terminate service, may charge the sewer utility a fee pursuant to Rule 4.8.g.3. 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.

4.9. Refusal to serve applicants – It is suggested the utility design its application form to reflect the following:

4.9.a. Non-compliance with rules -- Any utility may decline to serve an applicant until he has complied with these rules and the utility's rules set forth in a Commission approved tariff governing sewer service.

4.9.b. 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 provided.

4.9.c. A bill which has been found to be contractually uncollectible by a court or could reasonably be found to be uncollectible by reason of an applicable statute of limitations shall not be used by a utility to deny or discontinue service.

4.9.d. 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 Commission for a ruling thereon. The refusal must be in writing with a copy sent to the Commission.

4.10. Access to property.

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

4.10.b. Identification for employees -- Every employee, whose duties regularly require him to enter a customer's premises, shall wear a distinguishing uniform or other insignia identifying him as an employee of the utility and shall carry on his person an identification card which will identify him as an employee of the utility, containing a photograph of said employee. The identification card shall contain the telephone number of the utility as well as other pertinent information necessary to identify the employee. All other employees, whose duties require occasional entry into the homes or premises of customers, shall carry an identification card containing information as herein required.

4.11. Service interruptions.

4.11.a. Records of interruptions -- 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 the interruptions.

4.11.b. Notice required for scheduled interruptions -- The Bureau for Public Health, the Department of Environmental Protection, the 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 or environmental 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.~~

4.11.c. Notice required for unscheduled interruptions -- In the event of an unscheduled service interruption that may cause a health or environmental hazard, the Bureau for Public Health, the Department of Environmental Protection, and the Commission shall be notified as soon as possible upon a utility becoming aware of an unscheduled service interruption. Additionally, customers and the general public shall be made aware of any unscheduled service interruption for which the utility is required to provide notice by utilizing one or more of the following acceptable methods of public notification as appropriate:

4.11.c.1. Fax/e-mail notification to local radio and television stations, cable systems, newspapers and other print and news media in the affected area as soon as possible after the event occurs. The notification must provide relevant information about the event, such as the affected location, its potential impact including possible adverse health effects and the population or subpopulation particularly at risk, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed.

4.11.c.2. Use of the utility's own Internet web site and 24/7 emergency phone line and integrated voice response system to provide relevant information about the event, such as the affected location, its potential impact including possible adverse health effects and the population or subpopulation particularly at risk, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed.

4.11.c.3. Other types of notice at the discretion of the utility, including, but not limited to, doorknob flyers distributed to affected ratepayers/occupants, email, text message, automated dialing system (outbound dialing).

4.11.d. Actual notice must be provided to affected health care and childcare facilities and other facilities, for example, schools and restaurants, as determined by consultation with the Commission, the Bureau for Public Health, the Department of Environmental Protection and other state agencies as necessary.

4.11.e. Coordination with state and local emergency management agencies must occur, as needed, to use any emergency alert system available for qualifying situations.

4.11.f. Public Notice Templates -- Utilities should have public notice templates prepared in advance to be available when needed to avoid wasting critical time developing materials when confronted with an unscheduled service interruption. The notices should cover all possible contaminants of concern and associated health effects.

4.11.g. Utility Contact Person -- To ensure that the public is informed in the case of an unscheduled interruption occurring due to an emergency situation, utilities should have a knowledgeable contact person stationed onsite during the emergency, if possible, to communicate to the public and media on behalf of the company.

#### 4.12. Moratoria.

4.12.a. Conditions -- The Commission may impose a moratorium on the system, either entire or apportioned, whenever sufficient evidence exists that the existing facilities are operating in excess of design capacity, that the system capacity necessary for future demand does not exist, or when an increase in customers will result in the degradation of service to existing customers.

4.12.b. Petition -- A utility, Commission Staff, or governmental entity may petition the Commission in writing for the imposition of a moratorium on a system. The petition should include evidence of the existence of conditions outlined in Rule 4.12.a. If the utility is the petitioner, it must state the utility's plan to remediate those conditions.

4.12.c. Imposition by state agency other than the Commission -- A utility must immediately notify the Commission in writing if a State agency other than the Commission imposes a moratorium on the utility's system.

4.12.d. Public notification of petition -- A party petitioning for a moratorium shall notify the public that such request is being made, through a Class II legal advertisement in the form of Sewer Form No. 3, "Public Notice of Filing of a petition for imposition of a moratorium" attached to these Rules, published no later than fifteen (15) calendar days from the date such request is made to the Commission. The notification shall clearly state which areas of the utility's system are affected, and that interested parties may submit comments to the Commission for consideration.

4.12.e. Exemptions -- Any prospective customer or group of prospective customers may apply to the Commission for an exemption from an existing moratorium. Such requests shall be made in writing by the prospective customer(s) to the Commission, and shall include justification for the proposed exemption.

4.12.f. Refusal of Service -- A utility may not deny service to a prospective customer on grounds of a moratorium until the Commission has imposed a moratorium. Any utility denying service to a prospective customer or group of customers due to a moratorium shall notify, in writing, all applicants for service of their right to file with the Commission a request for exemption from the moratorium.

4.12.g. Improvements to System -- A utility upon which a moratorium is imposed shall continue to seek improvements to its system necessary to lift the moratorium. The Commission may, at its discretion, require the utility to submit reports outlining all progress made toward system improvements.

#### **§150-5-5. Utility Facilities; Service Pipes; Extension of System.**

##### 5.1. Adequacy of facilities.

5.1.a. The collecting system of every sewer utility shall be designed, constructed, maintained and operated to receive and transport the sewage from its customers' outlets to its treatment plant without undue delay.

5.1.b. Where the terrain is such that pumping or lift stations must be provided, such facilities must have the approval of the Bureau for Public Health and the Department of Environmental Protection and be operated under the rules of the Bureau for Public Health and the Department of Environmental Protection.

5.1.c. When a new sewer utility proposes to construct and operate a sewer service business, its entire plant layout shall be approved by the Bureau for Public Health and the Water Resources Division of the Department of Environmental Protection.

5.1.d. Construction and maintenance of plant -- Each utility shall at all times construct and maintain its entire plant and system to furnish safe, adequate and continuous service.

5.1.e. Inspection of plant -- Each utility shall inspect its plant and facilities in such manner and with such frequency as is 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 Bureau for Public Health and the Department of Environmental Protection.

5.1.f. Records of conditions -- Records necessary for the proper maintenance of the system and in accordance with the Bureau for Public Health and the Department of Environmental Protection 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.

5.1.g. Records of operation -- Each utility shall keep a record of the operation of its plant, which, so far as practical, shall show sufficient details of plant operation as is 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 Bureau for Public Health and the Department of Environmental Protection.

5.1.h. 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.

## 5.2. Utility Service Pipe.

5.2.a. Where 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 mains are located, the utility will furnish, install, and maintain the utility service pipe and appurtenances between the main in the street up to the customer's point of service at or near 90 degrees to the main. All such service pipes and appurtenances shall be installed only by the utility unless by prior written agreement.

5.2.b. The utility shall determine the location of the utility service pipe.

5.2.c. The utility shall install and maintain, at its own cost and expense, all of the utility service pipe to the point of service, regardless of the side of the road on which the customer is located in reference to the main line. The utility shall designate the point of service on the customer's side of the road.

5.2.d. The utility shall not make any charge for furnishing and installing any permanent service connection, unless the utility has prior approval of the Commission to charge a tap fee and the same is set forth in the utility's tariff on file with the Commission.

5.2.e. The utility service pipe shall remain under the utility's sole control and jurisdiction.

5.2.f. The customer shall not attach any fixtures to, or make any branches in, the utility service pipe between the point of service and the main. Violation of this rule may result in termination of service pursuant to these rules.

5.2.g. Temporary service connections for construction or other temporary purposes shall be installed by the utility at the cost of the applicant.

5.2.h. Each utility shall adopt standard methods of installation where practicable. Such methods shall be set out with written descriptions and drawings to provide a clear understanding of the requirements; all of which shall be submitted to the Commission.

5.2.i. 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, that service shall not be deemed to be available unless the sewage will flow by gravity or be transported by such other methods approved by the Bureau for Public Health including, but not limited to, vacuum and pressure systems, approved under W.Va. Code §16-1-9, from the customer's premises into the utility's facilities.

## 5.3. Customer Service Pipe.

5.3.a. No customer, plumber, company owner or any agent shall connect to the utility's main or to any utility 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 permission for doing so has been granted by the utility in writing.

5.3.b. Once an application for service has been granted, the customer shall install and maintain the customer service pipe.

5.3.c. The utility's authorized employee shall inform the customer of the location of the point of service. The customer shall install the customer service pipe to the point of service after which the utility will install the utility service pipe from the main to the point of service.

5.3.d. Where the utility's service pipe is already installed to the point of service, the customer shall connect with the utility service pipe as installed.

5.3.e. The customer service pipe shall be installed in a workmanlike manner, shall conform to all reasonable rules and regulations of the utility, and shall be maintained by the customer at his own expense.

5.3.f. The utility will specify the size, kind, quality and location of all materials used in the customer's service pipe and the customer shall comply with those specifications.

5.3.g. A customer must maintain his service pipe in good condition and free from all leaks and defects, at the customer's cost and expense. A customer's failure to comply with this rule may result in termination of water or sewer service pursuant to these rules.

5.3.h. 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; and 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.

5.3.i. A customer's service pipe shall not pass through or across any premises or property other than that to be served nor across any portion of the property that could practicably be sold separately from the immediate premises served and no pipes or plumbing in any premises shall be extended therefrom to adjacent or other premises.

5.3.j. 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.

5.3.k. The utility shall make changes and bear the full costs of changes in the customer's service pipe required due to changes in grade, relocation of mains, and other causes not related to the customer. The customer shall bear the full costs of changes in service pipe or meter location desired by the customer for his or her convenience.

5.3.l. The customer shall not attach any fixtures to, or make any branches in, the customer service pipe between the point of service and the premises served. Violation of this rule may result in termination of service pursuant to these rules.

5.3.m. The connection of surface drains to the sanitary system is prohibited. As a means to deter prohibited connections where surface or ground water is introduced into the sanitary system, the utility may add a surcharge to the customer's sewer bill where evidence of a violation exists. The surcharge shall be authorized by separate schedule to the utility's sewer tariff filed pursuant to the *Rules for the Construction and Filing of Tariffs*, 150CSR2, but the utility need not file revenue, expense, or other financial data unless otherwise ordered by the Commission. The charge for roof drains, downspouts, storm sewers or similar facilities connected to the sanitary sewer system will be calculated by the formula or rate clearly stated in the tariff, and will not be cumulative to any metered rate for sewer service. The tariff should further provide that the surcharge will not be imposed unless and until the customer is notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or surface water is being introduced into the sanitary sewer, and that the customer has thirty (30) days to divert that water from the sanitary sewer.

5.4. Reserved.

5.5. Extension of mains to serve new customers.

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

5.5.b. 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.

5.5.c. For any proposed extension of mains, a reasonable relationship should exist between the per customer investment to serve new customers and the per customer investment to serve old customers.

5.5.d. Every effort shall be made by a utility to install its main line in the public road right-of-way or in a utility right-of-way abutting the public road right-of-way.

5.5.e. Extension for general sewer service.

5.5.e.1. The utility will respond to all inquiries regarding new sewer service, whether oral or written, by explaining all available options for obtaining service under these rules.

5.5.e.2. The utility will, upon written request for service in the form of Sewer Form No. 4, 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 providing the requested service, using the form of Sewer Form No. 5, including pipe, valves, manholes, fittings, necessary materials, permits, labor costs incurred by the utility when the utility externally contracts for the construction of the extension, or internal labor costs, provided such internal or external costs are not recovered in existing rates, and other applicable related costs. When a road crossing(s) is (are) necessary to serve the customer(s) requesting service, the cost estimate shall not include costs attributable to extending the main across the first road (closest to the already existing main), but shall include the costs of installing the main across a second and any subsequent road(s). The written estimate calculated using Sewer Form No. 5 shall be provided to the customer in the form of Sewer Form No. 6, no more than forty-five (45) days from the receipt by the utility of the written request for service. The written estimate shall include an estimated construction start date and an estimated time of construction. If the prospective customer believes that any part of the estimate

is unreasonable, the customer is free to pursue an informal request for assistance from the Commission staff or to file a formal complaint with the Commission. Further, the utility and the customer shall execute a Main Line Extension Agreement. Commission Staff may be consulted to provide assistance and sample forms. The agreement must include as an attachment a copy of this extension rule. The utility shall keep an executed copy of the agreement for at least six (6) years. The length of the extension required shall be that length required to extend from the new proposed service area to the nearest point of connection to the utility system having sufficient excess capacity to provide service at maximum demand.

5.5.e.3. Whenever the utility is required to extend service from an existing main to property that does not immediately abut the utility's right-of-way or the public road that contains the utility main, the extension shall be considered a main extension and the cost responsibility shall be determined under Rule 5.5.e.

5.5.e.4. Where the cost of the extension does not exceed the estimated total net revenue, as calculated below, from prospective customers whose service pipes 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.

5.5.e.4.A. Net revenue shall be gross revenue minus the excess usage leak adjustment rate approved for the utility, and with this difference further reduced for any revenue based taxes.

5.5.e.4.B. Revenue shall be based on 4,500 gallons per month per residential unit, unless circumstances of the applicant show this would result in significant error. For non-residential units, annual revenue shall be based on typical consumption for comparable units published by the American Water Works Association.

5.5.e.4.C. Estimated total net revenue for private, for profit, utilities will be calculated as six (6) times estimated net annual revenue. Each such utility shall file for a utility-specific line extension multiplier within twelve (12) months of the effective date of these rules.

5.5.e.4.D. The utility-specific line extension multiplier for private, for profit, utilities shall be based on one (1) divided by the utility's net fixed charge rate. The net fixed charge rate shall equal ~~the total~~ a function of the utility's weighted cost of capital, applicable income tax rates, and the Commission approved depreciation accrual rate.

5.5.e.4.E. Estimated total net revenue for associations, municipal, and public service district utilities will be calculated as five (5) times estimated net annual revenue. If the excess leak adjustment calculated for the utility fails to include all of the incremental costs of serving a new customer that should properly be netted out from the total revenues of the utility, the utility may apply to the Commission for a determination of the proper amount to be deducted from gross revenues to arrive at an appropriate determination of net revenue.

5.5.f. Extensions beyond the limit of utility-financed extensions of general sewer service.

5.5.f.1. If the estimated cost of the proposed extension required in order to furnish general sewer service exceeds the utility's estimate of total net revenue as determined by Rule 5.5.e.4., such extension shall be made if the applicant or the applicant's authorized agent contracts for such extension and deposits in advance with the utility the estimated cost of the extension over and above the limit of the utility-funded

portion of the extension. The utility shall not pay nor be liable for any interest on such cash deposits. The utility shall make the extension after receiving the cash deposit. The utility shall, for each bona fide new customer who, within a period of ten (10) years from the making of such extension, directly connects to the extension between its original beginning and original terminus refund to the original depositor(s), an amount equal to the estimated total net revenue of the new customer as determined by Rule 5.5.e.4., but in no event shall the aggregate refund made to the depositors exceed the original deposit. Provided, however, that associations, public service districts and municipal sewer utilities may elect to refund the estimated amount over a period of five (5) years making payments no less frequently than every six (6) months.

#### 5.5.g. Alternate Depositor-Financed Extension Plan.

5.5.g.1. Qualifying utilities -- The above requirements notwithstanding, the utility may decline to finance the portion of a requested extension that would be utility-funded, if it can demonstrate that it has no prospect of any reasonable internal or external financing through commercial loans, grants, or through an installment arrangement with an entity installing the extension or providing the necessary materials.

5.5.g.1.A. If the utility declines to finance the portion of a requested extension that would be the financial responsibility of the utility, the utility shall file for a waiver of the extension rule within sixty (60) days of the written request.

5.5.g.1.B. Before filing for a waiver, the utility must first make an estimate of the extension costs.

5.5.g.1.C. A request for a waiver by a utility shall be accompanied by supporting documentation justifying its request, including cost estimates, documentation of inability to finance, internally or externally, through commercial loans, grants or an installment arrangement with an entity installing the extension or providing the necessary materials.

5.5.g.1.D. If the Commission finds that the utility has reasonably declined to finance the portion of the requested extension that would otherwise be utility-funded, the Commission shall authorize the use of the alternate depositor-financed extension plan as described below.

5.5.g.2. Description of alternate depositor-financed extension plan -- Under the alternate depositor-financed extension plan, the utility shall make the extension after:

5.5.g.2.A. receiving a cash deposit equal to the full amount of the extension cost; and

5.5.g.2.B. agreeing to give the depositor(s), who is a customer, a monthly bill credit totaling one hundred percent (100%) of the actual net bill(s) from the date service is initiated and until the total credits given equal the estimated total net revenue as defined in Rule 5.5.e.4; and

5.5.g.2.C. agreeing to refund to the original depositor(s) an amount equal to estimated total net revenue as defined in Rule 5.5.e.4. of each bona fide customer, other than the depositor(s), who, within a period of ten (10) years from the construction of the extension, directly connects to the extension between its original beginning and the original terminus. The refund may be spread out over a five (5) year period with the utility making payments no less frequently than every six (6) months. Such refunds shall continue until the total refunds given equal the estimated total net revenue as defined in Rule 5.5.e.4.

5.5.g.3. In no event shall the total refund made to the depositor(s) under Rule 5.5.g.2.C. exceed the original deposit of the depositor(s).

5.5.g.4. The utility shall not pay nor be liable for any interest on the cash deposits associated with line extensions.

5.5.h. General provisions.

5.5.h.1. 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, but in no event longer than ninety (90) days after completion of construction of the extension. 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. The customer may pay this additional amount in installments. No interest will be paid by the utility on the applicant's payment or on any balance to be refunded.

5.5.h.2. In estimating the cost of an extension, the estimate shall be based on the diameter of the pipe to be used; provided, that the estimated cost to the customer or customers shall not be based on a pipe diameter greater than the diameter of the main from which the extension is to be made, unless actual use estimated for the proposed customer or customers required a larger pipe.

5.5.h.3. Extensions made under this rule shall be and remain the property of the utility.

5.5.h.4. The utility reserves the right to further extend its sewer mains from and beyond the 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 such further extension or branch mains so installed.

5.5.h.5. In determining the length of main extensions or of sewer line to be installed in an urban area when land is subdivided in lots, the main, or sewer line (if installed by an entity other than a utility), shall be extended to fully cover the frontage of the property and if the last lot to be served is a corner lot, the terminal point of the extension made hereunder shall be located so that the sewer line ties in with the intersecting street; and further; provided that if there is no main located in the intersecting street, the terminal point of the extension 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.

5.5.h.6. Before sewer lines will be laid in any new subdivision, the road surface shall be brought to the established sub-grade as determined by the agency having jurisdiction.

5.5.h.7. This rule shall not be construed as prohibiting the utility from entering into an agreement with a customer that complies with the Commission approved checklist attached hereto as Sewer Form No. 7, in providing an alternate plan for a main extension. Commission Staff may be consulted to provide assistance and sample forms. In providing an alternate plan for main extensions a utility may not discriminate between customers whose service requirements are similar. The agreement shall be filed with and approved by the Commission prior to the implementation or execution of the agreement by any of the parties. The agreement shall include the name, address and phone number of the parties to the agreement. The agreement shall also include a provision explaining why the utility is not funding the extension. The agreement must attach a copy of this Rule 5.5., and a statement signed by the prospective customer that he has reviewed and understands the provisions of Rule 5.5.f. which entitle a customer to refunds and that he knowingly waives such rights, if applicable. Failure to obtain 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 to all facilities including property, plant and rights-of-way incidental to the furnishing of utility service.

5.5.h.8. Contract for service -- The utility shall not be required to make utility-funded 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 or as otherwise mutually agreed in a user's agreement.

5.5.h.9. Construction conditions -- Construction of line extensions, as provided in this rule, will be undertaken promptly after all applications have been completed, necessary right-of-way agreements or rights of entry have been delivered to the utility, and all prospective customers have signed contracts.

5.5.h.10. Right-of-Way.

5.5.h.10.A. If the construction of an extension involves the acquisition of a private right-of-way, then the prospective customer shall attempt to secure the right-of-way and deliver it to the utility free of cost before construction of the extension is started.

5.5.h.10.B. 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.

5.5.h.10.C. As a condition to obtaining a main extension, any property owner or developer shall grant the utility the necessary easements which would allow the utility to make future extensions into unserved areas. The granting of the necessary easements shall be made without the utility being required to pay additional consideration for the additional easements to the property owner or developer. If the property owner or developer is unwilling to grant the additional easements, the utility shall not be required to extend its main to serve the property owner or developer.

5.5.h.11. Upon the proper filing of a Tariff Rule 42A, 42T, or 19A rate case or a certificate case filed pursuant to W.Va. Code §24-2-11 by the utility, the utility may seek an impact fee to include in its tariff a Capacity Improvement Fee, Capacity Assurance Fee or such other fee or charge designed to raise capital to cover the cost of future capacity expansion to be assessed against customers or entities creating those costs.

5.5.i. Community infrastructure investment agreements with municipal utilities and public service districts.

5.5.i.1. Notwithstanding the foregoing, municipal utilities and public service districts may enter into "community infrastructure agreements" in accordance with the provisions of W.Va. Code §22-28-1 et seq.

5.5.i.2. Utilities that have entered into "community infrastructure investment agreements" pursuant to W.Va. Code §22-28-1 et seq. shall be required to maintain separate books and records for the project areas involved in the agreements. For purposes of this section, the project areas for which separate books and records are required include plant upgrades and stand alone systems.

5.5.i.3. Utilities that have entered into "community infrastructure investment agreements" pursuant to W.Va. Code §22-28-1 et seq. shall file (i) a copy of the certificate of appropriateness, (ii) a copy of the community infrastructure investment agreement, and, if necessary, (iii) a new tariff containing rates applicable to the new service area. The required documents shall be filed with the Commission no later than thirty (30) days of the date the project is transferred to the utility.

5.5.i.4. If the rates for the new customers served by a public service district's project are higher than the rates for the public service district's existing customers, the public service district shall, within ninety (90) days of the date the project is transferred to the public service district, make a formal rate application with the Commission in order to justify the higher rates to the new customers. A municipality shall enact an ordinance increasing rates, if necessary, within ninety (90) days of the date the project is transferred to the municipality.

#### **§150-5-6. Safety requirements**

##### 6.1. Accidents.

6.1.a. 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.

6.1.b. Electric shock -- Each utility shall instruct its employees engaged in electrical work in the practice and use of accepted rules and proper procedure for resuscitation from electric shock.

6.1.c. Asphyxiation -- Each utility shall inform 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.

#### **§150-5-7 Creation or alteration of public service districts**

##### 7.1. Creation or alteration of a public service district.

7.1.a. A county commission upon entering an order on its own motion, or upon receipt of a petition, or upon receipt of a recommendation of the Commission, proposing the creation, expansion, enlargement, reduction, merger, dissolution, or consolidation; ~~reduction or dissolution~~ of a public service district pursuant to W.Va. Code §16-13A-2, shall:

7.1.a.1. At the same session, fix a date of hearing in the county which date shall be not more than forty (40) days nor less than twenty (20) days from the date of the action;

7.1.a.2. Within 10 days, provide the Executive Secretary of the Commission with a copy of the order or petition and notification of the time and place of the hearing to be held by the county commission;

7.1.a.3. If the territory proposed to be included is situated in more than one (1) county, when fixing the date of hearing, provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed;

7.1.a.4. Publish, at least ten (10) days prior to the hearing, a Class I legal advertisement meeting the requirements stated in W.Va. Code §16-13A-2, giving notice of the hearing;

7.1.a.5. Post notice in at least five (5) conspicuous locations in the proposed public service district as required by W.Va. Code §16-13A-2; and

7.1.a.6. File with the Executive Secretary of the Commission affidavits of publication pursuant to Rule 4. above, and affidavits of posting pursuant to Rule 5. above as soon as the same are available.

7.2. Notification to the Commission of county commission action.

7.2.a. If the county commission enters an order creating, enlarging, reducing, merging, dissolving, or consolidating a public service district, the county commission shall, within ten (10) days of entering such order, file a copy of such order with the Executive Secretary of the Commission. If the county commission declines to enter such an order, the county commission shall, within ten (10) days of declining, file with the Executive Secretary of the Commission notice that it has declined to enter any such order.

7.3. Notice of Filing.

7.3.a. Upon the receipt of a county commission order proposing the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district pursuant to W.Va. Code §16-13A-2, the Commission shall enter an order directing the county commission to provide notice of the proceeding through the issuance of a Class I legal advertisement in the form prescribed by the Commission, in the county or counties affected by the proposed order. The notice shall include the right of any customer of the proposed public service district or other interested party to file a written protest. See Sewer Form No. 8 for example of notice to be published.

~~7.3:~~ 7.4. Commission hearing.

~~7.3.a:~~ 7.4.a. The Commission shall may hold a hearing or hearings in each county affected by a county commission order(s) filed pursuant to Rule 7.1.a. and t The Commission shall publish a Class I legal advertisement giving notice should it hold of such hearing or hearings. The notice shall include the right of any customer of the proposed public service district or other interested party to file a written protest.

~~7.4:~~ 7.5. Commission consideration of proposed creation or alteration.

~~7.4.a:~~ 7.5.a. After public comment and hearing the Commission shall, by order, approve, disapprove or modify a county commission order creating, expanding, merging, consolidating, reducing or dissolving a public service district. In deliberating on approval, modification or disapproval the Commission may consider, among other things:

7.5.a.1. the public convenience and necessity;

7.5.a.2. the economic feasibility, including sources of funding, costs and related benefits of the county commission's order;

7.5.a.3. the adequacy of facilities;

7.5.a.4. other facilities in the area; and

7.5.a.5. other possible alternatives.

**Sewer Form No. 1**  
(Sewer Rule 4.8.b.)

(Insert Company Name Here)

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

We have scheduled your water service provided at \_\_\_\_\_  
\_\_\_\_\_ (address)  
for termination on or after \_\_\_\_\_ because of your delinquent  
\_\_\_\_\_ (date)  
sewer bill.

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

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

If your service is terminated you will be subject to the following additional charges involving reconnect fees and deposit requirements in order to restore service.

(Include all applicable charges, including disconnect, reconnect and/or administrative fees)

**YOU HAVE THE RIGHT TO CHALLENGE THE TERMINATION IF YOU BELIEVE ANY OF  
THE FOLLOWING CONDITIONS APPLY TO YOU:**

1. Any portion of the bill is in dispute
2. You are being charged for service not received
3. The information above is incorrect
4. You are unable to pay the bill in accordance with the billing, and termination of service would be especially dangerous to the health or safety of a member of your household
5. You are able to pay only in installments

If the reason for your challenge is 1, 2, or 3 above, you will have to pay any amount not in dispute. If the reason for your challenge is 4 or 5, we will attempt to negotiate a deferred payment agreement with you.

**YOU MUST NOTIFY US BEFORE THE DATE OF TERMINATION IN ORDER TO PROTECT  
YOUR RIGHTS UNDER THIS RULE:**

(Provide instructions for contacting the appropriate utility personnel by telephone and mail, including business hours)

You should also inform us if you are 65 years or older, or regardless of age, if you are physically, mentally, or emotionally incapacitated.

Sewer Form No. 1  
Page 2 of 2

Once you have notified us of your challenge, we will schedule a meeting at the business office nearest to your residence and try to resolve your problem. At your option, the discussion of your challenge may be made over the telephone. **IF YOU ARE NOT SATISFIED WITH OUR DECISION AT THIS MEETING, YOU WILL HAVE SEVEN (7) DAYS IN WHICH TO FILE A CHALLENGE WITH THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA.** You will be required to pay your current bill while the challenge is pending. There is no charge associated with filing a challenge and you may do so without the assistance of an attorney.

To file a challenge with the PSC, you may call this toll free telephone number 1-800-642-8544 or write to this address:

Utility Challenge  
Public Service Commission of West Virginia  
P.O. Box 812  
Charleston, W.Va. 25323

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

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



**Sewer Form No. 3**  
(Sewer Rule 4.12.d.)

Public Notice of Filing of a Petition for Imposition of a Moratorium

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

NAME OF UTILITY \_\_\_\_\_ ,  
a public utility.

Petition for consent and approval for  
the imposition of a moratorium on the  
utility system.

PUBLIC NOTICE

On \_\_\_\_\_, the \_\_\_\_\_  
(date) [Name of Utility, Commission Staff, or governmental entity]  
filed a petition with the Public Service Commission for approval of the imposition of a moratorium on

\_\_\_\_\_ 's \_\_\_\_\_  
(name of utility) (water, sewer or other)  
system serving \_\_\_\_\_

[describe areas served].

If approved, the moratorium would mean that no new customers could be served by the utility in these areas  
until the Commission lifts the moratorium. The \_\_\_\_\_

[name of petitioner]

claims that the imposition of a moratorium is appropriate because \_\_\_\_\_

\_\_\_\_\_  
[describe reasons and describe any plans to alleviate the circumstances giving rise to the petition, and any  
estimate of a date when it would be appropriate for the Commission to lift the moratorium.]

Any person wishing to protest, support, make comment, or request a public hearing about the proposed  
moratorium should do so in writing. Written statements should be addressed to Executive Secretary, Public  
Service Commission, P.O. Box 812, Charleston, WV, 25323.

NAME OF UTILITY

**Sewer Form No. 4**  
(Sewer Rule 5.5.e.2.)

Form of written request for service by a prospective customer or  
a group of prospective customers located in the same neighborhood

Sewer ( )      Water and Sewer ( )

Previous Customer ( )      If so, when \_\_\_\_\_      New customer ( )

Name \_\_\_\_\_

Mailing address \_\_\_\_\_ Phone \_\_\_\_\_

Property location \_\_\_\_\_

Rent ( )      Own ( )      Other \_\_\_\_\_

If rent: Property owners name \_\_\_\_\_

Property owner's mailing address \_\_\_\_\_ Phone \_\_\_\_\_

Type of service:      Residential ( )      Number in household \_\_\_\_\_

   Commercial ( )      Type \_\_\_\_\_

   Industrial ( )      Type \_\_\_\_\_

Applicant's place of employment \_\_\_\_\_

Employment address \_\_\_\_\_ Phone \_\_\_\_\_

Name of spouse \_\_\_\_\_

Spouse's place of employment \_\_\_\_\_

Spouse's employment address \_\_\_\_\_ Phone \_\_\_\_\_

I HEREBY AUTHORIZE SERVICE TO BE ESTABLISHED IN MY NAME AT THE ABOVE PROPERTY LOCATION AND  
AGREE TO PAY FOR SERVICE UNTIL DISCONTINUED BY MY REQUEST IN WRITING. I UNDERSTAND THAT THIS  
APPLICATION IS ACCEPTED SUBJECT TO THE AVAILABILITY OF SERVICE AT THIS LOCATION.

Applicant's signature \_\_\_\_\_

Date \_\_\_\_\_

Utility representative \_\_\_\_\_ Date \_\_\_\_\_

For office use only

Name \_\_\_\_\_ Account No. \_\_\_\_\_

Applicant ID \_\_\_\_\_

Sewer Form No. 4  
Page 2 of 2

Deposit amount \_\_\_\_\_ Tap fee amount \_\_\_\_\_

Meter Size \_\_\_\_\_ Meter No. \_\_\_\_\_

Meter Route \_\_\_\_\_ Meter reading \_\_\_\_\_

Date on \_\_\_\_\_ Date off \_\_\_\_\_

Customer request ( ) Termination ( )

**Sewer Form No. 5**  
(Sewer Rule 5.5.e.2.)

Form for use in determining cost estimate to extend sewer service

Date \_\_\_\_\_

The following estimate is in response to a request to extend the Utility's sewer facilities approximately \_\_\_\_\_ feet along \_\_\_\_\_ to serve a customer or customers who desire sewer service.

**Cost Estimate**

Sewer line ( -- inch PVC) _____ feet @ \$ _____ /foot = \$ _____	
Excavation/installation _____ feet @ \$ _____ /foot = \$ _____	
Materials (fittings, valves, stone, etc.)	= \$ _____
Permits/rights-of-way (Health, Highways, etc.)	= \$ _____
Restoration (seeding, gravel, etc.)	= \$ _____
Related cost (engineering, legal, etc.)	= \$ _____
<b>TOTAL</b>	<b>= \$ _____</b>

**Cost Share of Customers and Utility**

A. Total estimated cost of extension	\$ _____
B. Utility Share: (estimated total net revenue per customer calculated pursuant to Rule 5.5.e.4.) \$ _____ per customer x _____ customers =	\$ _____
C. Customer share: estimated cost to be paid by customers (A-B)	= \$ _____

**Conditions**

If the potential customers shall deposit with the Utility, in advance, the total sum of \$ \_\_\_\_\_ , (customers share from "C" above), a tap fee of \$ \_\_\_\_\_ per customer, and a \$ \_\_\_\_\_ security deposit per customer, the Utility will apply for the necessary permit applications and begin construction as soon as possible.

If the actual cost to construct the extension is less than the estimated cost, the Utility will refund the difference to the original depositors. If the actual cost exceeds the estimated cost the Utility will bill the depositors for the difference.

The customers will be required to sign an application for service and/or a users agreement when the tap fees and deposits are made.

This main line extension estimate is made in accordance with Sewer Rule 5.5 of the *Rules for the Government of Sewer Utilities*.

**Sewer Form No. 6**  
 (Sewer Rule 5.5.e.2.)  
 Form of cost estimate to be  
 provided to applicants for service

Dear Mr. Customer:

We have received a petition for a sewer main extension and have estimated the construction cost to extend the main to serve the properties of the \_\_\_\_\_ (insert number) petitioners. This estimate is summarized below:

Sewer line _____ feet at \$_____/foot	_____
Excavation/Installation _____ feet at \$_____/foot	_____
Materials (fittings, valves, stone, etc.)	_____
Permits/Rights-of-way (Health, Highways, etc.)	_____
Restoration (seeding, gravel, etc.)	_____
Related Cost (engineering, legal, etc.)	_____
<b>Total Estimated Extension Construction Cost</b>	_____
Minus Utility's Share (estimated total net revenue per customer pursuant to Sewer Rule 5.5.e.4.)	_____
<b>Estimated Cost to be Paid by Customers</b>	_____
<b>Estimated Cost per Customer</b>	_____

When the "customer's share" referenced above is deposited with the Utility, the Utility will apply for the necessary permit applications and begin construction as soon as possible. If the actual cost to construct the extension is less than the estimated cost, the Utility will refund the difference to the original depositors. If the actual cost exceeds the estimated cost, the Utility will bill the depositors for the difference. This difference must be settled before service can actually be connected.

All customers will be required to sign an extension agreement and an application for service and/or a users agreement and pay a tap fee of \$ \_\_\_\_\_, and a security deposit of \$\_\_\_\_\_ prior to receiving service. The security deposit is refunded with interest following twelve consecutive months of full and timely payments for services rendered.

The estimated start date of construction is \_\_\_\_\_ .

The estimated duration of construction is \_\_\_\_\_days.

Should you have any questions, you may contact Barbara Manager or John Foreman at \_\_\_\_\_ between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Sincerely,

**Sewer Form No. 7**

(Sewer Rule 5.5.h.7)

**Form of Commission Check-List for Alternate Main Extension Agreements**

This form sets forth the minimum amount of information that should be included in a proposed alternate main extension agreement.

- 1. Name of developer, mobile home park owner or prospective customer(s).
- 2. General location or description of area to be served.
- 3. Indication that the developer, owner or prospective customer(s) has/have read Water Rule 5.5, Sewer Rule 5.3, or both in their entirety.
- 4. Indication that the developer, owner or prospective customer(s) understand(s) the Rules.
- 5. Having read and understood the Rules, the developer, owner or prospective customer(s) choose(s) to enter into the alternate main line extension agreement.
- 6. If the developer, owner or prospective customer(s) waive(s) reimbursement, the agreement should contain the waiver.
- 7. A copy of the applicable Rule(s) must be attached to the agreement.
- 8. A statement as to who will bear the cost of inspection, if any.
- 9. If the customer is to bear the cost of inspection, a statement of the maximum amount of the cost of inspection.
- 10. If the developer, owner or prospective customer(s) wish(es) to waive the right of receiving an estimate of the cost of the extension if constructed by the utility, a statement reflecting the waiver.
- 11. A statement as to the type of testing to be required.
- 12. A statement as to who will bear the cost of testing, if any.
- 13. If the customer is to bear the cost of the testing, a statement of the maximum amount of the cost of the testing.
- 14. A statement as to who will install the service connections.
- 15. If the developer, owner or prospective customer(s) is/are to install the service connections, a statement that the utility will not charge a tap fee.
- 16. A statement that the tap fee, if any to be charged, is the approved tap fee in the utility's tariff.
- 17. A statement that the utility is to be indemnified and held harmless against any and all claims for injuries and/or damages which may arise from problems associated with the construction of the extension by the developer, owner or prospective customer(s).

Sewer Form No. 7  
Page 2 of 2

- 18. A statement that the ownership of the extension will be conveyed to the utility prior to its connection to the utility's system.
- 19. A statement indicating who will be responsible for preparing the plans for the extension.
- 20. If the developer, owner or prospective customer(s) is/are to be responsible for the preparation of the plan for the extension, a statement that the developer, owner or prospective customer(s) will provide plans to the Staff of the Public Service Commission if required.
- 21. The number of prospective customers to be served by the extension, the number of lots to be served, or some other general indication of the size of the area to be served by the extension.
- 22. If the initial cost estimate has not been waived, the estimate must be set forth in the agreement.
- 23. A warranty indicating that the developer, owner or prospective customers will warrant the system for a period of one year after completion of the construction, or after system is placed into service.
- 24. The agreement should not be executed before being sent to the Commission for approval.
- 25. A statement as to who will obtain and pay for necessary permits.
- 26. A statement as to who is responsible for the cost of the construction.
- 27. A statement as to who is responsible for the cost of the material.
- 28. A statement describing the extension, including length, diameter and any major components such as fire hydrants, etc.

**NOTE:** A paragraph such as "The Developer/Customer waives his rights under paragraph 5.3 or 5.5 of the Commission's Rules" will not be acceptable as a catch-all for the requirements listed above. Each item must be addressed in the agreement.

Sewer Form No. 8  
(Sewer Rule 7.3)

**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 day of [month], [year].

[ Case No.]

[ Case Name]

**NOTICE OF FILING**

On [date], the [name of party] filed a petition for consent and approval to [type of creation/alteration] the boundaries of the [description of area to be created, enlarged, reduced, merged, dissolved or consolidated] pursuant to W.Va. Code §16-13A-2. A complete description of the boundary [type of creation/alteration] is on file with the [identify entity with which information is filed (for example, county commission and/or public service district)] and the West Virginia Public Service Commission.

Anyone desiring to protest or intervene should file a written protest or notice of the intervention within 30 days following the date of this publication. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules on intervention, set forth in the Commission's *Rules of Practice and Procedure*. All protests and interventions should be addressed to Sandra Squire, P. O. Box 812, Charleston, West Virginia 25323. If no substantial protest is filed, the Commission may approve the County Commission's Order without hearing.

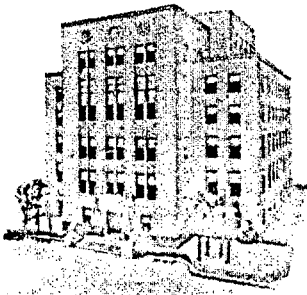
[Name of Party]

FILED

2011 MAR -9 PM 3: 58

OFFICE OF THE VIRGINIA  
SECRETARY OF STATE

# Comments received pertaining to Rules for the Government of Sewer Utilities



HARRISON COUNTY COURT HOUSE

# Harrison County Commission

301 WEST MAIN STREET  
CLARKSBURG, WEST VIRGINIA 26301  
304-624-8500  
FAX (304) 624-8673

December 17, 2009

COMMISSIONERS  
FRANK "CHUNKI" ANGOTTI  
BERNIE FAZZINI  
RON R. WATSON

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2009 DEC 21 AM 8 10  
WVA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

West Virginia Public Service Commission  
201 Brooks Street  
Post Office Box 812  
Charleston West Virginia 25323-0812

RE: Comments Regarding General Order No. 186.22  
(Commission's Rules and Regulations for Government of Sewer Utilities)

Dear Honorable Commissioners:

The Harrison County Commission understands that the comment period for this General Order has been closed, but we respectfully submit these late comments concerning the 150-5 sewer rules placed out for comment on August 15, 2008 and which we understand have already been reviewed by the Commissioners.

With the passage of Senate Bill 419 in the 2006 legislative session, any public utility intending to provide sewer service by an innovative, alternative method, regardless of the number of customers is subject to the jurisdiction of the Public Service Commission. Your staff and other government and community representatives held Task Force meetings in 2007 and arrived at language to amend the sewer rules to include alternative/innovative sewer systems.

The draft appears to be workable and will greatly benefit the citizens of our county and citizens across West Virginia, especially those in small, sometimes isolated and sparsely populated communities in need of sewer service. Many small communities could very well be provided sewer service in an alternative/innovative method, and we would encourage the commissioners to expedite review by your legal/technical staff and publish for comments.

With 25% of the homes in the United States served by septic systems and 30% of new construction including onsite sewage treatment, we the Harrison County Commission wish to express our resolved support for alternative and innovative onsite sewer systems operated and maintained by a responsible management entity under jurisdiction of the WV Public Service Commission.

Very truly yours,

*Frank T. Angotti, Jr.*  
Frank T. Angotti, Jr. President

*Bernie Fazzini*  
Bernie Fazzini, Member

*Ron Watson*  
Ron Watson, Member

xc: Delegates & Senators  
Paul Hamrick



BERKELEY COUNTY  
PUBLIC SERVICE SEWER DISTRICT  
P.O. BOX 944  
Martinsburg, WV 25402  
Phone: (304) 263-8566  
Fax: (304) 267-7478

Board of Directors:

John C. Kunkle, *Chairman*  
John E. Myers, *Secretary*  
Ronald K. Collins, *Treasurer*



William F. Rohrbaugh  
*General Counsel*

November 12, 2008

Sandra Squire, Executive Secretary  
Public Service Commission  
of West Virginia  
201 Brooks Street  
Post Office Box 812  
Charleston, WV 25323

Go 186.22  
Go 188.28

RECEIVED  
2008 NOV 14 AM 8 32  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Re: **GENERAL ORDER NOS. 186.22 & 188.28**

In the matter of a rulemaking to amend the Commission's Rules and Regulations for the Government of Sewer Utilities (and Water Utilities)

Dear Ms. Squire:

Enclosed for filing please find an original and twelve (12) copies of this letter, which is the Berkeley County Public Service Sewer District's comments to the Public Service Commission's proposed amendments to 150 C.S.R. (Sewer Rules) and 150 C.S.R. 7 (Water Rules). Please note that the District did not receive notice of the proposed rule making. For its comments, the District states as follows:

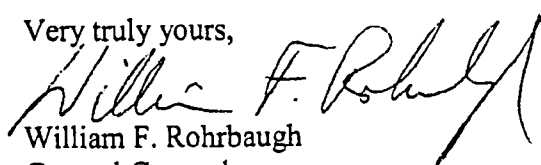
Sewer Rules (150 C.S.R. 5)

1. 4.1.f.4. *Requires that charges to customers of a public service sewer district who are not connected to the sewer service must be included in the public service district's tariff.* The District does not object to this proposed amendment, but respectfully requests that utilities be provided relief from its implementation. The District and its bondholders rely upon the ability of the District to charge customers who are not yet connected to public sewer in order to generate sufficient revenues to pay its debt service. If the PSC requires this provision to be included in a public service district's tariff, the District requests that the PSC amend all applicable tariffs upon its own motion and/or grant a grace period for the implementation of the same.

2. 4.8.b.4. *Clarifies responsibilities of water and sewer utilities and the provision of notice when water service is to be terminated for non-payment of a sewer bill.* This amendment requires the utility to make two (2) attempts to contact the customer, in person, before termination of water service for non-payment of a sewer bill. The District respectfully suggests that this requirement is redundant and needlessly increases utilities' already considerable collection costs. The existing method is more than adequate and should be retained.
3. 5.4. *Long service lines are not permitted for sewer utilities.* The District respectfully suggests that this proposed amendment is overly broad, ambiguous by its terms and unenforceable. Moreover, the District can envision a number of scenarios in which this requirement may limit opportunities for economic development.
4. 5.5.g.5. *Adds paragraph to advise parties of their option to come to the Commission to reach an alternate main extension plan.* The District respectfully requests that this proposed amendment be deleted in its entirety. The negotiation of terms between a utility and a developer, including the decision whether to enter into such an agreement, should remain the exclusive authority of the utility. PSC review should be limited to (1) whether the agreement protects the interests of the District and its rate payers; and (2) whether the agreement unfairly discriminates among similarly situated developers. The powers assumed under this amendment cross the line between utility and regulatory authority.
5. 5.5.h.11. *Clarifies the term "impact fee" and includes a certificate case as a possible means to seek a fee.* The District respectfully recommends that references to any type of "capacity impact fee" be modified to change or delete the word "impact." The use of the term "impact fee" may be legally problematic for the PSC and the utility. The District prefers the term "capacity improvement fee."

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,



William F. Rohrbaugh  
General Counsel  
W. Va. State Bar #5048

Enclosures



# Greenbrier Public Service District No. 1

9035 Seneca Trail South, Ronceverte, WV 24970  
(304) 645-6632 Fax (304) 645-5362  
greenbrierpsd1@verizon.net

October 31, 2008

Ms. Sandra Squire, Executive Secretary  
Public Service Commission of West Virginia  
P.O. Box 812  
Charleston, WV 24323 25323

RE: Comments Regarding Proposed Sewer Rule Changes  
GO 186.22

RECEIVED  
2008 NOV 5 AM 8 47  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Dear Ms. Squire,

Please find attached an original and twelve copies of Greenbrier Public Service District No. 1's comments regarding proposed changes to the Rules for the Government of Sewer Utilities as filed in the above styled proceeding.

If you have any questions, please feel free to contact the District at 304-645-6632.

Sincerely,

A handwritten signature in black ink, appearing to read 'David D. Gray'.

David D. Gray  
General Manager

DDG/

attachments

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

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W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

CASE NO. GO 186.22

**In the matter of rulemaking to amend the Commission's Rules and Regulations for  
the Government of Sewer Utilities**

---

**FILING OF COMMENTS AND SUGGESTIONS TO PROPOSED RULE CHANGE(S)**

---

Now comes Greenbrier Public Service District No. 1, represented by its General Manager, David D. Gray, responding to the Commission's request for comments in the above styled matter in order to reasonably make necessary changes to the Rules for the Government of Sewer Utilities to reflect decisions of the Commission and policies regarding the Rules heard during formal hearings.

The Greenbrier Public Service District No.1 respectively submits the following comments sighting the particular rule number and paragraph regarding each comment.

Comment No.1, Rule 4.2.a.7

The District agrees with the Commission regarding interest to paid to customers which are refunded a customer deposit. The set interest rate of 2% per annum calculated as simple interest prevents the utility(s) from have to refund differing amount to customers from year to year, and eliminates the need for the Commission to determine the per annum interest rate based on market conditions and economy on an annual basis.

Comment No. 2, Rule 4.8.b.4

The District disagrees with the Commission regarding the language in this proposed change. The District believes that two (2) attempts to contact a customer through personal contact is appropriate. However, conducting conversations regarding bill delinquency with other person(s) defined as "a

responsible adult member of the household” is ambiguous and improper. There is no way to determine a particular person(s) responsibility for the utility bill if they are not the official, bona-fide customer with an account on record with the utility. The District believes any conversation with person(s), whether it can be determined if they are responsible or not, with someone other than the account holder, or a person on record with the utility as a person within the household, such in the case of a married couple, is inappropriate and creates a liability for the utility where a claim could be asserted by the account holder if the utility disconnected service without notifying the particular account holder according to utility records. The District suggests this language be further modified to describe the method for which persons could be made of record on an individual account, thus determining individual responsibility for payment, and notification in the event of delinquency or termination for non-payment.

Comment No. 3, Rule 4.11.c

The District disagrees, in part with the proposed additional language. Notification of the general public of a unscheduled service interruption should only apply at times when natural or man made disasters, or other acts, such as sabotage, major theft, war, or other events which would make significant portions of the sewer system unusable, or in need of major work to restore service. Notification of the general public of an unscheduled service interruption, where only small areas and small numbers of customer are affected is unnecessary. If the utility is able to respond quickly, mitigate the interruption and restore service in a reasonable amount of time, notification of only the customer(s) affected would be more appropriate. That notification would be more efficiently accomplished by either direct person to person contact, or by using a door hanger, or written notice notifying the customer of the interruption and other pertinent information. It would be inappropriate of using the adjoining paragraphs to this rule

to notify the general public in the event of a line blockage which affects, say, 5 customers, which could be repaired in one hour. Most, if not all of the District's service interruptions only affect small geographic areas of our collection system and affect only small numbers of customers. Mass notification of the general public of these situations would not only be time consuming for the utility, but also serve to create significant confusion among customers which would be unaffected by such service interruptions. The District suggests the language be further expanded to include some general guidelines where certain levels of public notification would apply regarding unscheduled service interruptions.

Comment No. 4, Rule 5.5.i

The District has reviewed WV State Code §22-28 and agrees in principal with its provisions, however, it seems to be a unique way of describing an Alternate Mainline Extension Agreement which is already clearly defined in these Rules. The District disagrees with the inclusion of only a small portion of the language in this matter. The District believes this is a very important tool for utilities both municipal and public service district to enter into agreements and manage development, particularly in areas of the state where accelerated growth has been experienced. Even though the Public Service Commission's responsibilities seem limited under the statute, the rule, in its entirety should be included within these rules, as the Legislation is a form of extension of service, and formally describes a method of conducting such extension, It also provides an avenue by which utilities may enter into agreements to jointly provide such service. The District recommends all the provisions be added to these rules and clearly describe the role of the Commission, as well as other regulatory agencies.

At this time, the District agrees with all other proposed changes as they have been presented.

The District respectfully submits these comments to the Commission in hope they may be helpful in determining the necessary change in these Rules.

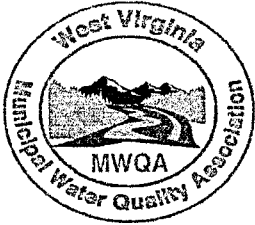
The District is not requesting a hearing in this matter at this time.

Respectively Submitted,



---

David D. Gray, General Manager  
Greenbrier Public Service District No. 1  
9035 Seneca Trail South  
Ronceverte, WV 24970



WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION  
P.O. Box 852  
Morgantown, West Virginia 26507-0852  
304-292-8443

**BOARD MEMBERS**

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Parkersburg Utility Board  
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Weston, City of  
Wheeling WPCD  
Williamstown Public Works

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Burgess & Niple  
Geosyntec Consultants  
Greenhome & O'Mara, Inc.  
O'Brien & Gere Engineers, Inc.  
Potesta & Associates  
Strand Associates, Inc.  
Thrasher Engineering, Inc.  
URS

**GENERAL COUNSEL**

Paul Calamita, AQUALAW

October 31, 2008

**By Facsimile (304-340-0325) & First Class Mail**

Ms. Sandra Squire  
Executive Secretary  
Public Service Commission of WV  
201 Brooks Street  
P.O. Box 812  
Charleston, WV 25323

60 186.22

**Re: Comments on Proposed Amendments to 150 CSR 5**

Dear Ms. Squire:

The West Virginia Municipal Water Quality Association (WVMWQA) offers the following comments regarding the Public Service Commission's (PSC) proposed amendments to 150 CSR 5, "Rules for the Government of Sewer Utilities." WVMWQA appreciates the opportunity to offer comments on PSC's proposals.

The WVMWQA is opposed to the amendments of §150-5-4.11.c-e. These requirements are over broad as written. Notice requirements should not apply where the interruption was so brief such that the notice would serve no purpose. Second, the general public should only receive notice where a threshold disruption has even occurred. This NEW requirement needs some refinement in our view.

The WVMWQA is also opposed to the proposed addition of §150-5-5.5.g.5, allowing a utility or a prospective customer/customer group to bring a disagreement about the terms of a main line extension to the PSC for resolution. WVMWQA objects to this extension of the PSC's jurisdiction.

The WVMWQA wholeheartedly supports the amendments to §150-5-4.8.a.4, repealing the knock before disconnect rule. This is a common-sense change, as the prior requirement could have resulted in avoidable conflict between utility personnel and home owners.

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SECRETARY'S OFFICE

Regarding the addition of §150-5-5.4.a, which prohibits long service lines for sewer utilities, the WVMWQA would like some clarification on PSC's basis for this outright prohibition and whether the PSC considered safeguards short of an absolute prohibition.

The WVMWQA supports amendments to §150-5-4.2.a.1-2, which increase the amount a sewer system or public service district may require as a deposit.

The WVMWQA also supports amendments to §150-5-4.2.a.7, which set the amount of interest paid on unreturned security deposits at 2% per annum, calculated as simple interest.

The WVMWQA is also in support of the addition of §150-5-5.5.i, which eliminates the requirement of a certificate of convenience and necessity for certain water and sewer projects pursuant to community infrastructure agreements.

Lastly, the WVMWQA is in support of the amendments to §150-5-2.4.a, which require the e-filing of financial and statistical reports through the PSC website.

The WVMWQA appreciates the agency's consideration of these concerns.

Respectfully Submitted,



F. Paul Calamita  
WVMWQA General Counsel

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W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

LAW OFFICE OF  
**JAMES V. KELSH**

300 Summers St., Ste. 1230  
P.O. Box 3713  
Charleston, WV 25337-3713  
kelshlaw@yahoo.com  
WV State Bar #6617

Telephone  
(304) 343-1654

Facsimile  
(304) 343-1657

October 31, 2008

Ms. Sandra Squire  
Executive Secretary  
Public Service Commission  
of West Virginia  
201 Brooks Street  
Charleston, West Virginia 25301

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WV VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

RE: GENERAL ORDER NO. 186.22  
In the matter of a rulemaking to amend the  
Commission's Rules and Regulations for the  
Government of Sewer Utilities

GENERAL ORDER NO. 188.28  
In the matter of a rulemaking to amend the  
Commission's Rules and Regulations for the  
Government of Water Utilities


Dear Ms. Squire:

Enclosed herein for filing on behalf of Greenbrier County Public Service District No. 2, Gilmer County Public Service District, Jane Lew Public Service District, Jefferson County Public Service District, Jefferson Utilities, Inc., Mason County Public Service District, Moundsville Water Board, and the Summit Park Public Service District (collectively referred to as "Utility Coalition"), please find the original and twelve (12) copies of the "Utility Coalition Comments".

Ms. Sandra Squire  
Page Two  
October 31, 2008

As evidenced by the Certificate of Service a copy of this filing is today being served upon Staff Attorney C. Terry Owen.

Sincerely,

  
James V. Kelsh  
WV State Bar No. 6617

Enclosures

cc: C. Terry Owen, Esquire  
Nancy Gee  
Randy S. Grinstead  
Brenda Lawson  
Suzanne Lawton  
Mary Seymour  
B. Lee Snyder  
David Stevens  
Jim Woods  
Debbie Britt  
Paul Fisher  
Jim Cox  
Kevin Williams

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

GENERAL ORDER NO. 186.22

In the matter of a rulemaking to amend the  
Commission's Rules and Regulations for the  
Government of Sewer Utilities.

GENERAL ORDER NO. 188.28

In the matter of a rulemaking to amend the  
Commission's Rules and Regulations for the  
Government of Water Utilities.

**UTILITY COALITION COMMENTS**

Comes now the Greenbrier County Public Service District No. 2, the Gilmer County Public Service District, the Jane Lew Public Service District, the Jefferson County Public Service District, Jefferson Utilities, Inc., the Mason County Public Service District, the Moundsville Water Board, and the Summit Park Public Service District (collectively, the "Utility Coalition"), pursuant to the Commission's August 15, 2008 order in the above captioned matter, to file these Comments ("Comments") to the Commission's proposed amendments to the Rules for the Government of Sewer Utilities, 150 WVCSR Series 5 ("Sewer Rules") and to the Rules for the Government of Water Utilities, 150 WVCSR Series 7 ("Water Rules").

**I. Stylistic Changes**

The Commission regulates 335 sewer utilities and 416 water utilities. The vast majority of these utilities serve a small customer base with a single manager

who must handle a variety of duties -- oversight and often hands-on administration of billing, field operations, and personnel. The rules these managers are obligated to enforce should be presented in a clear, easy to read manner. Rules should be stated concisely and comprehensively. Rules should be logically ordered. Rules that are more clearly understood should increase compliance.

Neither the existing Water and Sewer Rules nor the Commission's proposed alternatives are sufficiently user friendly. Both lack a table of contents,<sup>1</sup> a basic organizational device to help the reader identify applicable terms to a given situation. Rule and sub-rule titles are inconsistently used. When a rule title is not used, it forces the reader to read the entire rule to determine its subject. The consistent use of rule titles increases the logical ordering of the rules by congregating rules that pertain to the same topic under the same rule title. Rules under one topic are often not organized in an order that corresponds to the steps the utility will take in implementing the rule.

The Utility Coalition has carefully reviewed the entirety of the Water and Sewer Rules and made organizational and stylistic changes throughout, to make the rules more user friendly. The Utility Coalition's proposed Water Rules are provided as Attachment A, and its proposed Sewer Rules are provided as Attachment B. The Utility Coalition has prepared a table of contents for both sets of

---

<sup>1</sup> The Utility Coalition understands that in the past the West Virginia Secretary of State has refused to accept rules that include a table of contents. A table of contents is an important aid to efficient use of the Rules and should be utilized by the Commission either as a separate document provided on its website, or the Water and Sewer Rules could be put in the form of a manual with a table of contents, as the West Virginia Board of Education has done with its Purchasing Procedures for Local Education Agencies, 126 WVCSR Series 202, and the West Virginia Bureau of Senior Services has done with the West Virginia State Plan for Aging Programs, 76 WVCSR Series 3.

the Utility Coalition's proposed rules. Rule and sub-rule titles have been used throughout, with capitalization and underlining to give the rule titles greater prominence and easier readability. The Utility Coalition's proposed rules congregate what often were separate rules under more consolidated rule titles. Rules have been reorganized so that they more closely parallel the temporal steps a utility takes in implementing a rule. Because of the hundreds of changes made, not all are discussed in the text of these Comments, rather, footnotes appear in the Utility Coalition's proposed rules explaining the changes where an explanation was warranted. The Utility Coalition's proposed rules and footnotes thereto are incorporated into these Comments by this reference.

## **II. Substantive Changes**

The Utility Coalition has also proposed numerous substantive changes, not all of which are discussed in the text of these Comments. Most are explained in the footnotes to the Utility Coalition's proposed Rules. The Utility Coalition will discuss substantive changes that require a lengthier explanation than a footnote offers below.

### **A. Damaged Facilities Charge**

The Utility Coalition proposes a new term at Water Rule 3.4.d. and 4.3.d., and Sewer Rule 4.3.d. to charge a damaged facilities charge to customers or users when a water meter is damaged two or more times in a 24 month period, or when unauthorized devices are installed, such as meter bypassing devices, or unauthorized taps.

For water meter damage, the charge is the lesser of the utility's cost to repair or replace the meter or the utility's non-certificate project tap fee. The first incidence of meter damage in a 24 month period would be repaired or replaced at the utility's expense.

The utility would charge a damaged facilities charge set at the same level as its non-certificate project tap fee. For bypass devices or unauthorized devices, the utility could also charge for estimated usage and any other applicable fees from its tariff. To impose a damaged facilities charge, the utility would need to have a damaged facilities charge in its tariff.

Water utilities are increasingly using more sophisticated and more costly meters, such as touch-read and remote read waters. The cost of repairing and replacing these meters is higher than simpler, cheaper meters. The proposed damaged facilities charge is a reasonable and balanced way for utilities to recoup the cost of repairing and replacing these damaged facilities.

The criminal law statutes regarding tampering with utility facilities, W.Va. Code §§61-3-29 and 61-3-44 have proven to be of little use to utilities because law enforcement is typically uninterested in enforcing what are perceived to be "low level" crimes, and the level of proof required to meet the criminal law standard is hard to meet, as most tampering is unobserved by any witnesses.

**B. Interest on Security Deposits.**

The Utility Coalition proposes the elimination of payment on security deposits, Water and Sewer Rules 4.2, because the administrative cost to the utility of administering the separate security deposit account exceeds the interest paid to

customers. Security deposits from tenants are maintained so long as the tenant is a customer of the utility. When a security deposit refund is due to a tenant customer, utility personnel must review the customer's records to determine how long the deposit has been held and how much interest applies. This requires the time of office personnel. Office personnel and the governing bodies of utilities must administer numerous accounting processes for both tenant and non-tenant customers.

The task to utility office personnel would be greatly simplified and expedited by the elimination of the payment of interest on security deposits. Since inflation was tamed in the early 1980's, the interest obtainable on these security deposit accounts has been very low, and high inflation does not appear on the horizon. Requiring interest on security deposits is excessively burdensome to utilities considering the small benefit to customers.

The Commission's proposed 2% interest on security deposits should be rejected, as 2% interest is not obtainable by all utilities given their individual banking circumstances. An excessive interest rate results in subsidization. Such an approach ignores the Commission's practice of setting utility specific rates to reflect each utility's unique cost and revenue structure.

**C. Termination for Payment by Bad Check**

The Utility Coalition proposes to modify Water Rule 4.8.a.3.B. and Sewer Rule 4.8.b.3.B. by eliminating the current requirement that a utility provide a customer with a second advance notice of intention to terminate when, following receipt of the first notice of intention to terminate, the customer pays with a bad

check. Instead the Utility Coalition proposes that when a customer avoids termination by issuing a bad check, the utility can terminate service without further notice. The Utility Coalition has made a corresponding change to Water and Sewer Forms Nos. 1 to inform customers of this policy.

The current rule imposes excessive administrative costs on the utility and its regular paying customers for the misdeeds of the utility's irregular paying customers.

**D. Administrative Fee for Termination Trips**

The Utility Coalition proposes at Water Rule 4.8.a.3.C. and Sewer Rule 4.8.b.3.C. to impose an administrative fee whenever a utility dispatches personnel to terminate water service for non-payment and the customer pays the delinquency prior to actual termination. This proposal is consistent with recent Commission orders, such as Claywood Park Public Service District, Case No. 07-0175-PWD-19A (August 19, 2008 Commission Order). The cost to the utility once personnel are dispatched to terminate service is the same regardless of whether service is actually disconnected or not. The administrative fee rightfully imposes this cost upon the cost-causers.

The administrative fee provision also includes a multiple trip charge that would apply when customers try to prevent disconnection by interposing some obstruction to the meter. The Greenbrier County Public Service District No. 2 has had a customer tie a pit bull's leash to the water meter. The Mason County Public Service District has had customers park cars, some without tires, over meters. This causes excessive cost in employee time and should be passed on to the cost-

causers. Once these fees become known, the Utility Coalition expects customer payment practices to improve, and to encounter fewer shenanigans by customers. This should improve the efficiency of utility operations.

**E. Termination of Sewer Service**

The Utility Coalition proposes substantial amendments to Sewer Rule 4.8.a. regarding termination of sewer service. The existing Rule lacks detail on the procedure to be followed.

The Utility Coalition proposal makes clear at the outset that sewer termination is only available when a sewer customer obtains water from a non-utility source.

The Utility Coalition proposes that utilities seeking termination of sewer service must use a form petition provided as Sewer Form No. 12. The form requires the utility to provide a copy of the customer's bill, the utility's offer of a deferred payment agreement or the customer's breach thereof, and a copy of an unsatisfied court judgment. If a utility files a fully completed Sewer Form No. 12, it has satisfied its burden of proof, and the burden shifts to the customer to show termination is not warranted. In Sewer Form No. 12, the utility prays that the Commission require the customer to pay its current bill while the matter is pending, with termination the penalty for failing to do so, as the Commission routinely does with water billing disputes.

The Utility Coalition believes that sewer customers can pay their bills just as well as water customers. Higher delinquencies arise with sewer customers on well

water because the current system discourages early action by utilities on delinquent sewer accounts of well water users. The high cost of the termination of sewer service process under the current rules leads to utilities refraining from initiating such actions until the amount of the outstanding bill is at least as large as the utility's expected litigation costs. This is economically rational, but leads to large delinquencies that the customer has difficulty paying and the utility has difficulty collecting except over a lengthy period. The Utility Coalition believes its proposal is a fair and lower cost procedure than the Commission's current practice. It does not require the utility to file a lien against the property, as the members of the Utility Coalition have found the practice of recording liens to be of no value in the short term, and little value in the long term. The Utility Coalition proposal does not require utilities to suggest wages, as this practice is excessively time consuming. The county health department is not made a part, as it is more economical for staff to confer with the county health department and call health department personnel as witnesses if need be than to automatically make county health departments involuntary parties in every case.

By specifying what is required by the utility and making that sufficient to switch the burden of proof, litigation at the PSC is simplified and cost to the utility reduced. This will encourage earlier initiation of actions before delinquencies get too high.

#### **F. Notice of Unscheduled Interruptions**

The Utilities Coalition opposes the Commission's proposed notice requirements for unscheduled interruptions in Water Rule 4.12.d. and Sewer Rule 4.11.c. as excessive, discretionary, and inconsistent with federal notice requirements.

The Utilities Coalition concurs with the well-stated comments on this proposal of the Berkeley County PSD and Lubeck PSD, two of the larger PSDs in the state. Compliance with this proposed requirement is even less realistic for the far more prevalent small systems with their smaller staffs. When a small system experiences an unscheduled interruption, it needs to have its personnel squarely focused upon fixing facilities without unnecessary distractions from that task.

All water systems in the state are required to comply with National Primary Drinking Water Regulations, 40 CFR 141 ("NPDWR"). Public Water Systems, 64 WCSR Series 3, §10.1.a. Subpart Q to the NPDWR, 40 CFR §141.201-211, sets forth the standards for public notification of drinking water violations. The utility questions the authority of the Commission to impose notice requirements given that the federal EPA and the West Virginia Bureau of Public Health have already done so. This is a health issue that has and is being addressed by rules promulgated by the agencies entrusted with primary authority for the regulation of the public health aspects of potable water. It is not helpful to water utilities to have dual and inconsistent notice requirements. Given that existing regulations are already in place, there is no need for the Commission's proposed rules.

**g. Tap Cost Limit**

The Utility Coalition proposes a cost limitation upon a utility's duty to install a tap for a standard tariff tap fee at Water and Sewer Rule 5.2.d.1. The Commission has long recognized in the main line extension rule that a fairly standard ratio should exist between the cost to install facilities to serve a customer and the revenue expected to be received by the utility.

The Utility Coalition proposes to extend this concept to tap fees, with a very high cap on the cost obligation to install a tap. When the cost to install a tap exceeds 42 times the utility's expected gross monthly revenue from that customer, the customer must pay in advance the amount in excess of the 42 times figure. For the median water utility in the state according to the Commission's Water Utility Cost Ranking as of October 24, 2008, this would result in a cap of \$1,266.30 per tap, and for the median sewer utility, the cap would be \$1,273.86. The cost of a tap installation cap would have no effect upon the utility cost contribution requirement to extend mains under the main line extension rule.

**H. Notice of Thermal Expansion Risk**

The Utility Coalition opposes the Commission's proposed, Water Rule 5.7.b., on principled and practical grounds. Water utilities deliver cold water to customers. The utility should not be responsible for the costs and implications when a customer chooses to heat the water. The Commission's proposal would require utility personnel to enter customers' homes and to furnish and install expensive plumbing facilities. This will entail increased direct costs of utility personnel time and also

increased insuring and bonding costs. The Commission's proposed rule will have the effect of discouraging the use of check valves, thereby reducing water safety due to increased incidents of backflow contamination.

This matter may resolve itself in time. Either the hot water heater manufacturers will correct this design flaw or thermal expansion tanks will be part of a standard homebuilder installation. This is not an issue to be added as a rule as it will become outdated once thermal expansion awareness has been promoted to the public as well as homeowner's insurance companies. Someone should pay but not the utility.

The assertion in proposed Rule 5.7.b. that the utility will be "deemed to have changed the character of service" by requiring backflow prevention ignores the fact that such devices have been in common usage for over 20 years. Jefferson Utilities has been using check valve meter setters in its systems for over 20 years. Jefferson Utilities started using these to avoid the draining and damage to customers' water heaters in the case of a main line break. This is still a valid concern. The check valve protects the customer and the utility.

The Utility Coalition proposes as an alternative adding Water Rule 4.1.d.4. that notice of the presence of check valves in the meter pit or of backflow prevention devices be posted conspicuously in its office for inspection by the public.

#### **I. Main Extensions**

The Utility Coalition proposes fundamental revisions to the Commission's main extension rules, Water and Sewer Rules §5.5. The Utility Coalition proposes

that the term "Standard Extensions" be used to refer to extensions constructed by the utility to serve existing structures with a utility contribution of some or all of the cost. An "Alternate Extension" refers to the construction of an extension to serve proposed structures that must be paid in full by the developer without opportunity for refund. The Utility Coalition proposes the deletion of the "Alternate Depositor Financed Extension Plan" as seldom used. "Self-Help Extensions" are included in the Utility Coalition's proposal. Utilities could develop other forms of extension agreements. Sample Standard Extension and Self-Help Extension Agreement forms are provided. The utilities' cost contribution toward a Standard Extension is changed to 42 months expected gross revenue to replace the current formula, which is confusing and makes a legally baseless distinction between privately owned and publicly owned utilities. Utilities must offer alternate main line extension agreements on a non-discriminatory basis. Once a template or actual Alternate Extension Agreement is approved by the Commission, the utility could re-use the Alternate Extension Agreement with other developers without Commission review or approval. All Self-Help Extension Agreements would need to be reviewed and approved by the Commission.

The Utility Coalition's proposal to require the developers of proposed structures to pay for the cost of such extensions in full with no opportunity for reimbursement is consistent with most utilities' practices and appropriately shields current customers from adverse financial consequences that can result from speculative ventures.

The Utility Coalition's proposal provides greater form and recognition to Self-Help Extensions by explicitly including them in Rule 5.5, and providing a sample form and waiver. This type of extension often makes service possible where it otherwise would not.

The utility's cost contribution requirement is changed back to the former "3 and one-half times" rule as the current rule is overly complex in calculation and ambiguous in interpretation. The Utility Coalition does not propose the reinstatement of the former rule verbatim, but rather has used new and more concise terms to reach the same result.

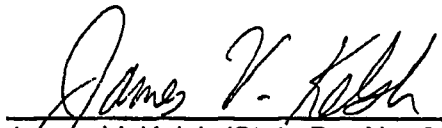
Once a form or actual Alternate Extension Agreement is approved by the Commission, the utility could re-use the same terms of agreement with other developers without Commission approval. This proposal is consistent with the preferences of developers, and saves administrative resources for both utilities and the Commission.

### **III. Procedural Recommendation**

The Commission's August 15, 2008 order initiating this rulemaking directed any party seeking a hearing to request one in the comments. The Utility Coalition does not recommend or request that the Commission schedule a hearing at this time. The Utility Coalition suggests that the Commission internally review the comments it receives, and in response thereto, issue a second set of proposed rules and another comment period, with parties given a second opportunity to request a hearing.

GILMER COUNTY PUBLIC SERVICE DISTRICT;  
GREENBRIER COUNTY PUBLIC SERVICE DISTRICT NO. 2;  
JANE LEW PUBLIC SERVICE DISTRICT;  
JEFFERSON COUNTY PUBLIC SERVICE DISTRICT;  
JEFFERSON UTILITIES;  
MASON COUNTY PUBLIC SERVICE DISTRICT;  
MOUNDSVILLE WATER BOARD; and  
SUMMIT PARK PUBLIC SERVICE DISTRICT

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**TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION**

**SERIES 5  
RULES FOR THE  
GOVERNMENT OF  
SEWER UTILITIES**

**UTILITY COALITION'S  
PROPOSED REVISIONS**

## **EXPLANATION OF MARKING CONVENTIONS**

The attached proposal shows the Utility Coalition's proposed changes in yellow. The baseline document is an "accept all changes" version of the changes the Commission proposed in its August 15, 2008 Order. The table of contents is entirely new, so no yellow marking appear on it.

**TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION**

**SERIES 5  
RULES FOR THE GOVERNMENT OF  
SEWER UTILITIES**

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TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION

SERIES 5  
RULES FOR THE GOVERNMENT OF  
SEWER UTILITIES

§150-5-1. General.

1.1. Scope. -- These rules govern the operation and service of sewer utilities subject to the jurisdiction of the Public Service Commission pursuant to W. Va. Code §24-2-1.

1.2. Authority. W. Va. Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2, 24-2-5, 24-2-6, 24-2-7, 24-2-8, 24-2-9, 24-3-2, 24-3-5, 24-3-10, 16-13A-2, 16-13A-9, 8-18-23 and 16-13A-2.<sup>1</sup>

1.3. Filing Date. August 25, 2003.

1.4. Effective Date. October 24, 2003.

1.5. General.

1.5.a. Changes<sup>2</sup>. This rulemaking repeals the Commission's current Rules and Regulations for the Government of Public Service Districts, 150 CSR 17, and incorporates portions of those rules within these Sewer Rules. Portions of Series 17 will be incorporated into the Commission's Rules for the Government of Sewer Utilities, 150 CSR 5, by separate proceeding. This rulemaking addresses legislative changes, makes changes for stylistic and clarification purposes. These rules replace rules that went into effect on October 24, 2003.

1.5.b. Purpose. 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 utilities and customers.

1.5.c. Modifications. The adoption of these rules in no way precludes the 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.

1.5.d. Applicability of Other Laws. These rules shall not relieve in any way a utility from any of its duties under the laws of this State.

1.6. Application of Rules.

1.6.a. Persons Affected. These rules apply to all public utilities as defined in Rule 1.7, customers of public utilities, applicants for service from public utilities, and county commissions<sup>3</sup>.

<sup>1</sup> Statutory references changed to specify those statutes that provide the Commission with rulemaking authority utilized in adopting the Rules for the Government of Sewer Utilities (the "Rules")

<sup>2</sup> Topical heading added for this and nearly all Rules as a convention to aid review and congregation of topics. Hereafter, no footnotes will appear where only a topical heading is added to a rule.

<sup>3</sup> Amended to add other entities affected by the Rules consistent with the content of the Rules.

1.6.b. Waiver. If hardship results from the application of any Sewer Rule or if unusual difficulty is involved in immediately complying with any rule, application may be made to the Commission for the modification of the rule or for temporary or permanent exemption from its provisions: Provided, that no application for modification or exemption will be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

1.7. Definitions.

1.7.a. "Applicant". A person, firm, corporation, ~~municipality, public service district~~<sup>4</sup> or any other entity that applies for sewer service.

1.7.b. "Billing Related Dates".

1. "Bill Due Date". The date when the utility mails the bill.

2. "Latest Pay Date". The last date, which shall be no sooner than the 20<sup>th</sup> day following the date the utility mails the bill, that the bill may be paid without incurring a late payment penalty. ~~Such date must be stated on the face of the bill.~~<sup>5</sup>

3. "Delinquent Bill". Any bill issued by a ~~public service district or a municipal system~~ utility that has not been paid within twenty (20) days of the bill due date. ; ~~or any bill issued by a sewer utility that is not a public service district or a municipal system within thirty (30) days of the bill due date. Such date must be stated on the face of the bill.~~<sup>6</sup>

1.7.c. "Commercial Service". Means service to each separate business enterprise, occupation or institution occupying for its exclusive use any unit or units of space as an entire building, entire floor, suite of rooms or a single room, and using sewer for such incidental use as the schedule of rates applicable to the particular installation may permit. Commercial service shall apply to all stores, offices, hotels, wholesale houses, garages, display windows, signs, theaters, barber and beauty shops, churches, opera houses, auditoriums, lodge halls, school houses, banks, bakeries and any other space occupied for commercial purposes. Any rooming house, lodging house, resort, inn or tavern renting more than four (4) rooms to strangers or transients without any previous agreement for accommodation or as to the duration of stay shall be classed as a hotel and as such it comes under the commercial classification.

1.7.d. "Commission". Whenever in these rules the words "Commission" or "Public Service Commission" occur, 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.

1.7.e. "Customer". Shall mean and include any such person, firm, corporation, ~~municipality, public service district~~ utility or any other entity who purchases a utility product or services ~~of~~ from any utility and ~~shall include any such person, firm, corporation, municipality, public service district or any other entity who purchases such services or product for resale.~~<sup>7</sup>

<sup>4</sup> Removed as the Commission has not treated sale-for-resale customers in the same manner as other applicants for service. Further, there is no reason to include public service districts and municipalities in the Rule to the exclusion of other forms of sewer utilities.

<sup>5</sup> Stricken on the basis that duties should not be stated in definitions.

<sup>6</sup> Amended to make 20 day bill due date uniform for all types of utilities. 30 day billing results in difficulty in preparing bills, and customer confusion as payments and bills cross in the mail.

<sup>7</sup> Amended to clarify that all sale-for-resale purchasers of utility services are utility customers.

1.7.f. "Customer's Service Pipe". Shall be that portion of the service pipe from the point of service to the structure or premises served, ~~installed at the cost and expense of the customer.~~<sup>8</sup>

1.7.h.g. "Governmental Unit". Any municipality or other political subdivision or agency of the State of West Virginia or the Federal Government.

1.7.j.h. "Moratorium". A condition imposed on a utility by the Commission or other state agency<sup>9</sup> prohibiting service connections and/or reactivation of service for an entire system, or a portion thereof.

~~1.7.j.i. "Payment". Payment is made by cash, check, credit card, debit card, or voucher accepted by the utility.~~<sup>10</sup>

1.7.j.i. "Point of Service". Means the utility's pipe and appurtenances which connect any utility service pipe with the inlet connection of a customer's service pipe at the customer's property line, or elsewhere on the customer's property if provided for in a user's agreement. ~~The utility shall own and maintain all facilities located between the point of service and the main.~~<sup>11</sup>

1.7.j. "Prospective Customer". Means the owner or occupant of a completed structure.<sup>12</sup>

1.7.l.k. "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 shall mean and include any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in the business of collecting, transporting, and/or treating sanitary sewage from 25 or more customers.<sup>13</sup>

1.7.m.l. "Residential Service". Means service to a householder or a tenant, living in a separate house or separate apartment in an apartment building, using water and sewer for general household service. Should the owner of a multiple apartment building undertake to furnish sewer to his tenants as a part of their monthly rent, then such service shall be classed as "Commercial." In cases where a householder or tenant devotes some portion of the occupied building to commercial use and uses the remainder as a residence then the predominate use of sewer shall constitute the basis for classification as either residential or commercial.

1.7.m. "Self-Help Extension". An extension in which the utility contributes the costs of materials, legal and engineering services up to its contribution requirement under Rule 5.5.b.2, and some or all Prospective Customers provide labor, equipment and materials costing in excess of the utility contribution requirement.<sup>14</sup>

1.7.n. "Sewer Main". Means sewer pipe owned, operated, or maintained by the utility located in a public right-of-way, street, alley, or private right-of-way, used for the purpose of collecting sewage and from which service connections for customers are taken. Any sewer pipe extending through a utility right-

<sup>8</sup> Amended to remove duty from definition.

<sup>9</sup> Term added to clarify that other agencies besides Commission may impose moratoria.

<sup>10</sup> Term stricken as meaningless.

<sup>11</sup> Term stricken as definitions should not impose duties.

<sup>12</sup> Term added to definitions section and used at Rule 5.5.

<sup>13</sup> Amended to clarify that only sanitary sewers are public utilities, and that sewer systems must have more than 25 customers.

<sup>14</sup> New definition for use with Utility Coalition Proposed Rule 5.5.b.4

of-way across private property shall be a sewer main. ~~Costs to install a sewer main across private property are subject to the cost sharing provisions of Rule 5.5.~~<sup>15</sup>

1.7.o. "Temporary Service". Sewer service desired for less than a year-round basis, including vacation homes, sewer for construction, or other short-term uses.<sup>16</sup>

1.7.p. "Temporary Service Connection". 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 utility sewer main extending along the total frontage of the lot on said street or right-of-way, unless otherwise agreed to by the utility.

1.7.q. "Utility Service Pipe". Shall be that portion of the service pipe between the sewer main and the point of service, ~~installed at the cost and expense of the utility.~~<sup>17</sup>

## §150-5-2. Records, Reports and Other Information to be Supplied to the Commission.

### 2.1. Records and Reports.

2.1.a. Preservation of Records. All records required by these rules shall be preserved by the utility in the manner prescribed by the Commission.

#### 2.1.b. Location of Records.

1. Inspection. ~~Such~~ Records shall be kept at the office or offices of the utility in West Virginia, and shall be open at all reasonable hours for examination by the Commission or its duly authorized representative without formal order of the Commission.<sup>18</sup>

2. Out of State Records. If kept outside the State, such records shall be brought to the utility's office in West Virginia upon request of the Commission or its duly authorized representative without formal order of the Commission, or the utility may be required to pay the reasonable traveling expenses of the Commission employees assigned to examine the records.

2.1.c. Reports to Commission. Upon ~~Commission~~ request by the Commission or its duly authorized representative without formal order of the Commission, a utility shall furnish to the Commission the results of any test or tests required to be made, or the information contained in any records required to be kept by the utility, or any further information in its possession, respecting its rates, charges, or practices. ~~, without formal order of the Commission requiring the release of such information.~~<sup>19</sup>

### 2.2. Filing of Rate Schedules.

2.2.a. Tariffs. Tariffs containing rates and rules of each utility, including municipal utilities, shall be filed in the manner prescribed by the Commission in "Rules and Regulations for the Government and Filing of Tariffs" (Tariff Rules) effective as amended or modified by the Commission.<sup>20</sup>

<sup>15</sup> Stricken as definitions shouldn't impose duties.

<sup>16</sup> New definition to clarify meaning of term.

<sup>17</sup> Stricken as definitions shouldn't impose duties.

<sup>18</sup> Language added to clarify that no order is required.

<sup>19</sup> Rule amended to clarify that no Commission order is required.

<sup>20</sup> Term "municipal utilities" added to Rule 2.2.a. to eliminate need for Rule 2.2.b.

~~2.2.b. Municipal rates— Rates for municipal water and combined water and sewer utilities shall be adopted, and tariffs shall be filed, in accordance with the Commission's "Rule for the Government and Filing of Tariffs," 150CSR2, effective as amended or modified by the Commission.~~

### 2.3. Utility's Special Rules.

2.3.a. Application. A utility desiring to establish any rule(s), supplementing the rules of the Commission, shall first make application to the Commission for authority to establish such a rule(s), clearly stating the reasons for the rule(s).

~~2.3.b. On and after ninety (90) days from the effective date of these Rules, 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.<sup>21</sup>~~

2.3.e. b. Exemption Effect. 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 not been approved by the Commission.

### 2.4. Financial and Statistical Report.

2.4.a. Annual Report. Every utility shall file annually a financial and statistical report upon forms to be furnished by the Commission. The report shall be based upon the accounts set up in conformity with Rule 2.5. The report shall be filed on or before three (3) months following the end of the utility's fiscal year or on such date as the Commission may direct. ~~Beginning January 1, 2009, all financial and statistical reports shall be filed electronically utilizing the Commission's web site.~~ Utilities shall file reports with the Commission in electronic spreadsheet format utilizing the Commission's web site beginning with the utility's first full fiscal year commencing after the adoption of these rules.<sup>22</sup>

2.4.b. Extensions. Upon written request and for good cause shown, the Commission may approve or disapprove, through its Executive Secretary, by letter, a reasonable extension of time to file the financial and statistical report. Such application is to be made before the expiration of the time for filing the report.

~~2.4.c. Each utility shall file, yearly as of July 1 for the preceding July 1 through June 30, sewer statistical reports upon forms to be furnished by the Commission. The report shall be filed on or before three (3) months following the end of the utility's fiscal year or on such date as the Commission may direct.~~

### 2.5. Uniform System of Accounts.

2.5.a. Format. All sewer utilities shall maintain their accounts and records in compliance with the Uniform System of Accounts as promulgated in ~~1973~~ 1996 by the National Association of Regulatory Utility Commissioners ("NARUC") for Class A, ~~and B, Sewer Utilities and Class C and D Sewer Utilities~~ beginning with the utility's first full fiscal year commencing after adoption of these rules. For any prior periods, the utility may use the 1996 NARUC format or the format previously used by the Commission from October 24, 2003 to the effective date of these rules.<sup>23</sup>

<sup>21</sup> Deleted as no longer needed due to effect of prior versions of the Rules.

<sup>22</sup> Alternative language needed to permit utilities to make an orderly transition to the new format requirements. The term "spreadsheet" added to clarify the type of format required.

<sup>23</sup> Change made to promote an orderly transition to the new accounting system.

2.5.b. Interpretation. Observance of the system of accounts applicable to the sewer utility by appropriate class is obligatory upon all persons having direct charge of the books and accounts of the utility. For the purpose of securing uniformity in the applications of this system all questions of doubtful interpretation of accounting rules are to be submitted to the Water and Wastewater Division of the Commission for consideration and decision.<sup>24</sup>

2.5.c. Classifications. The classification of sewer utilities for purposes of keeping accounts in accordance with the 1996 NARUC Uniform System of Accounts shall be as follows:

<u>Classification</u>	<u>Revenue Level</u>
A	\$800,000 \$1,000,000 or more
B	400,000—799,999 \$200,000 - \$999,999
C	100,000—399,999 less than \$200,000
D	less than 100,000

1. For utilities filing an annual report in a format other than the 1996 NARUC format, the classification system shall be that previously used by the Commission from October 24, 2003 to the effective date of these rules.<sup>25</sup>

## 2.6. Maps and Records.

2.6.a. Covered Facilities. Each utility shall keep on file suitable maps, plans and records showing the entire layout of every pumping station, treatment plant, transmission and collection line, with the location, size and capacity of each transmission and collection line, and customer's service, and other facilities used in the collection and treatment of sewage.

2.6.b. Additions to System. In the case of new construction or property acquired from others, the additions 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 or property acquired. All drawings shall have the scale clearly shown and be of sufficient detail to accurately depict the project or property.

2.6.c. Updating. In general, where present maps of existing facilities are not entirely up to date, special surveys to locate any plant or facilities will not be required immediately, but maps must be updated as prescribed by the Commission.

## 2.7. Management audits.

~~2.7.a. Scope—To establish a procedure for examination of management practices and policies to determine whether the utility 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.~~

~~2.7.b. Types of management audits—The following types of management audit, which vary in scope, may be directed and used by the Commission:~~

<sup>24</sup> Change made to clarify that resolution will not be by a formal Commission order.

<sup>25</sup> Transitional provision.

1. ~~Comprehensive~~ — An investigation characterized by an extensive, detailed analysis of a utility's management and operations.

2. ~~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.

3. ~~Focused~~ — An in-depth investigation of one or several specific areas of a utility's management and operations.

2.7.c. ~~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 W. Va. jurisdiction.

2.7.d. ~~Conduct and control~~ —

1. 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.

2. The Commission may impose eligibility restrictions upon contractors relating to past, current and post-audit relationships with the utility.

3. 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.

2.7.e. ~~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.

2.7.f. ~~Implementation of recommendations~~ —

1. ~~Draft report.~~

A. Upon completion of the audit a draft report shall be submitted to the utility for comments.

B. The auditor and Company representatives shall conduct a draft review meeting subsequent to the distribution of the draft review report.

~~2. Final report.~~

~~A. A final report shall be submitted to the Commission no later than thirty (30) days after the submission of the draft report to the utility.~~

~~B. Within thirty (30) 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.~~

~~3. The Commission may, after hearing, issue an order prescribing the recommendations which should be adopted by the utility.~~

~~4. 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.~~

~~5. 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.~~

~~6. 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.~~

~~7. The Commission may grant an extension of the time limits established in this section upon a showing of good cause for such extension.<sup>26</sup>~~

**§150-5.3. Meter Requirements.**

3.1. Scope. 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 are subject to the approval of the Commission. All flow meters used in serving bulk or resale customers shall be owned and operated by the utility providing service to the bulk or resale customer.

3.2. Sewer Flow Measuring Devices. Where sewer flow measuring devices are used for billing purposes, the utility shall test these devices for accuracy on an annual basis at the expense of the

<sup>26</sup> Rule 2.7 removed because it is overly specific and seldom used by the Commission. The Commission can set the terms and scope of management audits by its orders in general investigations or other proceedings.

customer. The measuring devices shall also be maintained in good working order and shall be adjusted or repaired to be as nearly correct as is commercially practicable.<sup>27</sup>

### 3.3. Prohibitions on Master Metering.

#### ~~3.3.1. Reserved.~~

3.3.2 1. Mobile Home Parks. For mobile home parks constructed on or after the effective date of these rules October 24, 2003, each mobile home in a mobile home park shall be individually sewered with taps installed at the lot line of each mobile home. The lot owner shall be responsible for payment of any applicable tap fees. All utility easements and mains constructed within the mobile home park will become the property of the utility by agreement between the (i) owner of the mobile home park or the lot owner, whichever is applicable, and (ii) the utility. The agreement must be approved by order of the Commission prior to construction of any main. Lines extending from the mobile home to the tap will be considered customer service lines and maintenance of those lines will be the responsibility of the applicable lot owner.

## §150-5-4. Customer Relations.

### 4.1. Customer Information.

4.1.a. Information as to Service. Each utility shall, upon request, give its customers such information and assistance as is reasonable, in order that customers may enjoy safe and efficient service.

4.1.b. Explanation of Computing Bills. Each utility shall adopt some means of informing its customers as to the method of computing bills, either by printed description on its bills, or by a notice to the effect that the method will be explained at the office of the utility upon request.

4.1.c. Explanation of Rates. It shall be the duty of the utility to explain to the customer at the beginning of service, or whenever the customer shall request the utility to do so, the utility's rates applicable to the type of service furnished to the customer and all other classes of customers, and to assist him in obtaining the best rate for his service requirements. The responsibility for the selection, however, rests with the applicant. In the event the customer's use of service changes such that a rate schedule other than the one initially selected becomes favorable, the responsibility for requesting a change in rate schedule, consistent with the provisions of the service agreement, shall rest with the customer. The utility shall, on its periodic statements, annually inform its customers that, if they so request, it shall supply them with a copy of the utility's rate or rates applicable to the type of service to be furnished to all classes of customers with a concise written explanation of the rates, and an identification of any classes of customer for whom rates are not summarized.

#### 4.1.d. Posting Requirements. ~~of law, rates, rules and collection agents.~~

1. Required Items. Every utility shall maintain in its office for inspection by the public the following:

A. ~~A copy of~~ The rates and rules of the utility, and of forms of contracts and applications applicable to the territory served from that office.

B. ~~A copy of~~ The Public Service Commission Law of this State.

<sup>27</sup> New term added to clarify that customer pays for testing of flow meter.

C. ~~A copy of t~~ These rules.

2. Notice of Information. A suitable placard, in large type, shall be exhibited in a conspicuous location, giving information to customers that a copy of the law, the rules of the Public Service Commission and the schedule of rates are kept for their inspection.

3. Notice of Collection Agents. Once a year, or as often as a utility changes collection agents, each utility shall publicize by newspaper or bill insert to its customers its collection agents to whom customers may deliver payment of sewer bills.

4.1.e. Applications for Sewer Service.

1. Written Application. All applicants desiring sewer service may be required to make written application at the office of the utility on printed forms provided therefore, setting forth in said application all purposes for which sewer will be used upon their premises including, whether service is desired on a year-round, seasonal, or temporary basis.<sup>28</sup>

A. Landlords and Tenants. All applicants for service 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.~~<sup>29</sup>

B. Identification. The utility may require the applicant to provide valid current identification at the time of application for service.<sup>30</sup>

2. Initiation Charges. Except as provided in Rule 4.8.d.e.2., no charge will be made for initiating sewer service to new customers where a connection is already installed or current customers transferring service to a new location where a connection is already installed, so long as the initiation occurs during regular working hours.<sup>31</sup>

3. Effect of Approved Application. The utility's approval of an ~~Accepted~~ applications for sewer to be provided to any premises shall constitute a right to the customer to take and receive a sewer service for said premises for the purposes specified in such application; (i.e. Residential, Commercial, and Industrial) subject only to the fulfillment of the conditions of these rules by the customer.

4. Customer Change. Any change in the identity of the contracting customer at a premises will require a new application for sewer, and the utility may, following the notice required by Rule 4.8.b, discontinue water service until such new application has been made and accepted, but the former customer shall remain liable for sewer furnished to said premises until he has given notice in writing to the utility to discontinue sewer service. In the event the customer of record has died or has become incapable of being responsible for sewer service, that individual's spouse may become the customer of record without being required to complete a new application for sewer service, or paying a new deposit.<sup>32</sup>

<sup>28</sup> Significant additional terms of service added.

<sup>29</sup> Since landlords are no longer secondarily liable for tenant utility bills, this provision is struck.

<sup>30</sup> New term to enable utility to confirm identity of applicants.

<sup>31</sup> Cross reference is modified to reflect further changes in these Rules as proposed by the Utility Coalition. Rule modified to clarify that tap fee still applies when a tap is installed.

<sup>32</sup> Rule amended to clarify that water service may be terminated for failing to complete a new application for sewer service following appropriate notice.

3 5. Receipt. 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 utility,~~ then the sewer ~~public service district~~ utility shall provide the customer with a proper receipt and shall instruct the customer to present said receipt to the water utility when application for water service is made.

6. Temporary Service.

A. Sewer for temporary service must be specifically applied for with the utility.<sup>33</sup>

B. Financial Responsibility. Whenever a temporary service connection is made, the applicant shall bear the entire cost and expense of labor and material for tapping the main and installing the utility and customer service pipe and its removal, if required.<sup>34</sup>

C. Terms of Service. The utility may charge a security deposit that includes the cost of removal of facilities, if removal is expected. The utility shall charge its tariff rates for the volume of sewage discharged.<sup>35</sup>

4.1.f. Public Service District's Notice of Availability of Sewer Service and Billing After Notice.

1. Notice by Publication. When sewer service is made available by a public service district ~~to customers~~ in an area which has not previously been served by the district, the district shall publish a notice in a newspaper of general circulation in the area affected once a week for two consecutive weeks, with the second notice being published at least thirty (30) days prior to the date that the district intends to begin billing for services. The notice shall state, at a minimum, the following information: (1) that sewer services are available; (2) the date that the district will begin billing for services as authorized by W. Va. Code §16-13A-9 and Rule 4.3. of the Commission's Rules for the Government of Sewer Utilities; (3) the district's rates; (4) that W. Va. Code §16-13A-9 authorizes the district to petition the circuit court to compel connection to the sewer system; (5) the location and telephone number of the district's business office; and (6) the amount of the bill to be rendered as provided by W. Va. Code §16-13A-9, in the event a customer does not connect to the system.<sup>36</sup>

2. Exception. Publication is not required when service is extended to a single customer at the customer's request.

3. Personal Notice. In addition to notice by publication, when sewer service is made available to customers in an area which has not previously been served by the district, the district shall provide notice with at least the information as described in section 1. above, to all potential new customers by certified mail, return receipt requested, by personal service with signed and dated receipt, or by posting a notice on the premises. If the premises to be served is not inhabited by the owner, notice shall be given to the owner by certified mail, return receipt requested, in addition to giving notice to the customer inhabiting the premises. In the event that the district is not able to effect personal notice after a good faith effort, or if the district believes that the requirements of this section create an undue hardship on the district, the district may petition the Commission for a waiver of the requirements of personal notice provided in this section.

<sup>33</sup> Rule is shortened and uses the defined term temporary service.

<sup>34</sup> Rule is amended to clarify extent of customer's obligation for facilities.

<sup>35</sup> New Rule to clarify utility's ability to charge a security deposit above the ordinary security deposit.

<sup>36</sup> "Customer" stricken as persons affected are not then customers.

4. Billing Unconnected Customers. Customers of public service sewer districts who are not connected to the sewer system after appropriate notice has been given of availability of service pursuant to W. Va. Code §16-13A-9 and Rule 4.1.f. shall be billed based on actual water consumption or the average monthly water consumption based upon the owner's, tenant's, or occupant's specific customer class. These charges must be included in the utility's tariff filed with the Commission.

4.2. Customer Deposits.

4.2.a. Security Deposits.

1. General. ~~Security deposits for utilities other than public service districts~~

A. Requirement. A utility, ~~other than a public service district~~ may require the applicant or customer to make a deposit with it initially, and from time to time, to secure the payment of sewer service rates and charges. This provision must be included in the utility's tariff filed with the Commission. The utility shall not be bound to supply sewer service until ~~these conditions~~ its security deposit requirements are fulfilled and it may terminate water service if the security or increased security is not given when required, following the procedures of Rule 4.8.b. <sup>37</sup>

B. Discrimination Prohibited. All utilities that collect security deposits must do so in a non-discriminatory manner. <sup>38</sup>

C. Multiple Service Locations. Multiple service locations shall require multiple deposits. <sup>39</sup>

D. Transfer of Service. A current customer ~~of a public service district~~ who requests service at another location ~~within the jurisdiction of the district~~ and who has made payment of bills for the previous twelve (12) months without a delinquency is not required to pay a deposit for service at the new location. ~~because that customer is not a new applicant for service under W. Va. Code § 16-13A-9.~~ The preceding sentence shall not apply to multiple service locations or locations where the customer is a tenant on a municipal or public service district system. ~~Multiple service locations shall require multiple deposits.~~ <sup>40</sup>

E. Forfeit And Resumption. 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~~ utility until another deposit as described above has been remitted to the ~~district~~ utility. <sup>41</sup>

F. Death of Customer. In the event the customer of record has died or has become incapable of being responsible for sewer service, that individual's spouse may become the customer of record without being required to complete a new application for sewer service, or paying a new deposit. <sup>42</sup>

<sup>37</sup> Rule amended to clarify that all types of water utilities can charge a security deposit. Specific provisions with respect to municipalities and PSDs

<sup>38</sup> Moved from Rule 4.2.a.14.

<sup>39</sup> Moved from Rule 4.2.a.8.

<sup>40</sup> Moved from Commission proposed Rule 4.2.a.8. and modified to clarify that it applies to all types of utilities, except in the case of tenants on PSD or municipal systems.

<sup>41</sup> Moved from Rule 4.2.a.2, and modified to clarify that it applies to all types of utilities.

<sup>42</sup> Moved from Commission proposed Rule 4.2.a.8.

~~10. All new applicants for residential or other service from a combined water and sewer public service district shall deposit (i) a minimum of fifty dollars (\$50.00), or (ii) two twelfths (2/12) of the annual estimated charge for sewer service, whichever is greater, for each of the services to be rendered.~~<sup>43</sup>

12. G. Receipt. Concurrently with receiving a cash deposit, the utility shall deliver to the applicant for service or the customer, a receipt showing: (i) the date thereof, (ii) the name of the applicant or customer and the address of the premises to be served or served, (iii) the service to be furnished or furnished, and (iv) the amount of the deposit and the fact that interest will be paid at a Commission determined rate. 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 of proof or payment will not be necessary under the provisions for an automatic refund.<sup>44</sup>

11. H. 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; (iii) each transaction concerning the deposit.

~~After the customer has paid bills for service for twelve (12) consecutive months without a delinquency, the utility shall promptly and automatically refund the deposit plus accrued interest. Calculation of the above twelve (12) months' period shall commence from the first regular payment or following the payment of a delinquent bill or bills. Interest at the rate as determined in accordance with Rule 4.2.a.7., shall be paid from the date of deposit until the date of the refund of the security deposit.~~<sup>45</sup>

2.1. Security deposits for public service districts Deposit Limits for Municipal Utilities and Public Service Districts. All new applicants for residential or other sewer service from a municipal utility or public service district, shall make a deposit of (i) a minimum of fifty dollars (\$50.00), or (ii) two-twelfths (2/12) of the annual estimated charge average annual usage for the applicant's specific customer class for sewer service, whichever is greater, with the utility to secure the payment of sewer service rates and charges. For combined water and sewer utilities such deposit shall not be more than either one hundred dollars (\$100) or two-twelfths (2/12) of the average annual usage of water service and wastewater service for the applicant's specific customer class, whichever is greater. ~~The district shall not be bound to supply sewer until this condition is fulfilled.~~<sup>46</sup>

3.2. Deposit Limits for Other Sewer Utilities. For investor owned utilities, associations, and non-profit utilities, the security deposit shall not be more than one-twelfth (1/12) of the annual estimated charge for residential service or one-sixth (1/6) of the annual estimated charge for all other service.<sup>47</sup>

6 3. Segregated Accounts. Rule 4.2.a.4 requires public service districts to segregate deposits ~~into interest bearing accounts~~. Upon proper showing by complaint or otherwise, the Commission may require any other utility to likewise segregate customer deposits.<sup>48</sup>

<sup>43</sup> Stricken as unneeded given the statutory identity with respect to the security deposit practices of PSDs and municipal utilities.

<sup>44</sup> Interest provision stricken consistent with Utility Coalition proposal to eliminate the payment of interest on security deposits.

<sup>45</sup> Stricken consistent with Utility Coalition proposal to eliminate the payment of interest on security deposits.

<sup>46</sup> Combination of Commission proposed Rules 4.2.a.1 and .2, as amounts are statutorily identical. Last sentence stricken as redundant given Utility Coalition Proposed Rule 4.2.a.1.A.

<sup>47</sup> Specification of "other utilities" added, remainder transferred from Commission proposed Rule 4.2.a.1.

<sup>48</sup> Cross reference modified consistent with other modifications to this rule proposed by the Utility Coalition. Interest provision stricken consistent with Utility Coalition proposal.

7. ~~The interest rate to be paid by all sewer utilities other than public service districts 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 file with the Commission its calculations. The Commission will issue an order setting the rate to be paid by the utilities until the next annual Commission order. The simple interest shall be paid at the date of discontinuance of service or at the end of the deposit period.~~<sup>49</sup>

8. ~~The interest rate to be paid by public service districts shall be determined as follows. The Staff of the Commission shall determine a rate which a typical small investor could receive at federally insured banks in W. Va. in the last quarter of each calendar year. The Staff shall by January 15 of each year report to the Commission its rate with supporting information. The Commission will issue an order setting the rate to be paid until the next annual Commission order. The simple interest shall be paid at the date of discontinuance of service or at the end of the deposit period.~~<sup>50</sup>

### 3.4. Return of Deposit. to customers who are not tenants

#### A. General.

1. Time of Return. The utility shall have a reasonable time, not to exceed thirty (30) days, to read 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.<sup>51</sup>

2. 12 Month Period. Calculation of the ~~above~~ twelve (12) months' period shall commence from the first regular payment or following the payment of a delinquent bill or bills.

B. Non-Tenants. After a customer who is not a tenant has paid bills for service for twelve (12) consecutive months without a delinquency the utility shall promptly and automatically refund the deposit plus accrued interest.

4. C. Tenants on PSD or Municipal System. ~~Return of deposit by district to a customer who is a tenant—A Public service districts and municipal sewer systems is~~ are not required to return a deposit to a customer who is a tenant until the time the tenant discontinues service with the district or municipal system. After a customer who is a tenant discontinues service with the district or municipal system, the utility shall promptly and automatically refund the deposit plus accrued interest.

D. Tenants on Other Systems. Investor owned utilities, associations, and non-profit utilities may not retain security deposits for tenant customers who have paid bills for service for 12 consecutive months without delinquency.<sup>52</sup>

~~5. Interest at the rate as determined in accordance with Rule 4.2.a.8. shall be paid from the date of deposit until the date of the refund of the security deposit. Simple interest on any deposit held for more than one year shall be calculated based on the applicable current year's rate of simple interest as determined in accordance with Rule 4.2.a.8. All customer security deposits shall be placed in an interest bearing account at a local federally insured financial institution. 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~~

<sup>49</sup> Stricken for reasons stated in Utility Coalition Comments, at 4-5.

<sup>50</sup> Stricken for reasons stated in Utility Coalition Comments, at 4-5.

<sup>51</sup> Phrase stricken as unnecessary.

<sup>52</sup> Term added to clarify duty of other utility systems.

~~customer have been fully performed before being required to return any deposit in the case where there has not been an automatic refund.~~<sup>53</sup>

~~13~~ 5. Unclaimed Deposits. Should a utility have retained, through no fault of its own, deposits made by customers to whom service has been discontinued during any calendar year, it shall, on or before the first day of March, in each year, mail to the customer's last known address a check as refund of the deposit plus accrued interest, or at the utility's option. For all mailed checks that are returned by the postal service, or for checks that are not cashed within 90 days of issuance, the utility shall by the 1st day of July publish a list of such depositors, in a newspaper published and of general circulation in each of the counties in which it operates and in which the deposits were made, showing as of the thirty-first (31st) 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 shall not be liable for any interest on such deposit after publication of such lists. Upon the completion of the above procedure,~~ Sixty days after publication, the utility shall follow the provisions of the Uniform Unclaimed Property Act, codified at W. Va. Code §36-8-1, with regard to the disposition of any unclaimed deposit.<sup>54</sup>

~~14. Provided that this rule shall not affect residential customer security deposits required by a utility prior to the passage of W. Va. Code §24-3-8 on March 12, 1983.~~<sup>55</sup>

#### 4.2.b. Guarantee Guaranty Agreement.

1. Utility Option. A utility, other than a public service district, 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 may, upon request, receive copies of disconnection notices sent to the customer whose account has been guaranteed: Provided that the limitations herein fixed upon the terms of a guaranty agreement shall not apply to industrial customers.

2. Termination. A guaranty agreement shall terminate after the customer has satisfactorily paid bills for twelve (12) consecutive months, or when the customer gives notice to the utility of discontinuance of service at the location covered by the guaranty agreement, or six (6) 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. Upon termination of a guaranty agreement, or whenever the utility deems the same insufficient as to amount of surety, a cash deposit or a new or additional guaranty may be required upon reasonable written notice to the customer.

~~3. Application in case of receiver or trustee — The aforesaid provisions shall apply in the case of a receiver or trustee operating a business, under court order that requires utility service.~~<sup>56</sup>

#### 4.3. Billing Information.

##### 4.3.a. General.

1. Content. Bills shall be rendered periodically, and they shall show the readings of the meter at the beginning and end of the period for which the bill is rendered, the date of the meter readings,

<sup>53</sup> Stricken for the reasons stated in Utility Coalition Comments, at4-5.

<sup>54</sup> Rule is changed to provide distinct phases to furnish customer with unclaimed refund.

<sup>55</sup> Stricken as no longer necessary.

<sup>56</sup> Stricken as unnecessary as guaranty agreements are an option to the utility in all circumstances.

the number of cubic feet or gallons of sewer service provided, and the authorized rate. Each bill shall bear upon its face the latest pay date and the date it shall be a delinquent bill if not paid. On all bills which include charges for items other than authorized sewer charges, 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. All bills shall state "This utility is regulated by the Public Service Commission of West Virginia" and "Rates available upon request."<sup>57</sup>

2. Estimated Bills. If the utility must, for any reason, render an estimated bill, the bill shall be clearly marked as an estimated bill.

4.3.b. Initial and Final Bills. First and last 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.e. Utilities desiring to adopt mechanical billing of such nature as to render compliance with all the terms of Rule 4.3.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.~~<sup>58</sup>

4.3.e. c. Late Payment Penalty. On all current usage billings not paid by the latest pay date, the greater of \$5.00 or ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate. This provision must be included in the utility's tariff filed with the Commission.<sup>59</sup>

4.3.d. Damaged Facilities.

A. Bypass and Diversion Devices. Whenever utility discovers a device installed without its consent, including but not limited to unauthorized connections to a main, utility service pipe or customer service pipe, the utility may immediately terminate service without notice and require as a condition of restoration of service that the entity benefitted by the illicitly installed device pay the utility's damaged facilities charge equal to the utility's tap fee, provided that the utility has a damaged facilities charge in its tariff. The utility may, in addition, require payment of estimated usage during the period in which any unauthorized device was believed to be present, and all applicable regular charges, including, when applicable, tap fees.<sup>60</sup>

4.3.e. Application of Payment. When a utility receives a customer payment at a time when both a delinquent bill and a current bill are outstanding, the utility will apply the payment first to the current bill, and apply any leftover amounts to the delinquency. Provided, that this rule shall not apply to payments from customers whose delinquencies have been addressed in a deferred payment agreement. If a termination notice has been issued then the payment should first be applied to the delinquent amount that is the subject of the termination notice.

<sup>57</sup> Rule combines in one place several separate rules regarding bill content.

<sup>58</sup> Stricken as redundant given the general waiver rule, 1.6.b.

<sup>59</sup> Rule is amended to provide a minimum late payment penalty, as for low rate utilities the 10% penalty isn't sufficient to discourage late payment or to cover the utility's administrative cost in mailing termination notices.

<sup>60</sup> New provision. See Utility Coalition Comments at 3-4.

#### 4.4. Adjustment of Bills.

4.4.a. Fast Meters. If the water utility makes a refund to the customer pursuant to Rule 4.4.a. of the Commission's "Rules for the Government of Water Utilities," 150CSR3 5, the sewer utility will make a corresponding adjustment to the sewer charges associated with the same period of time based on the corrected meter reading and the applicable sewer rates.

4.4.b. Dead Meters. At any time that a water utility calculates water usage and bills for water service pursuant to the provisions in Rule 4.4.b. of the Commission's "Rules for the Government of Water Utilities," 150CSR3 5, the sewer utility will bill for sewer service for the corresponding time period based on the water usage calculated and billed by the water utility.

#### 4.4.c. Leak Adjustments. on the Customer's Side of the Meter.

1. Policy Adoption. Each utility shall develop, and implement, and make available upon request 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.

A. Ineligible Leaks. Leaking commodes, dripping faucets, malfunctioning appliances and similar situations shall not constitute leaks which entitle the customer to a recalculated bill.

B. Discrimination. The policy shall be maintained in the utility's office for inspection by the public and shall be applied in a non-discriminatory manner to all customers. The reasonableness of the utility's policy or practice with respect to a policy shall be subject to Commission review in a formal complaint proceeding.<sup>61</sup>

2 C. Adjustments. The policy shall provide for a recalculated bill to reflect the utility's incremental cost of treating or purchasing the sewer wastewater treatment, as contained in the utility's leak adjustment rate in its tariff, for all amounts volumes attributable to eligible leaks above the customer's historic usage. Historic usage shall be defined as the average usage of the preceding twelve (12) months, or actual period of service if less than twelve (12) months. If using the historic usage would result in an unreasonable calculation, adjustments may be made. If such adjustments are made, the utility should advise its customer that a dispute regarding such adjustments may be taken to the Commission in the form of an informal complaint.<sup>62</sup>

3 i. Utilities Without Leak Adjustment Rates. As an alternative to using the incremental cost of treating or purchasing the sewer, the utility may, at its option, use an adjustment which allows it to recover. A utility without a leak adjustment rate in its tariff must use the Commission's estimate of "typical incremental" cost per thousand gallons of sewer sewage on usage above the historic usage. The Commission shall from time to time establish its estimate of "typical incremental cost" by order.<sup>63</sup>

4. 2. Establishment of Leak Adjustment Rate. However, i In future rate cases the utility's incremental cost of treating or purchasing the sewer shall be determined and the rate placed in an

<sup>61</sup> Language regarding the availability of the formal complaint proceeding stricken as redundant, as a utility is subject to a complaint for any violation of the rules.

<sup>62</sup> Language regarding the availability of the formal complaint proceeding stricken as redundant, as a utility is subject to a complaint for any violation of the rules.

<sup>63</sup> Change clarifies that utilities without a leak adjustment rate in the tariff must use the Commission's default leak adjustment rate.

appropriate the tariff as the leak adjustment rate. After a rate has been determined in a rate case, the utility shall not have the option to use the Commission's estimate of "typical incremental cost" found in 4.4.e.3.<sup>64</sup>

#### 4.5. Complaints.

4.5.a. 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. In the event that the complaint is not adjusted resolved to the satisfaction of the customer, the utility shall notify the customer that he may file an informal or formal complaint with the Commission.<sup>65</sup>

4.5.b. Records 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.

4.5.c. 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.

#### 4.6. Disputed Bills.

4.6.a. Investigation and Notice. In the event of a dispute between the customer and the utility respecting any bill, the utility shall conduct an investigation and report the result thereof to the customer. In the event that the complaint is not resolved, the utility shall, before service is discontinued, notify the customer that he may file an informal or formal complaint with the Commission.

4.7. Customer Discontinuance of Service. Any customer requesting service to be discontinued shall give written notice thereof to the utility, during regular business hours. The utility shall confirm that the person making the request is the utility's customer of record. The customer may be required to produce proof that it has requested termination of water service from the water utility. Unless a different period shall be mutually agreed upon by written contract, service will be discontinued by the end of the next business day. Until the utility shall have such written notice and be able to confirm that the person making the request is the utility's customer of record, the customer may be held responsible for all service rendered.<sup>66</sup>

#### 4.8. Utility Discontinuance for Non-Payment.

##### 4.8.a. Notice of Discontinuance of Sewer Service.<sup>67</sup>

1. Availability. A utility may only petition the Commission for authority to terminate sewer service for customers who obtain potable water from a private well or a non-utility source.

2. Petition. A utility may petition the Commission for authority to terminate sewer service using Sewer Form No. \_\_\_\_\_. All applicable attachments to which reference is made in Sewer Form No. \_\_\_\_\_ must be included with the Petition. If a utility files a fully completed Sewer Form No. 12, it has satisfied its burden of proof, and the burden shifts to the customer to show cause that

<sup>64</sup> Language stricken as unneeded.

<sup>65</sup> Change made to reflect that not all customer complaints concern billing.

<sup>66</sup> Changes made to clarify that written notice is required, and that the utility may insist on identification, and proof that the customer has requested termination of water service from the water utility.

<sup>67</sup> New provisions. See comments at 7-8.

termination is not warranted.

3. Payment of Current Service Required. Upon service of Sewer Form No. \_\_\_\_ upon the customer identified therein, the customer must pay the current bill for sewer service while the matter is pending before the Commission.

4. Notice of Termination. When a customer fails to make a payment required by §4.8.a.3. of this Rule, the utility shall notify the customer and the Commission in writing that sewer service may be terminated by the utility ten calendar days after mailing such notice should the customer fail to pay its current bill to the utility before the conclusion of the ten day period.

5. Administrative Fee. The utility may add a \$25.00 administrative fee to the bill of a customer when the utility has sent personnel to disconnect a customer's service and the customer makes payment prior to disconnection, provided the utility has such an administrative fee in its tariff.<sup>68</sup>

i. Multiple Trips. When the utility is required to make multiple trips to disconnect service due to the presence of obstructions preventing safe access to the connection, the utility may charge an administrative fee for each trip, and, in addition thereto, add a charge to the customer's bill for unusual costs incurred by the utility in implementing the disconnection, including but not limited to towing fees, animal control costs, and additional utility personnel.<sup>69</sup>

4.8.b. Notice of Discontinuance of Water Service

1. Written Notice. Written notice is required to be made at least 10 calendar days before the utility disconnects water service, and it must be sent first class mail, address service requested, or hand delivered or posted to the property where service may be terminated. Written notice shall comply with Sewer Form No. 1, attached to these rules. The written notice shall become void if the utility has not discontinued service within thirty (30) days of the date indicated on the notice for termination.

A. Notice to Landlord Customer. If a landlord of a single-unit dwelling or a master-metered mobile home park, apartment building, motel, hotel or other multiple or single-unit dwelling is responsible for payment of a utility bill, written notice of termination in the form of Sewer Form No. 2 shall be placed at a location readily available for public inspection on the premises at least five (5) days prior to the scheduled termination of service to that mobile home park, apartment building, motel, hotel or other multiple or single-unit dwelling. If the billing address for any single unit service is different than the service location, a written notice in the form of Sewer Form No. 2 shall be delivered or posted at a visible location on the premises where the service is to be terminated at least five (5) days prior to the scheduled termination. This notice shall inform the occupant(s) of the date on or after which termination of service will occur and shall state the steps the occupant(s) can take to avoid termination of service.

2. Personal Contact Attempts. Prior to disconnecting water service for non-payment of either a water, a stormwater, or a sewer bill, ~~the water utility shall make~~ at least two (2) attempts to notify the customer through personal contact shall be required. ~~First the water utility shall either telephone or visit the customer at least twenty-four (24) hours prior to a scheduled disconnection. Second, the water utility shall knock on the customer's door immediately prior to a disconnection. Either the sewer utility or the water utility shall make~~ The two (2) attempts to notify shall be made by personal contact at least twenty-four (24) hours prior to the scheduled termination unless it is reasonably established that the premises are not permanently inhabited. ~~For the purposes of this rule, personal contact includes both~~

<sup>68</sup> New provision, consistent with recent Commission decisions.

<sup>69</sup> Term necessary to discourage creative efforts by customers to avoid termination.

~~face to face meetings and telephone calls with a responsible adult member of the household.~~<sup>70</sup> The inability to make personal contact shall not prevent the water utility from terminating service.<sup>71</sup>

~~5. Service shall not be discontinued on a Saturday, Sunday, any day that is a federal or state holiday, a day on which the utility's business office is not open to accept payment, or on the day before such days, unless an emergency exists.~~<sup>72</sup>

~~6. All disconnections shall be performed between the hours of 8 a.m. and 4 p.m.~~<sup>73</sup>

3. Payment Prior to Termination. The payment must be for the entire amount of the delinquency to prevent termination. ~~However,~~ a utility may refuse payment by check if the customer has, during the previous twelve (12) months, attempted to make payment by a check subsequently returned by the bank for insufficient funds

7. A. Payments Outside of Office. The utility shall may, in its discretion, accept payment at the customer's premises in lieu of discontinuing service for either a delinquent water, stormwater, or sewer bill. The utility, in its discretion, may refuse to accept payment in cash at the customer's premises.<sup>74</sup>

8. B. Bad Checks. If a customer has received notice of a scheduled termination, and, to avoid such termination, makes payment by check which is subsequently dishonored by the bank, the utility may then terminate water service ~~only after it has mailed~~ without further notice, ~~by first class mail, to the customer at least five (5) calendar days, excluding state or federal holidays, prior to termination; provided that at the option of the utility, either personal contact or telephone contact may be substituted for contact by first class mail.~~<sup>75</sup>

C. Administrative Fee. The utility may add a \$25.00 administrative fee to the bill of a customer when the utility has sent personnel to disconnect a customer's service and the customer makes payment prior to disconnection, provided the utility has such an administrative fee in its tariff.<sup>76</sup>

i. Multiple Trips. When the utility is required to make multiple trips to disconnect service due to the presence of obstructions preventing safe access to the meter, the utility may charge an administrative fee for each trip, and, in addition thereto, add a charge to the customer's bill for unusual costs incurred by the utility in implementing the disconnection, including but not limited to towing fees, animal control costs, and additional utility personnel.<sup>77</sup>

4. ~~10.~~ Deferred Payment Agreement. 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

<sup>70</sup> Term stricken because it would effectively not count as valid programmed calls, e-mail, communications with a customer who is not "responsible", i.e., has Alzheimer's Disease, and rule could lead to disclosure of confidential customer information to someone who is not the customer of record.

<sup>71</sup> Rule specifies what constitutes a person contact attempt. is amended to clarify it may apply to non-payment for stormwater service.

<sup>72</sup> Moved to Rule 4.8.a.5.

<sup>73</sup> Moved to Rule 4.8.a.5.

<sup>74</sup> Rule changed to make acceptance of payment outside of office discretionary to the utility for the same reasons stated in the comments filed by the West Virginia Rural Water Association, Tomlinson Public Service District, and the Berkeley County Public Service Water District. Reference to termination for non-payment of stormwater added.

<sup>75</sup> See Utility Coalition Comments, at 5-6.

<sup>76</sup> New provision, consistent with recent Commission decisions.

<sup>77</sup> Term necessary to discourage creative efforts by customers to avoid termination.

into a deferred payment agreement: Provided, that the 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 availability of a reasonable payment plan.

A. Factors. 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 delinquency; ability of the customer to pay; payment history; time the delinquency has been outstanding; reasons why the delinquency has been outstanding; and any other relevant factors.

B. Notice of Right to Challenge. The deferred payment agreement shall include language informing the customer of the right to challenge the reasonableness of the proposed payments to the Commission.

C. Payment While Challenge Pending. During the challenge, the utility may not terminate service: provided that the current bill must be paid by the customer on time and in full in order to protect his rights under this rule.

D. Payment Obligation. Once a deferred payment agreement has been established, the customer must pay the current bill on time and in full and make timely payments in accordance with the deferred payment agreement.

~~E. E. Breach. If the deferred payment is not received in accordance with the terms of the agreement or the payment is made with a check subsequently dishonored by the bank, 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 state or federal holidays, prior to termination: provided that at the option of the utility, either personal contact or telephone contact with the customer 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. However, if the customer has, during the previous twelve (12) months, attempted to make payment by a check which was subsequently dishonored by the bank the utility may refuse the customer's check and immediately terminate service without additional notice.~~<sup>78</sup>

E. F. Renegotiation. If the customer's financial condition significantly changes and the existing payment agreement results in hardship, the utility shall renegotiate the payment agreement, consistent with the provisions of Rule 4.8.a.10.A 4.A. The customer shall provide documentation in support of his claim that his financial condition has changed. During the renegotiation period the customer must continue to pay the current bill on time and in full and make some payment on the delinquency.

5. Time of Termination. Service shall actually be discontinued no sooner than ten (10) days following the date that a utility has mailed to a customer a statement that sewer bills are delinquent. Service shall not be discontinued on a Saturday, Sunday, any day that is a federal or state full or partial holiday, a day on which the utility's business office is not open to accept payment, or on the day before such days, unless an emergency exists. All disconnections shall be performed between the hours of 8 a.m. and 4 p.m.<sup>79</sup>

6. Reconnection. Once a disconnected customer has paid his delinquency in full, or the utility has agreed to enter into a deferred payment agreement with the customer, and all disconnect and/or

<sup>78</sup> Last sentence stricken as redundant given Rule. 4.8.a.3.

<sup>79</sup> Consolidation of several rules.

reconnect fees have been paid, the utility shall reconnect the customer's water service as soon as possible but no later than twenty-four (24) hours from the time the customer pays all disconnect and reconnect fees.

4.8.c. Charge for Reconnection

1. Utility Termination. Whenever the supply of water is turned off for violation of rules, non-payment of bills, or fraudulent use of sewer, the utility may make a charge as set forth in its tariff for reestablishment of service.

2. Customer Termination. If service is discontinued at the request of the customer, the utility may refuse service to such customer, at the same premises, if requested within eight (8) months of the date service was discontinued, unless the customer shall first pay the reconnection charge set forth in the utility's tariff.

4.8.d. Treatment of Households. The utility shall not ~~refuse, deny, or~~ discontinue service to an ~~applicant or~~ present customer due to a delinquency in payment for service by a previous occupant of the premises to be served unless such ~~applicant or~~ present customer and such previous occupant are members of the same household and were members of the same household at the time the delinquent bill was incurred.<sup>80</sup>

4.8.e. Combined Water and Sewer ~~public service districts~~ Utilities. Any ~~public service district~~ utility providing water and sanitary or stormwater sewer service to its customers shall have the right to terminate water service for delinquency in payment of either water or sewer bills; provided that proper notice is given and procedures followed as set out in these Rules.<sup>81</sup>

4.8.f. ~~Inter-utility Agreements regarding for Discontinuance of Water Service for Non-Payment of Sewer bills.~~

1. ~~In the event that any utility, (whether public, private, city, incorporated town, municipal corporation or public service district) owns and operates either water facilities or sewer facilities, and a separate utility owns and operates the other kind of facilities, either water or sewer, then the two utilities 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 Rules 4.8.a.1. through 4.8.a.13.~~ Eligible Parties. A sanitary sewer utility may contract with a water utility to discontinue the supply of water service for non-payment of sanitary sewer or MS4 service fees and charges.<sup>82</sup>

2. Municipal sewer—When sewer facilities are municipally owned and water facilities are not, the municipality providing sewer service may require the water utility to discontinue water service to any customer who is delinquent in the payment of sewer service rates and charges to the municipality. The water utility shall 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 water utility which contract shall provide that the municipality shall reimburse the water utility for all costs and expenses incurred in both the termination of water service to the delinquent sewer customer and the subsequent resumption of water service to such customer.<sup>83</sup>

<sup>80</sup> Rule amended to address disconnection only. Similar rule addressing denial of service appears at Rule 4.10.d.

<sup>81</sup> Rule amended to address stormwater systems and to clarify that it applies to any utility providing both water and sewer service.

<sup>82</sup> Rule amended to make more concise and to address MS4 systems.

<sup>83</sup> Term stricken as redundant given other rules.

2. Terms.

A. Indemnity. The contract shall provide for reasonable methods and assurances so that the water utility 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 customer through the fault of the ~~municipal sewer utility.~~ system.<sup>84</sup>

B. Procedures. The inter-utility agreement should contain specific provisions regarding responsibilities of notice of termination, termination, reconnection, and reasonable fees based on ~~fair and reasonable compensation.~~ tariff charges.

3. Commission Approval. Any ~~inter-utility~~ agreements pursuant to Rule 4.8.f.2h. shall be submitted to the Commission for approval prior to any termination of water service for non-payment of sanitary sewer or MS4 bills under such agreements.<sup>85</sup>

~~4. Notice and Procedure.~~ Prior to termination of water service, proper notice must be given and ~~procedures followed as set forth in these rules.~~<sup>86</sup>

~~5. A water utility that has terminated or reconnected service for non-payment of sewer bills or that has made a visit to the customer's premises to terminate service, may charge the sewer utility a fee pursuant to Rule 4.8.e. 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.~~<sup>87</sup>

4. Deferred Payment Agreement. A sanitary sewer customer who has been notified that water service is to be terminated for non-payment of sanitary sewer bills shall be given the opportunity to enter into a deferred payment ~~on the same terms and conditions set forth in Rule 4.8.a.10. as provided in Rules for the Government of Sewer Utilities, 150 WVCSSR Series 5.~~ An MS4 system is not obligation to offer or to enter into a deferred payment agreement.<sup>88</sup>

4.9. Utility Discontinuance for Other Reasons.

4.9.a. Termination without notice. Where conditions hazardous to life or property or continuity of service to other customers are found to exist on the customer's premises, where the utility's collection or transmission equipment or facilities have been tampered with or damaged, the water may be shut off without notice in advance.<sup>89</sup>

4.9.b. Termination with notice. Where a customer has failed to post or re-post a security deposit, failed to provide the utility with access to the customer service line. or where the customer's service line is in a condition that is not compliant with these rules, the utility may terminate service following the notice required by Rule 4.8.b.<sup>90</sup>

<sup>84</sup> Rule amended to broaden scope to include all types of sewer systems.

<sup>85</sup> Rule amended to clarify application to MS4 systems.

<sup>86</sup> Stricken as redundant.

<sup>87</sup> Deleted as unneeded given other changes.

<sup>88</sup> Rule amended to provide distinct procedures applicable to MS4 and sanitary sewer utilities.

<sup>89</sup> Rule modified to clarify that utility can terminate service to customer where large leak threatens service to other customers, where user has tampered with or damaged utility's facilities.

<sup>90</sup> New provision to put into one place other reasons for termination of service.

4.9-10. Refusal to Serve Applicant.

4.9-10.a. Non-Compliance With Rules. Any utility may decline to serve an applicant until he has complied with these rules and the Commission approved utility's rules set forth in a Commission approved tariff governing sewer service.

4.9-10.b. Applicant's Facilities Inadequate. The utility may refuse to serve an applicant if, in its judgment, the applicant's installation of piping equipment is regarded as hazardous or of such character that satisfactory service cannot be provided.

4.9-10.c. Uncollectible Bills. A bill which has been found to be contractually uncollectible by a court or could reasonably be found to be uncollectible by reason of an applicable statute of limitations shall not be used by a utility to deny or discontinue service.

4.8-10.d. Treatment of Households. The utility shall not refuse service to an applicant due to a delinquency in payment for service by a previous occupant of the premises to be served unless such applicant and such previous occupant are members of the same household and were members of the same household at the time the delinquent bill was incurred, or the applicant is a tenant and the landlord has a delinquency.<sup>91</sup>

4.9-10.e. Main Extensions. In the case of the establishment of a new utility and/or extensions, when the utility has received applications for service and has accepted the tap-fee for same; the utility will immediately upon receiving bids for such installation determine the feasibility of serving the areas in question and immediately advise the applicants. In the event an area is deemed infeasible to serve, the tap-fee deposit will be returned to the applicant immediately.<sup>92</sup>

4.9-10.f. Applicant's Recourse. In the event that the utility shall refuse to serve an applicant under the provisions of this rule, the utility must inform the applicant that the question may be submitted to the Commission for decision.

It is suggested the utility design its application form to reflect the above procedures.<sup>93</sup>

~~4.10. Change in Character of Service. When a substantial change is made by a utility in water pressure, or other conditions affecting the efficiency of operation or adjustment of appliances, the utility shall inspect and readjust the appliances of all customers in the district affected, if necessary, without charge. Where circumstances require, the utility shall furnish and install suitable pressure regulating devices.<sup>94</sup>~~

4.11. Access to Property.

4.11.a. Reasonable Access. The utility shall at all reasonable times have access to service connections and other property owned by it on customer's premises, for the purpose of maintenance and operation. Neglect or refusal on the part of customers to provide reasonable access to service connections

<sup>91</sup> New term, modeled upon Rule 4.8.d. with addition that a tenant can be denied service if a landlord has failed to pay a delinquency.

<sup>92</sup> Rule amended to remove excessive notification.

<sup>93</sup> Term removed as it is advisory only.

<sup>94</sup> Term stricken as it entails utility personnel entering customer premises, raising insurance and bonding costs to utilities.

and other property owned by the utility for the above purposes shall be deemed to be sufficient cause for discontinuance of water service, subject to the notice and procedures provided in these rules, unless immediate termination of water or sewer is required to protect life, property, or the continuity of service to other customers.<sup>95</sup>

4.11.b. Identification for Employees. Every employee, whose duties regularly require him to enter the homes of customers, shall wear a distinguishing uniform or insignia, identifying him as an employee of the utility and shall carry on his person an identification card which will identify him as an employee of the utility, containing a photograph of said employee. The identification card shall contain the telephone number of the utility as well as other pertinent information necessary to identify the employee. All other employees, whose duties require occasional entry into the homes or premises of customers, shall carry an identification card containing information as herein required.

4.142. Service Interruptions.

4.142.a. Records of Interruptions. 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 the interruptions.

4.142.b. Notice Required for Scheduled Interruptions. The Bureau for Public Health, the Department of Environmental Protection, the 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 or environmental 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.<sup>96</sup>

~~4.11.c. Notice required for unscheduled interruptions — In the event of an unscheduled service interruption, the Bureau for Public Health, the Department of Environmental Protection, and the Commission shall be notified as soon as possible upon a utility becoming aware of an unscheduled service interruption. Additionally, customers and the general public shall be made aware of the unscheduled service interruption by utilizing one or more of the following acceptable methods of public notification as appropriate:~~

~~A. Fax/e mail notification to local radio and television stations, cable systems, newspapers and other print and news media in the affected area as soon as possible after the event occurs. The notification must provide relevant information about the event, such as the affected location, its potential impact including possible adverse health effects and the population or subpopulation particularly at risk, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed.~~

~~B. Use of the utility's own Internet web site and 24/7 emergency phone line and integrated voice response system to provide relevant information about the event, such as the affected location, its potential impact including possible adverse health effects and the population or subpopulation particularly at risk, and a description of actions affected ratepayers/occupants should take to ensure their safety, with updates as often as needed.~~

~~C. Automated dialer system (outbound dialing) notification to affected~~

<sup>95</sup> Rule amended to clarify that notice is required to terminate except in specified circumstances.

<sup>96</sup> Commission proposed strike through of last clause removed to maintain current notice procedures, which are inapplicable to cases of unexpected interruption.

ratepayers'/occupants' landline or wireless phones:

~~\_\_\_\_\_ D. Actual notice to affected health care and childcare facilities and other facilities, for example, schools and restaurants, as determined by consultation with the Commission, the Bureau for Public Health, the Department of Environmental Protection and other state agencies as necessary.~~

~~\_\_\_\_\_ E. Other types of direct or actual notice, such as doorknob flyers distributed to affected ratepayers/occupants, when feasible.~~

~~\_\_\_\_\_ F. Email and text message notification to affected customers who have opted to receive notice through use of these methods.~~

~~\_\_\_\_\_ G. Coordination with state and local emergency management agencies as needed to use any emergency alert system available for qualifying situations.~~

~~\_\_\_\_\_ 4.11.d. Public Notice Templates — Utilities should have public notice templates prepared in advance to be available when needed to avoid wasting critical time developing materials when confronted with an unscheduled service interruption. The notices should cover all possible contaminants of concern and associated health effects.~~

~~\_\_\_\_\_ 4.11.e. Utility Contact Person — To ensure that the public is informed, utilities should have a knowledgeable contact person stationed onsite during the emergency, if possible, to communicate to the public and media on behalf of the company. <sup>97</sup>~~

#### 4.13. Moratoria.

4.13.a. Petition. A utility, Commission Staff, or governmental entity may petition the Commission in writing for the imposition of a moratorium on a system. The petition should include evidence of the existence of conditions outlined in Rule 4.12.d. If the utility is the petitioner, it must state the utility's plan to remediate those conditions.

4.13.b. Public Notification Notice of Petition. A party petitioning for a moratorium shall notify the public that such request is being made, through a Class II legal advertisement in the form of Sewer Form No. 3, "Public Notice of Filing of a Petition for Imposition of a Moratorium" attached to these Rules, published no later than fifteen (15) calendar days from the date such request is made to the Commission. The notification shall clearly state which areas of the utility's system are affected, and that interested parties may submit comments to the Commission for consideration.

4.13.c. Refusal of Service. A utility may not deny service to a prospective customer on grounds of a moratorium until the Commission or another State agency has imposed a moratorium. ~~Any utility denying service to a prospective customer or group of customers due to a moratorium shall notify, in writing, all applicants for service of their right to file with the Commission a request for exemption from the moratorium. <sup>98</sup>~~

4.13.d. Conditions. The Commission may impose a moratorium on a system, either entire or apportioned, whenever sufficient evidence exists that the existing facilities are operating in excess of design capacity, that the system capacity necessary for future demand does not exist, that a sale for resale

<sup>97</sup> Commission proposed notice requirements applicable to unscheduled interruptions stricken as unworkable for small utilities with small staffs, and also for the reasons stated in the comments filed by the Berkeley County Public Service District that such notice is overkill in most situations.

<sup>98</sup> Rule amended to acknowledge efficacy of moratoria imposed by other state agencies.

customer is using wastewater transmission or treatment in excess of its contractual rights, or when an increase in customers will result in the degradation of service to existing customers.<sup>99</sup>

4.13.e. Improvements to System. A utility upon which a moratorium is imposed shall continue to seek improvements to its system necessary to lift the moratorium. The Commission may, at its discretion, require the utility to submit reports outlining all progress made toward system improvements.

4.13.f. Exemptions. Any utility denying service to a prospective customer or group of customers due to a moratorium shall notify, in writing, all applicants for service of their right to file with the Commission a request for exemption from the moratorium. Any prospective customer or group of prospective customers may apply to the Commission for an exemption from an existing moratorium. Such requests shall be made in writing by the prospective customer(s) to the Commission, and shall include justification for the proposed exemption.<sup>100</sup>

4.13.g. Imposition by Other State Agency. A utility must immediately notify the Commission in writing if a State agency other than the Commission imposes a moratorium on the utility's system. The issuance of a moratorium by another State agency is effective upon issuance, and remains in effect until modified or removed by the State agency issuing the moratorium.<sup>101</sup>

4.14. Bulk Treatment. Wastewater transported or treated on approved rates or contracts by a public utility shall not be resold or caused to be resold by any customer with more than 25 users unless the said customer is engaged in the business of collecting wastewater as a public utility. When a utility learns that a customer with more than 25 users that is not a public utility is reselling wastewater treatment or transportation service, the utility shall continue to provide treatment and/or transportation to the customer, subject to the terms of these rules and the utility's tariff, until the Commission enters an order to modify or terminate service.<sup>102</sup>

## §150-5-5. Utility Facilities; Service Pipes; Extension of System.

### 5.1. Adequacy of Facilities.

5.1.d. a. Construction and Maintenance of Plant. Each utility shall at all times construct and maintain its entire plant and system to furnish safe, adequate and continuous service. The collecting system of every sewer utility shall be designed, constructed, maintained and operated to receive and transport the sewage from its customers' outlets to its treatment plant without undue delay.

5.1.b. Compliance with DEP and BPH Rules. Where the terrain is such that pumping or lift stations must be provided, such facilities must have the approval of the Bureau for Public Health and the Department of Environmental Protection and be operated under the rules of the Bureau for Public Health and the Department of Environmental Protection. ~~5.1.e.~~ When a new sewer utility proposes to construct and operate a sewer service business, its entire plant layout shall be approved by the Bureau for Public Health and the Water Resources Division of the Department of Environmental Protection.

5.1.e. c. Inspection of Plant. Each utility shall inspect its plant and facilities in such manner and with such frequency as is 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~~

<sup>99</sup> Rule amended to specify that a utility may petition the Commission for imposition of a moratorium based upon a sale for resale system exceeding its contractual right to capacity.

<sup>100</sup> Rule combines two components of current Rules 4.12.e and .f

<sup>101</sup> Rule confirms effectiveness of moratoria issued by other state agency.

<sup>102</sup> New term added similar to Water Rule 4.15

Minimum Federal Safety Standards (Federal Occupational Health and Safety Administration) and the Bureau for Public Health and the Department of Environmental Protection.<sup>103</sup>

~~5.1.f. Records of conditions — Records necessary for the proper maintenance of the system and in accordance with the Bureau for Public Health and the Department of Environmental Protection 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.~~

5.1.g. d. Records of Operation. Each utility shall keep a record of the operation of its plant, which, so far as practical, shall show sufficient details of plant operation as is 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 Bureau for Public Health and the Department of Environmental Protection. In special cases, a more complete record may be specified by order of the Commission.<sup>104</sup>

5.1.h. e. Report to Commission. Each utility shall, upon request by order 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.

## 5.2. Utility Service Pipe.

5.2.a. Pipe Installation Method. Where 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 mains are located, the utility will furnish, install, and maintain the utility service pipe and appurtenances between the main in the street up to the customer's point of service at or near 90 degrees to the main. All such service pipes and appurtenances shall be installed only by the utility unless by prior written agreement.

5.2.b. Location and Materials. The utility shall determine the size, kind, quality, and location of all materials used in the utility service pipe.

5.2.c. Road Crossings. The utility shall install and maintain, at its own cost and expense, all of the utility service pipe to the point of service, regardless of the side of the road on which the customer is located in reference to the main line. The utility shall designate the point of service on the customer's side of the road.

5.2.d. Tap Fees. The utility shall not make any charge for furnishing and installing any permanent service connection, unless the utility has prior approval of the Commission to charge a tap fee and the same is set forth in the utility's tariff on file with the Commission.

1. Cost Limit. If the cost to the utility of installing a permanent service connection is more than 42 times the estimated monthly gross revenue to be received by the utility from the customer, as calculated under Rule 5.5.b.2., the utility is not obligated to install a permanent service connection unless the customer pays in advance the estimated cost of installing a permanent service connection over and above 42 times the estimated monthly gross revenue to be received by the utility from the customer. If the actual cost to install the permanent service connection is less than estimated, the utility shall refund any excess amount collected from the customer after the utility has made final payment to its contractor or the utility's personnel have completed the installation. If the actual cost to install the permanent

<sup>103</sup> References to other applicable legal requirements stricken as redundant.

<sup>104</sup> New language moved from Rule 5.1.f.

service connection is greater than estimated, the utility shall collect the excess amount through the customer's regular bill over a 12 month period.<sup>105</sup>

~~5.2.e. The utility service pipe shall remain under the utility's sole control and jurisdiction.~~<sup>106</sup>

~~5.2.f. The customer shall not attach any fixtures to, or make any branches in, the utility service pipe between the point of service and the main. Violation of this rule may result in termination of service pursuant to these rules.~~<sup>107</sup>

5.2.5. e. 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, that service shall not be deemed to be available unless the sewage will flow by gravity or be transported by such other methods approved by the Bureau for Public Health including, but not limited to, vacuum and pressure systems, approved under W. Va. Code §16-1-9, from the customer's premises into the utility's facilities.

5.2.h.f. Service Pipe Installation. Each utility shall adopt standard methods of service pipe installation where practicable. Such methods shall be set out with written descriptions and drawings to provide a clear understanding of the requirements, ~~all of which shall be submitted to the Commission.~~<sup>108</sup>

5.2.g. Temporary Connection. Temporary service connections for construction or other temporary purposes shall be installed by the utility at the cost of the applicant.

### 5.3. Customer Service Pipe.

5.3.a. ~~Selection of Location and Materials.~~ The utility's authorized employee shall inform the customer of the location of the point of service. The customer shall install the customer service pipe to the point of service after which the utility will install the utility service pipe from the distribution main to the point of service. Where the utility's service pipe is already installed to the point of service, the customer shall connect with the utility service pipe as installed. The utility will specify the size, kind, quality and location of all materials used in the customer's service pipe and the customer shall comply with those specifications.<sup>109</sup>

5.3.b. One Customer Per Service Pipe. There shall be no more than one (1) customer service pipe required to serve a single premises and each premises shall be supplied through an independent customer service pipe, unless otherwise approved by the utility in writing.<sup>110</sup>

5.3.c. Installation Requirements. The customer's service pipe shall: be laid below the frost line at all points; be placed on firm and continuous earth so as to give unyielding and permanent support; and be installed in a trench at least two (2) 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.<sup>111</sup>

<sup>105</sup> New term to place cap on utility's cost to install a tap. See Utility Consortium Comments at 9-10. Cost provisions made consistent with utility contribution requirement under Utility Consortium proposed amendment to Rule 5.5

<sup>106</sup> Stricken as unnecessary.

<sup>107</sup> An all inclusive tampering rule is provided at Rule 5.3.h.

<sup>108</sup> Stricken term removed as unenforced by the Commission and needlessly costly and intrusive, as utility methods change frequently.

<sup>109</sup> Consolidation of several former rules.

<sup>110</sup> Term moved to increase logical flow of rule.

<sup>111</sup> Consolidation under one topic of several rules.

~~5.3.c. Where the utility's service pipe is already installed to the point of service, the customer shall connect with the utility service pipe as installed.~~<sup>112</sup>

5.3.j.d. Property rights requirements. Except in the case of a Commission approved Easement long Service Lines, a customer's service pipe shall not pass through or across any premises or property other than that to be served, nor across any portion of the property that could practicably be sold separately from the immediate premises served, and no wastewater pipes or plumbing in any premises shall be extended therefrom to adjacent or other premises.

~~5.3.f. The customer's service pipe shall be installed in a workmanlike manner, shall conform to all reasonable rules and regulations of the utility, and shall be maintained by the customer at his own expense.~~<sup>113</sup>

5.3.k.e. Right to Inspect. The customer's service pipe and all connections and fixtures attached thereto shall be subject to the inspection of the utility before use water will be turned on, and all premises, including any and all fixtures within the said premises, shall at all reasonable hours be subject to inspection by any duly authorized employees of the utility.<sup>114</sup>

5.3.b.f. Responsibility for Customer Service Pipe. Once an application for service has been granted, the customer shall install and maintain the customer service pipe. The customer's service pipe shall be installed in a workmanlike manner, shall conform to all reasonable rules and regulations of the utility, and shall be maintained by the customer at his own expense. A customer must maintain his service pipe in good condition and free from all leaks and defects, at the customer's cost and expense. A customer's failure to comply with this rule may result in termination of water or wastewater service pursuant to these Rules.<sup>115</sup>

~~5.3.g. The utility will specify the size, kind, quality and location of all materials used in the customer's service pipe and the customer shall comply with those specifications.~~<sup>116</sup>

5.3.l.g. Change in customer service pipe. If the utility makes changes in grade, relocates mains, or causes other changes in service not initiated by the customer, then the utility shall make changes and bear the full costs of changes in the customer's service pipe location. ~~required due to changes in grade, relocation of mains, and other causes not related to the customer.~~ The customer shall bear the full costs of changes in service pipe location desired by the customer for his or her convenience.<sup>117</sup>

5.3.h. Tampering. No customer, plumber, company owner or any agent shall connect to the utility's main, to any utility service pipe, customer service pipe, or extend the pipes therefrom to any premises for the purpose of securing wastewater service, until application has been made therefore to the utility as provided in these rules and permission for doing so has been granted by the utility in writing. The customer shall not attach any fixtures to, or make any branches in, the utility's main, the utility service pipe, or the customer service pipe between the point of service and the premises served. The utility may terminate water and/or wastewater service without advance notice and refuse to serve a person until charges for estimated usage for the period in which the utility has information that leads it to believe a person has been receiving wastewater in violation of this rule are paid. In addition, the utility

<sup>112</sup> Moved to 5.3.c

<sup>113</sup> Moved to 5.3.b

<sup>114</sup> Change to clarify that water service should not commence prior to sewer utility's completion of inspection.

<sup>115</sup> Consolidation under one topic of several rules.

<sup>116</sup> Moved to 5.3.c

<sup>117</sup> Rule clarifies critical distinguishing feature as to whether customer or utility is financially responsible.

may charge a damaged facilities fee equivalent to its tap fee (in addition to a regular tap fee charge) for violation of this rule; provided, the utility has a damaged facilities fee in its tariff.<sup>118</sup>

5.3 ~~m.i.~~ Inflow Prohibited. The connection of surface drains to the sanitary system is prohibited. As a means to deter prohibited connections where surface or ground water is introduced into the sanitary system, the utility may add a surcharge to the customer's sewer bill where evidence of a violation exists. The surcharge shall be authorized by separate schedule to the utility's sewer tariff filed pursuant to the Rules for the Construction and Filing of Tariffs, 150CSR2, but the utility need not file revenue, expense, or other financial data unless otherwise ordered by the Commission. The charge for roof drains, downspouts, storm sewers or similar facilities connected to the sanitary sewer system will be calculated by the formula or rate clearly stated in the tariff, and will not be cumulative to any metered rate for sewer service. The tariff should further provide that the surcharge will not be imposed unless and until the customer is notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or surface water is being introduced into the sanitary sewer, and that the customer has thirty (30) days to divert that water from the sanitary sewer.

#### 5.4. Long Service Lines.

[Reserved]

5.5. Main Extensions of mains to serve new customer(s) and customers currently served under Rule 5.4.

#### 5.5.a. General.

1. Duty to Serve. A water utility, whether publicly or privately owned, is under a public service obligation to extend its mains, ~~and its plant and~~ appurtenant facilities to serve new customers within its service area who may apply for service pursuant to this rule.

2. Applicability and Exemption. The terms of Rule 5.5 apply to the extensions of mains that do not involve the borrowing of funds by the utility or the issuance of a certificate of convenience and necessity by the Commission under W.Va. Code §24-2-11.<sup>119</sup>

A. Certificates of Convenience and Necessity. The issue of whether a certificate of convenience and necessity is required for a project is case specific and utility specific. If a utility is in doubt as to whether or not a certificate of convenience and necessity is required for a project, it should file a written request for assistance with the Director of the Legal Division of the Commission and cooperate with the Legal Division and Staff in aiding the evaluation of that request. While an opinion of the Legal Division of the Commission does not bind the Commission, compliance with an opinion of the Legal Division constitutes proof of the utility's good faith effort to comply with law.<sup>120</sup>

~~5.5.d. 3.~~ Location and Length of Mains. Every effort shall be made by a utility to install its distribution main in the public road right-of-way or in a utility right-of-way abutting the public road right-of-way. The length of the extension required shall be that length required to extend from the new proposed service area to the nearest point of connection to the utility system having sufficient excess capacity to provide service at maximum demand. In determining the length of main extensions or of sewer line to be installed in an urban area when land is subdivided in lots, the main shall be extended to

<sup>118</sup> Rule consolidates several provisions in Rules regarding unauthorized customer modification to facilities.

<sup>119</sup> New term to define applicability of rule.

<sup>120</sup> New term to explain process for utilities to determine whether a certificate is required.

fully cover the frontage of the property and if the last lot to be served is a corner lot, the terminal point of the extension made hereunder shall be located so that the sewer line ties in with the intersecting street; and further; provided that if there is no main located in the intersecting street, the terminal point of the extension 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.<sup>121</sup>

~~5.5.b. 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.~~

~~5.5.c. For any proposed extension of mains, a reasonable relationship should exist between the per customer investment to serve new customers and the per customer investment to serve existing customers.~~<sup>122</sup>

#### 10.4. Rights-of-Way.

A. Standard Acquisition. If the construction of an extension involves the acquisition of a private right-of-way, then the prospective customer shall attempt to secure the right-of-way and deliver a copy of a stamped and recorded easement it to the utility free of cost before construction of the extension is started.<sup>123</sup>

B. Utility Acquisition. 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. New Roads. Before sewer lines will be laid in any new subdivision, the road surface shall be brought to the established sub-grade as determined by the agency having jurisdiction.

~~5. Length and location of extensions. In determining the length of main extensions or of sewer line to be installed in an urban area when land is subdivided in lots, the main, or sewer line (if installed by an entity other than a utility), shall be extended to fully cover the frontage of the property and if the last lot to be served is a corner lot, the terminal point of the extension made hereunder shall be located so that the sewer line ties in with the intersecting street; and further; provided that if there is no main located in the intersecting street, the terminal point of the extension 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.~~<sup>124</sup>

~~9. Construction conditions — Construction of line extensions, as provided in this rule, will be undertaken promptly after all applications have been completed, necessary right-of-way agreements or rights of entry have been delivered to the utility, and all prospective customers have signed contracts. applications for service and paid all applicable fees, including tap fees, and deposits.~~<sup>125</sup>

8.6. Applicant Requirements. ~~Contract for services --~~ The utility shall not be required to make utility-funded financial contributions toward extensions or refunds as described in this rule unless

<sup>121</sup> Consolidation of several rules under one topic.

<sup>122</sup> Rules 5.5.b. and c. have been stricken as meaningless in light of the specificity of the rest of Rule 5.5.

<sup>123</sup> Rule amended to clarify that prospective customer has duty to get easement recorded, thereby preventing the delivery to the utility in a form unacceptable for recording.

<sup>124</sup> Rule 5.5.d.5 moved to 5.5.a.3. with some changes.

<sup>125</sup> Stricken as redundant.

those to be served by such extensions shall guarantee to the utility that they will agree to take the service at their premises within thirty (30) days after service is available or as otherwise mutually agreed in a user's agreement, and pay all applicable charges, including tap fees and security deposits.<sup>126</sup>

~~7. This rule shall not be construed as prohibiting the utility from entering into an agreement with a customer that complies with the Commission approved checklist attached hereto as Sewer Form No. 7, in providing an alternate plan for a main extension. Commission Staff may be consulted to provide assistance and sample forms. In providing an alternate plan for main extensions a utility may not discriminate between customers whose service requirements are similar. The agreement shall be filed with and approved by the Commission prior to the implementation or execution of the agreement by any of the parties. The agreement shall include the name, address and phone number of the parties to the agreement. The agreement shall also include a provision explaining why the utility is not funding the extension. The agreement must attach a copy of this Rule 5.5., and a statement signed by the prospective customer that he has reviewed and understands the provisions of Rule 5.5.f. which entitle a customer to refunds and that he knowingly waives such rights, if applicable. Failure to obtain 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 to all facilities including property, plant and rights-of-way incidental to the furnishing of utility service.~~<sup>127</sup>

7. Ownership. The utility shall own standard main line extensions upon commencement of construction. Upon completion and acceptance by the utility, alternate main line and self-help extensions made under this rule shall become ~~and remain~~ the property of the utility.<sup>128</sup>

8. Further Extensions. The utility reserves the right to further extend its sewer mains from and beyond the 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 such further extension or branch mains so installed.

9. Future Easements. A mandatory term in any standard main line extension agreement or alternate main line extension agreement is that any property owner or developer shall agree to grant the utility the necessary easements in the future which would allow the utility to make future extensions into unserved areas without the utility being required to pay additional consideration for the additional easements to the property owner or developer or its assigns. If the property owner or developer is unwilling to agree to grant the additional easements, the utility shall not be required to extend its main to serve the property owner or developer.<sup>129</sup>

5.5.e b. Standard Extension to Serve Existing Structures ~~for general sewer service.~~<sup>130</sup>

1. ~~The utility will respond to all inquiries regarding new sewer service, whether oral or written, by explaining all available options for obtaining service under these rules.~~<sup>131</sup>

2.1. Application and Estimate. The utility will, upon written request for service in the form of Sewer Form No. 4, by ~~a prospective customer or group of prospective customers~~ an owner or occupant of a completed structure or a group of owners or occupants of completed structures ("Prospective Customer") located in the same neighborhood vicinity, or a customer currently served under Rule 5.4,

<sup>126</sup> Rule modified to enhance clarity and completeness.

<sup>127</sup> Moved and changed at 5.5.h.1

<sup>128</sup> Rule modified to clarify different utility role vis-à-vis ownership in different type of extensions.

<sup>129</sup> Consolidation and elaboration of existing terms.

<sup>130</sup> See Utility Coalition Comments, at 11-13.

<sup>131</sup> Stricken for vagueness.

determine the necessary size of main required to give service and make an estimate of the cost of providing the requested service, using the form of Sewer Form No. 5, including pipe, valves, fittings, necessary materials, permits, labor costs incurred by the utility when the utility externally contracts for the construction of the extension, or internal labor costs, provided such internal or external costs are not recovered in existing rates, and other applicable related costs.<sup>132</sup>

A. Road Crossings. When a road crossing(s) is (are) necessary to serve the customer(s) the Prospective Customers, the cost estimate shall not include costs attributable to extending the main across the first road (closest to the already existing main), but shall include the costs of installing the main across a second and any subsequent road(s).

B. Estimate Deadline. The written estimate calculated using Sewer Form No. 5 shall be provided to the customer the Prospective Customer in the form of Sewer Form No. 6,<sup>133</sup> no more than forty-five (45) days from the receipt by the utility of the written request for service. The written estimate shall include an estimated construction start date and an estimated time of construction.<sup>134</sup>

C. Review of Estimate. If the prospective customer Prospective Customers believes that any part of the estimate is unreasonable, the customer Prospective Customers are is free to pursue an informal request for assistance from the Commission staff or to file a formal complaint with the Commission.

Commission Staff may be consulted to provide assistance and sample forms. The agreement must include as an attachment a copy of this extension rule.<sup>135</sup> The utility shall keep an executed copy of the agreement for at least six (6) years. The length of the extension required shall be that length required to extend from the new proposed service area to the nearest point of connection to the utility system having sufficient excess capacity to provide service at maximum demand.<sup>136</sup>

~~3.2. Whenever the utility is required to extend service from an existing distribution main to property that does not immediately abut the utility's right-of-way or the public road that contains the distribution main, the extension shall be considered a main extension and the cost responsibility shall be determined under Rule 5.5.e.<sup>137</sup>~~

~~4.2. Utility Contribution. Where the cost of the extension does not exceed three and one-half 42 times estimated gross monthly revenue total net revenue as calculated below, from prospective customers Prospective Customers whose service pipes 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, who have paid applicable tap fees, security deposits and other charges, and who have signed user agreements agreeing to take service within 30 days of completion of the extension, 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.<sup>138</sup>~~

A. Estimated Gross Monthly Revenue. Estimated gross monthly revenue shall be based upon the utility's tariff rates in effect on the date Sewer Form No. 4 is received, estimated usage from Prospective Customers. If a utility's tariff is based upon any period other than a month, the utility shall

<sup>132</sup> Stricken as duplicative as already included on Form No. 5.

<sup>133</sup> Sewer Form Nos. 5 and 6 are largely redundant, so they have been consolidated into one form.

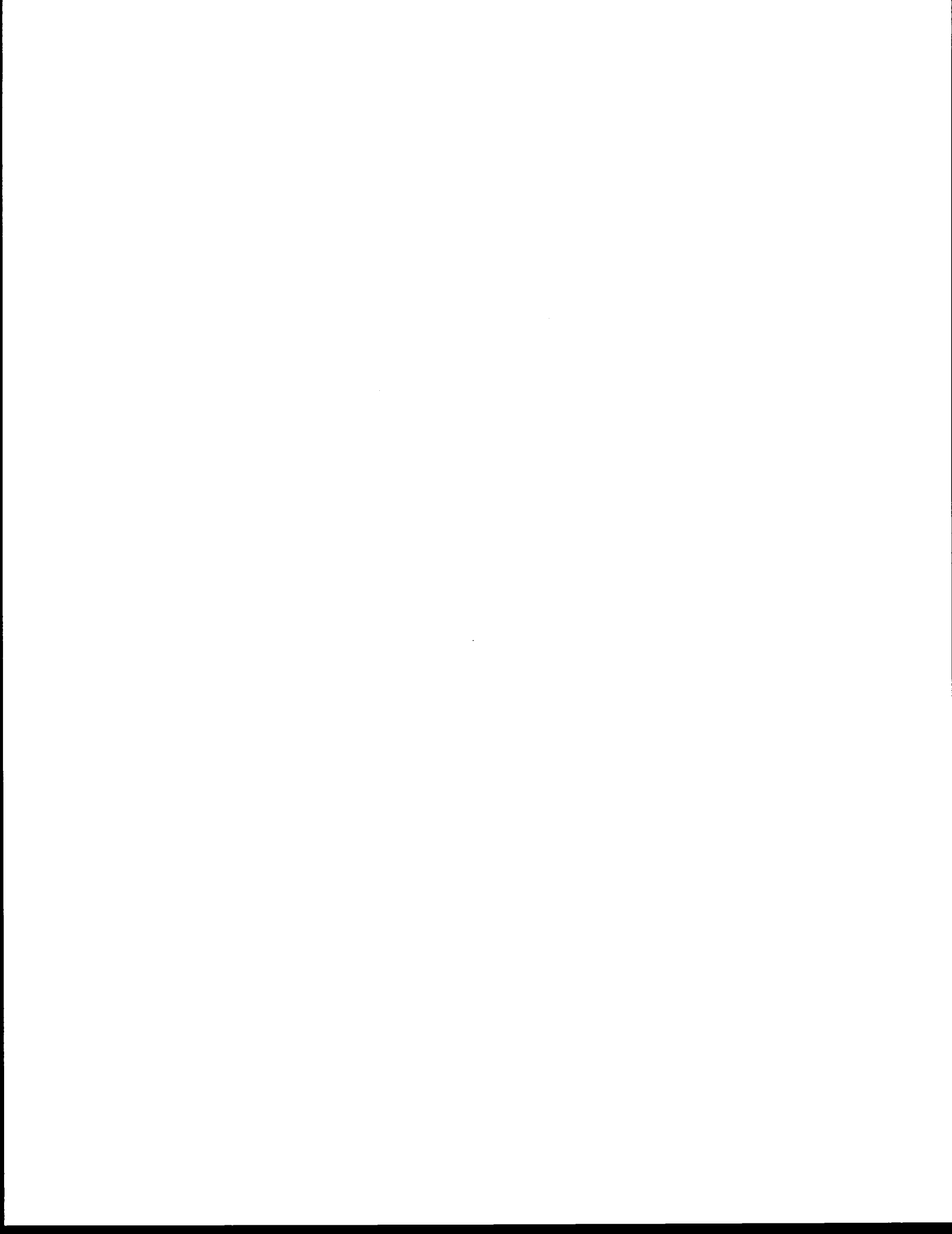
<sup>134</sup> Stricken as duplicative as already included on Form No. 6.

<sup>135</sup> Not required for standard main line extension agreements.

<sup>136</sup> Last sentence moved to 5.5.a.2.

<sup>137</sup> Stricken as meaningless.

<sup>138</sup> Rule amended to revert to "three and one half times" rule of prior water rules. Rule modified to simplify mechanics of calculating utility contribution.



adjust its calculations to reflect the monthly average of its charges.

i. Residential Customers. In estimating revenue to be obtained from residential customers, the utility shall use its average monthly residential volume, if available. If the utility is unable to determine its average residential monthly volume, the utility shall use 4,000 gallons. For customers without meters, the utility shall use its flat monthly residential charge.

ii. Non-Residential Customers. For non-residential customers, the utility shall use the volume estimated for the type of customer served by reference to tables maintained by the American Water Works Association.

B. Written Agreement Required. Further, ~~the~~ The utility and the customer Prospective Customers shall execute a Standard Main Line Extension Agreement consistent with Sewer Form No. 6.

A. ~~Net revenue shall be gross revenue minus the excess usage leak adjustment rate approved for the utility, and with this difference further reduced for any revenue-based taxes.~~

B. ~~Revenue shall be based on 4,500 gallons per month per residential unit, unless circumstances of the Current Applicants show this would result in significant error. For non-residential units, annual revenue shall be based on typical consumption for comparable units published by the American Water Works Association.~~

C. ~~Estimated total net revenue for private, for profit, utilities will be calculated as six (6) times estimated net annual revenue. Each such utility shall file for a utility-specific line extension multiplier within twelve (12) months of the effective date of these rules.~~

D. ~~The utility-specific line extension multiplier for private, for profit, utilities shall be based on one (1) divided by the utility's net fixed charge rate. The net fixed charge rate shall equal the total a function of the utility's weighted cost of capital, applicable income tax rates, and the Commission approved depreciation accrual rate.~~

E. ~~Estimated total net revenue for associations, municipal, and public service district utilities will be calculated as five (5) times estimated net annual revenue. If the excess leak adjustment calculated for the utility fails to include all of the incremental costs of serving a new customer that should properly be netted out from the total revenues of the utility, the utility may apply to the Commission for a determination of the proper amount to be deducted from gross revenues to arrive at an appropriate determination of net revenue.~~

5.5.f. 3. Prospective Customer Contribution. ~~Extensions beyond the limit of utility-financed extensions of general water service and public fire service.~~

A. Deposit Requirement. If the estimated cost of the proposed extension required in order to furnish general sewer service exceeds the utility's estimate of total net revenue as determined by Rule 5.5.e-4.b.2, such extension shall be made if the Prospective Customer ~~or the authorized agent~~ contracts for such extension and deposits in advance with the utility the estimated cost of the extension over and above the limit of the utility-funded portion of the extension. The utility shall not pay nor be liable for any interest on such cash deposits. The utility shall make the extension after receiving the cash deposit.

B. Construction Refunds. 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, but in no event longer than ninety (90) days after completion of construction of the extension. 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. The customer may pay this additional amount in installments. No interest will be paid by the utility on the applicant's payment or on any balance to be refunded.<sup>139</sup>

C. Connection Refunds. The utility shall, for each bona fide new customer who, within a period of ten (10) years from the making of such extension, directly connects to the extension between its original beginning and original terminus refund to the original depositor(s), an amount equal to the estimated total net revenue of the new customer as determined by Rule 5.5.e-4.b.2., but in no event shall the aggregate refund made to the depositors exceed the original deposit. ~~Provided, however, that a~~ Associations, public service districts and municipal sewer utilities may elect to refund the estimated amount over a period of five (5) years making payments no less frequently than every six (6) months.

D. Written Agreement Required. ~~Further,~~ The utility and the customer Prospective Customers shall execute a Standard Main Line Extension Agreement consistent with Sewer Form No. 7.

~~5.4. 4. Alternate Main Line Extension Agreement Option~~

~~This rule shall not be construed as prohibiting the utility from entering into an agreement with a customer Prospective Customer that complies with the Commission approved checklist attached hereto as Sewer Form No. 7, in providing an alternate plan for a main extension. Commission Staff may be consulted to provide assistance and sample forms. In providing an alternate plan for main extensions a utility may not discriminate between customers Prospective Customers whose service requirements are similar. The agreement shall be filed with and approved by the Commission prior to the implementation or execution of the agreement by any of the parties. The agreement shall include the name, address and phone number of the parties to the agreement. The agreement shall also include a provision explaining why the utility is not funding the extension. The agreement must attach a copy of this Rule 5.5., and a statement signed by the prospective customer Prospective Customers that he has they have reviewed and understands the provisions of Rule 5.5.f. 5.5.b.3.C which entitle a customer to refunds and that he they knowingly waives such rights, if applicable. Failure to obtain 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 to all facilities including property, plant and rights of way incidental to the furnishing of utility service.~~

~~(2.) In estimating the cost of an extension, the estimate shall be based on the diameter of the pipe to be used; provided, that the estimated cost to the customer or customers shall not be based on a pipe diameter greater than the diameter of the main from which the extension is to be made, unless actual use estimated for the proposed customer or customers required a larger pipe.~~<sup>140</sup>

5.5.g. 4. Self-Help Extensions<sup>141</sup>.

A. Written Agreement Required. If a utility and an owner or prospective customer or group of prospective customers wish to enter into a self help extension agreement, the Utility shall prepare a self-help extension agreement containing, at a minimum, the information identified on Sewer Form No. 8 attached to these rules.

B. Commission Approval Required. A utility participating in a self help extension agreement shall submit the agreement to the Commission for review and approval prior to construction.

<sup>139</sup> New term.

<sup>140</sup> Stricken as redundant.

<sup>141</sup> New rule to give this practice a more consistent form and greater Commission oversight.

C.. Waiver Required. The utility shall not permit anyone to work on a self help project who has not signed a waiver of liability consistent with Sewer Form No. 9 to the benefit of the utility for injury to person or property related to construction of the Self-Help Extension.

5. Other Form of Extensions. This rule shall not be construed as prohibiting the utility from entering into an agreement with a customer on alternative terms than those described herein. Any extension agreement that is inconsistent with the Standard Main Line Extension Agreement, Self-Help Extension Agreement, or Alternate Extension Agreement must be reviewed and approved by the Commission.

5.5-h.c. Alternate Extensions to Serve Prospective Structures<sup>142</sup>

1. Written Agreement Required. Upon written request for service from a developer, builder, or owner of property ("Property Developer") to serve one or more proposed, incomplete, or unoccupied structures, the utility shall prepare an agreement with the that complies with the Commission approved checklist attached hereto as Sewer Form No. 10; provided, that such agreement may not provide for any reimbursement by the utility to the Property Developer for the cost of planning, designing, or constructing the extension.

2. Discrimination Prohibited. In providing an alternate plan for main extensions a utility may not discriminate between customers whose service requirements are similar. The agreement shall be filed with and approved by the Commission prior to the implementation or execution of the agreement by any of the parties.-unless the agreement is identical in its legal terms to a form or actual agreement that the Commission previously approved for the utility, in which case the utility need not submit the agreement to the Commission for review and approval. ~~The agreement shall include the name, address and phone number of the parties to the agreement. The agreement shall also include a provision explaining why the utility is not funding the extension. The agreement must attach a copy of this Rule 5.5., and a statement signed by the prospective customer that he has reviewed and understands the provisions of Rule 5.5.f. which entitle a customer to refunds and that he knowingly waives such rights, if applicable. Failure to obtain 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,~~<sup>143</sup>

3. Initiation of Service. Upon completion of construction and proper utility inspection of the extension, the utility shall initiate service only after proper transfer of title to all facilities including property, plant and rights-of-way incidental to the furnishing of utility service.

~~2. If a utility and a prospective customer or group of customers are attempting to negotiate an alternate mainline extension agreement and are unable to reach an agreement regarding a proposed alternate main extension plan, either party may bring the dispute to the Commission for resolution.~~<sup>144</sup>

5.6 Capital Improvement Fee. Upon the proper filing of a Tariff Rule 42A, 42T, or 19A rate case or a certificate case filed pursuant to *W. Va. Code* § 24-2-11 ~~by the utility~~, the utility may seek an ~~impact fee~~ a Capital Improvement Fee, Capacity Assurance Fee or such other fee designed to raise capital for future capacity to be assessed against new customers.<sup>145</sup>

<sup>142</sup> New rule applicable only to planned structures.

<sup>143</sup> See Utility Coalition Comments, at 11.

<sup>144</sup> Stricken as unneeded given rules requirement for non-discrimination. Utilities are subject to the filing of complaints for any violation of rule, there is no need to selectively reiterate the availability of that form of relief.

<sup>145</sup> Rule modified to change term to Capital Improvement Fee and to clarify that such fees apply to new customers only.

~~5.5.g. Alternate Depositor Financed Extension Plan to serve existing structures.~~<sup>146</sup>

~~1. Qualifying utilities — The above requirements notwithstanding, the utility may decline to finance the portion of a requested extension that would be utility-funded, if it can demonstrate that it has no prospect of any reasonable internal or external financing through commercial loans, grants, or through an installment arrangement with an entity installing the extension or providing the necessary materials.~~

~~A. If the utility declines to finance the portion of a requested extension that would be the financial responsibility of the utility, the utility shall file for a waiver of the extension rule within sixty (60) days of the written request.~~

~~B. Before filing for a waiver, the utility must first make an estimate of the extension costs.~~

~~C. A request for a waiver by a utility shall be accompanied by supporting documentation justifying its request.~~

~~D. If the Commission finds that the utility has reasonably declined to finance the portion of the requested extension that would otherwise be utility-funded, the Commission shall authorize the use of the alternate depositor-financed extension plan as described below.~~

~~2. Description of alternate depositor-financed extension plan — Under the alternate depositor-financed extension plan, the utility shall make the extension after:~~

~~A. receiving a cash deposit equal to the full amount of the extension cost; and~~

~~B. agreeing to give the depositor(s), who is a customer, a monthly bill credit totaling one hundred percent (100%) of the actual net bill(s) from the date service is initiated and until the total credits given equal the estimated total net revenue as defined in Rule 5.5.e.4; and~~

~~C. agreeing to refund to the original depositor(s) an amount equal to estimated total net revenue as defined in Rule 5.5.e.4. of each bona fide customer, other than the depositor(s), who, within a period of ten (10) years from the construction of the extension, directly connects to the extension between its original beginning and the original terminus. The refund may be spread out over a five (5) year period with the utility making payments no less frequently than every six (6) months. Such refunds shall continue until the total refunds given equal the estimated total net revenue as defined in Rule 5.5.e.4.~~

~~3. In no event shall the total refund made to the depositor(s) under Rule 5.5.g.2.C. exceed the original deposit of the depositor(s).~~

~~4. The utility shall not pay nor be liable for any interest on the cash deposits associated with line extensions.~~

~~5. If a utility and a prospective customer or group of customers are attempting to negotiate an alternate mainline extension agreement and are unable to reach an agreement regarding a proposed alternate main extension plan, either party may bring the dispute to the Commission for resolution.~~<sup>147</sup>

<sup>146</sup> Stricken term removed as unenforced by the Commission and needlessly costly and intrusive, as utility methods change frequently.

<sup>147</sup> Removed as redundant given availability of complaint procedure at PSC for any violation of rules.

## 5.5.h. General provisions:

1. 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, but in no event longer than ninety (90) days after completion of construction of the extension. 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. The customer may pay this additional amount in installments. No interest will be paid by the utility on the applicant's payment or on any balance to be refunded.

2. In estimating the cost of an extension, the estimate shall be based on the diameter of the pipe to be used; provided, that the estimated cost to the customer or customers shall not be based on a pipe diameter greater than the diameter of the main from which the extension is to be made, unless actual use estimated for the proposed customer or customers required a larger pipe.

11. Upon the proper filing of a Tariff Rule 42A, 42T, or 19A rate case or a certificate case filed pursuant to *W. Va. Code § 24-2-11* by the utility, the utility may seek an impact fee a Capacity Impact Fee, Capacity Assurance Fee or such other fee designed to raise capital for future capacity to be assessed against customers.<sup>148</sup>

## 5.5.i. Community infrastructure agreements with municipal utilities and public service districts

1. Notwithstanding the foregoing, municipal utilities and public service districts may enter into "community infrastructure agreements" in accordance with the provisions of *W. Va. Code § 22-28-1 et. seq.*

2. Utilities that have entered into "community infrastructure agreements" pursuant to *W. Va. Code § 22-28-1 et. seq.* shall be required to maintain separate books and records for the project areas involved in the agreements. For purposes of this section, the project areas for which separate books and records are required include plant upgrades and stand alone systems.

3. Utilities that have entered into "community infrastructure agreements" pursuant to *W. Va. Code § 22-28-1 et. seq.* shall file a Notice of Transfer and a new tariff containing the additional service area.

The utility must state whether the rates for the new customers served by the project are higher than the rates for the utility's existing customers. The Notice of Transfer and tariff shall be filed with the Commission within thirty (30) days of the date the project is transferred to the utility.

4. If the rates for the new customers served by the project are higher than the rates for the utility's existing customers, the utility shall, within ninety (90) days of the date the project is transferred to the utility, make a formal rate application with the Commission in order to justify the higher rates to the new customers.<sup>149</sup>

## §150-5-6. Safety requirements

## 6.1. Accidents.

<sup>148</sup> Moved and changed at 5.5.c.3

<sup>149</sup> Rule-making authority under the Community Infrastructure Investment Projects Act, *W. Va. Code § 22-28-1 et seq.*, is restricted to the Secretary of the Department of Environmental Protection. *W. Va. Code § 22-28-9.*

6.1.a. 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.

6.1.b. Electric shock -- Each utility shall instruct its employees engaged in electrical work in the practice and use of accepted rules and proper procedure for resuscitation from electric shock.

6.1.c. Asphyxiation -- Each utility shall inform 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.

**§150-5-7. ~~Creation or Alteration of Public Service Districts Territory.~~**

**7.1. Creation or Alteration of a Public Service District.**

7.1.a. Procedure. A county commission upon entering an order on its own motion, or upon receipt of a petition, or upon receipt of a recommendation of the Commission, proposing the creation, expansion, enlargement, reduction, merger, dissolution, or consolidation, ~~reduction or dissolution~~ of a public service district pursuant to W. Va. Code §16-13A-2, shall:

1. Setting Hearing. At the same session, fix a date of hearing in the county which date shall be not more than forty (40) days nor less than twenty (20) days from the date of the action;

2. Notice to the Commission. Within ten (10) days, provide the Executive Secretary of the Commission with a copy of the order or petition and notification of the time and place of the hearing to be held by the county commission;

3. Notice to Other County Commissions. If the territory proposed to be included is situated in more than one county, when fixing the date of hearing, provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed;

4. Publication of Notice. Publish, at least ten (10) days prior to the hearing, a Class I legal advertisement meeting the requirements stated in W. Va. Code §16-13A-2, giving notice of the hearing;

5. Posting of Notice. Post notice in at least five (5) conspicuous locations in the proposed public service district as required by W. Va. Code § 16-13A-2; and

6. Filing Notices with Commission. File with the Executive Secretary of the Commission affidavits of publication pursuant to Rule 4. above, and affidavits of posting pursuant to Rule 5. above as soon as the same are available.

**7.2. Notification to the Commission of County Commission Action.**

7.2.a. Application to Commission. If the county commission enters an order creating, enlarging, reducing, merging, dissolving, or consolidating a public service district, the county commission shall, within ten (10) days of entering such order, file a copy of such order with the Executive Secretary of the Commission. If the county commission declines to enter such an order, the county commission shall, within ten (10) days of declining, file with the Executive Secretary of the Commission notice that it has declined to enter any such order.

### 7.3. Notice of Filing.

7.3.a. Content. Upon the receipt of a county commission order proposing the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district pursuant to W. Va. Code § 16-13A-2, the Commission shall enter an order directing the county commission to provide notice of the proceeding through the issuance of a Class I legal advertisement in the form of Sewer Form No. 11. ~~prescribed by the Commission, in the county or counties affected by the proposed order. The notice shall include the right of any customer of the proposed public service district to file a written protest or make a verbal protest at the hearing or hearings. See Sewer Form No. 8 for example of notice to be published.~~<sup>150</sup>

### 7.4. Commission Hearing.

7.4.a. Notice. The Commission shall may hold a hearing or hearings in each county affected by a county commission order(s) filed pursuant to Rule 8.1.a. ~~and~~ The Commission shall publish a Class I legal advertisement giving notice should it hold of such hearing or hearings.

### 7.5. Commission Consideration of Proposed Creation or Alteration.

7.5.a. Order. After public comment and hearing the Commission shall, by order, approve, disapprove or modify a county commission order creating, expanding, merging, consolidating, reducing or dissolving a public service district. In deliberating on approval, modification or disapproval the Commission may consider, among other things:

1. the public convenience and necessity;
2. the economic feasibility of providing service in the territory affected. ~~including sources of funding, costs and related benefits of the county commission's order;~~<sup>151</sup>
3. the adequacy of facilities;
4. other facilities in the area; and
5. other possible alternatives.

### 7.6. Effect of Territory<sup>152</sup>

7.6.a. Authority Not Exclusive. The Commission approved territory authorizes a public service district to provide service within the territory so approved and up to ten miles outside of such territory; however such authority is not exclusive. A municipality, investor owned utility, association, or non-profit utility may provide and extend service into the unserved territory of a PSD.

7.6.b. PSD Incursion Into Another PSD's Territory. A PSD may only extend facilities into the Commission approved territory of another PSD with the consent of the board of the PSD with sewer authority in the territory in question unless the PSD with Commission approved territory owns no sewer facilities.

<sup>150</sup> Stricken language is redundant given content of Sewer Form No. 11.

<sup>151</sup> Stricken language is not a proper factor, as such information is typically not known at the time a PSD's territory is modified or a PSD is created.

<sup>152</sup> New rule to clarify significance of PSD territory, and how it is to be treated by utilities.

7.6.c. Extending Facilities Into a Neighboring County. The extension of facilities into a county for which the appropriate county commission has not entered an order approving the PSD to provide service in said county may only occur with either the consent of a board of a PSD having sewer authority in such territory or an order of the county commission expressing consent to such extension. When such consent is provided, no county commission order is required.

**Sewer Form No. 1**  
**(Sewer Rule 4.8.b.)**

(Insert Company Name Here)

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

We have scheduled your water service provided at \_\_\_\_\_  
(address)  
for termination on or after \_\_\_\_\_ because of your delinquent sewer bill.  
(date)

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

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

If personnel are dispatched to terminate service, you will be charged a \$25.00 administrative fee, regardless of whether service is actually terminated. [For utilities with this administrative charge in the tariff.]

Personnel [do/do not] accept payment outside of the office.

Cash [is/is not] accepted outside of the office.

If you have written us a bad check in the last twelve months, we will not accept payment of applicable charges by check.

If your service is terminated you will be subject to the following additional charges involving reconnect fees and deposit requirements in order to restore service.

(Include all applicable charges, including disconnect, reconnect and/or administrative fees)

**YOU HAVE THE RIGHT TO CHALLENGE THE TERMINATION IF YOU BELIEVE ANY OF THE FOLLOWING CONDITIONS APPLY TO YOU:**

1. Any portion of the bill is in dispute
2. You are being charged for service not received
3. The information above is incorrect
4. You are unable to pay the bill in accordance with the billing, and termination of service would be especially dangerous to the health or safety of a member of your household
5. You are able to pay only in installments

If the reason for your challenge is 1, 2, or 3 above, you will have to pay any amount not in dispute. If the reason for your challenge is 4 or 5, we will attempt to negotiate a deferred payment agreement with you.

**YOU MUST NOTIFY US BEFORE THE DATE OF TERMINATION IN ORDER TO PROTECT YOUR RIGHTS UNDER THIS RULE:**

(Provide instructions for contacting the appropriate utility personnel by telephone and mail, including business hours)

You should also inform us if you are 65 years or older, or regardless of age, if you are physically, mentally, or emotionally incapacitated.

Sewer Form No. 1  
Page 2 of 2

Once you have notified us of your challenge, we will schedule a meeting at the business office nearest to your residence and try to resolve your problem. At your option, the discussion of your challenge may be made over the telephone. **IF YOU ARE NOT SATISFIED WITH OUR DECISION AT THIS MEETING, YOU WILL HAVE SEVEN (7) DAYS IN WHICH TO FILE A CHALLENGE WITH THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA.** You will be required to pay your current bill while the challenge is pending. There is no charge associated with filing a challenge and you may do so without the assistance of an attorney.

To file a challenge with the PSC, you may call this toll free telephone number 1-800-642-8544 or write to this address:

Utility Challenge  
Public Service Commission of West Virginia  
P.O. Box 812  
Charleston, W. Va. 25323

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

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

**Sewer Form No. 2**  
(Sewer Rule 4.8.b.9)

**NOTICE OF SCHEDULED WATER TERMINATION**

We have scheduled water service provided at \_\_\_\_\_  
(address)  
for termination on or after \_\_\_\_\_ because of your landlord's delinquent sewer bill.  
(date)

To notify the Public Service Commission, you may call this toll free telephone number, 1-800-642-8544, or write to this address:

Public Service Commission of West Virginia  
P.O. Box 812  
Charleston, WV 25323

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

**Sewer Form No. 3**  
(Sewer Rule 4.12.d.)

Public Notice of Filing of a Petition for Imposition of a Moratorium

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

NAME OF UTILITY \_\_\_\_\_,

a public utility.

Petition for consent and approval for  
the imposition of a moratorium on the  
utility system.

PUBLIC NOTICE

On \_\_\_\_\_, the \_\_\_\_\_  
(date) [Name of Utility, Commission Staff, or governmental entity]

filed a petition with the Public Service Commission for approval of the imposition of a moratorium on

\_\_\_\_\_ (name of petitioner) \_\_\_\_\_ (water, sewer or other)

system serving \_\_\_\_\_  
[describe areas served]

If approved, the moratorium would mean that no new customers could be served by the utility in these  
areas until the Commission lifts the moratorium. The \_\_\_\_\_  
[name of petitioner]

claims that the imposition of a moratorium is appropriate because \_\_\_\_\_

\_\_\_\_\_  
[describe reasons and describe any plans to alleviate the circumstances giving rise to the petition, and any estimate of a date when  
it would be appropriate for the Commission to lift the moratorium.]

Any person wishing to protest, support, make comment, or request a public hearing about the  
proposed moratorium should do so in writing. Written statements should be addressed to Executive  
Secretary, Public Service Commission, P.O. Box 812, Charleston, WV, 25323.

NAME OF UTILITY

Sewer Form No. 4  
(Sewer Rule 5.5.e.2.)

Form of written request for service by a prospective customer or  
a group of prospective customers located in the same neighborhood

Sewer ( ) Water and Sewer ( )

Previous Customer ( ) If so, when \_\_\_\_\_ New customer ( )

Name \_\_\_\_\_

Mailing address \_\_\_\_\_ Phone \_\_\_\_\_

Property location \_\_\_\_\_

Rent ( ) Own ( ) Other \_\_\_\_\_

If rent: Property owners name \_\_\_\_\_

Property owner's mailing address \_\_\_\_\_ Phone \_\_\_\_\_

Type of service: Residential ( ) Number in household \_\_\_\_\_

Commercial ( ) Type \_\_\_\_\_

Industrial ( ) Type \_\_\_\_\_

Applicant's place of employment \_\_\_\_\_

Employment address \_\_\_\_\_ Phone \_\_\_\_\_

Name of spouse \_\_\_\_\_

Spouse's place of employment \_\_\_\_\_

Spouse's employment address \_\_\_\_\_ Phone \_\_\_\_\_

I HEREBY AUTHORIZE SERVICE TO BE ESTABLISHED IN MY NAME AT THE ABOVE PROPERTY LOCATION  
AND AGREE TO PAY FOR SERVICE UNTIL DISCONTINUED BY MY REQUEST IN WRITING. I UNDERSTAND  
THAT THIS APPLICATION IS ACCEPTED SUBJECT TO THE AVAILABILITY OF SERVICE AT THIS LOCATION.

Applicant's signature \_\_\_\_\_ Date \_\_\_\_\_

Utility representative \_\_\_\_\_ Date \_\_\_\_\_

For office use only

Name \_\_\_\_\_ Account No. \_\_\_\_\_

Applicant ID \_\_\_\_\_

Deposit amount \_\_\_\_\_ Tap fee amount \_\_\_\_\_

Meter Size \_\_\_\_\_ Meter No. \_\_\_\_\_

Meter Route \_\_\_\_\_ Meter reading \_\_\_\_\_

Date on \_\_\_\_\_ Date off \_\_\_\_\_

Customer request ( ) Termination ( )

Sewer Form No. 6 5<sup>153</sup>  
(Sewer Rule 5.5.e.2: b.1.)  
Form of cost estimate to be  
provided to applicants for service

Dear Mr. Customer:

We have received a petition for a sewer main extension and have estimated the construction cost to extend the main to serve the ~~properties~~ existing structures of the (insert number) petitioners. This estimate is summarized below:

Sewer line \_\_\_\_\_ feet at \$ \_\_\_\_\_ / foot

Excavation/Installation \_\_\_\_\_ feet at \$ \_\_\_\_\_ / foot

Materials (fittings, valves, stone, etc.) \_\_\_\_\_

Permits/Rights-of-way (Health, Highways, etc.) \_\_\_\_\_

Restoration (seeding, gravel, etc.) \_\_\_\_\_

Related Cost (engineering, legal, etc.) \_\_\_\_\_

Total Estimated Extension Construction Cost \_\_\_\_\_

Minus Utility's Share (estimated total net revenue per customer pursuant to Sewer Rule 5.5.e.4.) \_\_\_\_\_

---

Estimated Cost to be Paid by Customers \_\_\_\_\_

Estimated Cost per Customer \_\_\_\_\_

When the "customer's share" referenced above is deposited with the Utility and stamped and recorded easements are delivered to the utility, the Utility will apply for the necessary permit applications and begin construction as soon as possible. If the actual cost to construct the extension is less than the estimated cost, the Utility will refund the difference to the original depositors. If the actual cost exceeds the estimated cost, the Utility will bill the depositors for the difference. This difference must be settled before service can actually be connected.

All customers will be required to sign the attached ~~an~~ extension agreement and complete the attached ~~an~~ application for service and/or a users agreement and pay a tap fee of \$ \_\_\_\_\_, and a security deposit of \$ \_\_\_\_\_ prior to the commencement of construction ~~receiving~~ service. The security deposit is refunded with interest following twelve consecutive months of full and timely payments for services rendered.

The estimated start date of construction is \_\_\_\_\_.

The estimated duration of construction is \_\_\_\_\_ days.

Please complete and return the attached materials and make all payment identified.

Should you have any questions, you may contact Barbara Manager or John Foreman at \_\_\_\_\_ between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Sincerely,

<sup>153</sup> Sewer Form No. 5 stricken as redundant to Sewer Form No. 6. Utility Coalition proposes using Sewer Form No. 6 as Sewer Form No. 5 with changes.

SEWER FORM NO. 6<sup>154</sup>  
(Sewer Rule 5.5.b.2.B.)

STANDARD MAIN LINE EXTENSION AGREEMENT  
(NO CUSTOMER CONTRIBUTION)

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_  
[utility name], "OWNER", and \_\_\_\_\_,  
"CUSTOMER", owning property located at \_\_\_\_\_, being one of \_\_\_\_\_,  
customers requesting service by petition for a water extension known as the Extension.

WITNESSETH:

THAT WHEREAS, OWNER is the owner and operator of a water system serving customers within a geographic area in \_\_\_\_\_ County, West Virginia, as defined by the County Commission of \_\_\_\_\_, West Virginia; and

WHEREAS, CUSTOMER is a property owner, and with a group of \_\_\_\_\_ other CUSTOMERS, has requested OWNER to extend sewer service, to be known as the Extension, to their properties; and

WHEREAS, the cost of the Extension is estimated by the OWNER not to exceed 42 times OWNER'S estimate of monthly gross revenue.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto have agreed and do hereby agree as follows:

(1) Construction Standards. The Extension will be installed according to the rules and regulations of the Public Service Commission of West Virginia, the West Virginia Department of Environmental Protection, and the West Virginia Bureau for Public Health and will be the property of the OWNER.

(2) Easements. CUSTOMER will deliver to the OWNER, prior to commencement of construction, at no cost to the OWNER, copies of stamped and recorded private easements necessary for the completion of the Extension in a form acceptable to OWNER.

(3) Further Extensions. The OWNER reserves the right to further extend its sewer system from and beyond the terminus of the Extension made pursuant to this agreement.

(4) Fees. CUSTOMER will pay to the OWNER the applicable tap fee, security deposit, and any other applicable charges in OWNER'S tariff prior to the connection of CUSTOMER'S service line to the Extension.

Witness the following signatures.

\_\_\_\_\_  
CUSTOMER

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

<sup>154</sup> New form.

SEWER FORM NO. 7<sup>155</sup>  
(Sewer Rule 5.5.b.3.D.)

STANDARD MAIN LINE EXTENSION AGREEMENT  
(CUSTOMER CONTRIBUTION)

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_  
[utility name], "OWNER", and \_\_\_\_\_,  
"CUSTOMER", owning property located at \_\_\_\_\_, being one of \_\_\_\_\_,  
customers requesting service by petition for a sewer extension known as the Extension.

WITNESSETH:

THAT WHEREAS, OWNER is the owner and operator of a water system serving customers within a geographic area in \_\_\_\_\_ County, West Virginia, as defined by the County Commission of \_\_\_\_\_ West Virginia; and

WHEREAS, CUSTOMER is a property owner, and with a group of \_\_\_\_\_ other CUSTOMERS, has requested OWNER to extend sewer service, to be known as the Extension, to their properties; and

WHEREAS, the cost of the Extension is estimated by the OWNER to exceed 42 times OWNER'S estimate of gross monthly revenue.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto have agreed and do hereby agree as follows:

(1) Customer Contribution. CUSTOMER will pay to OWNER the amount stated in (8) of this agreement as being equal to CUSTOMER'S share of the estimated Extension cost.

(2) Actual Costs and Estimates. If the Extension costs are less than the estimate, the difference will be refunded pro-ratably to the CUSTOMERS making deposits on the Extension. If the Extension costs are more than the estimate, the CUSTOMERS making deposits will be billed pro-ratably for the difference. The OWNER will make available to the CUSTOMERS all invoices and statements justifying the final cost.

(3) Construction Standards. The Extension will be installed according to the rules and regulations of the Public Service Commission of West Virginia, the West Virginia Department of Environmental Protection, and the West Virginia Bureau for Public Health and will be the property of the OWNER.

(4) Easements. CUSTOMER will deliver to the OWNER, prior to the commencement of construction, at no cost to the OWNER, copies of stamped and recorded private easements necessary for the completion of the Extension.

<sup>155</sup> New form.

(5) Reimbursements for Subsequent Customers. Reimbursements will be made in accordance with Rule 5.5.b.3.C of the Rules and Regulations for the Government of Sewer Utilities.

(6) Further Extensions. The OWNER reserves the right to further extend its sewer system from and beyond the terminus of the Extension made pursuant to this agreement, and CUSTOMER shall not be entitled to any refund for the attaching of customers to any further extension.

(7) Fees. CUSTOMER will pay to the OWNER the applicable tap fee, security deposit, and any other applicable charges in OWNER'S tariff prior to the connection of CUSTOMER'S service line to the Extension.

(8) Costs. The preliminary Extension construction cost is estimated to be \$\_\_\_\_\_. The OWNER'S share based on \_\_\_\_\_ customers is \$\_\_\_\_\_. This leaves a balance of \$\_\_\_\_\_ to be shared equally between the customers at \$\_\_\_\_\_ per customer.

Witness the following signatures.

\_\_\_\_\_  
CUSTOMER

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

SEWER FORM NO. 8  
(Sewer Rule 5.5.b.4.)

SELF-HELP MAIN LINE EXTENSION AGREEMENT  
(CUSTOMER CONTRIBUTION)

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ [utility name], "OWNER", and \_\_\_\_\_, "CUSTOMER", owning property located at \_\_\_\_\_, being one of \_\_\_\_\_, customers requesting service by petition for a sewer extension known as the Extension.

WITNESSETH:

THAT WHEREAS, OWNER is the owner and operator of a sewer system serving customers within a geographic area in \_\_\_\_\_ County, West Virginia, as defined by the County Commission of \_\_\_\_\_ West Virginia; and

WHEREAS, CUSTOMER is a property owner, and with a group of \_\_\_\_\_ other CUSTOMERS, has requested OWNER to extend sewer service, to be known as the Extension, to serve their properties located \_\_\_\_\_; and

WHEREAS, the cost of the Extension is estimated by the OWNER to exceed 42 times OWNER'S estimate of gross monthly revenue; and

WHEREAS, the CUSTOMERS to be served by the Extension have or have access to, the skills, labor and equipment necessary to construct the Extension; and

WHEREAS, to minimize costs to the CUSTOMERS to be served by the Extension, the CUSTOMERS are willing to furnish labor and equipment and materials exceeding the utility's costs contribution requirements, if any.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH: That for and in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereto have agreed and do hereby agree as follows:

(1) Design. OWNER will have its engineer design the Extension at OWNER's expense, which is expected to be comprised of \_\_\_\_\_ linear feet ("lf") of \_\_\_\_\_-inch diameter main, \_\_\_\_\_ lf of \_\_\_\_\_-inch diameter main [identify other significant features, such as man holes].

(2) Permits. OWNER will obtain all permits necessary for the Extension.

(3) Easements. CUSTOMER will deliver to the OWNER, prior to the commencement of construction, at no cost to the OWNER, copies of stamped and recorded private easements necessary for the completion of the Extension.

(4) Construction Standards. The Extension will be installed according to the OWNER's design, the rules and regulations of the Public Service Commission of West Virginia, the West Virginia Bureau for Public Health, the West Virginia Department of Environmental Protection, and will become the property of the OWNER.

(5) Owner Contribution. OWNER will contribute legal and engineering services and materials for the Extension up to \$ \_\_\_\_\_, said amount representing the utility's cost contribution requirement under Sewer Rule 5.5.

OWNER's contribution is expected to be expended as follows:

Legal	\$ _____
Engineering (including permits and inspection)	\$ _____
Materials	\$ _____
TOTAL	\$ _____

The material to be contributed by OWNER will be:

\_\_\_\_\_ lf of \_\_\_\_\_ inch diameter main  
\_\_\_\_\_ lf of \_\_\_\_\_ inch diameter main  
\_\_\_\_\_ [describe other materials]

(6) CUSTOMER Contribution. Equipment necessary for the Extension consists of [describe]. CUSTOMER, in conjunction with other customers to be served by the Extension, has or will obtain such equipment. CUSTOMER will provide or obtain labor for installation of the Extension. CUSTOMER will, with other customers to be served by the Extension, pay for the acquisition of the following materials for the extension:

\_\_\_\_\_ lf of \_\_\_\_\_ inch diameter main  
\_\_\_\_\_ lf of \_\_\_\_\_ inch diameter main

The estimated cost of these materials is \$ \_\_\_\_\_.

The per customer share is \$ \_\_\_\_\_.

(7) Inspection. OWNER will assign an inspector for the installation of the Extension. OWNER will contribute the cost of testing or inspection, as indicated in Paragraph (5).

(8) Fees. OWNER will not charge a tap fee for taps installed by others.

(9) Further Extensions. The OWNER reserves the right to further extend its sewer system from and beyond the terminus of the Extension made pursuant to this agreement, and CUSTOMER shall not be entitled to any refund for the attaching of customers to any further extension.

(10) Waiver. CUSTOMER files herewith an executed waiver attached to this Agreement. This Agreement is null and void if CUSTOMER fails to fully execute the attached waiver.

Witness the following signatures.

\_\_\_\_\_  
CUSTOMER

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Sewer Form No.9<sup>156</sup>  
(Sewer Rule 5.5.b.4.C.)

**VOLUNTEER WAIVER FORM**

Thank you for volunteering for the \_\_\_\_\_ self help extension project (the  
name of project  
"Project"), being constructed in conjunction with \_\_\_\_\_. This form must be fully  
utility  
completed and delivered to \_\_\_\_\_ prior to you performing any work on  
utility  
the Project.

**PLEASE PRINT**

NAME: _____	DATE: _____
STREET: _____	
CITY: _____	STATE: _____ ZIP: _____
DAYTIME PHONE: _____	EVENING PHONE: _____
E-MAIL: _____	
EMPLOYER/SCHOOL/ORGANIZATION: _____	

**WAIVER OF LIABILITY**

I understand that my or my dependent's work as a volunteer on or about the Project could expose me or my dependent to various risks of injury or illness, and any tools or equipment used or clothes or jewelry worn to damage. I understand and assume these risks, and agree not to hold \_\_\_\_\_ (utility) its agents, employees, insurers, or fellow Project volunteers liable for such injury, illness, or damage. I hereby waive any and all claims for such injuries, illness, or damage that could be brought in any court of law, or administrative agency, including but not limited to Workers' Compensation claims. I further understand that it is the policy of \_\_\_\_\_ (utility) that all volunteers must abide by the verbal safety instructions and requirements of \_\_\_\_\_ (utility) staff on the construction site.

_____	_____	_____
volunteer's printed name	signature	date
_____	_____	_____
signature of parent/guardian if volunteer is under 18 years of age	date	

<sup>156</sup> New form.

Sewer Form No. 10  
(Sewer Rule 5.5.7.c)

Form of Commission Check-List for Alternate Main Extension Agreements

This form sets forth the minimum amount of information that should be included in a proposed alternate main extension agreement.

- 1. Name of developer, mobile home park owner or prospective customers(s).
- 2. General location or description of area to be served.
- 3. ~~Indication that the developer, owner or prospective customer(s) has/have read Water Rule 5.5, Sewer Rule 5.35, or both in their entirety.~~ A statement indicating who will be responsible for preparing the plans for the extension.
- ~~21~~ 4. The number of prospective customers to be served by the extension, the number of lots to be served, identification of all easements needed to full build out of the development, ~~or some other general indication of the size of~~ and the area to be served by the extension.
- ~~5.~~ ~~For alternate main line extension agreements to serve only existing structures, Having read and understood the Rules, the developer, owner or prospective customer(s) choose(s) to enter into the alternate main line extension agreement.~~
- ~~28~~ 5. A statement describing the extension, including length, diameter and any major components such as fire hydrants, etc.
- ~~4.~~ 6. ~~Indication that the developer, owner or prospective customer(s) understand(s) the Rules.~~ A statement describing the utility's review of the plans for the extension and cost responsibility.
- ~~25~~ 7. A statement as to who will obtain and pay for necessary permits.
- ~~26~~ 8. A statement as to who is responsible for the cost of the construction.
- ~~9.~~ ~~If the customer is to bear the cost of inspection, a statement of the maximum amount of the cost of inspection.~~
- ~~27~~ 9. A statement as to who is responsible for the cost of the material.
- ~~10.~~ ~~For alternate main line extension agreements to serve only existing structures, if the developer, owner or prospective customer(s) wish(es) to waive the right of receiving an estimate of the cost of the extension if constructed by the utility, a statement reflecting the waiver.~~
- ~~6~~ 10. ~~For alternate main line extension agreements to serve only existing structures, if the developer, owner or prospective customer(s) waive(s) reimbursement, the agreement should contain the waiver.~~ Developer must present utility with copies of recorded easements and all other real property documents and permits, prior to commencement of construction
- ~~7.~~ 11. ~~For alternate main line extension agreements to serve only existing structures, A a copy of the applicable Rule(s) must be attached to the agreement.~~ Utility must authorize commencement of construction in writing.

Sewer Form No.10

Page 2 of 2

- ~~8~~ 12. A statement as to who will bear the cost of inspection, ~~if any.~~
- ~~13.~~ ~~If the customer is to bear the cost of the testing, a statement of the maximum amount of the cost of the testing.~~
- ~~11~~ 13. A statement as to the type of testing to be required.
- ~~12~~ 14. A statement as to who will bear the cost of testing, if any.
- ~~14~~ 15. A statement as to who will install the service connections.
- ~~16.~~ ~~A statement that the tap fee, if any to be charged, is the approved tap fee in the utility's tariff.~~
- ~~15~~ 16. If the developer, owner or prospective customer(s) is/are to install the service connections, a statement that the utility will not charge a tap fee.
- 17. A statement that the utility is to be indemnified and held harmless against any and all claims for injuries and/or damages which may arise from problems associated with the construction of the extension by the developer, owner, or prospective customer(s), or any agents or contractors of the same.
- 18. A statement that the ownership of the extension will be conveyed to the utility ~~prior to its connection to the utility's system~~ upon the utility's acceptance of the system.
- ~~23~~ 19. A warranty indicating that the developer, owner or prospective customers will warrant the system for a period of one year after completion of the construction, or after system is placed into service.
- ~~20.~~ ~~If the developer, owner or prospective customer(s) is/are to be responsible for the preparation of the plan for the extension, a statement that the developer, owner or prospective customer(s) will provide plans to the Staff of the Public Service Commission if required.~~
- 24 20. ~~The agreement should not be executed before being sent to the Commission for approval. A statement that the developer, owner or prospective customer will grant the utility easements necessary for the utility to serve other customers at no cost to the utility~~
- ~~22.~~ ~~For alternate main line extension agreements to serve only existing structures, if the initial cost estimate has not been waived, the estimate must be set forth in the agreement.~~

**NOTE:** A paragraph such as "The Developer/Customer waives his rights under paragraph 5.3 or 5.5 of the Commission's Rules" will not be acceptable as a catch all for the requirements listed above. Each item must be addressed in the agreement.

**SEWER FORM NO. 8 11**

(Sewer Rule 7.3)

**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 \_\_\_\_ day of [month], [year].

[ Case No.]

[ Case Name]

**NOTICE OF FILING**

On [date], the [name of party] filed a petition for consent and approval to [type of creation/alteration] the boundaries of the [description of area to be enlarged] pursuant to *West Virginia Code* § 16-13A-2. A complete description of the boundary [type of creation/alteration] is on file with the [identify entity with which information is filed (for example, county commission and/or public service district)] and the West Virginia Public Service Commission.

Anyone desiring to protest or intervene should file a written protest or notice of the intervention within 30 days following the date of this publication. All protests or requests to intervene should briefly state the reason for the protest or intervention. Requests to intervene must comply with the Commission's rules on intervention, set forth in the Commission's *Rules of Practice and Procedure*. All protests and interventions should be addressed to Sandra Squire, P. O. Box 812, Charleston, West Virginia 25323. If no substantial protest is filed, the Commission may approve the County Commission's Order without hearing.

[Name of Party]

SEWER FORM NO. \_\_\_\_\_  
(Sewer Rule N. 4.8.a.2.b.)

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Case No. \_\_\_\_\_-S-X  
\_\_\_\_\_, Petitioner

The petition of the above-named \_\_\_\_\_, Petitioner, respectfully shows:

1. That the above-named Petitioner is a public utility engaged in the business of wastewater collection at \_\_\_\_\_, in the State of West Virginia.
2. Petitioner provides wastewater collection service to the following customer ("Customer") who receives water from a private well:  
[Insert name and address of customer]
3. Customer is delinquent in payment to Petitioner as evidenced by the most recent bill rendered by Petitioner to Customer, attached hereto as Exhibit \_\_\_\_\_.
4. Petitioner has offered a deferred payment agreement to Customer as evidenced by Exhibit \_\_\_\_\_. Customer has [refused to enter into the deferred payment agreement offered OR breached the deferred payment agreement attached hereto as Exhibit \_\_\_\_\_].
5. Petitioner obtained a [magistrate/circuit] court judgment against Customer that has been unsatisfied for more than 90 days, as shown on Exhibit \_\_\_\_\_.

WHEREFORE, Petitioner prays that the Commission make the Customer a respondent by serving a copy of this Petition upon respondent, and that Customer be required to reply to the Petition within 10 days of service of the Petition, that the Customer be required to make current payments to Petitioner while this matter is pending on penalty of discontinuance of sewer service, and that, after due investigation, an order may be issued authorizing Petitioner to terminate sewer service to Customer, and for such other and further order as the Commission may deem necessary, reasonable and just in the premises.

[Prayer may ask for the ascertainment of lawful rates of practices, and an order requiring the Customer to conform thereto.]

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

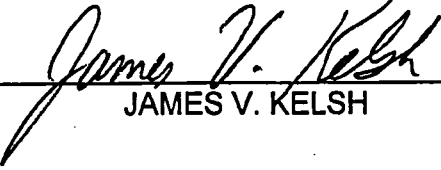
(Signed) \_\_\_\_\_  
Signature of Utility

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

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

**CERTIFICATE OF SERVICE**

I, James V. Kelsh, counsel for the Utility Coalition, do hereby certify that a copy of the "Utility Coalition Comments" have on this 31<sup>st</sup> day of October, 2008, been served upon Staff Attorney C. Terry Owen via hand delivery to the offices of the Public Service Commission, 201 Brooks Street, Charleston, West Virginia.

  
\_\_\_\_\_  
JAMES V. KELSH

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA  
STAFF COMMENTS

DATE: October 31, 2008

TO: SANDRA SQUIRE, Executive Secretary

FROM: C. TERRY OWEN, Staff Attorney  
Legal Division

RE: General Orders 186.22 and 188.28  
In the matter of a rulemaking to amend the Commission's Rules and Regulations for the Government of Water and Sewer Utilities.

RECEIVED  
08 OCT 31 PM 3:38  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

The Staff of the Public Service Commission provides for the Commission's consideration the following comments:

*Sewer Rules*, 150 C.S.R. 5

While the *Sewer Rules* are entitled "*Rules for the Government of Sewer Utilities*" as currently codified in the *Code of State Regulations* and as proposed, the Commission has historically referred to them as "Rules and Regulations for the Government of Sewer" Utilities in its orders and published documents. Perhaps it is time for consistency in future references and printings to drop the words "and Regulations". This is redundant and the Commission's *Rules* are usually referred to and cited as *Rules*, not regulations.

Rule 1.7.c.3. - Definition of delinquency.

The Legal Division notes that the proposed change reflects the language of *W. Va. Code* § 8-20-10(b) and is a needed update.

Rule 2.4.a. - Electronic filing of financial and statistical reports.

There is an inconsistency between the Commission's Order, which states on page 2 that electronic filings should begin two years after the proposed order becomes effective, and the proposed Rule. The proposed Rule states that electronic filing should begin January 1, 2009. The Water and Wastewater Division suggests that the effective date of the electronic filing requirement agree with the Commission's order and not the specific date set forth in the proposed rule.

The Legal Division concurs with the WWD comment.

Rule 2.5 - The requirement that utilities maintain their records in compliance with a more recent edition of the National Association of Regulatory Utility Commissioners' *Uniform System of Accounts (USA)*.

The WWD outlines the significant changes in record keeping requirements of this rule change. The WWD notes that the more current Uniform System of Accounts requires the posting of accumulated depreciation associated with contributions in aid of construction to be posted to contra accounts. The WWD opines that this serves no purpose and that public utilities should be allowed to charge all depreciation to an accumulated depreciation account, notwithstanding the source of the funding for the asset. In support of its position, the WWD states that the Governmental Accounting Standards Board-34 (GASB-34) prohibits the use of the proposed accounting method. The WWD provides an exhibit setting forth all of the USA expense accounts with the corresponding functional sub accounts as a working aid.

The Legal Division does not take a position on this issue because of its pure accounting nature. However, the Legal Division does caution that the NARUC requirement set forth in its USA may be a further requirement above and beyond the GASB-34 standards and required of regulated entities for specific regulatory purposes. The Legal Division also notes that not all water and sewer utilities are governmental entities.

#### Rule 4.2.a. - Security Deposits

The WWD makes several suggestions regarding changes in the proposed rules that would eliminate the payment of interest on customer deposits. The WWD contends that the calculation of interest is burdensome on utilities, that petitions for waivers would be eliminated and that the interest earned could be better utilized by public utilities in meeting their revenue requirements.

The WWD interprets the statutory language, which is repeatedly set forth in the *W. Va. Code*, as conferring upon the Commission the authority to set an interest rate payable upon deposits as 0.00%. If this were done, it would eliminate the interest bookkeeping and payment thereby freeing up the accrued interest revenues for other uses.

The Legal Division differs with the WWD's statutory interpretation. The statutory language which is repeatedly set forth in the *W. Va. Code* is: "... the governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the PSC may prescribe." See *W. Va. Code* §§ 8-19-12a(2), 8-20-10(a)(4), and 16-13-16(e). The Legal Division, applying the plain language rule of statutory interpretation suggests that the payment of interest on deposits is controlled by the use of the word "shall" in these statutes, while the reference to "... a rate as the PSC may prescribe." grants the PSC the discretion

to designate an interest rate, but no duty to do so. However, whether this discretion is exercised or not by the PSC to designate the interest rate, the utility is still required to return the deposit with interest. The Legal Division also suggests that it would be a callous and unnecessary anti-consumer policy to eliminate the interest payment requirement.

#### Rule 4.11 - Scheduled and unscheduled interruptions.

The Engineering Division suggests that the requirement that the reporting of all scheduled and unscheduled interruptions is overly burdensome and impractical. As an alternative, the ED suggests that the notification requirements only be applicable to interruptions affecting more than 50 customers or those lasting more than twenty-four hours. The ED further suggests that the notification rules be modified to be more specific regarding how notification of the Commission or other agencies be made and how the notifications should be distributed internally if filed with the Commission's Office of the Executive Secretary.

The Legal Division cautions that the controlling language may already eliminate all limited and brief interruptions. The language "... which will result in interruption of service for any duration that may cause a health or environmental hazard ... " is clear. The Legal Division cannot endorse a change that would allow either an interruption to less than fifty customers or an interruption of less than twenty-four hours to go unreported if those interruptions would cause a health or environmental hazard. The Legal Division concurs with the ED's recommendation that the notification process be more specifically defined.

#### Rule 5.5.g. - Alternate Depositor-Financed Extension Plans

The ED is concerned that the resolution of alternate depositor-financed extension plan disagreements by the Commission should be applicable only to alternate depositor-financed extension plan disagreements. The ED feels that this disagreement resolution rule should be applicable to both alternate depositor-financed extension plans and all other extension agreements.

The Legal Division is not certain that *Sewer Rule 4.5* pertaining to complaints and *Procedural Rules (Rules of Practice and Procedure, 150 C.S.R. 1) 6.1 and 6.2* do not already provide the Commission forum for resolution of disagreements pertaining to all service line extensions.

#### Rule 5.5.h.7. - Alternate Extension Plans

The ED proposes certain changes in the Commission's requirements regarding filing and Commission approval of all alternate mainline extension plans. In order to reduce

unnecessary filings, the ED recommends that once an alternate mainline extension plan format has been approved by the Commission, future filings should be for informational purposes only - thereby no longer requiring Commission approval. The ED also recommends that the provision requiring Commission approval as a prerequisite to the right to obtain reimbursement from the utility be eliminated. The ED feels that the utility is actually in control of the filing and approval policy and that this requirement unnecessarily penalizes the customers.

The Legal Division notes that no change was proposed by the Commission for this *Rule* and that consideration by the Commission during this rulemaking presents a public notice problem.

*Water Rules, 150 C.S.R. 7*

While the *Water Rules* are entitled "*Rules for the Government of Water Utilities*" as currently codified in the and as proposed, the Commission has historically referred to them as "Rules and Regulations for the Government of Water" Utilities in its orders and published documents. Perhaps it is time for consistency and future references and printings should drop the words "and Regulations". This is redundant and the Commission's *Rules* are usually referred to and cited as *Rules*, not regulations.

Rule 1.7.c.3. - Definition of delinquency.

The Staff's comments on the corresponding Sewer Rule are applicable.

Rule 2.4.a. - Electronic filing of financial and statistical reports.

The Staff's comments on the corresponding Sewer Rule are applicable.

Rule 2.5 - The requirement that utilities maintain their records in compliance with a more recent edition of the National Association of Regulatory Utility Commissioners *Uniform System of Accounts*.

The Staff's comments on the corresponding Sewer Rule are applicable.

Rule 4.2.a. - Security Deposits

The Staff's comments on the corresponding Sewer Rule are applicable.

Rule 4.1.g.2. - Requiring a flow test to determine whether sufficient supply and pressure are available to provide private fire protection service.

The Engineering Division feels that this testing could be expensive and burdensome on small utilities and recommends that applicants for private fire protection be required to pay for the testing. The ED also recommends that the *Rule* be amended further to clearly designate the private fire protection system designer as the responsible party for the design of the private fire protection system.

The Legal Division endorses the ED's position on payment for testing, but believes the proposed rule clearly imposes the responsibility for the design function of the private fire protection system upon its designer.

Rule 4.1.g.7. - Providing the exception that a residential minimum water bill be based upon the meter size that is normally required for residential service, when no fire protection service is provided. One- and two-family residences would be served through a one-inch meter and billed for consumption, but not billed for private fire protection service.

The ED recommends that the exceptions for one- and two-family residences be eliminated because there is no cost basis for their exception. A cost for this service should be determined by a cost of service study and charged.

The Legal Division has no reason, based in law, to advise the Commission to change its public interest policy on this issue.

Rule 4.12 - Scheduled and unscheduled interruptions.

The Staff's comments on the corresponding Sewer Rule are applicable.

Rule 5.5.g. - Alternate Depositor - Financed Extension Plans

The Staff's comments on the corresponding Sewer Rule are applicable.

Rule 5.5.h.7. - Alternate Extension Plans

The Staff's comments on the corresponding Sewer Rule are applicable.

Rule 5.7 - Cross connections and backflow prevention devices.

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PSC Proposed Sewer and Water Rule Changes  
October 31, 2008  
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The ED interprets the Commission's proposed rule change to encourage public water utilities to adopt blanket requirements that their customers install approved backflow devices whether or not a real threat of cross-connection exists. The ED also feels that it would be overly burdensome and unreasonable to require public utilities to supply and maintain thermal expansion equipment. The ED states that thermal expansion equipment is usually installed inside the customers' premises and not outside with the utilities facilities. Most plumbing codes requires the installation of thermal expansion equipment to be the responsibility of a building owner, not utilities. The ED encourages the Commission to change its proposed rule to require only that water utilities comply with the regulations of the Bureau of Public Health. In this manner, cross-connections facilities will only be required in instances when there exists a real threat of contamination.

The Legal Division does not interpret the applicability of the proposed rule changes in the same manner as the ED. The changes require only that all standard or uniform cross-connection and backflow programs be filed with the Commission and that if a public utility goes beyond the requirements of the Bureau of Health and requires backflow prevention without regard to the existence of a real threat of contamination, then the utility must bear the cost of installing and maintaining the thermal expansion protections equipment.

CTO/s  
Attachments

CWS CWS

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PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

INTERNAL MEMORANDUM

DATE: October 27, 2008

TO: C. Terry Owen, Staff Attorney  
Legal Division

FROM: Amy Swann, Director *AS*  
Geert Bakker, Utility Analyst Manager, *GB*  
William Nelson, Utility Analyst Manager *WN*  
David Acord, Utility Analyst Supervisor *DA*  
David Hatten, Utility Analyst Supervisor *DH*  
Water and Wastewater Division

RECEIVED  
08 OCT 28 PM 1:06  
LEGAL DIVISION

SUBJECT: General Orders 186.22 and 188.28  
In the matter of a rulemaking to amend the Commission's Rules and  
Regulations for the Government of Water and Sewer Utilities.  
Internal Memorandum

On August 15, 2008, the Public Service Commission initiated Rulemakings to amend both the Commission's Sewer and Water Rules. The order provided the Executive Secretary's office would provide notice of the Rulemakings through publication in various newspapers throughout the state. In addition, the Commission ordered a comment period to be provided with respect to the proposed rules identified in the order and noted that comments should be filed with the Commission's Executive Secretary by October 31, 2008, by 4:00 PM.

The Staff of the Water and Wastewater Division has reviewed both of the proposed rules contained in the two rulemakings and offers the following comments:

1. Water and Sewer Rule 2.4.a. On Page 2 of the Commission's order it states that these Rules require that financial and statistical reports filed with the Commission will be filed electronically beginning two years after the effective date of the rules. The actual proposed rules state that beginning January 1, 2009, all financial and statistical reports shall be filed electronically utilizing the Commission's web site. The Staff recommends that the rules be amended as follows:

2.4.a Each utility shall file annually a financial and statistical report upon forms to be furnished by the Commission The report shall be based upon the accounts set up in conformity with Rule 2.5. The report shall be filed on or before three (3) months following the end of the utility's fiscal year or on such date as the Commission may

direct. Beginning two years from the dates these Rules go into effect (Insert date here), all financial and statistical reports shall be filed electronically utilizing the Commission's web site.

The Staff of the Water and Wastewater Division has, over the years, received many questions on the requirements in the rules for water and sewer utilities to pay interest on customer deposits. The Staff of the Water and Wastewater Division also proposes that water and sewer utilities be required to collect deposits and be required to maintain the deposits in a separate interest bearing account. However, under the Staff's proposed changes to the rules, the utility would have the ability to use the interest earned on deposits towards its revenue requirement and would only be required to refund the original deposit amount when the respective payment requirements have been met by the customer. The utilization of interest would be to the benefit of all customers on the system. Furthermore, this would also allow utilities to spend more time on more pressing matters than trying to calculate interest on each respective deposit, filing cases at the PSC for waiver of such requirements, etc. The following represents the Commission's current Water and Sewer rules as proposed and the Staff's proposed changes:

### General Order 186.22 (Sewer)

#### 4.2.a. Security Deposits:

(Commission Proposed)

3. Return of deposit to customers who are not tenants -- After a customer who is not a tenant has paid bills for service for twelve (12) consecutive months without a delinquency, the utility shall promptly and automatically refund the deposit plus accrued interest. Calculation of the above twelve (12) months' period shall commence from the first regular payment or following the payment of a delinquent bill or bills.

(WWD Proposed)

3. Return of deposit to customers who are not tenants -- After a customer who is not a tenant has paid bills for service for twelve (12) consecutive months without a delinquency, the utility shall promptly and automatically refund the deposit ~~plus accrued interest~~. Calculation of the above twelve (12) months' period shall commence from the first regular payment or following the payment of a delinquent bill or bills.

(Commission Proposed)

4. Return of deposit by public service districts and municipal systems only for to a customer who is a tenant -- By statute A public service districts and municipal systems is are not required to return a deposit to a customer who is a tenant until the time the tenant discontinues service with the district or municipal system. After a customer who is a tenant discontinues service with the district or municipal system, the utility shall promptly and automatically refund the deposit plus accrued interest.

(WWD Proposed)

4. Return of deposit by public service districts and municipal systems only for to a customer who is a tenant -- By statute A public service districts and municipal systems is are not required to return a deposit to a customer who is a tenant until the time the tenant discontinues service with the district or municipal system. After a customer who is a tenant discontinues service with the district or municipal system, the utility shall promptly and automatically refund the deposit. ~~plus accrued interest.~~

(Commission Proposed)

5. Interest at the rate as determined in accordance with Rule 4.2.a.8. shall be paid from the date of deposit until the date of refund of the security deposit. Simple interest on any deposit held for more than one year shall be calculated based on the applicable current year's rate of simple interest as determined in accordance with Rule 4.2.a.8. All customer security deposits shall be placed in an interest bearing account at a local federally insured financial institution. 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.

(WWD Proposed)

~~5. Interest at the rate as determined in accordance with Rule 4.2.a.8. shall be paid from the date of deposit until the date of refund of the security deposit. Simple interest on any deposit held for more than one year shall be calculated based on the applicable current year's rate of simple interest as determined in accordance with Rule 4.2.a.8. All customer security deposits shall be placed in an interest bearing account at a local federally insured financial institution. The district and municipality 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.~~

C. Terry Owen, Staff Attorney  
General Orders 186.22 and 188.28  
October 27, 2008  
Page 4

(Commission Proposed)

7. The interest rate to be paid by all sewer utilities ~~other than~~ including public service districts shall be ~~determined as follows~~ 2% per annum calculated as simple interest. ~~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 file with the Commission its calculations. The Commission will issue an order setting the rate to be paid by the utilities until the next annual Commission order. The simple interest shall be paid at the date of discontinuance of service or at the end of the deposit period.~~

(WWD Proposed)

~~7. The interest rate to be paid by all sewer utilities other than including public service districts shall be determined as follows 2% per annum calculated as simple interest. 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 file with the Commission its calculations. The Commission will issue an order setting the rate to be paid by the utilities until the next annual Commission order. The simple interest shall be paid at the date of discontinuance of service or at the end of the deposit period.~~

(Commission Proposed)

~~12.11.~~ 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 fact that interest will be paid at a Commission determined rate. Each utility shall provide automatic means to refund the deposit of a customer, when 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.

(WWD Proposed)

~~12.11.~~ 10. 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 fact that interest will be paid at a Commission determined rate.~~ Each utility shall provide automatic means to refund the deposit of a customer, when so entitled, if

C. Terry Owen, Staff Attorney  
General Orders 186.22 and 188.28  
October 27, 2008  
Page 5

the original receipt cannot be produced. A receipt or proof of payment will not be necessary under the provisions for an automatic refund.

(Commission Proposed)

**13. 12.** Unclaimed deposits -- Should a utility have retained, through no fault of its own, deposits made by customers whose service has been discontinued during any calendar year, it shall, on or before the first day of March, in each year, mail to the customer's last known address a check as refund of the deposit plus accrued interest, or at the utility's option, publish a list of such depositors in a newspaper published and of general circulation in each of the county(ies) in which it operates and in which the deposits were made, showing as of the thirty-first (31st) 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 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. Upon completion of the above procedure, the utility shall follow the provisions of the Uniform Unclaimed Property Act, codified in the W. Va. Code §36-8-1 et seq., with regard to the disposition of any unclaimed deposit.

(WWD Proposed)

**13. ~~12.~~ 11.** Unclaimed deposits -- Should a utility have retained, through no fault of its own, deposits made by customers whose service has been discontinued during any calendar year, it shall, on or before the first day of March, in each year, mail to the customer's last known address a check as refund of the deposit ~~plus accrued interest~~, or at the utility's option, publish a list of such depositors in a newspaper published and of general circulation in each of the county(ies) in which it operates and in which the deposits were made, showing as of the thirty-first (31st) 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 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.~~ Upon completion of the above procedure, the utility shall follow the provisions of the Uniform Unclaimed Property Act, codified in the W. Va. Code §36-8-1 et seq., with regard to the disposition of any unclaimed deposit.

## General Order 188.28 (Water)

### 4.2.a. Security Deposits:

(Commission Proposed)

3. Return of deposit to customers who are not tenants -- After a customer who is not a tenant has paid bills for service for twelve (12) consecutive months without a delinquency, the utility shall promptly and automatically refund the deposit plus accrued interest. Calculation of the above twelve (12) months' period shall commence from the first regular payment or following the payment of a delinquent bill or bills.

(WWD Proposed)

3. Return of deposit to customers who are not tenants -- After a customer who is not a tenant has paid bills for service for twelve (12) consecutive months without a delinquency, the utility shall promptly and automatically refund the deposit ~~plus accrued interest~~. Calculation of the above twelve (12) months' period shall commence from the first regular payment or following the payment of a delinquent bill or bills.

(Commission Proposed)

4. Return of deposit by public service districts and municipal systems only for to a customer who is a tenant -- By statute A public service districts and municipal systems is are not required to return a deposit to a customer who is a tenant until the time the tenant discontinues service with the district or municipal system. After a customer who is a tenant discontinues service with the district or municipal system, the utility shall promptly and automatically refund the deposit plus accrued interest.

(WWD Proposed)

4. Return of deposit by public service districts and municipal systems only for to a customer who is a tenant -- By statute A public service districts and municipal systems is are not required to return a deposit to a customer who is a tenant until the time the tenant discontinues service with the district or municipal system. After a customer who is a tenant discontinues service with the district or municipal system, the utility shall promptly and automatically refund the deposit. ~~plus accrued interest~~.

(Commission Proposed)

5. Interest at the rate as determined in accordance with Rule 4.2.a.8. shall be paid from the date of deposit until the date of refund of the security deposit. Simple interest on any deposit held for more than one year shall be calculated based on the applicable current year's rate of simple interest as determined in accordance with Rule 4.2.a.8. All customer security deposits shall be placed in an interest bearing account at a local federally insured financial institution. 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.

(WWD Proposed)

~~5. Interest at the rate as determined in accordance with Rule 4.2.a.8. shall be paid from the date of deposit until the date of refund of the security deposit. Simple interest on any deposit held for more than one year shall be calculated based on the applicable current year's rate of simple interest as determined in accordance with Rule 4.2.a.8. All customer security deposits shall be placed in an interest bearing account at a local federally insured financial institution. The district and municipality 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.~~

(Commission Proposed)

7. The interest rate to be paid by all sewer utilities ~~other than~~ including public service districts shall be ~~determined as follows~~ 2% per annum calculated as simple interest. ~~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 file with the Commission its calculations. The Commission will issue an order setting the rate to be paid by the utilities until the next annual Commission order. The simple interest shall be paid at the date of discontinuance of service or at the end of the deposit period.~~

(WWD Proposed)

~~7. The interest rate to be paid by all sewer utilities other than including public service districts shall be determined as follows 2% per annum calculated as simple interest. 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 file with the Commission its calculations. The Commission will issue an order setting the rate to be paid by the utilities until the next annual Commission order. The simple interest shall be paid at the date of discontinuance of service or at the end of the deposit period.~~

(Commission Proposed)

**12.11.** 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 fact that interest will be paid at a Commission determined rate. Each utility shall provide automatic means to refund the deposit of a customer, when 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.

(WWD Proposed)

~~**12.11. 10.** 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 fact that interest will be paid at a Commission determined rate.~~ Each utility shall provide automatic means to refund the deposit of a customer, when 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.

(Commission Proposed)

**13. 12.** Unclaimed deposits -- Should a utility have retained, through no fault of its own, deposits made by customers whose service has been discontinued during any calendar year, it shall, on or before the first day of March, in each year, mail to the customer's last known address a check as refund of the deposit plus accrued interest, or at the utility's option, publish a list of such depositors in a newspaper published and of general circulation in each of the county(ies) in which it operates and in which the deposits were made, showing as of the thirty-first (31st) 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 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. Upon completion of the above procedure, the utility shall follow the provisions of the Uniform Unclaimed Property Act, codified in the W. Va. Code §36-8-1 et seq., with regard to the disposition of any unclaimed deposit.

(WWD Proposed)

~~13. 12.~~ 11. Unclaimed deposits -- Should a utility have retained, through no fault of its own, deposits made by customers whose service has been discontinued during any calendar year, it shall, on or before the first day of March, in each year, mail to the customer's last known address a check as refund of the deposit ~~plus accrued interest~~, or at the utility's option, publish a list of such depositors in a newspaper published and of general circulation in each of the county(ies) in which it operates and in which the deposits were made, showing as of the thirty-first (31st) 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 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.~~ Upon completion of the above procedure, the utility shall follow the provisions of the Uniform Unclaimed Property Act, codified in the W. Va. Code §36-8-1 et seq., with regard to the disposition of any unclaimed deposit.  
**General Order 186.22 and 188.28**

The Orders change the required Uniform System of Accounts as follows:

2.5. Uniform system of accounts.

2.5.a. All sewer utilities shall maintain their accounts and records in compliance with the Uniform System of Accounts as promulgated in 1996 by the National Association of Regulatory Utility Commissioners for Class A, B, & C sewer utilities.

2.5. Uniform system of accounts.

All water utilities shall maintain their accounts and records in compliance with the Uniform System of Accounts (USoA) as promulgated in 1996 by the National Association of Regulatory Utility Commissioners for Class A, B, and C Water Utilities.

The changes reflect current operating practices for both water and sewer utilities and water and sewer USoA mirror each other now. The sewer accounts place emphasis on water reuse and allow for recording the investments and costs, which will ease the calculation of tariff rates for effluent being reused for irrigation or drinking water.

The following are a summary of the changes in the Uniform System of Accounts for both water and sewer systems as promulgated in 1996 from the System of Accounts for Water of 1973 and the System of Accounts for Sewer Systems of 1958. The Class D is eliminated entirely from the System of Accounts.

<u>Changes</u>	<u>Water</u>	<u>Wastewater</u>
Change the term "sewer" to "wastewater" where applicable to conform with the terminology currently used by the industry.	ABC	ABC
1. Increased the Class A, B & C revenue levels to account for inflation since the levels were last changed in 1984. This was done based on the same index used to set the levels in  Class A: \$1,000,000 and more, Class B: \$200,000 to \$999,999, and Class C: Less than \$200,000.	ABC	ABC
2. Included a monetary level for capitalizing versus expensing for all Classes as follows: Class A: \$750 Class B: \$400 Class C: \$150	ABC	ABC
3. Added definitions, accounting instructions and subaccounts to provide for the accounting for regulatory assets and liabilities.	AB	AB
5. Added a new water plant account to separately account for backflow prevention devices.	ABC	

- |     |   |     |     |
|-----|---|-----|-----|
| 6.  | Added new wastewater plant accounts to separately account for reuse facilities used to produce reclaimed water.   |     | AB  |
| 7.  | Added new wastewater expense accounts to separately account for the operation of reuse facilities to produce reclaimed water.   |     | AB  |
| 8.  | Added new wastewater revenue accounts to separately account for revenue from reclaimed water sales.   |     | AB  |
| 9.  | Added a new water expense account to separately account for Water Conservation Expenses.  | AB  |     |
| 10. | Requires the use of subaccounts to Accounts 271 - CIAC and 272 - Amortization of CIAC to separately account for any CIAC gross-up funds received by a utility.<br>Also adds definitions for gross-up of CIAC. | ABC | ABC |
| 11. | Added a new account to separately account for revenues collected by a utility prior to service being initiated to guarantee or reserve plant capacity.  | ABC | ABC |
| 12. | Added a new water expense account to separately account for water testing expenses.   | ABC |     |
| 13. | Removed confusing language in Account 218 - Proprietary Capital - which indicated that the system provided language concerning the use of earned surplus accounts, which it does not.                         | ABC | ABC |

- |     |   |     |     |
|-----|---|-----|-----|
| 14. | Added a new wastewater plant account to separately account for power generation equipment.  |     | ABC |
| 15. | Added additional accounts for Contractual Services to separately account for billing and professional services.   | C   | C   |
| 16. | Redesigned the Operating and Maintenance Accounts for all schedules. Each type of expense, such as payroll, equipment rental, contract services or Material and Supplies, will have its own account number and a subaccount for each operation function, such as collection, treatment, distribution etc. | ABC | ABC |

Item 10 - CIAC.

This change requires utilities to post accumulated depreciation to a contra account (acct. 272) for all plant financed with contributions by customers, governments, etc. Now, some utilities do post their depreciation expense on plant financed with contributions to the Contribution account. This way, the contributions amount decreases with the depreciated value of the plant. With the introduction of GASB 34 and 33 (Governmental Accounting Standards Board), contributions are recognized in the year they are received as non-operating income. The 2006 Miller Governmental GAAP Manual includes the following guidance:

**“ Practice Point:** Prior to the issuance of GASB-34, an Enterprise Fund could account for depreciation expense in the conventional manner or depreciation expense could be closed at the end of the year directly to the fund’s contributed capital account that was created when a restricted grant, entitlement, or shared revenue was provided to acquire the related capital asset. GASB-34 prohibits the latter method of accounting for depreciation expense. (GASB-34, par. 103”

There is no purpose in matching depreciation expense with contributions anymore.

C. Terry Owen, Staff Attorney  
General Orders 186.22 and 188.28  
October 27, 2008  
Page 13

Staff recommends that the Commission specifically allows utilities to charge all depreciation expenses to account 108 Accumulated Depreciation, regardless of the type of funding received for the specific plant being depreciated for all water and sewer utility classes.

Item 16 – O&M.

We have attached as Attachment 1 the example of the expense schedules that illustrate all expense accounts and the corresponding functional sub accounts.

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Water Operation and Maintenance Expense Accounts-2009

Acct #	Description	Source of Supply and Expenses - Operations		Source of Supply and Expenses - Maint.		Water Treatment Expenses - Operations		Water Treatment Expenses - Maint.		Trans. & Diets. Expenses - Operations		Trans. & Diets. Expenses - Maint.		Customer Accounts Expenses		Admin. & General Expenses	
		0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.1	1.2	1.3	1.4	1.5	1.6
601	Salaries and Wages - Employees	601.1	601.2	601.3	601.4	601.5	601.6	601.7	601.8	601.9	602.0	602.1	602.2	602.3	602.4	602.5	602.6
602	Salaries and Wages - Officers, Directors and Majority stockholders	603.1	603.2	603.3	603.4	603.5	603.6	603.7	603.8	603.9	604.0	604.1	604.2	604.3	604.4	604.5	604.6
604	Employee Pension & Benefits	604.1	604.2	604.3	604.4	604.5	604.6	604.7	604.8	604.9	605.0	605.1	605.2	605.3	605.4	605.5	605.6
610	Purchased Water	610.1	610.2	610.3	610.4	610.5	610.6	610.7	610.8	610.9	611.0	611.1	611.2	611.3	611.4	611.5	611.6
615	Purchased Power	615.1	615.2	615.3	615.4	615.5	615.6	615.7	615.8	615.9	616.0	616.1	616.2	616.3	616.4	616.5	616.6
616	Fuel for Power Production	616.1	616.2	616.3	616.4	616.5	616.6	616.7	616.8	616.9	617.0	617.1	617.2	617.3	617.4	617.5	617.6
618	Chemicals	618.1	618.2	618.3	618.4	618.5	618.6	618.7	618.8	618.9	619.0	619.1	619.2	619.3	619.4	619.5	619.6
620	Materials and Supplies	620.1	620.2	620.3	620.4	620.5	620.6	620.7	620.8	620.9	621.0	621.1	621.2	621.3	621.4	621.5	621.6
621	Contractual Services - Eng.	621.1	621.2	621.3	621.4	621.5	621.6	621.7	621.8	621.9	622.0	622.1	622.2	622.3	622.4	622.5	622.6
622	Contractual Services - Acct.	622.1	622.2	622.3	622.4	622.5	622.6	622.7	622.8	622.9	623.0	623.1	623.2	623.3	623.4	623.5	623.6
623	Contractual Services - Legal	623.1	623.2	623.3	623.4	623.5	623.6	623.7	623.8	623.9	624.0	624.1	624.2	624.3	624.4	624.5	624.6
624	Contractual Services - Management Fees	624.1	624.2	624.3	624.4	624.5	624.6	624.7	624.8	624.9	625.0	625.1	625.2	625.3	625.4	625.5	625.6
625	Contractual Services - Testing	625.1	625.2	625.3	625.4	625.5	625.6	625.7	625.8	625.9	626.0	626.1	626.2	626.3	626.4	626.5	626.6
626	Contractual Services - Other	626.1	626.2	626.3	626.4	626.5	626.6	626.7	626.8	626.9	627.0	627.1	627.2	627.3	627.4	627.5	627.6
641	Rental of Building/Real Property	641.1	641.2	641.3	641.4	641.5	641.6	641.7	641.8	641.9	642.0	642.1	642.2	642.3	642.4	642.5	642.6
642	Rental of Equipment	642.1	642.2	642.3	642.4	642.5	642.6	642.7	642.8	642.9	643.0	643.1	643.2	643.3	643.4	643.5	643.6
650	Transportation Expenses	650.1	650.2	650.3	650.4	650.5	650.6	650.7	650.8	650.9	651.0	651.1	651.2	651.3	651.4	651.5	651.6
656	Insurance - Vehicle	656.1	656.2	656.3	656.4	656.5	656.6	656.7	656.8	656.9	657.0	657.1	657.2	657.3	657.4	657.5	657.6
657	Insurance - General Liability	657.1	657.2	657.3	657.4	657.5	657.6	657.7	657.8	657.9	658.0	658.1	658.2	658.3	658.4	658.5	658.6
658	Insurance - Workman's Compensation	658.1	658.2	658.3	658.4	658.5	658.6	658.7	658.8	658.9	659.0	659.1	659.2	659.3	659.4	659.5	659.6
659	Insurance - Other	659.1	659.2	659.3	659.4	659.5	659.6	659.7	659.8	659.9	660.0	660.1	660.2	660.3	660.4	660.5	660.6
660	Advertising Expense	660.1	660.2	660.3	660.4	660.5	660.6	660.7	660.8	660.9	661.0	661.1	661.2	661.3	661.4	661.5	661.6
666	Regulatory Commission Expenses - Amortisation of Rate Case Expense	666.1	666.2	666.3	666.4	666.5	666.6	666.7	666.8	666.9	667.0	667.1	667.2	667.3	667.4	667.5	667.6
667	Regulatory Commission Expense - Other	667.1	667.2	667.3	667.4	667.5	667.6	667.7	667.8	667.9	668.0	668.1	668.2	668.3	668.4	668.5	668.6
668	Water Resource Conservation Expense	668.1	668.2	668.3	668.4	668.5	668.6	668.7	668.8	668.9	669.0	669.1	669.2	669.3	669.4	669.5	669.6
670	Bad Debt Expense	670.1	670.2	670.3	670.4	670.5	670.6	670.7	670.8	670.9	671.0	671.1	671.2	671.3	671.4	671.5	671.6
675	Miscellaneous Expenses	675.1	675.2	675.3	675.4	675.5	675.6	675.7	675.8	675.9	676.0	676.1	676.2	676.3	676.4	676.5	676.6

# WASTEWATER OPERATION AND MAINTENANCE EXPENSE ACCOUNTS-2009

Acct# Description	Collection										Pumping		Treatment		Customer		Admin.		Treatment-		Expenses -		
	0.1	0.2	0.3	0.4	0.5	0.6	0.7	0.8	0.9	1.0	1.1	1.2	1.3	1.4	1.5	1.6	1.7	1.8	1.9	2.0	2.1	2.2	2.3
701. Salaries and Wages - Employees	701.2	701.2	701.3	701.4	701.5	701.6	701.7	701.8	701.9	701.10	701.11	701.12											
703. Salaries and Wages - Officers, Directors and Majority Stockholders	703.1	703.2	703.3	703.4	703.5	703.6	703.7	703.8	703.9	703.10	703.11	703.12											
704. Employee Pensions and Benefits	704.1	704.2	704.3	704.4	704.5	704.6	704.7	704.8	704.9	704.10	704.11	704.12											
710. Purchased Wastewater Treatment	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX											
711. Sludge Removal Expense	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX											
715. Purchased Power	715.1	715.2	715.3	715.4	715.5	715.6	715.7	715.8	715.9	715.10	715.11	715.12											
716. Fuel for Power Production	716.1	716.2	716.3	716.4	716.5	716.6	716.7	716.8	716.9	716.10	716.11	716.12											
718. Chemicals	718.1	718.2	718.3	718.4	718.5	718.6	718.7	718.8	718.9	718.10	718.11	718.12											
720. Materials and Supplies	720.1	720.2	720.3	720.4	720.5	720.6	720.7	720.8	720.9	720.10	720.11	720.12											
731. Contractual Services - Eng.	731.1	731.2	731.3	731.4	731.5	731.6	731.7	731.8	731.9	731.10	731.11	731.12											
732. Contractual Services - Acct.	732.1	732.2	732.3	732.4	732.5	732.6	732.7	732.8	732.9	732.10	732.11	732.12											
733. Contractual Services - Legal	733.1	733.2	733.3	733.4	733.5	733.6	733.7	733.8	733.9	733.10	733.11	733.12											
734. Contractual Services - Management Fees	734.1	734.2	734.3	734.4	734.5	734.6	734.7	734.8	734.9	734.10	734.11	734.12											
735. Contractual Services - Testing	735.1	735.2	735.3	735.4	735.5	735.6	735.7	735.8	735.9	735.10	735.11	735.12											
736. Contractual Services - Other	736.1	736.2	736.3	736.4	736.5	736.6	736.7	736.8	736.9	736.10	736.11	736.12											
741. Rental of Building/Real Property	741.1	741.2	741.3	741.4	741.5	741.6	741.7	741.8	741.9	741.10	741.11	741.12											
742. Rental of Equipment	742.1	742.2	742.3	742.4	742.5	742.6	742.7	742.8	742.9	742.10	742.11	742.12											
750. Transportation Expenses	750.1	750.2	750.3	750.4	750.5	750.6	750.7	750.8	750.9	750.10	750.11	750.12											
756. Insurance - Vehicle	756.1	756.2	756.3	756.4	756.5	756.6	756.7	756.8	756.9	756.10	756.11	756.12											
757. Insurance - General Liability	757.1	757.2	757.3	757.4	757.5	757.6	757.7	757.8	757.9	757.10	757.11	757.12											
758. Insurance - Workman's Compensation	758.1	758.2	758.3	758.4	758.5	758.6	758.7	758.8	758.9	758.10	758.11	758.12											
759. Insurance - Other	759.1	759.2	759.3	759.4	759.5	759.6	759.7	759.8	759.9	759.10	759.11	759.12											
760. Advertising Expense	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX											
766. Regulatory commission Expenses - Amortization of Rate Case Expense	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX											
767. Regulatory commission Expense - Other	767.1	767.2	767.3	767.4	767.5	767.6	767.7	767.8	767.9	767.10	767.11	767.12											
770. Bad Debt Expense	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX											
775. Miscellaneous Expenses	775.1	775.2	775.3	775.4	775.5	775.6	775.7	775.8	775.9	775.10	775.11	775.12											

**ENGINEERING DIVISION FINAL STAFF MEMORANDUM**

DATE: October 29, 2008  
TO: Terry Owen, Staff Attorney  
Legal Division  
FROM: James W. Ellars, P.E., Senior Engineer **JWE**  
Engineering Division  
SUBJECT: General Order No. 186.22

RECEIVED  
08 OCT 29 PM 2:12  
WATER SERVICE COMMISSION  
LEGAL DIVISION

In the matter of a rulemaking to amend the Commission's Rules and Regulations for the Government of Sewer Utilities

General Order No. 188.28

In the matter of a rulemaking to amend the Commission's Rules and Regulations for the Government of Water Utilities

On August 15, 2008 the Commission issued proposed rules changes in the above-captioned proceedings. Attached are comments and recommendations respectfully submitted on behalf of the Commission Staff's Engineering Division.

JWE:s  
Attachment

**EEM**

**GENERAL ORDER 186.22  
ENGINEERING DIVISION STAFF RECOMMENDATIONS  
SEWER RULE CHANGES**

4.11 Scheduled and Unscheduled Interruptions:

The proposed change requires utilities to notify the Commission in the event of *any* interruption.

Discussion: Assuming most utilities comply with the rule, expanding this requirement to include *any* interruption is overly burdensome and impractical. Such a requirement will likely result in the Commission receiving literally hundreds of notifications from utilities every month, with the vast majority of these notifications relating to interruptions that impact a very small number of customers and limited duration.

Moreover, the proposed rule does not define the term "notification" in terms of what equals a valid notification. Who, which Division, section, etc. should be notified?

Recommendation: The notification requirement should be limited to interruptions which impact a large number of customers, or those having long durations. Recommend that the notification requirement be limited only to those interruptions which fall into either of two categories:

- 1) Interruptions affecting more than 50 customers, or
- 2) Any interruption lasting longer than 24 hours;

Regarding the notification process internal to the Commission, the Commission's Executive Secretary should be notified and a subsequent notice, either in hardcopy form or electronically, forwarded to the Engineering and Water/Wastewater Divisions.

5.4.a Long Service Lines:

Rule change clarifies that long service lines are not permitted for sewer systems.

Discussion/Recommendation: Engineering Division agrees with the rule change.

5.5.g Alternate Depositor-Financed Extension Plans:

Discussion: The proposed language was inserted into Rule 5.5.g which relates only to Alternate Depositor-Financed Extension Plans. However, the intent of the proposed change appears to be applicable to all alternate main line extension agreements.

Recommendation: It is more appropriate to include it under Rule 5.5.h. (General Provisions - specifically 5.5.h.7). Engineering Division agrees with the rule change.

5.5.h.7 Alternate Extension Plans:

Discussion: Historically, this Rule has been interpreted to require that every single agreement be submitted to the Commission for approval. However, it does not provide for identical agreements which have previously been submitted and approved by the Commission where only the parties to the agreement have changed and where the substantive terms and conditions remain identical to the previously-approved agreement. This can result in utilities being required to file the exact same agreement in multiple cases where the only difference is that one of the parties listed in the agreement (the customer) has changed.

The sentence "Failure to obtain Commission approval will result in the loss of the right to obtain reimbursement from the utility" should be stricken. This penalizes the customer instead of the utility who actually has control over the filing process.

Recommendation: Strike and replace the following language from Rule 5.5.7.h:

This rule shall not be construed as prohibiting the utility from entering into an agreement with a customer that complies with the Commission approved checklist attached hereto as Sewer Form No. 7, in providing an alternate plan for a main extension. Commission Staff may be consulted to provide assistance and sample forms. In providing an alternate plan for main extensions a utility may not discriminate between customers whose service requirements are similar. ~~The Agreements shall be filed with and approved by the Commission prior to the implementation or execution of the agreement by any of the parties. However, once an agreement is approved it may be utilized in subsequent extension agreements with other parties without further Commission approval, provided that the original terms and conditions of the previously-approved agreement remain unchanged. In such cases where subsequent approval is not required, the Utility shall be required to file the executed agreement with the Commission for informational purposes.~~ The agreement shall include the name, address and phone number of the parties to the agreement. The agreement shall also include a provision explaining why the utility is not funding the extension. The agreement must attach a copy of this Rule 5.5 ., and a statement signed by the prospective customer that he has reviewed and understands the provisions of Rule 5.5 .f. which entitle a customer to refunds and that he knowingly waives such rights, if applicable. ~~Failure to obtain 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 to all facilities including property, plant and rights-of-way incidental to the furnishing of utility service.

**GENERAL ORDER 188.28  
ENGINEERING DIVISION STAFF RECOMMENDATIONS**

**WATER RULE CHANGES**

4.1.g Private fire protection service –

**The proposed change at paragraph 2 requires the completion of a flow test in conjunction with an application for private fire protection service.**

Discussion: The proposed rule change does not specify who shall pay the costs associated with the conduct of the required flow test. Engineering Staff opines that the cost of such testing may prove burdensome to many small utilities and will recommend that the proposed rule change be amended to specify that the estimated cost of such testing shall be paid for by the applicant desiring private fire service. In addition, Staff believes that the designer of the private fire protection system must bear the responsibility for the design of the system and we are revising the language of the proposed rule to reflect this view.

Recommendation: Revise the proposed rule change as follows:

2. The utility shall not approve an application for private fire protection service unless the utility determines that its system provides an adequate size water main with sufficient water volume and pressure. A flow test shall be performed as required by the State Fire Code, specifically as described within the incorporated NFPA Standard 291, to determine the water supply and pressure available in the utility's water main. The cost of conducting such flow testing shall be paid for by the applicant based upon the Utility's written, detailed estimate of such cost. Payment shall be made at the time that application is made for service.

The private fire protection system MAY, at the discretion of the engineering professional in charge of the design of the private fire protection system, be engineered based on the results of the utility's flow test with the understanding that the results of any single flow test may not accurately represent the hydraulic capacity of the water supply system at all times and under all circumstances.

**The proposed rule at paragraph 7 provides an exception that allows residential, one- or two-family Life Safety fire service to be provided through a residential 1" meter and provides that the minimum charge shall be based on the meter size which would have been used if no fire service were to be provided.**

Discussion: A primary consideration in the establishment of rates is to establish such rates based primarily upon the cost of providing service. An important component of the cost of service is the need to provide excess capacity so as to allow a water system to meet the peak demands (such as the demand due to fires) of its customers. The proposed rule change arbitrarily mandates that this important cost component (excess capacity) be

ignored for certain "special" customers (one-or two-family residences) just because they install certain "life safety" fire protection equipment (residential sprinklers). Staff opines that such arbitrary negation of an important tenant of rate making should not be mandated-away via rule making. Instead, Staff advocates continuing with the proven, historical approach of using a properly-prepared and well thought out class cost of service study as the basis for establishing fair, cost-based rates for all customers.

Further, in the design of a residential sprinkler system, one uses a rational engineering approach to properly evaluate the needed water service size and water meter size. In many cases, dependant upon site specific conditions (such as the available water supply pressure and the flow needed by the sprinkler system), a "standard" ( $5/8$ " or  $3/4$ "") water meter may prove adequate. Each sprinkler system is different and each such system will be designed by a qualified professional who will specify the size of meter and service which is needed for that particular installation. In other words, it is not necessary to mandate, by rule change, that a minimum 1" meter be used, in many instances; a smaller meter will serve satisfactorily.

Recommendation: Revise the proposed rule as follows:

The utility will charge the applicant for general water service based on the consumption through and size of the water meter installed, in accordance with its schedule of rates for general water service. ~~with the exception that a residential one or two family Life Safety fire service supplied through a residential service meter shall be provided with a 1" meter and shall be charged based on the consumption through the meter. The minimum charge shall be based on a meter size no greater than the size of meter that would have otherwise been needed without residential fire service. It shall be understood that this increased meter size is due to the potential volume necessary for a residential Life Safety fire service and for no other purpose. The applicant shall be responsible for the additional cost of materials for the 1" service over the service size that would have otherwise been needed without a residential fire service.~~ The utility shall, subject to Commission approval, charge the commercial applicant for private fire protection service in accordance with its schedule of rates for such service.

#### 4.12 Scheduled and Unscheduled Interruptions:

The proposed change requires utilities to notify the Commission in the event of *any* interruption.

Discussion: Assuming most utilities comply with the rule, expanding this requirement to include *any* interruption is overly burdensome and impractical. Such a requirement will likely result in the Commission receiving literally hundreds of notifications from utilities every month, with the vast majority of these notifications relating to interruptions that impact a very small number of customers and limited duration. It is important to note that the Commission Staff already receives copies of all Boil Water Advisories issued by the Bureau for Public Health.

Moreover, the proposed rule does not define the term "notification" in terms of what equals a valid notification. Who, which Division, section, etc. should be notified?

Recommendation: The notification requirement should be limited to interruptions which impact a large number of customers or those having long durations. Recommend that the notification requirement be limited only to those interruptions which fall into either of two categories:

- 1) Interruptions affecting more than 50 customers, or
- 2) Any interruption lasting longer than 24 hours;

Regarding the notification process internal to the Commission, the Commission's Executive Secretary should be notified and a subsequent notice, either in hardcopy form or electronically, forwarded to the Engineering and Water/Wastewater Divisions.

#### 5.5.g Alternate Depositor-Financed Extension Plans:

Discussion: The proposed language was inserted into Rule 5.5.g which relates only to Alternate Depositor-Financed Extension Plans. However, the intent of the proposed change appears to be applicable to all alternate main line extension agreements.

Recommendation: It is more appropriate to include it under Rule 5.5.h. (General Provisions - specifically 5.5.h.7). Engineering Division agrees with the rule change.

#### 5.5.h.7 Alternate Extension Plans:

Discussion: Historically, this Rule has been interpreted to require that every single agreement be submitted to the Commission for approval. However, it does not provide for identical agreements which have previously been submitted and approved by the Commission where only the parties to the agreement have changed and where the substantive terms and conditions remain identical to the previously-approved agreement. This can result in utilities being required to file the exact same agreement in multiple cases where the only difference is that one of the parties listed in the agreement (the customer) has changed.

The sentence "Failure to obtain Commission approval will result in the loss of the right to obtain reimbursement from the utility" should be stricken. This penalizes the customer instead of the utility, who actually has control over the filing process.

Recommendation: Strike and replace the following language from Rule 5.5.7.h:

This rule shall not be construed as prohibiting the utility from entering into an agreement with a customer that complies with the Commission approved checklist attached hereto as Water Form No. 6, in providing an alternate plan for a main extension.

Commission Staff may be consulted to provide assistance and sample forms. In providing an alternate plan for main extensions a utility may not discriminate between customers whose service requirements are similar. The Agreements shall be filed with and approved by the Commission prior to the implementation or execution of the agreement by any of the parties. However, once an agreement is approved it may be utilized in subsequent extension agreements with other parties without further Commission approval, provided that the original terms and conditions of the previously-approved agreement remain unchanged. In such cases where subsequent approval is not required, the Utility shall be required to file the executed agreement with the Commission for informational purposes. The agreement shall include the name, address and phone number of the parties to the agreement. The agreement shall also include a provision explaining why the utility is not funding the extension. The agreement must attach a copy of this Rule 5.5 ., and a statement signed by the prospective customer that he has reviewed and understands the provisions of Rule 5.5 .g. which entitle a customer to refunds and that he knowingly waives such rights, if applicable. ~~Failure to obtain 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 to all facilities including property, plant and rights-of-way incidental to the furnishing of utility service.

#### 5.7 Cross connections and backflow prevention regulations.

Discussion: The applicable state standard is found in 64 CSR 15 effective March 13, 2004 as stated in the proposed rules. Under these regulations, however, approved backflow prevention devices are not required for every single customer connected to a public water system and such a practice should not be encouraged by the Commission. Utilities normally require backflow prevention devices *only where a cross-connection hazard exists, or where one could likely exist*. It is our opinion that utilities should not require, as a "blanket" policy, that approved backflow prevention devices be required for every single customer. Such a practice will be expensive and will raise costs to ratepayers, in many cases, unnecessarily. 64 CSR 15 provides clear instances where approved devices must be installed.

Section 5.2.1 of 64 CSR 15 does appear to give the "community public water system", i.e., the *utility* the authority to require approved backflow preventers whenever and wherever it chooses. However, the practice of placing a "blanket requirement" on all customers is not 1) supported by the existing rules, and 2) is overly broad and will likely result in unnecessary costs to ratepayers. Utilities should simply comply with 64 CSR 15 and not be encouraged to adopt "blanket requirements" for approved backflow preventers which impact all customers regardless of the real potential for contamination.

Additionally, requiring utilities to supply and maintain thermal expansion equipment is overly burdensome and unreasonable. Such equipment, if needed, is typically installed *inside* the customers' premises, which may create additional

responsibility and liability for the utility. The utility would then be responsible for maintaining equipment to which they may have no access, and then held accountable should the equipment fail. The current rules clearly delineate a point of service for customers where the utility's operation and maintenance responsibilities end, which in most cases is the property line. Likewise, only those customers whose service includes a cross-connection or a substantial contamination potential should be required to install and maintain these devices as well as the associated thermal expansion equipment. Further, most plumbing codes mandate the responsibility for thermal expansion devices to lie with the building owner and NOT with the utility.

Recommendation: The Commission should require utilities to comply with all regulations from the Bureau for Public Health, including 64 CSR 15. However, the Commission should not encourage utilities to adopt "blanket requirements" where all customers are required to install approved backflow preventers, regardless of whether or not a real and substantial threat of cross-connections exists.

Recommend the following changes to the proposed rule:

5.7. Cross connections and back flow prevention regulations.

See West Virginia Bureau for Public Health ~~Bulletin EW-113 effective April 1, 1976~~ legislative rules; codified at 64 CSR 15 as of March 13, 2004 (the effective date of this rule).

5.7.a. Pursuant to the requirements of the Bureau for Public Health legislative rules, all utilities that have adopted a standard or uniform cross-connection and backflow program must file the details of such programs with this Commission. ~~Such programs will be approved as filed unless it can be shown that the program violates an existing rule of this Commission.~~

5.7.b. If a utility elects to universally require backflow prevention on all customers without regard to actual or potential health hazards that may exist, the utility will be deemed to have changed the character of service to the customer and, as a result, the utility ~~will be held responsible for supplying and maintaining any necessary thermal expansion protection equipment on the customers' premises~~ shall be required to seek Commission approval prior to the implementation of any such plans or policies, during which the utility shall bear the burden of proof regarding the necessity of its actions.



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P.O. Box 1588  
Charleston, WV 25326-1588  
(304) 353-8000 (304) 353-8180 Fax  
www.stepToe-johnson.com

Writer's Contact Information  
(304)598-8107  
Timothy.Stranko@stepToe-johnson.com

October 31, 2008

Sandra Squire, Executive Secretary  
Public Service Commission of West Virginia  
201 Brooks Street  
Post Office Box 812  
Charleston, West Virginia 25323-0812

RECEIVED  
08 OCT 31 PM 3:34  
W.VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

RE: Morgantown Utility Board and Putnam Public Service District;  
Comments on Proposed water and Sewer Rules

Dear Ms. Squire:

Morgantown Utility Board and Putnam Public Service District ("the Utilities"), by Counsel, and pursuant to Commission General Orders 186.22 and 188.28, jointly submit (original + 12) the following comments regarding the proposed changes to the Water and Sewer Rules:

**Sewer Rules: 150 WV CSR 5**

**4.8.b.4: Notice of Discontinuance**

Two attempts to make personal contact at least 24 hours prior to the scheduled termination for non-payment should be reduced to one attempt.

A customer scheduled for disconnection for non-payment receives a written Notice of Scheduled Termination. On the announced day of disconnection, a utility representative attempts personal contract at the service location immediately prior to disconnection. Two prior attempts to make personal contact is unreasonably labor intensive and costly. An initial written notice, a single attempt to make personal contact, and a final attempt at the service address is ample opportunity for the customer to bring the account current and avoid disconnection for non-payment.

The Utilities thank the Commission for its clarification of the nature of the personal contact requirements proposed in this rule.

#### 4.11: Notice Required for Unscheduled Interruptions

The proposed new requirements are overly broad, impractical and labor intensive. In exchange for these new costs and requirement, little value is delivered to the utility or its customers. Accordingly, the new requirements should be eliminated or limited.

Of course, notice to customers suffering a significant service interruption is an essential part of quality customer service. However, notice of every unscheduled interruption to the PSC, DEP and BPH will not add any value to utility operations and/or customer service. Accordingly, this duplicative and impractical requirement should be eliminated.

The proposed rule is overly broad because it would require notice for every unscheduled service interruption. Multiple notices of interruptions of short duration and/or limited customer impact are neither practical nor necessary. Furthermore, in the case of unscheduled interruptions that include a discharge to the environment, the Utilities are already required by the Clean Water Act to report these incidents to the DEP.

If the Commission chooses to continue this burdensome notice requirement, it should be limited to those unscheduled interruptions effecting more than 100 customers or those of more than 24 hours duration, with no regard to the number of customers effected.

Because of the many circumstances and impacts causing and arising from unscheduled interruptions, the notice templates suggested in section d are of questionable value and should be deleted.

#### Water Rules: 150 WV CSR 7

##### 4.1.g: Private Fire Protection Service

The proposed rule should clarify that the applicant is responsible for the cost of the required testing, and that payment must be made at the time of application for the fire service pursuant to a good faith cost estimate by the utility. Full payment for the required testing must be made prior to activation of service.

Because neither the Commission nor the utility has authority over or responsibility for the design of fire protection systems, the requirement that the system "shall be designed based on the results of this flow test ..." should be removed. The rule should continue to emphasize that the utility cannot guarantee flow delivery consistent with the results of the flow test. Furthermore, the rule should prohibit the utility from reviewing or commenting upon the design of the fire protection system.

The rule proposes that customers receiving residential one or two family "Life Safety" fire service be exempt from cost of service ratemaking by ignoring the excess capacity costs

generated by these customers is unfair and inconsistent with Commission ratemaking protocol. Accordingly, the minimum charge to these customers should be consistent with the actual demands (IAW actual meter size) placed on the system by their service configuration. To do as proposed would unfairly shift the costs away from those generating the cost.

Finally, the uniform 1" meter requirement for customers receiving residential one or two family "Life Safety" fire service is unnecessarily controlling. The system designed my request a meter of smaller size, and neither the Commission nor the utility should attempt to review, approve or dictate the meter size contrary to that requested by the private design professional.

#### 4.8.a.4: Notice of Discontinuance

Two attempts to make personal contact at least 24 hours prior to the scheduled termination for non-payment should be reduced to one attempt.

A customer scheduled for disconnection for non-payment receives a written Notice of Scheduled Termination. On the announced day of disconnection, a utility representative attempts personal contact at the service location immediately prior to disconnection. Two prior attempts to make personal contact is unreasonably labor intensive and costly. An initial written notice, a single attempt to make personal contact, and a final attempt at the service address is ample opportunity for the customer to bring the account current and avoid disconnection for non-payment.

The utilities thank the Commission for its clarification of the nature of the personal contact requirements proposed in this rule.

#### 4.12.d: Notice required for Unscheduled Interruptions

The proposed new requirements are overly broad, impractical and labor intensive. In exchange for these new costs and requirement, little value is delivered to the utility or its customers. Accordingly, the new requirements should be eliminated or limited.

Of course, notice to customers suffering a significant service interruption is an essential part of quality customer service. However, notice of every unscheduled interruption to the PSC and BPH will not add any value to utility operations and/or customer service. BPH already receives or issues notice of boil water advisories, which are presumably shared with the Commission. This duplicative and impractical requirement should be eliminated.

The proposed rule is overly broad because it would require notice for every unscheduled service interruption. Multiple notices of interruptions of short duration and/or limited customer impact are neither practical nor necessary.

If the Commission chooses to continue this burdensome notice requirement, it should be limited to those unscheduled interruptions effecting more than 100 customers or those of more than 24 hours duration, with no regard to the number of customers effected.

Because of the many circumstances and impacts causing and arising from unscheduled interruptions, the notice templates suggested in section e are of questionable value and should be deleted.

MORE FOLLOWS BELOW

## Other Suggestions for Rules Changes

While not responding to a proposed rule change, the Morgantown Utility Board respectfully requests that the Commission consider the following rules:

### Sewer Rule 5.5.f and g/ Water Rule 5.5.f and g: Extensions

The refund requirements included in these Rules should be limited to bona fide customers occupying a single family home, and/or should classify a multiple-service structure as one bona fide customer.

Developers constructing buildings with multiple services can quickly occupy these buildings with multiple "bone fide customers". This requires the utility to pay refunds up to the original deposit amount almost immediately following completion of the project and occupation of the multi-unit building. In other words, the utility must underwrite the project, contrary to the intent of the Rules, and await recapture of this investment from customer revenues for a significant time following the initial investment.

Since 2002, the Morgantown Utility Board has refunded more than \$1.1 Million for water and sewer extensions as required by these rules. During the same period, Morgantown has realized a net revenue increase of less than \$110,000 from these new service accounts. As a result, existing customers are underwriting the many multi-family and student apartment developments in the MUB service area.

This transfer of costs from the developers to the existing customers is contrary to the intent of the rules and to fundamental fairness of the cost generators assuming the burden of those costs. Accordingly, Morgantown proposes the following change to the Rules:

5.5.f. Extensions beyond the limit of utility-financed extensions of general water service and public fire service.

If the estimated cost of the proposed extension required in order to furnish general water service exceeds the utility's estimate of total net revenue as determined by Rule 5.5.e.4., such extension shall be made if the applicant or the applicant's authorized agent contracts for such extension and deposits in advance with the utility the estimated cost of the extension over and above the limit of the utility-funded portion of the extension. The utility shall not pay nor be liable for any interest on such cash deposits. The utility shall make the extension after receiving the cash deposit. The utility shall, for each bona fide new customer who, within a period of ten (10) years from the making of such extension, directly connects to the extension between its original beginning and the original terminus, refund to the original depositor(s), an amount equal to the estimated total net revenue of the new customer as determined by Rule 5.5.e.4., but in no event shall the aggregate refund made to the depositor(s) exceed the original deposit. Provided that associations, public service districts and municipal water utilities may elect to refund the estimated amount over a period of five (5) years equal to the utility's line extension multiplier as

defined in Rule 5.5.e.4. ~~D~~ E. making payments no less frequently than every six (6) months. For the purposes of this rule, a qualifying bona fide customer is one occupying a single family home or, in the case of multiple unit developments, one building, regardless of the number of services included within the structure, shall be classified as one bona fide customer.

5.5.g.2.C Alternate Depositor-financed Extension Plan

... agreeing to refund to the original depositor(s) an amount equal to the estimated total net revenue as defined in Rule 5.5.e.4. of each bona fide customer, other than the depositor(s), who, within a period of ten (10) years from the construction of the extension, directly connects to the extension between its original beginning and the original terminus. The refund may be spread out over a five (5) year period with the utility making payments no less frequently than every six (6) months. Such refunds shall continue until the total refunds given equal the estimated total net revenue as defined in Rule 5.5.e.4. For the purposes of this rule, a qualifying bona fide customer is one occupying a single family home or, in the case of multiple unit developments, one building, regardless of the number of services included within the structure, shall be classified as one bona fide customer.

Thank you for your kind attention to these comments, and for your service to our State.

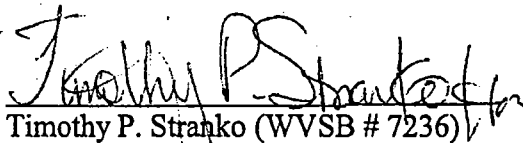
Respectfully submitted,

PUTNAM PUBLIC SERVICE DISTRICT

and

MORGANTOWN UTILITY BOARD

By Counsel:



Timothy P. Stranko (WVSB # 7236)  
Steptoe & Johnson PLLC  
United Center, Suite 400  
1085 Van Voorhis Road  
Post Office Box 1616  
Morgantown, West Virginia 26507-1616  
(304) 598-8107  
October 31, 2008



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E-Mail: [snchambers@jacksonkelly.com](mailto:snchambers@jacksonkelly.com)  
State Bar No. 694

October 31, 2008

**VIA HAND DELIVERY**

Ms. Sandra Squire  
Executive Secretary  
Public Service Commission  
201 Brooks Street  
Post Office Box 812  
Charleston, West Virginia 25323

RECEIVED  
08 OCT 31 PM 3: 24  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Re: General Order No. 188.28 (Water Rules) and  
General Order No. 186.22 (Sewer Rules)

Dear Ms. Squire:

I am writing on behalf of West Virginia-American Water Company ("Company") to provide comments on a number of the proposed changes to the Commission's Water and Sewer Rules promulgated by the Commission pursuant to the referenced General Orders.

Comments regarding Water Rules

Water Rule 1.7.b.3. (definition of "Delinquent Bill"). The Company believes that the definition of delinquent bill should, logically, be the same for all water utilities; therefore, the definition applicable to public service district and municipal water utilities should also be made applicable to all other water utilities.

Water Rule 4.8.a.4. (first sentence). The Company supports the deletion of language requiring the water utility to make the required attempts to notify the customer by personal contact of the pending service termination. However, the Company believes that, in the absence of an approved agreement to the contrary, the obligation to make such customer contact should fall on the utility that is seeking to have water service terminated. Consequently, it is suggested that the following sentence be added after the first sentence:

Unless otherwise provided under the terms of an approved inter-utility agreement, the water, sewer or stormwater utility that is seeking to have a customer's water service discontinued shall be responsible for making the required attempts to notify the customer of the discontinuance of water service by personal contact.

Ms. Sandra Squire  
Page 2  
October 31, 2008

Water Rule 4.8.a.4. (last sentence). It is suggested that some clarification should be provided for the qualifier, "responsible adult", as this term could be interpreted narrowly to mean an adult with some express or implied legal responsibility for or authority over the customer, or could be interpreted more generally to mean any legally competent adult.

Comments regarding Sewer Rules

Sewer Rule 1.7.c.3. (definition of "Delinquent Bill"). The Company believes that the definition of delinquent bill should, logically, be the same for all sewer utilities; therefore, the definition applicable to public service district and municipal sewer utilities should also be made applicable to all other sewer utilities.

Sewer Rule 4.8.b.4. The Company supports the deletion of language requiring the water utility to make the required attempts to notify the customer by personal contact of the pending service termination. However, the Company believes that, in the absence of an approved agreement to the contrary, the obligation to make such customer contact should fall on the sewer utility that is seeking to have water service terminated. Consequently, it is suggested that the second sentence of the proposed rule be revised as follows:

~~Either the sewer utility or water utility~~Unless otherwise provided under the terms of an approved inter-utility agreement, the sewer utility shall make two (2) attempts to notify by personal contact at least twenty-four (24) hours prior to the scheduled termination unless it is reasonably established that the premises are not permanently inhabited.

Sincerely,

  
Stephen N. Chambers

SNC/dmb

cc: Linda S. Bouvette, Esq.



# PARKERSBURG UTILITY BOARD

125 Nineteenth Street  
Parkersburg, West Virginia 26101-2596

Telephone 304-424-8535  
Fax 304-485-3802

October 30, 2008

Mrs. Sandra Squire, Executive Secretary  
West Virginia Public Service Commission  
201 Brooks Street  
P.O. Box 812  
Charleston, WV 25323

GO 186.22  
GO 188.28

RECEIVED  
08 OCT 31 AM 10:24  
W. VA. PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Re: Proposed Revision of Water Rules and Sewer Rules

Dear Mrs. Squire:

We wish to offer the following comments regarding the PSC's proposed revisions of Rules and Regulations for the Government of Water Utilities:

#### 4.1.g.7, Page 11

The proposed revision to allow for Life Safety fire service through a residential service meter is problematic in the fact that you are restricting the utility to charge the customer less than the utility would charge another customer with the same size meter. The additional cost related to meter size is in place in utilities tariffs to offset the higher cost of purchasing and maintaining those larger meter settings.

#### 4.2.a.1, Page 13

The ability for the utility to retain customer deposits of tenants for a period greater than twelve months is a much needed improvement and sincerely appreciated. This should minimize the amount of accounts that become uncollectible due to tenant customers skipping out on final payments.

#### 4.2.a.7, Page 14

The setting of a stable interest rate is also a much needed improvement that will save our employees valuable time in calculating the amount of money to be returned to the customer.

West Virginia Public Service Commission  
Proposed Revision of Water and Sewer Rules  
October 30, 2008  
Page 2 of 5

RECEIVED  
08 OCT 31 AM 10:24  
WEST VIRGINIA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

**4.8.a.4, Page 18**

This rule continues to unnecessarily burden the utility in expending a considerable amount of manpower related to personally notifying customers that are well aware they are delinquent on their bills and subject to termination of services. Utilities are already required to notify these customers with a termination notice by mail which makes them aware that they are delinquent on their bill and that service will be terminated if payment is not made by a certain date.

This practice continues to reward non paying customers with special notifications that are not necessary for those customers that religiously pay their bills on time. In turn the paying customers are subsidizing the non paying customers by the fact that utility personnel are be required to expend additional time for further notification of those delinquent customers, this time could be better utilized doing maintenance or other work that benefits the system as a whole not just a select few.

**4.12.d.A – G, Page 23**

This rule as currently written puts an unnecessary burden on the utility for the notification of customers affected by an unscheduled interruption. We are not totally opposed to this rule but feel that there needs to be additional clarification so that utilities are not wasting valuable time and personnel that could be better utilized dealing with the cause of the service interruption.

**4.12.e – g, Page 24**

Again these rules need to be clarified as discussed in the previous comment.

We have the following comments regarding the PSC's proposed revisions of Rules and Regulations for the Government of Sewer Utilities:

**4.2.a.1, Page 10**

The ability for the utility to retain customer deposits of tenants for a period greater than twelve months is a much needed improvement and sincerely appreciated. This should minimize the amount of accounts that become uncollectible due to tenant customers skipping out on final payments.

**4.2.a.7, Page 11**

The setting of a stable interest rate is also a much needed improvement that will save our employees valuable time in calculating the amount of money to be returned to the customer.

**4.8.a.4, Page 15**

This rule continues to unnecessarily burden the utility in expending a considerable amount of manpower related to personally notifying customers that are well aware they are delinquent on their bills and subject to termination of services. Utilities are already required to notify these customers with a termination notice by mail which makes them aware that they are delinquent on their bill and that service will be terminated if payment is not made by a certain date.

This practice continues to reward non paying customers with special notifications that are not necessary for those customers that religiously pay their bills on time. In turn the paying customers are subsidizing the non paying customers by the fact that utility personnel are be required to expend additional time for further notification of those delinquent customers, this time could be better utilized doing maintenance or other work that benefits the system as a whole not just a select few.

**4.11.c.A – G, Page 23**

This rule as currently written puts an unnecessary burden on the utility for the notification of customers affected by an unscheduled interruption. We are not totally opposed to this rule but feel that there needs to be additional clarification so that utilities are not wasting valuable time and personnel that could be better utilized dealing with the cause of the service interruption.

**4.11.d & e, Page 24**

Again these rules need to be clarified as discussed in the previous comment.

We continue to be concerned about the extent to which the rules benefit non-payers to the detriment of those who pay their bills. As a public utility, we are here to provide service to the public and we take that responsibility very seriously. Most customers conduct themselves in a responsible manner. In the event they have difficulty paying a bill for some reason, they contact us and make the necessary arrangements to take care of their financial obligation.

A portion of our customers make every effort to avoid paying for the services they utilize. Too often PSC rules serve to make it even easier for the non-paying customer to utilize services for an extended time, and then skip out without paying for those services. This practice adds to the operating costs and adds to the financial burden of those who make a sincere effort to pay their bills.

These revisions do give some relief with the extension for retaining security deposits. We feel that there are still many revisions that should be made to turn the tables on those non paying customers that play the system to extend their use of services that they frankly do not intend on paying for if at all possible.

West Virginia Public Service Commission  
Proposed Revision of Water and Sewer Rules  
October 30, 2008  
Page 5 of 5

Basic daily necessities like water and sanitary sewer service must rank higher in priority than entertainment and fast food. It is wrong to reward customers for making poor decisions relating to their priorities in life, and then allow them to ride the financial backs of those who make sound and reasonable choices. We need to revise the rules back toward the paying customers and stop encouraging and rewarding non paying customers.

Respectfully,  
Parkersburg Utility Board

A handwritten signature in cursive script that reads "Eric Bennett".

Eric Bennett, Manager

cc:  
Parkersburg Utility Board  
George Zivkovich, Counsel  
Eric Bumgardner, Asst. Manager  
Pat Martin, Comptroller

# LUBECK

## Public Service District

P.O. Box 700, Washington, West Virginia 26181-0700

Telephone (304) 863-3341  
Facsimile (304) 863-3791

October 27, 2008

Ms. Sandra Squire, Executive Secretary  
Public Service Commission of West Virginia  
P. O. Box 812  
Charleston, West Virginia 25323

RE: Proposed Sewer Rule Changes

Dear Ms. Squire,

50186.22

RECEIVED  
2008 OCT 28 AM 9 04  
W VA PUBLIC SERVICE  
COMMISSION  
SECRETARY'S OFFICE

Lubeck PSD would like to submit the following comments concerning the proposed sewer rule changes:

1. Section 2.4.a. Although the District has for the last two years completed our annual report electronically there has been and continues to be sections of the report that are not linked, thus not allowing the District to insert the required information, etc. This needs to be corrected for the PSC to get an accurate reading on the status of the PSD's. We have made notes and submitted them along with the report but they do not appear to get into the proper hands to make changes.

2. Section 4.2.a.4. In this section of the changes you are adding public service before the word district. You missed adding this in the last sentence of the paragraph.

3. Section 4.2.a.5. This section requires the District's to pay 2% interest on our security deposits. If we invest our money locally, as is stated in the proposed rule, the District does not make close to the 2%, thus having our good paying customers supplementing our bad paying customers. Also, this section states that we are to look to Rule 4.2.a.8. I believe this should be 4.2.a.7.

4. Section 4.8.a.4. This part is difficult to gauge, in that if the calls are made by computer, it would be impossible to know whether the person answering the phone is an adult or not.

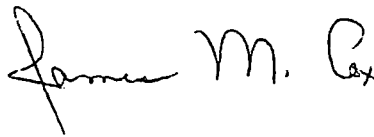
5. Section 4.11.c. This notice is an unnecessary burden on the Districts and takes time from the task at hand. If the situation is one that is large enough to cause an extended outage, I feel that most District's already, without being required, will put out notifications. This should be left up to the individual District's and be based upon their staffing, etc.

6. Section 5.5.g.5. This has been the case in the past. There is no reason to put this in writing. It only makes the possibility of coming to an agreement more difficult and costly to the District with attorney fees, etc. defending our position. It opens the door to the potential customers to likely take something to the PSC that otherwise we would have agreed to in the past, but since it so states, the customer will think, why not let the PSC determine my case for me.

This District feels that based upon the drastic changes that are being proposed, there needs to be a hearing on these changes.

Should you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "James M. Cox". The signature is written in a cursive style with a large, stylized "J" and "C".

James M. Cox  
Manager

c: WVRWA

*Public Service Commission*

Richard E. Hitt, General Counsel



FILED

2011 MAR -9 PM 3:26

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

Phone: (304) 340-0450  
FAX: 1-866-336-2893  
E-mail: rhitt@psc.state.wv.us

OFFICE OF THE SECRETARY OF STATE  
March 9, 2011

**Via Hand Delivery**

Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0771

Re: Public Service Commission of West Virginia Rules for the  
Government of Sewer Utilities, 150 C.S.R. Series 5.  
and  
Public Service Commission of West Virginia Rules for the  
Government of Water Utilities, 150 C.S.R. Series 7.

Dear Ms. Cooper:

Enclosed please find finally adopted rules in response to multiple changes in legislation occurring during the past several years. Specific statutes or bills requiring changes to the Rules for the Government of Sewer Utilities, 150 C.S.R. Series 5 and Rules for the Government of Water Utilities, 150 C.S.R. Series 7 include:

1. Committee substitute for Senate Bill 412 (effective June 6, 2003), in part, modified deposit language and provided for a refund of deposit with interest. These changes were codified at W.Va. Code §16-13A-9(a)(2).
2. Committee substitute for Senate Bill 672 (effective June 10, 2004) addressed deposits required from new customers, payment for delinquency from those deposits, reconnecting deposit, liens, discontinuance of service for delinquency in payment, security deposits for tenants, and providing refunds of deposits with interest for water, sewer and combined water and sewer utilities. These changes were codified at W.Va. Code §§8-19-12a, 8-20-10 and 16-13-16.
3. Committee substitute for Senate Bill 700 (effective July 8, 2005) added a new article relating to the creation of a Community Infrastructure investment program and

exempted certain projects under the Community Infrastructure Investment Program from the authority of the Public Service Commission. These changes were codified at W.Va. Code §§22-28-1 et seq.

4. House Bill 3045 (effective July 8, 2005) modified W.Va. Code §16-13A-2 to change from mandatory to permissive the Commission's responsibility to hold a hearing in an affected county or counties on review of a proposed public service district modification.
5. Committee substitute for Senate Bill 323 (effective June 6, 2008) added storm water utilities to those utilities that may have water service terminated for non-payment. The changes were codified in W.Va. Code §§8-20-10, 16-13-16, and 16-13A-9.
6. Senate Bill 465 (effective June 11, 2010) established that utilities are not required to accept payment at the customer's premises in lieu of disconnecting service for non-payment. These changes were codified at W.Va. Code §§8-19-12a, 8-20-10, 16-13-16, 16-13A-9 and 24-3-10.

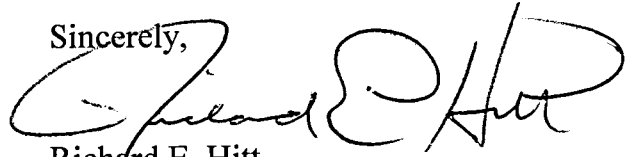
Additional changes to the rules include correcting typographical errors, clarifying and consolidating the rules, and conforming with the format requirement of the Standard Size and Format for Rules and Procedures for Publication of the State Register or Parts of the State Register, 153 C.S.R. Series 6 (Formatting Rules).

Additionally, I have enclosed the final Commission General Order No. 186.22 and 188.28 outlining the changes made in both rulemakings. Because the Commission is not a part of the Cabinet structure, the Commission order is the evidence of approval of the filing by the agency head, Chairman Michael A. Albert. Pursuant to Rule 9.3.b. of your Formatting Rules, 153 C.S.R. 6, I have enclosed (i) a copy of the "entire proposed changes with underlining and strikethrough as if the previous filing had not occurred," (ii) a copy of comments received, (iii) a CD Rom with a clean copy of the rules, and (iv) an original Form 5, "Notice of Agency Adoption of a Procedural or Interpretive Rule or a Legislative Rule Exempt from Legislative Review" for each set of rules. The brief response to all comments is found in the previously mentioned General Order.

As your office is aware, by prior order issued August 15, 2008, the Commission promulgated proposed amendments to these rules and published public notice instructing interested persons to file comments and/or request a hearing by October 31, 2008. The Commission received comments from eighteen entities for the Sewer Rules and nineteen entities for the Water Rules. The commenting entities are identified in the attached General Order.

Please date stamp the enclosed three extra copies of the filing packet and return them with our messenger. If you have any questions or if there are any problems, please bring them to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt". The signature is fluid and cursive, with a large initial "R" and "H".

Richard E. Hitt  
General Counsel

REH/SMS/slc  
Enclosures