

AMENDMENT TO PROCEDURAL RULE
FOR COMMISSION REVIEW OF ELECTRIC
COOPERATIVES, TELEPHONE COOPERATIVES
AND MUNICIPAL UTILITY RATE CHANGES
PURSUANT TO WEST VIRGINIA CODE
§24-2-4b, AS AMENDED.

ABSTRACT OF PROMULGATION HISTORY

The following is submitted as an abstract of the promulgation history of this duly adopted and promulgated final procedural rule, and as such, comes in compliance with West Virginia Code §29A-2-6(b) and in complement to the procedure section of General Order No. 200.3, which adopted and promulgated the final rule:

1. The subject matter of this rule was promulgated to be in compliance with West Virginia Code §24-2-4b, as the Legislature has had occasion to amend it from time to time; and,
2. The first rule was adopted and promulgated by General Order No. 200 on July 17, 1980; and,
3. The rule was amended by General Order No. 200.1 on January 15, 1981; and,
4. The rule was further amended by General Order No. 200.2 on October 29, 1981; and,
5. With the passage of Senate Bill No. 117 on March 12, 1983 and its being signed into law on March 25, 1983, to

be effective from passage, the Commission promulgated an emergency rule on April 26, 1983 to include the amendments to West Virginia Code §24-2-4b; and,

6. On July 22, 1983, the Commission promulgated a proposed rule to replace the emergency rule, gave notice and published in the State Register, pursuant to West Virginia Code ~~§29A-3-5~~ and 9; and,
7. On September 7, 1983, the Commission did adopt and promulgate the attached final rule by General Order No. 200.3.

PSC
Leg. Rule/Adm. Reg. 24-1
Series X

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
PROCEDURAL RULE
CHAPTER 24-1
SERIES X

TITLE: Procedural Rule or Commission Review of Electric
Cooperatives, Telephone Cooperatives and Municipal Rate
Changes Pursuant to West Virginia Code §24-2-b.

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WEST VIRGINIA PROCEDURAL RULE
PUBLIC SERVICE COMMISSION
CHAPTER 24-1
SERIES X

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

SECTION

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, 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, telephone cooperatives and municipalities and to their customers about Public Service Commission involvement with 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 for the timely disposition of such rates within the statutory requirements of Code §24-2-4b.

1.2 AUTHORITY - West Virginia 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

1.5 FILING REQUIREMENTS - Pursuant to 29A-2.1 CSR§1 et seq., this series of rules and regulations of the Public Service Commission of West Virginia is being refiled in accordance with revised requirements by the Secretary of State for filing in the State Register. This refileing does not repeal any of the substantive or procedural aspects of the Commission's rules and regulations but merely represents changes in sizing and formatting of the currently effective rules and regulations. As a result of these revisions in the standard format, in particular, those rules which have evolved into terms of art in Commission practice are

hereinafter incorporated into the title of each section or subsection heading of the standard format.

2. RATE-MAKING AND APPEAL PROCEDURES

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

- (a) All rates and charges set by electric 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.
- (d) All changes in electric 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) 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) Within fifteen (15) days after the adoption of a resolution or ordinance changing a utility rate or charge, the electric 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) 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) Electric 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:

- (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 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. 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.

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, telephone cooperative or municipal utility and which meets the requirements of Section 2.2(a)(1) above, 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 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, 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 Hearing Examiner shall have the discretion to approve such request upon the showing of good cause.

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

- (a) At such time as Commission jurisdiction is established in a case involving a rate change by a cooperative or a municipal utility, the Commission shall appoint a hearing examiner from its staff to review the grievances raised by the petitioners.
- (b) Said hearing examiner 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 charge 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 hearing examiner 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 and submit an audit report and cash-flow analysis to the hearing examiner at such time as requested by the examiner.
- (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 examiner 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, 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 a hearing examiner 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) 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) such other information as the Commission deems necessary.