

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In this Box

12/15/87 3:58

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: PUBLIC SERVICE COMMISSION OF WEST VIRGINIA TITLE NUMBER: 150

CITE AUTHORITY: W.Va. Code §§24-1-1, 24-1-2, 24-2-7, 24-3-3b

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

§24-1-7

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 19

TITLE OF RULE BEING ADOPTED: Rules and Regulations for Shipper Access
to the Lines and Facilities of Rail Carriers.

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS December 12, 1987

Newton D. Gier
CHAIRMAN.

FILED
MAY 13 1987

IN THE MATTER OF Rules and Regulations
Governing Access by Rail Carriers to
the Lines and Facilities of Another
Rail Carrier.

IN THE MATTER OF Rules and Regulations
Governing Access by Shippers to the
Lines and Facilities of A Rail Carrier.

ABSTRACT OF PROMULGATION HISTORY

On February 25, 1986, the West Virginia Legislature passed Enrolled Senate Bill 278 (S.B. 278). Article 3 of S.B. 278 adds a new Section 24-3-3b to the West Virginia Code, requiring railroads in West Virginia to provide open access to their tracks and facilities to other rail carriers and to private shippers. The purpose of S.B. 278 is to promote the economic well being of the citizens of West Virginia by assuring, by all available means not in conflict with authority exercised by the Federal Government, the availability of rail transportation services. Code §24-3-3b.

S.B. 278 directs the Public Service Commission to promulgate regulations providing for the establishment of reasonable fees to be paid to the carrier whose tracks and facilities are to be made available, and for the orderly, efficient, and safe utilization of those facilities.

By order entered on February 20, 1987, the Commission initiated a proceeding for the purpose of promulgating rules to effectuate the legislative mandate contained in West Virginia Code §24-3-3b. Interested parties desiring to comment on the proposed rule were provided an opportunity to file written comments and/or testimony with the Commission on or before March 23, 1987. Parties desiring to file reply comments or testimony were provided an opportunity to file written comments and/or testimony with the Commission on or before March 27, 1987. Pursuant to this order, the Commission scheduled a public hearing on March 30, 1987.

In response to the February 20, 1987 order, comments were filed by the American Association of Railroads, the West Virginia Coal Association and the Consumer Advocate Division. Reply comments were filed by the American Association of Railroads and the West Virginia Coal Association. At the public hearing, oral comments were presented by the West Virginia Mining and Reclamation

150 CSR 18

150 CSR 19

Association, the United Small Coal Operators, the Brotherhood of Locomotive Engineers and the Brotherhood of Maintenance and Way Employees.

Upon review of the comments submitted, the Commission has modified the proposed rule as detailed in the order which promulgates and adopts final rules. Therefore, on October 13, 1987, the Commission adopted the rules hereinafter set forth as Rules and Regulations Governing Access by Rail Carriers to the Lines and Facilities of Another Rail Carrier and Rules and Regulations Governing Access by Shippers to the Lines and Facilities of A Rail Carrier as final rules to become effective sixty days after promulgation, in accordance with West Virginia Code §24-1-7.

OCT 13 PM 3:59

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
LEGISLATIVE RULE
CHAPTER 24-1
SERIES 19

SECRET STATE

TITLE: Rules and Regulations for Shipper Access to the Lines and Facilities of Rail Carriers.

Section	Page
1.0 GENERAL	1
1.1 Scope.	1
1.2 Authority.	1
1.3 Filing Date.	1
1.4 Effective Date	1
2.0 PROCEDURES FOR SHIPPER ACCESS	1
2.1 Shipper Access by Agreement.	1
2.2 Shipper Access by Order.	1
3.0 DETERMINATION OF AN ACCESS CHARGES	4
3.1 Election of Access Charge Methodology.	4
3.2 Change of Access Charge Methodology.	5
3.3 Stand Alone Cost Methodology	5
3.4 Carrier Access Methodology	7
4.0 OPERATIONS BY THE ACCESSING SHIPPER	8
4.1 Accessing Shipper Obligations.	8
4.2 Accessed Carrier's Obligations	8
5.0 MISCELLANEOUS PROVISIONS.	9
5.1 Modification of Access Agreement or Shipper Access Order	9
5.2 Confidentiality Agreements	11
5.3 Definitions.	12

FILED
1987 OCT 13 PM 3:59
STATE

TITLE 150
WEST VIRGINIA LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION
CHAPTER 24-1
SERIES XIX

RULES AND REGULATIONS FOR SHIPPER ACCESS
TO THE LINES AND FACILITIES OF RAIL CARRIERS

1.0 GENERAL

1.1 SCOPE - This legislative rule establishes the procedures and requirements and the terms of compensation for a shipper to obtain access to the lines and facilities of a rail carrier located in the State of West Virginia pursuant to the legislative mandate in Code §24-3-3b.

1.2 AUTHORITY - West Virginia Code §§24-1-1, 24-1-7, 24-2-7, 24-3-3b.

1.3 FILING DATE - October 13, 1987

1.4 EFFECTIVE DATE - December 12, 1987

2.0 PROCEDURES FOR SHIPPER ACCESS

2.1 Shipper Access by Agreement -- If a shipper and one or more rail carriers enter into an access agreement, the parties shall jointly file with the Commission (a) a notice of such agreement that states its duration, identifies the access facilities to be used by the shipper, and describes the nature of the shipper's proposed operations using the access facilities, and (b) a copy of that part of the access agreement describing the operating relationship between the accessing shipper and the accessed carrier or carriers. The parties may file the entire agreement but are not required to do so.

2.2 Shipper Access by Order --

2.2.1 A shipper that has requested the use of access facilities located in the State of West Virginia but which has been unable to reach an access agreement with the rail carrier or carriers owning or controlling those access facilities may file with the Commission an application for a shipper access order.

2.2.2 An application for a shipper access order shall be supported by sworn affidavits, including the affidavit of the accessing shipper's chief executive officer, and shall contain:

(a) a certification by the accessing shipper that it has made a good faith effort to negotiate an access agreement with the accessed carrier, and a summary of the efforts it has made to enter into such an agreement;

(b) a description of the accessing shipper's proposed operations and a detailed specification of the access facilities it is seeking to use;

(c) a certification that in using the access facilities, the accessing carrier will comply with the accessed carrier's operating rules, and with all state and federal safety and environmental laws and regulations; and

(d) a specification of the access charge methodology to be used to compute access charges.

2.2.3 The accessing shipper shall serve a copy of the application on the accessed carrier.

2.2.4 Notice to other shippers --

2.2.4.1 Within ten days of service of the application the accessed carrier shall provide to each shipper on the access facilities designated by the accessing shipper that has used rail service over the access facilities within the six preceding months (a) a notice that an application has been filed for shipper access, (b) a general description of the access facilities being requested, and (c) the name and address of the accessing shipper.

2.2.4.2 Each shipper located on the access facilities that has used rail service over the access facilities within the six preceding months may request the accessing shipper to provide it with a copy of the application for a shipper access order. Within 10 days of receiving the request the accessing shipper shall provide to the requesting shipper a copy of its shipper access application.

2.2.5 Shipper Intervention --

2.2.5.1 Shippers located on the access facilities which are the subject of a shipper access application may petition the Commission for leave to intervene in the shipper access order proceedings.

2.2.5.2 For good cause shown, the Commission may permit other shippers to intervene and may establish substantive and procedural limitations on the intervenor to ensure orderly and expeditious processing of the application for a shipper access order.

2.2.6 Accessed carrier response --

2.2.6.1 Within 30 days of service of the application on the accessed carrier, or within such additional time as the Commission for good cause allows, the accessed carrier shall file with the Commission a response to the application which shall:

(a) set forth in detail its exceptions to the application;

(b) propose specific alternative provisions to those portions of the application to which it takes exception;

(c) set forth a detailed statement of the reasons for its exceptions to the application and of the reasons for its proposed alternatives;

(d) propose an access charge for the use of the access facilities sought by the accessing shipper calculated in accordance with these regulations using the access charge methodology specified by the accessing shipper; and

(e) be supported by sworn affidavits, including the affidavit of the accessed carrier's chief executive officer or chief operating officer.

2.2.6.2 Exceptions shall be directed to the operational feasibility of making the access facilities available to the accessing shipper to perform the services described in the application. Adequacy of service over the access facilities by the accessed carrier or the economic impact on the accessed carrier of operations by the accessing shipper shall not constitute grounds for exception. If the accessed carrier takes exception to all or part of the accessing shipper's proposal, it shall propose specific alternatives to the access facilities specified by the accessing shipper, that provide at least the same extent and quality of access at no greater cost as the facilities requested by the accessing shipper, within the limits of operational feasibility.

2.2.7 The accessed carrier shall serve a copy of its response and supporting affidavits on the accessing shipper, and each intervening shipper, and once the accessing shipper has executed a confidentiality agreement, the accessed carrier shall supply the accessing shipper copies of all workpapers supporting its exceptions and access charge proposals.

2.2.8 The accessing shipper and each intervening shipper may file a reply within 30 days of service of the accessed carrier's response which shall be supported by sworn

affidavits, including the affidavit of the accessing or intervening shipper's chief executive or operating officer.

2.2.9 The Commission may propound written interrogatories to the accessing shipper, the intervening shippers and to the accessed carrier regarding any matter material to the issuance of a shipper access order under these regulations, which shall be answered under oath and in writing by the chief executive officer, chief operating officer or such other person as directed by the Commission within the time established by the Commission.

2.2.10 If the application, the response, the reply, the affidavits in support, and the sworn answers to the Commission's written questions establish that there exists a disputed issue of fact material to the issuance of a shipper access order under these regulations, the Commission will permit the accessing shipper, the accessed carrier, the Commission's Staff and any intervenor to take depositions upon oral examination for the purpose of cross-examining the opposing party's supporting affiants. The depositions shall be filed with the Commission, and, together with the application, the response, the reply and the answers to the Commission's written questions shall constitute the record on which the Commission will base its decision unless modified as herein provided.

2.2.11 The Commission may modify the procedures for developing the record on which to consider an application for a shipper access order, to include, but not limited to, requiring oral proceedings.

2.2.12 If the Commission finds that the accessing shipper's use of the access facilities will not unduly interfere with the accessed carrier's own operations, and if the Commission further finds that the accessing shipper has complied with these regulations, it will issue a shipper access order directing the accessed carrier to permit the accessing shipper to use the access facilities identified in the Order under the terms and conditions set forth in the Order.

3.0 DETERMINATION OF AN ACCESS CHARGE

3.1. Election of Access Charge Methodology --

In its application an accessing shipper shall elect to have its access charge established under either the "stand alone cost" methodology, or the "carrier access" methodology. The shipper's election contained in its application shall be binding on the shipper for that and all

subsequent applications filed by the shipper for use of the same access facilities within the 36 months following the date on which the initial election is filed.

3.2 Change of Access Charge Methodology --

Notwithstanding Section 3.1 of these regulations, a shipper may elect to change the applicable access charge methodology by notifying the accessed carrier and undertaking to compensate the accessed carrier for the reasonable expenses incurred by the accessed carrier in calculating an access charge using the new methodology.

3.3 Stand Alone Cost Methodology

3.3.1 An access charge to an accessing shipper computed using the stand alone cost methodology seeks to give the accessed carrier the same contribution to its fixed costs that it would obtain if the accessed carrier charged a rate to the accessing shipper for transportation over the access facilities at the stand alone cost level established in the Interstate Commerce Commission's Coal Rate Guidelines -- Nationwide, Ex Parte 347 (Sub. No. 1).

3.3.2 The access charge to an accessing shipper for use of the access facilities to move a specified annual tonnage of a commodity over the access facilities shall be equal to the stand alone cost to the accessing shipper of moving that specified annual tonnage of its own traffic over the access facilities, reduced by the accessed carrier's avoidable costs of serving that traffic over the access facilities. In its application for a shipper access order, the accessing shipper requesting an access charge calculated under a stand alone cost methodology shall specify the annual tonnage it wishes to move over the access facilities.

3.3.3 In calculating its proposed access charge using a stand alone cost methodology, the accessed carrier shall present a base case that makes the following simplifying assumptions;

(a) all shippers of bulk commodities originating on, terminating on, or overhead to the access facilities are part of the stand alone group and have the same elasticity of demand for use of the access facilities;

(b) all non-bulk traffic originating on, terminating on, or overhead to the access facilities can cover only variable costs;

(c) the costs of off-line facilities needed to handle bulk commodities of other shippers originating on, terminating on, or overhead to the access facilities are fully compensated by the rates that are charged (or that could be charged) to the shippers of those commodities; and

(d) the facilities needed to provide stand alone service to the accessing shipper (and to other shippers in the stand alone group) are the access facilities currently in place.

3.3.4 In accordance with the ICC's stand alone cost methodology:

(a) the facilities needed to provide stand alone service to the shipper (and other shippers in the stand alone cost group) should be valued at their depreciated current cost; and

(b) the return on the depreciated current cost of the access facilities should be equal to the ICC's most recent determination of the nominal current cost of capital to the railroad industry.

3.3.5 The accessed carrier's access charge proposals shall also identify the traffic-sensitive costs that the accessing shipper's use of the access facilities will cause the accessed carrier to incur and that are not included in the stand alone cost calculation. The access charge proposed shall propose a method for measuring such costs and compensating the accessed carrier.

3.3.6 In addition to the base case, the accessed carrier may show that one or more of the base case assumptions is not appropriate for the specific case in issue, and the effect of that variation from the base case on the stand alone cost of the accessing shipper providing its own service.

3.3.7 Stand Alone Cost Rates Below Jurisdictional Levels --

3.3.7.1 If the stand alone cost of serving the accessing shipper or shipper group is less than 180% of the variable cost to the accessed carrier of providing the service, the stand alone cost of serving the accessing shipper or shipper group shall be conclusively presumed to equal 180% of the variable cost to the accessed carrier of providing the service.

3.3.7.2 For purposes of this section, the accessed carrier shall compute the variable cost of serving the

shippers traffic in the same manner required or permitted under the Interstate Commerce Act to determine the jurisdictional threshold of the Interstate Commerce Commission's rate reasonableness jurisdiction.

3.4 Carrier Access Methodology

3.4.1 An access charge to an accessing shipper calculated using the carrier access methodology seeks to afford the accessed carrier the same contribution to its fixed costs as it would obtain if the shipper were served by an accessing carrier with access charges calculated under the Commission's carrier access regulations.

3.4.2 If the accessing shipper elects to have its access charge calculated pursuant to the carrier access regulations, the accessed carrier shall assume as a base case that all shippers of bulk commodities have identical elasticities of demand for use of the access facilities. The accessed carrier may propose an alternative access charge predicated upon such shippers having different elasticities of demand for rail service, but shall explain, in detail, the basis for its conclusion.

3.4.3 Procedural Rights of Accessing Shipper using Carrier Access Methodology --

3.4.3.1 The accessing shipper shall have the same procedural rights as an accessing carrier including the right to propose a base case access charge predicated upon all shippers of bulk commodities on the access facilities having identical elasticities of demand for rail service over the access facilities, and an alternative access charge predicated upon those shippers of bulk commodities having differing elasticities of demand for rail service over the access facilities.

3.4.3.2 An accessing shipper shall not be entitled to receive from the accessed carrier any shipper specific data regarding the traffic of other shippers using the access facilities unless those shippers consent thereto. The accessing shipper shall be entitled to data showing gross-tonages of each commodity moved over the access facility in each of the three preceding years.

3.4.4 The Commission will select either the base case access charge schedule or the alternative access charge schedule proposed by the accessed carrier, or the base case access charge schedule or alternative access charge schedule proposed by the accessing shipper.

4.0 OPERATIONS BY THE ACCESSING SHIPPER

4.1 Accessing Shipper Obligations

4.1.1 In using the access facilities, the accessing shipper shall comply with the accessed carrier's operating rules and regulations.

4.1.2 Prior to commencing operations, and at such additional times as the accessed carrier may request, the accessing shipper shall provide to the accessed carrier evidence of insurance covering liabilities resulting from its use of the access facilities, which shall show the accessed carrier as a coinsured.

4.1.3 Prior to commencing operations, the accessing shipper shall provide to the accessed carrier an indemnity against all liabilities resulting from use of the access facilities by the accessing shipper, except to the extent that the injury is caused by the fault of the accessed carrier or its agents or employees. That indemnity shall extend to all liabilities that arise under state and federal environmental legislation.

4.1.4 The accessing shipper shall pay access charges due in accordance with the access order issued by the Commission.

4.2. Accessed Carrier's Obligations

4.2.1 The accessed carrier, upon request by the accessing shipper, shall provide training to the personnel of the accessing shipper to permit use of the access facilities in a safe and non-disruptive manner. The accessed carrier may charge the accessing shipper the actual cost of such training.

4.2.2 The accessed carrier shall be responsible for maintaining the continuing utility of the access facilities for providing substantially the same quality of access as they provided on the date the Commission issued the shipper access order. This shall not preclude the accessed carrier from changing the access facilities to incorporate new technology or to lower the cost, or improve the safety operation, or improve the quality of service.

4.2.3 The accessed carrier shall be responsible for dispatching and operation of the train control system on the access facilities. These services shall be provide to the accessing shipper on a non-discriminatory basis.

4.2.4 The accessed carrier shall not require the accessing shipper to comply with work rules not required by the Federal Railroad Administration or the Commission.

4.2.5 The accessed carrier shall not require that the trains of the accessing shipper be manned by the employees of the accessed carrier.

5.0 MISCELLANEOUS PROVISIONS

5.1 Modification of Access Agreement or Shipper Access Order

5.1.1 Modification by Agreement --

5.1.1.1 An accessing shipper and an accessed carrier that have agreed to modifications in a shipper access order governing the use of access facilities shall jointly file such proposed modifications with the Commission, together with an explanation of the purpose and effect of the proposed modifications.

5.1.1.2 The Commission may submit written questions to the applicants which shall be answered in writing and under oath within the time established by the Commission.

5.1.1.3 The Commission may request public comments on the proposed modification.

5.1.1.4 The Commission shall issue an order approving the proposed modification if it finds the modification to be in the public interest and consistent with the purposes of these regulations.

5.1.1.5 An accessing shipper and an accessed carrier that have agreed to modifications in a shipper access agreement shall file such notice and parts of the modification agreement as are required of initial agreements by these regulations.

5.1.2 Modification by Order --

5.1.2.1 For good cause shown, an accessing shipper or accessed carrier may file with the Commission a petition requesting the issuance of an order modifying a previously issued shipper access order or an access agreement that the parties have voluntarily filed with the Commission.

5.1.2.2 The petition shall set forth the proposed modification, the reasons therefor, and the efforts

that the petitioner has made to obtain an agreement with respect to the modifications proposed.

5.1.2.3 The petition shall be supported by affidavits, including the affidavit of the petitioner's chief executive officer, or if the petition is filed by the accessed carrier, it may be supported by the affidavit of the chief operating officer.

5.1.2.4 The petition and the supporting affidavits and workpapers shall be served upon all other parties to the agreement or order which the petitioner is requesting be modified, except that confidential information shall be served only after the party has executed a confidentiality agreement, and that traffic data regarding specific shippers shall not be supplied to an accessing shipper except with the consent of the shipper in question.

5.1.2.5 Within 30 days of service of the petition, each party to the agreement or order may file with the Commission and serve on the petitioner and other parties to the agreement or order a response to the petition, together with supporting affidavits and workpapers, stating its objections to the proposed modification, its reasons therefor, proposed alternative modifications, and its reasons therefor, provided, however, that confidential information shall be served only after a party has executed a confidentiality agreement, and further provided that traffic data regarding specific shippers shall not be supplied to an accessing shipper except with the consent of the shipper in question.

5.1.2.6 The response shall be supported by affidavits, including the affidavit of the respondent's chief executive officer, or if the respondent is the accessed carrier, the supporting affidavit may be that of the chief operating officer.

5.1.2.7 The Commission may submit written questions to the petitioner and the responding parties which shall be answered under oath and in writing.

5.1.2.8 If the Commission determines that there is a disputed issue of fact material to the issuance of a modification order, it may permit the parties to take the depositions on oral examination of the opposing party's affiants for the purpose of cross-examination.

5.1.2.9 The depositions shall be filed with the Commission and, together with the petition, the response, the affidavits in support, and the sworn answers to the

Commission's written questions, shall constitute the record on which the Commission will base its decision.

5.1.2.10 The Commission may modify the procedures for developing the record on which to consider a petition for modification, to include, but not limited to, requiring oral proceedings.

5.1.2.11 The Commission will issue an order modifying or denying modification of the access agreement or access order.

5.1.2.12 The Commission will not, by order, except in extraordinary circumstances modify any access agreement or access order that was modified by order within the 12 months preceding the filing of the petition for modification.

5.2. Confidentiality Agreements --

5.2.1 A person requesting or opposing the issuance by the Commission of any access order (or modification thereof) under these regulations shall execute an agreement meeting the criteria of this sub-part.

5.2.2 The agreement shall provide, inter alia, that:

(a) the signatory party will not disclose to any person not a party to the proceeding, or to any party to the proceeding that has not executed a confidentiality agreement, any information supplied to it by any other party to the proceeding which that party has designated as confidential commercial information concerning itself, its customers, or any other party to the proceeding or its customers;

(b) the signatory party agrees to pay damages to any person, whether or not a party to the proceeding or a signatory of a confidentiality agreement, that is injured in its business or property by the signatory party's disclosure of confidential commercial information in violation of the agreement;

(c) the damages in the event of such disclosure will be measured by the lost profits resulting from disclosure of the confidential commercial information which shall be conclusively presumed to be at least \$10,000; and

(d) if the signatory party is found to have made a disclosure in breach of the agreement, it will pay to the injured person, in addition to the presumptive or actual

damages determined, the costs of suit and a reasonable attorney's fee.

5.2.3 The signatory party shall serve the confidentiality agreement on each party to the proceeding, the Commission, and on each shipper concerning which the party is to receive or has received confidential commercial information from another party to the proceeding; provided, however, that the confidentiality agreement need not be served on any shipper whose traffic does not originate or terminate on the access facilities in question in the proceeding.

5.2.4 If any party to a proceeding under these regulations fails or refuses to execute a confidentiality agreement, that party shall not be entitled to receive from any other party or from the Commission any materials containing confidential commercial information, but the Commission may decide the issues before it as if such party had received such information.

5.3 Definitions -- As used in these regulations, the following terms shall have the meanings set forth below:

5.3.1 "Access Agreement" means an agreement between an accessing shipper and an accessed carrier that permits the accessing shipper to use access facilities owned by the accessed carrier, and contains the conditions of such use and a provision for an access charge for use of such facilities.

5.3.2 "Access Facilities" means track, switches, signal equipment, communications equipment and any other facilities necessary and appropriate to move trains from one or more points on the lines of the accessed carrier designated by the accessing shipper to any other point on the lines of the accessed carrier designated by the accessing shipper, including such facilities as are necessary to move trains from the lines of the accessed carrier to the lines of another carrier.

5.3.3 "Accessed Carrier" means a carrier by railroad subject to the jurisdiction of the Interstate Commerce Commission that is the subject of a request for access facilities that is being processed in a proceeding under these regulations.

5.3.4 "Accessing Shipper" means a person that is not a carrier by railroad subject to the jurisdiction of the Interstate Commerce Commission that requests the use of access facilities for the purpose of moving its own traffic.

5.3.5 "Application" means an application for an access order made pursuant to these regulations.

5.3.6 "Avoidable Cost" for purposes of these regulations shall mean those costs that will not be incurred by the accessed carrier if it does not provide specified service. For this purpose, all costs associated with providing train service, such as locomotive and equipment capital and maintenance expense, train crews, fuel, and track maintenance expenses incurred as a direct consequence of the operation of trains shall be treated as avoidable costs.

5.3.7 "Bulk Commodities" means all commodities carried in open or covered hopper cars and all commodities carried in tank cars.

5.3.8 "Commission" means the Public Service Commission of West Virginia.

5.3.9 "Confidentiality Agreement" means a confidentiality agreement meeting the requirements of these regulations.

5.3.10 "Depreciated Current Cost" means the depreciated current cost of the access facilities needed to serve the accessing shipper or the stand alone cost group of which the accessing shipper is a part, calculated in accordance with the Interstate Commerce Commission's decision in Coal Rate Guidelines - Nationwide, Ex Parte 347 (Sub. No. 1).

5.3.11 "Shipper Access Order" means an order issued by the Commission authorizing an accessing shipper to use access facilities of an accessed carrier and establishing the terms and conditions for such use.

5.3.12 "Workpapers" means documentation necessary to understand the means of calculation of a number that is contained in an affidavit or filing made with the Commission pursuant to these regulations and includes, inter alia accounting work sheets, computer output, listings of computer programs used to analyze data, and traffic data.