



## Brief Summary

The purpose of the proposed rule change is to amend the existing Procedural Rule for Commission Review of Electric Cooperatives, Natural Gas Cooperatives, Telephone Cooperatives and Municipal Rate Change pursuant to West Virginia Code §24-2-4b. The proposed amendments include Natural Gas Cooperatives within the Rule, make certain technical changes to the Rule, add directives regarding notice to the customers of the utility's or cooperative's intent to effect a rate change, and add requirements regarding the information the utility or cooperative must file with the Commission pursuant to West Virginia Code §24-2-4b.

GENERAL ORDER NO. 200.4  
IN THE MATTER OF revision of  
Procedural Rule for Commission  
Review of Electric Cooperatives,  
Natural Gas Cooperatives,  
Telephone Cooperatives and  
Municipal Rate Change Pursuant  
to West Virginia Code §24-2-4b.

#### FISCAL NOTE

This is a fiscal note pursuant to West Virginia Code §§24-1-1 and 24-1-7 of the West Virginia Code, as these sections are read in pari materia, with §§29A-3-1 through 29A-3-9 of the West Virginia Code, relating to General Order No. \_\_\_\_\_.

#### I. OBJECTIVES OF THE RULE

The purpose of this legislative rule is to amend the subject Procedural Rule to include natural gas cooperatives within the Rule, include directives regarding notice to the customers of the utility's or cooperative's intent to effect a rate change, include requirements regarding the information the utility or cooperative must file with the Commission, and make certain technical changes.

#### II. COST OF IMPLEMENTING THE PROPOSED RULES

##### A. Cost of Implementation for the State:

There will be no implementation cost relating to this rulemaking for the State of West Virginia, other than the costs related to this rulemaking proceeding.

##### B. Cost of Implementation for Persons Affected by the Proposed Rule:

The Commission is of the opinion that minimal additional costs will be incurred by the subject utilities as a result of the implementation of these rules.

#### III. THE EFFECT THIS MEASURE WILL HAVE ON THE COSTS OR REVENUES OF STATE GOVERNMENT (Information required by fiscal notes for either House of the Legislature).

If these proposed legislative rules are adopted in their entirety, any effect on gross revenues flowing to the Commission will be de minimus in nature. Administration costs should experience a de minimus reduction.

#### IV. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS

The Commission foresees that there may be unpredictable positive economic impact of this rule on the State and on its residents.

DATE January 25, 1998 AGENCY Public Service Commission

SIGNATURE OF AUTHORIZED REPRESENTATIVE



TITLE 150.  
PROCEDURAL RULES  
PUBLIC SERVICE COMMISSION

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 10  
PROCEDURAL RULE FOR COMMISSION REVIEW  
OF ELECTRIC COOPERATIVES, NATURAL GAS COOPERATIVES,  
TELEPHONE COOPERATIVES AND  
MUNICIPAL RATE CHANGE PURSUANT TO  
WEST VIRGINIA CODE §24-2-4b

§150-10-1. General

1.1. Scope. -- In view of the power given to the Commission under §24-2-2,5,7,8 and 9 of the West Virginia Code to regulate the rates and practices of public utilities in this State through lawful rules, regulations and orders, and in view of the limited jurisdiction granted to the Commission over electric cooperatives, natural gas cooperatives, telephone cooperatives and municipally operated utilities by §24-2-4b of the Code, the Commission has developed this Rule to provide guidance to electric cooperatives, natural gas cooperatives, telephone cooperatives and municipalities and to their customers about Public Service Commission involvement with the rate changes by such utilities. ~~This Rule has been developed to provide reasonable guidelines for the exercise of Commission jurisdiction in such cases, and to provide procedural guidelines to be followed by electric cooperatives, natural gas cooperatives, telephone cooperatives and municipal utilities for changing utility rates, and procedures to be followed by the Commission in its exercise of jurisdiction over such rate changes and for the timely disposition of such rates within the statutory requirements of Code §24-2-4b.~~

1.2. Authority. - W. Va. Code §24-1-7, 24-2-2, 4b, 5, 7, 8 and 9, and 24-3-2 and 5

1.3. Filing Date. - September 9, 1983

1.4. Effective Date. - November 9, 1983

§150-10-2. Rate-Making and Appeal Procedures.

2.1. Procedure to be followed by electric cooperatives, natural gas cooperatives, telephone cooperatives and municipalities for changing utility rates:

(a) All rates and charges set by electric cooperatives, natural gas cooperatives, telephone cooperatives and municipally operated public utilities shall

be just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services.

(b) All such utility rates and charges are to be on file with the Commission at all times.

(c) Notice of the intent to effect a rate change shall be specified on the monthly billing statement of the customers of such utility for the month next preceding the month in which the rate change is to become effective or the utility shall give its customers, members and/or stockholders, such other reasonable notice as will allow filing of timely objections to such rate change. Notice of the intent to effect a rate change specified on the monthly billing statement shall not be considered sufficient to allow timely filing of objections unless such notice is received by all customers within 5 days of the adoption of the ordinance or resolution approving said rate change and such notice includes a statement of the customers' rights to object to the rate change as set forth in West Virginia Code §24-2-4b(c)(1), (2) and (3).

(d) To satisfy the requirement to provide "other reasonable notice" the utility shall:

(1) post notice of its intent to effect a rate change in a conspicuous place at the utility's business premises beginning at least five days prior to the meeting where the rate change is proposed to be adopted and continuing through the thirty day appeal period provided under West Virginia Code §24-2-4b; and

(2)(a) provide, by first class mail, within five (5) days after the adoption of the municipal ordinance or governing board resolution changing the rates and/or charges, a notice to each customer, member and/or stockholder of the utility's intent to effect a rate change which notice must include a statement of the customers' rights to object to the rate changes as set forth in West Virginia Code 24-2-4b(c)(1), (2) and (3); or

(b) issue, within five (5) days after the adoption of the municipal ordinance or resolution changing rates and charges, a press release that announces the utility's intent to effect a rate change to be published in a newspaper of general circulation in the service area of the utility, and, in addition, publish as a Class II Legal Advertisement in a newspaper of general circulation in the service area of the utility a notice of rate change in conformance with Public Service Commission Tariff Form No. 8-B.

~~(d)~~(e) All changes in electric cooperative, natural gas cooperative, telephone cooperative or municipal utility rates and charges are to be accomplished by the adoption of a legally valid governing board resolution or municipal ordinance, in accordance with the provisions of §8-11-4, §8-20-10, §16-13-16 or any other applicable West Virginia Code provision, or by a provision of a municipal or cooperative charter, whichever is appropriate in the particular case.

~~(e)~~(f) The utility is to set the date when such a resolution or municipal ordinance shall take effect; however, in no event shall the resolution or ordinance be effective sooner than forty-five (45) days after adoption.

~~(f)~~(g) Within ~~fifteen (15)~~ five (5) days after the adoption of a resolution or ordinance changing a utility rate or charge, the electric cooperative, natural gas cooperative, telephone cooperative or municipality shall file with the Secretary of the Public Service Commission:

(1) the new rates or charges;

(2) the applicable resolution or ordinance;

(3) the justification for such resolution or ordinance, including, but not limited to a proforma income statement showing the cost of providing service and revenues to be generated by the new rates or charges; and

(4) an affidavit of publication of the utility's legal publication made pursuant to §8-11-4, §8-20-10, §16-13-16 or any other applicable West Virginia Code provision;

(5) documentation reflecting the notice of intent to effect a rate change provided by the utility to its customers, members and/or stockholders pursuant to §24-2-4b of the West Virginia Code and §150-10-2.1(c) and (d) of this Rule; and

~~(4)~~(6) the correct number of customers served by the utility, as determined by the number of bills rendered in the billing cycle last completed before the adoption of the resolution or ordinance. A Rule 42 exhibit is not required to be filed by the utility in cases subject to this rule.

~~(g)~~(h) Electric cooperatives, natural gas cooperatives, telephone cooperatives and municipal utilities shall promptly provide information about the correct number

of customers, members or stockholders to any such customer, member or stockholder requesting this information.

2.2. Procedure to be followed by the customers, members or stockholders of such utilities who wish to protest changes in their utility rates and charges:

~~(a) The Commission shall review and approve or modify such rates upon the filing of a petition within thirty (30) days of the adoption of the governing board resolution or municipal ordinance changing said rates or charges by.~~ Pursuant to §24-2-4b of the West Virginia Code the following customer(s) member(s) or stockholder(s) may protest to the Commission, changes in the utility's rates and charges:

(1) Any customer, member or stockholder aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five percent (25%) of the customers, members or stockholders residing within the State, served by such public utility; or

(2) Any customer who is served by a municipality operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Such petition shall be accompanied by evidence of discrimination; or

(3) Any customers or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customers or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

(b) Whenever used in Chapter 24 of the Code or this Rule, the term "Customer" shall mean and include any 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 products for resale.

(1) This definition refers to customers of record with the utility and cannot be broadened to include all residents of a municipality or those who may be ultimate consumers of the product.

(2) The spouse of a customer of record may sign a petition for the customer of record, but if both parties sign they are to be treated as one customer.

(c) Any protest by a customer(s), member(s) or stockholder(s) must be filed with the Commission within thirty (30) days of the adoption of the governing board resolution or municipal ordinance changing said rates and/or charges.

2.3. Procedure to be followed upon review by the Commission when a petition of protest is filed:

(a) Upon the filing with the Commission of a petition which protests a changed rate or charge by a electric cooperative, natural gas cooperative, telephone cooperative or municipal utility and which meets the requirements of Section 2.2(a)(1) above, the Commission will exercise its jurisdiction over the resolution or ordinance changing such rate or charge, and shall suspend the effective date of the resolution or ordinance changing such rate or charge is automatically suspended for a period of one hundred twenty (120) days from the date said rates or charges would otherwise go into effect, or until an order is issued as provided in Section 2.4(b), below.

(b) Upon sufficient showing of discrimination by any customer who resides outside the municipal boundaries, or by a customer or group of customers who reside within the municipal boundaries, under a petition filed under Section 2.2(a)(2) or Section 2.2(a)(3) above, the Commission will exercise its jurisdiction over the resolution or ordinance changing such rate or charge, and shall suspend the effective date of the resolution or ordinance changing such rate or charge for a period of one hundred twenty (120) days from the date said rates or charges would otherwise go into effect or until an order is issued as provided in Section 2.4(b), below.

(c) The Commission shall notify the affected cooperative or municipality by certified mail, return receipt requested, that it has assumed jurisdiction over the case, and that the rates are suspended, and it shall furnish a copy of the applicable petition to the utility.

(d) If any electric cooperative, natural gas cooperative, telephone cooperative or municipality objects to the filing of the petition, it must do so by challenging the validity of the petition. Such challenge should be filed within fifteen days after receipt by the utility of notice that the Commission has assumed jurisdiction. The utility should be prepared to go forward with its evidence

on the issue of jurisdiction within thirty (30) days of the filing of the appeal.

These time limits are expected to be sufficient to allow proper preparation of each case. If, for whatever reason, a cooperative or municipality wishes to file a challenge at a later date, the Administrative Law Judge shall have the discretion to approve such request upon the showing of good cause.

2.4. Procedure for the disposition of cases over ~~upon~~ ~~review~~ ~~of~~ which Commission jurisdiction is ~~established~~ exercised.

(a) At such time as Commission jurisdiction is ~~established~~ exercised in a case involving a rate change by a cooperative or a municipal utility, the Commission shall appoint an Administrative Law Judge from its staff to review the grievances raised by the petitioners.

(b) Said Administrative Law Judge shall conduct a public hearing, and shall, within 100 days from the date the said rates or charges would otherwise go into effect, unless otherwise tolled as provided in Section 2.5, issue an order approving, disapproving or modifying in whole or in part, the rates or charges at issue.

(c) In addition to this rule, all relevant rules and regulations of the Commission shall apply to such cases.

(d) The burden of proving the reasonableness of rate changes shall be on the utility and the utility is free to file with the Commission any information it desires to support a change in the rates. The Administrative Law Judge in each case shall direct when all such information is to be filed.

(e) The Commission staff shall in all cases conduct an investigation of the cooperative or municipal utility submit an audit report and cashflow analysis to the Administrative Law Judge at such time as requested by the judge.

(f) In order to facilitate the timely disposition of such cases, the following timetable is suggested to be followed by the utilities involved and the Commission staff; however, the judge in such cases shall be free to establish any reasonable timetable:

Day 1 - Petition filed.

Day 15 - Any challenge by the utility to the validity of the petition should be received by the Commission.

Day 30 - The utility should be prepared to go forward on the issue of the challenge to the appeal.

Day 63 - The Staff must file its required reports.

Day 70 - Public hearing is to be held.

2.5 It is expected that electric cooperatives, natural gas cooperatives, telephone cooperatives and municipalities will cooperate with the Commission as much as possible in cases where customers, members or stockholders protest a utility rate change. In circumstances in which a cooperative or a municipality does not file with the Commission any of the information required below, the Commission may toll the running of the one hundred twenty (120) day suspension period and the one hundred (100) day period limitation for issuance of an order by an Administrative Law Judge until such time as the cooperative or municipality files the required information with the Secretary of the Public Service Commission: ~~For the purposes of this order, the information required to be filed with the Commission shall include, but is not limited to, the following:~~

(a) the new rates and charges;

(b) the applicable cooperative resolution or municipal ordinance establishing the new rates and charges;

(c) the justification for such resolutions or ordinances, including, but not limited to a proforma income statement showing the cost of providing service and the revenues to be generated by the new rates or charges;

(d) an affidavit of publication of the utility's legal publication made pursuant to §8-11-4, §8-20-10, §16-13-16 or any other applicable West Virginia Code provision;

(e) documentation reflecting the notice of intent to effect a rate change provided by the utility to its customers, members and/or stockholders pursuant to §24-2-4b of the West Virginia Code and §150-10-2.1(c) and (d) of this Rule; and

~~(d)(f)~~ the correct number of customers, members or stockholders served by the utility, as determined by the number of bills rendered in the billing cycle last completed before the adoption of the ordinance; and

~~(e)(g)~~ such other information as the Commission deems necessary.

**PUBLIC NOTICE OF CHANGE IN RATES**

NOTICE is hereby given that \_\_\_\_\_, a public utility, has adopted by (ordinance)(Board resolution) \_\_\_\_\_, a tariff containing increased rates, tolls and charges for furnishing \_\_\_\_\_ service.

The proposed increased rates and charges will become effective \_\_\_\_\_ unless otherwise ordered by the Public Service Commission and will produce approximately \$\_\_\_\_\_ annually in additional revenue, an increase of \_\_\_\_\_%. The average monthly bill for the various classes of customers will be changed as follows:

	(\$)	INCREASE	INCREASE (%)
Residential	\$ _____		_____ %
Commercial	\$ _____		_____ %
Industrial	\$ _____		_____ %

A complete copy of this tariff, as well as a representative of the Company to provide any information requested concerning it, is available to all customers, prospective customers or their agents at any of the following offices of the Company.

(List with each publication only those offices applicable)

The Commission shall review and approve or modify such rates upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing said rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the Commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state; or

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the Commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customer who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the Commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.