

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

Form #2

Do Not Mark In This Box

2013 AUG 21 PH 3: 14

WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE**

AGENCY: Public Service Commission of West Virginia TITLE NUMBER: 150

RULE TYPE: Legislative Exempt CITE AUTHORITY: W.Va. Code §§16-13A-1c,2,8 and 24-2-1

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: 36

TITLE OF RULE BEING PROPOSED: Rules Governing Stormwater Utilities

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON September 20, 2013 AT 4:00 p.m. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS:

Commission Executive Secretary

Sandra Squire

P.O. Box 812

Charleston, WV 25323

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

  
Authorized Signature

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

# Public Service Commission

Richard E. Hitt, General Counsel



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

August 21, 2013

Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0771

**Via Hand Delivery**

Re: Public Service Commission; Rules Governing Stormwater Utilities,  
150 C.S.R. Series 36

Dear Ms. Cooper:

Enclosed for filing is a copy of proposed rules in the above new series. The rules are promulgated under the Commission's existing rulemaking authority, exempt from legislative rulemaking review pursuant to W.Va. Code §24-1-7. As you may recall, the proposed rules were initially filed on June 1, 2012, with final rules filed on March 15, 2013. The Commission, however, withdrew the final rules on May 13, 2013, before those rules went into effect.

I have enclosed also a new notice of a comment period, a fiscal note, a summary of the rule, and a statement of circumstances.

Because the Commission is not part of the Cabinet structure, the Commission Order is the evidence of the approval of the filing by the agency head, Chairman Michael A. Albert.

Please date stamp the enclosed two 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 Yours,

A handwritten signature in black ink, appearing to read "Richard E. Hitt".

Richard E. Hitt  
General Counsel

cc: Susan M. Stewart, Law Clerk

## Summary of the Rule

The Public Service Commission of West Virginia has proposed Rules Governing Stormwater Utilities, 150 C.S.R. 36, effective for all public service districts operating a stormwater utility.

Stormwater utilities are under an environmental obligation to manage, collect, convey, treat, or store stormwater in compliance with national and state stormwater requirements. Consequently, the cost and availability of a stormwater system is determined by the overall requirements imposed on a stormwater utility to service a broad land area. Each customer within that land area will be required to fund stormwater systems within the land area. Unlike drinking water or sanitary sewer services, customers may not see a tangible service being provided by a stormwater utility. The stormwater utility is mandated by the Department of Environmental Protection to provide (i) public education and outreach, (ii) public involvement and participation, (iii) illicit discharge detection and elimination, (iv) controlling runoff from construction sites, (v) controlling runoff from new development and redevelopment, and (vi) pollution prevention and good housekeeping for municipal operations. Because of the universality and variability of stormwater contributions to the waters of the state, the cost of a new or extended stormwater conveyance may not have a direct relationship to a specific stormwater customer bill or the cost to extend services to one particular area.

The new proposed rules (i) provide definitions, (ii) require certain information to be provided to the Commission and to customers, (iii) set forth customer billing provisions, customer rights and moratorium provisions, (iv) provide guidance for utility facilities, service pipes and expansion of service, (v) provide safety requirements, and (vi) provide rules for the creation or alteration of public service districts.

## STATEMENT OF CIRCUMSTANCES

Pursuant to W.Va. Code §24-2-1(a), any public service district created under W.Va. Code §16-13A-1 is regulated by the Public Service Commission. In 2002, the West Virginia Legislature amended W.Va. Code §16-13A-9 to allow public service districts to create stormwater utilities. The creation of sewer public service districts necessitated these proposed rules.

APPENDIX B  
***FISCAL NOTE FOR RULES***

Rule Title: **150 C.S.R. 36, Rules Governing Stormwater Utilities**

Type of Rule:  Exempt Legislative     Interpretive     Procedural     Emergency

Agency: Public Service Commission of West Virginia

Address: 201 Brooks Street  
Charleston, West Virginia 25301

Phone Number: Richard E. Hitt, 304-340-0450      Email: rhitt@psc.state.wv.us

**Fiscal Note Summary**

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

There will be no significant implementation cost relating to this rulemaking for the State of West Virginia. The Commission does not anticipate additional costs to be incurred as a result of this rulemaking.

**Fiscal Note Detail**

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

| <b>FISCAL YEAR</b>          |  |                                     |   |
|-----------------------------|--|-------------------------------------|---|
| Effect of Proposal          | Current Increase/Decrease<br>(use "-") | Next Increase/Decrease<br>(use "-") | Fiscal Year<br>(Upon Full Implementation) |
| 1. Estimated Total Cost     |  |                                     | N/A                                       |
| Personal Services           |  |                                     |   |
| Current Expenses            |  |                                     |   |
| Repairs & Alterations       |  |                                     |   |
| Assets                      |  |                                     |   |
| Other                       |  |                                     |   |
| 2. Estimated Total Revenues |  |                                     | N/A                                       |

Rule Title: **150 C.S.R. 36, Rules Governing Stormwater Utilities**

Rule Title: 150 C.S.R. 36, Rules Governing Stormwater Utilities

3. **Explanation of above estimates (including long-range effect):**  
Please include any increase or decrease in fees in your estimated total revenues.

Not applicable.

#### MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The effect of this rulemaking is to allow provide regulatory guidance for public service districts desiring to create stormwater utilities. Customers receiving stormwater service from a public service district will pay for such service at rates approved by the Public Service Commission of West Virginia.

Date: August 21, 2013

Signature of Agency Head or Authorized Representative



**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 21<sup>st</sup> day of August 2013.

**GENERAL ORDER NUMBER 260**

In the Matter of proposed Rules Governing Stormwater Utilities, 150 C.S.R. Series 36.

**COMMISSION ORDER**

The Commission proposes revised rules and initiates a comment period for those rules.

**BACKGROUND**

On June 1, 2012, the Commission promulgated proposed rules for public service districts (PSDs) desiring to create stormwater utilities. Commission Order at 3-4 and Attachment B (June 1, 2012). These Rules for the Government of Stormwater Utilities, 150 C.S.R. Series 36 (Stormwater Rules), are necessary because amendments to W.Va. Code §16-13A-9 allow PSDs to create stormwater utilities. In its order, the Commission set a schedule to receive comments on the proposed rules. Id. at 4.

On July 2, 2012, the Jefferson County Public Service District (Jefferson) filed comments requesting that the Commission decline to adopt the proposed rules in their entirety because the rules rely too heavily on the Rules for the Government of Sewer Utilities (Sewer Rules), 150 C.S.R. Series 5. Jefferson commented that the focus of the Sewer Rules is on facilities and building, but the focus of the Stormwater Rules should address how a stormwater utility fulfills its obligation to provide public education and outreach, public involvement and participation, illicit discharge detection and elimination, controlling runoff from construction sites, and pollution prevention and good housekeeping, the six core functions of a stormwater utility. Jefferson also suggested that the Commission should have modeled its rules on communities outside of West Virginia that have more experience in operating Municipal Separate Storm Sewer Systems (MS4s).

On July 2, 2012, the West Virginia Municipal Water Quality Association (WVMWQA) filed comments and noted that several of its members are PSDs that would be subject to the Stormwater Rules.

On July 3, 2012, Commission Staff filed comments on behalf of the Stormwater Rules Task Force (Task Force) that initially proposed Stormwater Rules for Commission consideration. See, Staff Petition, Case No. 10-1141-S-PC (July 23, 2010). The Task Force consisted of William Rohrbaugh of the Berkeley County Public Service District, Curtis Keller of the Berkeley County Public Service District, Luke Richmond of the Beckley Sanitary Board, Jim Greene of the Morgantown Utility Board, Scott Copen of the Morgantown Utility Board, Sherry Wilkins of the West Virginia Department of Environmental Protection (WVDEP), William Herald of the West Virginia Bureau of Public Health, Laura Conley-Rinehart of the West Virginia Department of Transportation, James Weimer of the Engineering Division of the Commission, and Amy Swann of the Water and Wastewater Division of the Commission.

On August 31, 2012, Staff filed Reply Comments on behalf of the Task Force. The Task Force considered the comments of WVMWQA and Jefferson, filed responses to those comments, and made editorial suggestions.

On March 15, 2013, the Commission issued final rules. The rules are scheduled to go into effect on May 14, 2013.

On March 25, 2013, Staff filed a Petition for Reconsideration on behalf of the Task Force. Staff requested that the Commission reconsider Stormwater Rules 2.6.a, 2.6.a.1, and 5.3.j.

On May 13, 2013, the Commission reopened this matter, rescinded its March 15, 2013 Order adopting the Stormwater Rules attached to that order, and withdrew the Stormwater Rules from filing with the West Virginia Secretary of State.

### **DISCUSSION**

Taking into account the rules initially proposed by the Task Force in 2010, the rules proposed by the Commission on March 15, 2013, pertinent state and federal statutes and regulations, and the permit issued through the WVDEP, the Commission has modified the rules filed on March 15, 2013. See, proposed Stormwater Rules attached hereto as Attachment B.

After consideration of the Petition for Reconsideration, the Commission revised Rule 2.6 and welcomes comments on the new proposed rule. We believe that the revised Rule 2.6 provides the Task Force with electronic data files, where available, without placing undo burden and expense where files are not otherwise required. The Commission agrees that stormwater utilities are unique. Unlike sanitary sewer facilities, stormwater conveyances may not always be hard-piped. Use of traditional concepts regarding points of service and

property lines may not always be consistent for stormwater operations which could involve runoff across surface areas, ditches, swales, and other non-piped conveyances. We have modified the proposed rules to reflect that fact. After consideration of arguments made in the Petition for Reconsideration related to Rule 5.3, the Commission revised rules 5.2, 5.3, and 5.4. The revisions are intended to more accurately reflect the purpose of Stormwater regulation by the Commission.

The Commission is concerned with enforcement of the Stormwater Rules and requests that interested parties comment specifically on Rule 4.13, offering suggestions regarding the enforcement of these rules. Although we have noted several specific revisions, the Commission made revisions throughout the proposed Stormwater Rules and interested parties should read and comment on the entire set of proposed rules.

### **FINDINGS OF FACT**

1. Staff filed a Petition for Reconsideration of the Stormwater Rules previously scheduled to go into effect on May 15, 2013. Petition, March 25, 2013.
2. After considering the Petition for Reconsideration, the Commission withdrew the proposed Stormwater Rules.

### **CONCLUSION OF LAW**

The Commission should receive comments on proposed rules relating to stormwater public service districts in the state.

### **ORDER**

IT IS THEREFORE ORDERED that the following schedule is adopted to receive written comments on the proposed rules attached hereto as Attachment B:

|                  |                           |
|------------------|---------------------------|
| Initial Comments | 4 p.m. September 20, 2013 |
| Reply Comments   | 4 p.m. October 18, 2013   |

IT IS FURTHER ORDERED that all comments should contain this case number, General Order Number 260, and be addressed to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, West Virginia 25323.

IT IS FURTHER ORDERED that the Commission Executive Secretary shall cause publication, one time, of the notice appearing in Attachment A in a newspaper, duly qualified by the Secretary of State, published and of general circulation in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser,

Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling and Williamson. The Executive Secretary shall file the affidavits of publication as soon as they are received.

IT IS FURTHER ORDERED that the Executive Secretary shall serve a copy of this order (i) by electronic service on **all public service districts operating in West Virginia** that have filed an e-service agreement, by United States First Class Mail on all public service districts operating in the state that have not filed an e-service agreement, (ii) on the members of the Task Force: William Rohrbaugh of the Berkeley County Public Service District, Curtis Keller of the Berkeley County Public Service District, Luke Richmond of the Beckley Sanitary Board, Jim Greene of the Morgantown Utility Board, Scott Copen of the Morgantown Utility Board, Sherry Wilkins of the West Virginia Department of Environmental Protection, William Herald of the West Virginia Bureau of Public Health, and Laura Conley-Rinehart of the West Virginia Department of Transportation by electronic service or United States First Class Mail, as applicable, and (iii) on Commission Staff by hand delivery.

A True Copy, Teste:

  
Sandra Squire  
Executive Secretary

SMS/slc  
GO260cc.doc

**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 21<sup>st</sup> day of August 2013.

GENERAL ORDER NUMBER 260

Rules Governing Stormwater Utilities, 150 C.S.R. Series 36.

NOTICE OF OPPORTUNITY TO COMMENT  
REGARDING RULES FOR STORMWATER UTILITIES

The Public Service Commission of West Virginia is considering adopting rules related to the provision of stormwater utility service by public service districts. Under the proposed rules, users of an operating stormwater utility are the owners of real property from which stormwater affects or drains into the stormwater system. Under the proposed rules, the property owner, or user, will be responsible for receiving and paying for service from the stormwater utility unless the user has entered into a written agreement that another party shall apply for service and become the customer of the stormwater utility. See, Commission proposed Rules Governing Stormwater Utilities, 150 C.S.R. Series 36, available on the Commission website at [www.psc.state.wv.us](http://www.psc.state.wv.us).

The Commission will receive written comments on the proposal to add rules relating to Stormwater public service districts as follows:

|                  |                              |
|------------------|------------------------------|
| Initial Comments | 4:00 p.m. September 20, 2013 |
| Reply Comments   | 4:00 p.m. October 18, 2013   |

Written comments should contain the case number listed above and be addressed to the Commission Executive Secretary, Sandra Squire, P.O. Box 812, Charleston, West Virginia 25323.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

TITLE 150  
LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION  
SERIES 36  
RULES FOR THE GOVERNMENT OF  
STORMWATER UTILITIES

2015 MAR 21 PM 3:15  
COMMUNICATIONS SECTION  
LEGISLATIVE OFFICE

**§150-36-1. General.**

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

1.2. Authority. - W.Va. Code §§16-13A-1c, 16-13A-2, 16-13A-8, 16-13A-9, 24-2-1.

1.3. Filing Date. -

1.4. Effective Date. -

1.5. General. - These rules apply to public service districts providing a stormwater utility service.

1.5.a. 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.b. 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.c. 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 stormwater public service districts as defined in W.Va. Code §16-13A-1c.

1.6.b. If hardship results from the application of any Stormwater 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. Billing Related Dates.

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

1.7.a.2. "Latest Pay Date" - The last date, which shall be no sooner than the twentieth (20th) 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.a.3. "Delinquent Bill" - Any bill issued by a public service district that has not been paid within twenty (20) days of the bill due date. Such date must be stated on the face of the bill.

1.7.b. "Best Management Practices" (BMPs) - are techniques used to control stormwater runoff, control sediment, and provide soil stabilization, as well as management decisions to prevent or reduce nonpoint source pollution. The West Virginia Department of Environmental Protection defines a BMP as a "technique, measure or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in the most cost effective manner."

1.7.c. "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.d. "Contributing Area" - Any area, impervious or pervious, contributing stormwater runoff to the public stormwater facilities.

1.7.e. "Conveyance" - Any structure, swale, pipe, ditch, pond or watercourse utilized to move stormwater from a non-served land area to the waters or aquifers of the State.

1.7.f. "Customer" - Shall mean the owner, tenant or occupant of any real property served by a stormwater system, and determined to be responsible for payment of public service district utility stormwater service fees.

1.7.g. "Customer's Stormwater Facilities" - Shall be that portion of any conveyance to the stormwater system from the structure, premises or land, which is owned by and installed at the cost and expense of the user or customer.

1.7.h. “Impervious Area” - Land area covered by buildings, pavement or other materials that significantly inhibit stormwater from penetrating the soil.

1.7.i. “Maximum Extent Practicable” (MEP) - A constantly evolving method that establishes the level of pollutant reductions that municipal separate storm sewer system operators must achieve through implementation of a stormwater management program.

1.7.j. “Measurable Goals” - BMP design objectives or goals that quantify the progress of program implementation and the performance of BMPs. They are objective markers or milestones that the utility and the permitting authority will use to track the progress and effectiveness of BMPs in reducing pollutants to the maximum extent practicable.

1.7.k. “Moratorium” - A condition imposed on a public service district by the Commission prohibiting new stormwater connections or reactivation of discontinued stormwater connections for an entire system, or a portion thereof. The moratorium will be effective only within the boundaries of the public service district to which the moratorium applies.

1.7.l. “Municipal Separate Storm Sewer System” (MS4) – The Commission adopts the definition of MS4 as presently defined or to be defined in the future by federal regulations, currently codified at 40 CFR §122.26(b)(8). The term MS4 does not solely refer to municipally-owned storm sewer systems, but rather is a term applied to non-private, publicly owned systems. References herein to an MS4 are used solely with regard to references to federal regulations because these rules apply only to public service district stormwater systems.

1.7.m. “Outfall” - The point at which stormwater Utility Conveyance Facilities discharges into the waters of the State.

1.7.n. “Payment” - Payment for utility service is made by cash, check, credit card, debit card, or voucher accepted by the utility.

1.7.o. “Pervious Area” - All land area that allows stormwater to infiltrate the soil.

1.7.p. “Point of Service” – For a hard piped customer storwater facility, the point where the stormwater runoff from a given parcel of land meets the UCF at or near the property line. Point of service may also be an area either near or distant from the property line where natural runoff that is not necessarily carried by hard-piped facilities drains into the UCF.

1.7.q. “Public Utility” - Except where a different meaning clearly appears from the context, the word, or words, “Utility” or “Public Utility” or “Stormwater Utility” when

used in these Rules shall mean and include any public service district engaged in the business of managing, collecting, transporting, or treating stormwater.

1.7.r. "Stormwater Service (Works)" - Any method, conveyance, treatment system or storage structure determined to be necessary to meet the requirements of the Commission or the environmental authority mandating the control and quality of stormwater entering waterways and aquifers of the State.

1.7.s. "Urbanized Area" - A land area comprising one or more places, central place(s) and the adjacent densely settled surrounding area, urban fringe, that together have a residential population of at least 50,000 and an overall population density of at least 1,000 people per square mile. It is a calculation used by the Bureau of the Census to determine the geographic boundaries of the most heavily developed and dense urban areas.

1.7.t. "User" - Owner of real property from which stormwater affects or drains into the stormwater system.

1.7.u. "Utility Conveyance Facility/Facilities" (UCF) - Any part or parts of a stormwater system, including but not limited to, ditches, pipes, swales, pump stations, retention ponds, or any other utility structure necessary for collection or conveyance of stormwater.

## **§150-36-2. 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 stormwater 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 applicable public service district with stormwater authority 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 public service district's office in West Virginia upon request of the Commission, or the public service district 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 public service district 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 public service district 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 and certificates of public convenience and necessity.

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," 150 CSR 2 effective as amended or modified by the Commission.

2.2.a.1. Any rate schedules established pursuant to these rules shall be based on the principal that customers shall pay rates that are based primarily on the cost of the service provided by the stormwater utility and that reflect the proportionate contributions to the total stormwater flows through the utility made by each customer class. Fee schedules developed pursuant to these rules shall be based on the methodologies that are in accordance with this cost allocation principal and acceptable to the Commission.

2.2.b. Certificates of public convenience and necessity shall be requested pursuant to the "Rules of Practice and Procedure," 150 CSR 1.

2.3. Utility's special rules.

2.3.a. The utility shall be subject to and comply with the provisions of Rule 2.3 of the "Rules for the Government of Sewer Utilities," 150 CSR 5. Any utility establishing special rules shall include those rules in its tariff.

2.4. Financial and statistical report.

2.4.a. The utility shall be subject to and comply with the provisions of Rule 2.4 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

2.5. Uniform system of accounts.

2.5.a. All stormwater utilities shall maintain their accounts and records in compliance with the Uniform System of Accounts for sewer as promulgated in 1996 by the National Association of Regulatory Utility Commissioners for Class A, B and C sewer utilities. In the event that the sewer uniform system of accounts is insufficient for proper accounting, the utility may add appropriate account titles and sub-accounts subject to review and notification by the Commission.

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 stormwater public service districts for purposes of keeping accounts in accordance with the Uniform System of Accounts for sewer shall be as follows:

| Classification | Revenue Level       |
|----------------|---------------------|
| A.             | \$1,000,000 or more |
| B.             | \$200,000-\$999,999 |
| C.             | less than \$200,000 |

2.6. Maps and records.

2.6.a. Each utility shall keep on file suitable maps, plans, and records showing the entire layout of pipes, retention ponds, open channels, water quality devices, curbs and gutters, ditches, swales, pump stations, bio retention, stormwater wetlands, and any other technology necessary for the management of stormwater, used in the collection and treatment of stormwater.

2.6.b. In addition to paper copies of maps and records, if required by another governmental entity or agency pursuant to any permits, laws or regulations, each Stormwater Project Designer shall be required to submit to the utility as-built electronic data files for all projects that are public in nature or could reasonably be acquired by the stormwater utility, in addition to the paper copies.

2.6.c. In the case of new construction or property acquired from others, updates to such maps and records should be made no later than 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.d. In general, where present maps of existing facilities are not entirely up to date, special surveys to locate any plant or stormwater facilities will not be required immediately, but maps must be updated as prescribed by the Commission.

2.7. Management Audits.

2.7.a. Scope - The utility shall be subject to and comply with the provisions of Rule 2.7 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

**§150-36-3. Basis of Billing for Stormwater Service.**

3.1. Billing for stormwater service will be based on rates and methods approved by the Public Service Commission, which may include rates and charges based on the amount of impervious surface area on the property served.

**§150-36-4. Customer Relations.**

4.1. Customer Information.

4.1.a. Information as to Service - Each utility shall, upon request, give its users and 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 users and 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 user and customer at the beginning of service, or whenever requested to do so, the utility's rates applicable to the type of service furnished to the customer and all other classes of customers. 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 customers with a concise written explanation of the rates, and an identification of any 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;

4.1.d.1.C. A copy of the Rules for the Government of Sewer Utilities, 150 CSR 5; and

4.1.d.1.D. 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. No less than once a year, and each time utility changes collection agents or locations, each utility shall publicize by newspaper or bill insert to its customers its collection agents to whom customers may deliver payment of stormwater bills.

4.1.e. Application for stormwater service.

4.1.e.1. Real property may be determined and declared to be served by a stormwater system only after each of the following conditions are met;

4.1.e.1.A. Where a public service district has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 CFR 122.26;

4.1.e.1.B. The authority of the public service district has been properly expanded to operate and maintain a stormwater system;

4.1.e.1.C. The public service district has made available a stormwater system where stormwater from the real property affects or drains into the stormwater system; and

4.1.e.1.D. The real property is located in the Municipal Separate Storm Sewer System's designated service area.

4.1.e.2. Having met those four conditions, an owner of the real property (user) shall be required to make written application on printed forms provided therefore setting forth in said application all purposes for which stormwater will be managed upon their premises. If the user has agreed in writing with a third party that the third party shall pay the stormwater fee, then the third party shall apply for service. The third party shall provide the utility with a copy of the agreement with the user. The utility may require the applicant to provide identification at the time of application for service. The applicant 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, the name and address of the owner or owners of the premises to be served must be provided to the utility.

4.1.e.3. A customer shall remain liable for stormwater service furnished to said premises until he has given notice in writing to the utility to discontinue stormwater service. Any change in the identity of the contracting customer at a premises will require a new application for stormwater service provided that, in the event the customer of record has died or has become incapable of being responsible for stormwater service, that individual's spouse may become the customer of record without being required to complete a new

application for stormwater service, or paying a new deposit. Where the former customer has provided notice of discontinuance of service in the absence of an application for service the user shall be billed. (See, 4.1.f.4). Where bills are not paid, the utility may, after reasonable notice, obtain a discontinuance of water service to the premises until such new application has been made and accepted.

4.1.e.4. 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 stormwater service to the area, then the stormwater 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 stormwater service and billing after notice.

4.1.f.1. Notice by Publication - When stormwater service is made available by a public service district to users in an area which has not previously been served by the public service 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 public service district intends to begin billing for services. The notice shall state, at a minimum, the following information: (1) that stormwater 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 Stormwater Utilities; (3) the district's rates; (4) the location and telephone number of the district's business office; and (5) the general amount of the bill that will be the responsibility of users, in various classes even if the user has not made an application for service.

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 stormwater service is made available to users in an area which has not previously been served by the stormwater utility, the stormwater utility shall provide notice with at least the information as described in section 4.1.f.1 above, to all users by certified mail, return receipt requested, or by personal service with signed and dated receipt. In the event that the public service 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. Where there has been no application for stormwater service within thirty (30) days and after appropriate notice has been given of availability of service

pursuant to W.Va. Code §16-13A-9 and Rule 4.1.f, users shall be billed based on the stormwater utility's approved tariff.

4.2. Customer deposits.

4.2.a. Security deposits.

4.2.a.1. Security deposits for public service stormwater districts - All new applicants for residential or other stormwater service from a public service district shall make a deposit with the public service district (1) fifty dollars (\$50.00), or (2) two twelfths (2/12) of the annual estimated charge for stormwater service, whichever is greater, to secure the payment of stormwater service rates and charges. 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.

4.2.a.2. Return of deposit to customers who are not tenants - After a customer who is not a tenant has paid bills for stormwater 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.

4.2.a.3. Return of deposit by public service district to a customer who is a tenant - A district is not required to return a deposit to a customer who is a tenant until the time the tenant discontinues service with the district. After a customer who is a tenant discontinues service with the district, the utility shall promptly and automatically refund the deposit plus accrued interest.

4.2.a.4. Unless otherwise ordered by the Commission by general order, interest of 1% per year 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.

4.2.a.5. A current customer of a public service district who terminates customer status at one location and receives stormwater service at a new 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. Multiple service locations shall require multiple deposits. In the event the customer of record has died, or has become incapable of being responsible for stormwater service, that individual's spouse may become the customer of record without being required to make a new application for stormwater service, or paying a new deposit.

4.2.a.6. Record of Deposit - Each utility holding a cash deposit shall keep a record showing: (1) the name and current address of each depositor; (2) the amount and date of the deposit; and (3) each transaction concerning the deposit.

4.2.a.7. Receipt - Concurrently with receiving a cash deposit, the utility shall deliver to the applicant for service, or customer, a receipt showing: (1) the date thereof; (2) the name of the applicant or customer and the address of the premises served or to be served; (3) the service furnished or to be furnished; and (4) 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.8. 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.

4.2.a.9. All utilities that collect security deposits must do so in a non-discriminatory manner.

#### 4.3. Billing information.

4.3.a. The utility shall be subject to and comply with the provisions of Rule 4.3 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

#### 4.4. Application of credit to customer bills.

4.4.a. Where real property receives stormwater service, each utility is authorized to establish a credit policy where credit can be applied to the stormwater utility bill for customer management technologies that capture stormwater on site.

4.4.b. A utility must have a credit policy included in its tariff that may include separate rates that consider reduced flow of stormwater because of customer management of rainfall. A customer may apply for a credit pursuant to a utility's tariff when it utilizes any

stormwater methods required by stormwater permit to capture: (1) the first one inch of rainfall from newly developed land area or (2) for an existing developed land area where a measurable amount of rainfall can be captured by the landowner. Methods for customer capture of stormwater shall be submitted to the stormwater utility for a determination of the applicability of a credit to the customer's stormwater bill.

4.4.c. The credit policy shall allow additional credits for water quality and water quantity controls that surpass minimum requirements for these controls by federal, state or local laws and regulation. Examples may be additional credit for providing more detention than required by regulation or providing stream buffers where none are required. A credit policy is not intended to completely eliminate the customer's obligation to pay stormwater rates.

4.4.d. Each utility may propose a policy which includes a maximum credit toward a stormwater bill or a minimum net stormwater bill after applications of the credit.

4.4.e. Each utility shall maintain in its office a copy of its tariff, including credit policy, and any forms necessary for a customer to utilize the credit policy.

#### 4.5. Complaints.

4.5.a. The utility shall be subject to and comply with the provisions of Rule 4.5 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

#### 4.6. Disputed Bills.

4.6.a. The utility shall be subject to and comply with the provisions of Rule 4.6 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

#### 4.7. Customer Discontinuance of Service.

4.7.a. The utility shall be subject to and comply with the provisions of Rule 4.7 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

#### 4.8. Utility Discontinuance of Service.

##### 4.8.a. Notice of Discontinuance.

4.8.a.1. The utility shall be subject to and comply with the provisions of Rule 4.8.b of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

4.8.b. The utility shall be subject to and comply with the provisions of Rule 4.8.c of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

4.8.c. Charge for Reconnection.

4.8.c.1. The utility shall be subject to and comply with the provisions of Rule 4.8.d of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

4.8.d. The utility shall be subject to and comply with the provisions of Rule 4.8.e of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

4.8.e. Any public service district that provides water and stormwater service has the right to terminate water service for the delinquency in payment of stormwater bills.

4.8.f. Inter-utility Agreements regarding discontinuance of water service for non-payment of stormwater bills.

4.8.f.1. The utility shall be subject to and comply with the provisions of Rule 4.8.g of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

4.9. Refusal to Serve Applicants.

4.9.a. The utility shall be subject to and comply with the provisions of Rule 4.9 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

4.10. Access to Property.

4.10.a. The utility shall be subject to and comply with the provisions of Rule 4.10 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

4.11. Service Interruptions.

4.11.a. The utility shall be subject to and comply with the provisions of Rule 4.11 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

4.12. Moratoria.

4.12.a. The utility shall be subject to and comply with the provisions of Rule 4.12 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

4.13. If the utility detects an impermissible discharge attributable to particular customer runoff, the utility shall take appropriate steps to eliminate or control the runoff as provided in its permit or relevant statutes or regulations.

**§150-36-5. Utility Facilities; Service Pipes; Expansion of Service.**

5.1. Adequacy of Facilities.

5.1.a. The collecting and conveyance system of every stormwater utility shall be designed, constructed, maintained and operated to receive and transport the stormwater from its customers' facilities to its stormwater outfall within the design limits of its West Virginia Department of Environmental Protection stormwater permit for new and existing facilities and related Commission certificate of public convenience and necessity. The utility shall develop and implement its stormwater management program in order to reduce the discharge of pollutants to the MEP.

5.1.b. Construction and Maintenance of System - Each stormwater utility shall at all times construct and maintain its facilities to furnish safe, adequate, reliable and continuous service.

5.1.c. Inspection - Each utility shall inspect its plant and stormwater 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.

5.1.d. Records of Conditions - Records necessary for the proper maintenance of the system and in accordance with the West Virginia Department of Environmental Protection shall be kept of the conditions found. In special cases, a more complete record may be specified by the Commission.

5.1.e. Records of Operation - Each utility shall keep a record of the operation of its facilities, which, so far as practical, shall show sufficient details of facility operation as is necessary to substantially reproduce its daily operations. The records shall also be maintained in accordance with the requirements of the West Virginia Department of Environmental Protection.

5.1.f. 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, maintenance and service in such form as the Commission may require.

## 5.2. Utility Conveyance Facilities (UCFs).

5.2.a. Where the UCFs are required, the utility will furnish, install, and maintain the UCF and appurtenances up to a point of service. All such UCFs and appurtenances shall be installed by the utility except for agreements approved pursuant to Rule 5.4.g.6.

5.2.b. When, under the provisions of Rule 5.3, hard-piped customer facility is required, the following rules shall apply.

5.2.b.1. The utility shall determine the location of the UCF.

5.2.b.2. The utility shall install and maintain, at its own cost and expense, the UCF to a point of service, regardless of the side of the road on which the customer is located.

5.2.b.3. The utility shall not make any charge for furnishing and installing any permanent connection to the UCF, unless the utility has prior approval of the Commission to charge a connection fee and the same is set forth in the utility's tariff on file with the Commission.

5.2.b.4. The UCF shall remain under the utility's sole control and ownership.

5.2.b.5. The customer shall not attach any fixtures to, or make any branches in, the UCF. Violation of this rule may result in the withholding or termination of service pursuant to these rules.

5.2.b.6. Temporary service connections for construction or other temporary purposes shall be installed by the utility at the cost of the applicant.

5.2.b.7. 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.c. Availability defined - Stormwater service and other related services such as outreach and education will be deemed available to a customer when the provisions of Rule 4.1.e.1 are satisfied.

### 5.3. Customer Stormwater Facilities.

Rule 5.3 applies only to new development or redevelopment parcels of land that meet one or more of the following criteria: (a) New development that involves the creation of 5,000 square feet or more of impervious cover, or involves other land disturbance activities of one acre or more; (b) Redevelopment that includes the creation, addition, or replacement of 5,000 square feet or more of impervious cover, or that involves other land disturbance activities of one acre or more; or (c) land disturbance activities that are smaller than the minimum applicability criteria set forth in (a) and (b) above, if such activities are part of a larger common plan of development, even though multiple, separate, and distinct land disturbance activities may take place at different times on different schedules.

5.3.a. When a discrete hard-piped customer facility is not required.

5.3.a.1. A user's or customer's stormwater contribution to the utility may not necessarily occur through discrete "hard-piped" infrastructure but rather, may be diffuse stormwater runoff from any portion of the property.

5.3.a.2. Once an application for service has been granted, the user or customer shall install and maintain the customer facilities on the customer's property.

5.3.a.3. The utility's authorized employee shall inform the user or customer of the location of each point of service. The customer shall install the customer stormwater facilities on his or her property. The utility will install the utility conveyance facilities to the point of service.

5.3.a.4. The customer's stormwater facilities shall be installed such as to follow the natural ebb and flow of the topographic features of the surrounding area or be constructed such that it is non-erosive and stable where grading is required. All installation specifications provided by the stormwater utility must be followed prior to obtaining service.

5.3.b. When discrete hard-piped customer facilities are required.

5.3.b.1. No customer, plumber, company owner or any agent shall connect to the UCF from any property for the purpose of securing stormwater 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.

5.3.b.2. 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.b.3. In circumstances where a customer is required to install pipe in order to physically connect to a UCF that is pipe, 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.b.4. A customer must maintain the customer service connection in good condition and free from defects, at the customer's cost and expense. A customer's failure to comply with this rule may result in termination of water service pursuant to these rules.

5.3.b.5. The customer's service pipes 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 attached thereto, shall at all reasonable hours be subject to inspection by a duly authorized employee of the utility.

5.3.b.6. The utility shall make changes and bear the full costs of changes in the customer's discrete hard-piped facilities required due to changes in grade, relocation of the utility pipe, and other causes not related to the customer. The customer shall bear the full costs of changes in the customer's discrete hard-piped facilities desired by the customer for his or her convenience.

5.3.b.7. The connection of surface stormwater drains to any sanitary system is prohibited. The utility shall require immediate disconnection where evidence of a violation exists.

5.4. Installation of UCFs to serve new customers. Rules for installation of UCFs to serve new customers are generally tailored for hard-piped conveyance facilities necessary to carry flows from new customers. They may apply to other UCFs, such as pumping facilities, impoundments or other structures that are necessary due to the flows from the new customers. In such case, special consideration must be given to assure that other customers are not subsidized by the facilities installed for the new customers.

5.4.a. A stormwater utility is under a public service obligation to install required UCFs to serve new customers within its service area who may apply for stormwater management service.

5.4.b. Necessary UCFs shall be made available in all cases in which the public convenience and necessity require the UCFs, construction problems are not unusual or burdensome, and the new facilities appear to be economically feasible.

5.4.c. For any proposed UCFs, a reasonable relationship should exist between the per customer investment to serve new customers and the per customer investment to serve old customers.

5.4.d. When the UCFs required include hard-piped conveyance, every effort shall be made by a utility to install the conveyances in the public road right-of-way or in a utility right-of-way abutting the public road right-of-way.

5.4.e. Customer-specific UCF requirements.

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

5.4.e.2. The utility will, upon written request for service in the form of Stormwater Form No. 4, by a prospective customer or group of prospective customers located in the same neighborhood, determine the necessary UCFs required to give service specifically due to the request for service and make an estimate of the cost of providing the requested service, using the form of Stormwater Form No. 5, including pipe, conveyances,

retaining structures, 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 conveyance under the first road (closest to the already existing conveyance), but shall include the costs of installing the conveyance under a second and any subsequent road(s). The written estimate calculated using Stormwater Form No. 5 shall be provided to the customer in the form of Stormwater 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 Stormwater 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. Where the UCF is needed to handle physical flows of stormwater, the length of the UCF extension required shall be that length required to extend from the new proposed stormwater service area to the nearest point of connection to the utility stormwater system having sufficient capacity to provide service.

5.4.e.3. Where the cost of the extension of the UCF does not exceed the estimated total revenue as calculated below, from prospective customers who will immediately be served by the new UCFs and from whom the utility has received applications for stormwater service upon forms provided by the utility for this purpose, the utility will install, at its own cost and expense, the necessary UCFs (utility financed UCFs); provided, that the patronage or demand will be of such permanency as to warrant the capital expenditure involved.

5.4.e.3.A. For residential units, annual revenue shall be based on the average monthly bill per residential unit over the past sixty months (or a reasonably estimated average monthly bill when sufficient historical data is not available) multiplied by twelve, unless circumstances of the applicant show this would result in significant error. For non-residential units, annual revenue shall be based on the actual impervious area designated in the application and any other factors that would affect the monthly bill applicable to such non-residential units.

5.4.e.3.B. Estimated total revenue for public service district utilities will be calculated as five (5) times estimated annual revenue.

5.4.f. UCF costs beyond the limit of utility financed UCFs.

5.4.f.1. If the estimated cost of the proposed UCFs required in order to furnish stormwater service exceeds the utility's estimate of total revenue as determined by Rule 5.4.e.4, such investment shall be made by the utility if the applicant or the applicant's authorized agent contracts for such investment in UCFs and deposits in advance with the utility the estimated cost of the UCFs over and above the limit of the utility funded portion. The utility shall not pay nor be liable for any interest on such cash deposits. The utility shall install the necessary UCFs after receiving the cash deposit. The utility shall, for each bona fide new customer who, within a period of ten years from the installation of such UCFs, uses the physical flow UCF between its original beginning and original terminus, and/or uses other UCFs funded by the new customer(s) pursuant to this rule, refund to the original depositor(s), an amount equal to the estimated total revenue of the new customer as determined by Rule 5.4.e.4, but in no event shall the aggregate refund made to the depositors exceed the original deposit. Provided, however, public service districts may elect to refund the estimated amount over a period of five years making payments no less frequently than every six months.

5.4.g. General provisions.

5.4.g.1. Should the actual cost of the UCFs 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 days after completion of construction of the UCFs. When the actual cost of the UCFs exceeds the estimate cost, then the utility will bill the depositor(s) for the difference between the estimated and the actual cost. The customer(s) may pay this additional amount in reasonable installments. No interest will be paid by the utility on the applicant's payment or on any balance to be refunded.

5.4.g.2. In estimating the cost of UCFs, the estimate shall be based on the individual design of the receiving UCF unless actual use estimated for the proposed customer or customers required a different design.

5.4.g.3. UCFs installed under this rule shall be and remain the property of the utility.

5.4.g.4. The utility reserves the right to further extend its flow conveyance UCF from and beyond the UCF installed 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 flow conveyance facilities or branch facilities so installed.

5.4.g.5. In determining the length of UCF flow conveyance extensions to be installed in an urban area when land is subdivided in lots, a UCF shall be extended to fully cover the drainage area of all subdivided and cleared lots ready for construction. The design of the UCF shall meet all future capacity needs of all finished lots as platted in the property records submitted to the county or other entity having jurisdiction over new construction planning. In rural areas or open land areas, any flow conveyance UCF required

will be that length necessary to adequately serve the applicant and to meet the stormwater utility obligations.

5.4.g.6. 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 Stormwater Form No. 7, in providing an alternate plan for UCFs necessary to serve a new customer(s). Commission Staff may be consulted to provide assistance and sample forms. In providing an alternate plan for UCFs, 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 and the customer(s) are not funding the extension pursuant to this rule. The agreement must attach a copy of this Rule 5.4, and a statement signed by the prospective customer that he has reviewed and understands the provisions of Rule 5.4.f which entitles a customer to refunds and that he knowingly has entered into an alternative agreement that may waive such rights, if applicable. If there is an expectation of reimbursement by the customer(s) for some portions of the UCFs installed under an alternative agreement, failure to obtain Commission approval may 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 be responsible for the facilities only after proper transfer of title to all facilities including property, plant and rights-of-way incidental to the furnishing of utility service.

5.4.g.7. Commencement of 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 pay for service at their premises within ninety days after service is available or as otherwise mutually agreed in a user agreement.

5.4.g.8. Construction conditions - Construction of UCFs, 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 user agreements that have received the prior approval of the Commission.

#### 5.4.g.9. Right-of-Way.

5.4.g.9.A. If the construction of UCFs 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 UCFs is started.

5.4.g.9.B. If it is not reasonably possible for the prospective customer or customers to secure the right-of-way, and the construction of a UCF involves the

utility incurring expense for right-of-way easements, either by purchase or condemnation, such costs shall be added to the total cost of the UCFs.

5.4.g.9.C. As a condition to obtaining necessary UCFs, any property owner or developer shall grant the utility the necessary easements which would allow the utility to make future expansions of UCFs or extensions of flow conveyance UCFs. 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 install necessary UCFs to serve the property owner or developer.

**§150-36-6. Safety requirements.**

6.1. The utility shall be subject to and comply with the provisions of Rule 6 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

**§150-36-7. Creation or alteration of public service districts.**

7.1. The utility shall be subject to and comply with the provisions of Rule 7 of the "Rules for the Government of Sewer Utilities," 150 CSR 5.

**Stormwater Form No. 1**  
(Stormwater Rule 4.8.a)

(Insert Company Name Here)

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

We have scheduled your water service provided by \_\_\_\_\_ at  
\_\_\_\_\_ (Water Company Name)  
\_\_\_\_\_ for termination on or after \_\_\_\_\_  
(address) (date)

because of your delinquent stormwater 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.

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 Public Service Commission, 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).

**Stormwater Form No. 2**  
(Stormwater Rule 4.8.a)

NOTICE OF SCHEDULED TERMINATION

We have scheduled water service provided by \_\_\_\_\_ at  
\_\_\_\_\_ (Water Utility)  
\_\_\_\_\_ for termination on or after \_\_\_\_\_ because of  
(address) (date)  
the property owner's delinquent stormwater bill.

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).

**Stormwater Form No. 3**  
(Stormwater Rule 4.12)

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 stormwater 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 utility) (stormwater)

System serving \_\_\_\_\_  
[describe areas served].

If approved, the moratorium would mean that no new customers could be served by  
the stormwater utility in these areas until the Commission lifts the moratorium. The  
\_\_\_\_\_ claims that the imposition of a moratorium is  
[name of petitioner]

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

**Stormwater Form No. 4**  
(Stormwater Rule 5.4.e.2)

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

( ) Stormwater

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

Name \_\_\_\_\_

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

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

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

If rent: Property owner's 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 STORMWATER SERVICE TO BE ESTABLISHED AND  
BILLED 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 ( )

**Stormwater Form No. 5**  
(Stormwater Rule 5.4.e.2)

Form for use in determining cost estimate to extend stormwater service

Date

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

**Cost Estimate**

UCF extension

|  |              |    |       |   |    |
|--|--------------|----|-------|---|----|
| Culverts ( _____ type of material)             | feet @       | \$ | /foot | = | \$ |
| Pipe ( _____ 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> |    |       | = | \$ |

**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 5.4.e.3) \$ \_\_\_\_\_ 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 Rule 5.4.e.2 of the Rules for the Government of Stormwater Utilities.

**Stormwater Form No. 6**  
(Stormwater Rule 5.4.e.2)

Form of cost estimate to be provided to applicants for service

Dear Mr. Customer:

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

|   |            |        |
|---|------------|--------|
| Stormwater conveyance                         | feet at \$ | / foot |
| Excavation/Installation                       | feet at \$ | / foot |
| Permits/Rights-of-way (WVDEP, Highways, etc.) |            |        |
| Restoration (seeding, gravel, etc.)           |            |        |
| Related Cost (engineering, legal, etc.)       |            |        |
| Total Estimated Extension Construction Cost   |            |        |

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 UCF 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.

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,

**Stormwater Form No. 7**  
**(Stormwater Rule 5.4.g.6)**

Form of Commission Check List for Alternate Stormwater UCF Extension Agreements

This form sets forth the minimum amount of information that should be included in a proposed alternate UCF 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 Stormwater Rule 5.4, Stormwater 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 UCF 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 UCF 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 connection fee, if any to be charged, is the approved connection 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).
- 18. A statement that the ownership of the UCF 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 UCF extension.
- 20. If the developer, owner or prospective customer(s) is/are to be responsible for the preparation of the plan for the UCF, 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 UCF, the number of lots to be served, or some other general indication of the size of the area to be served by the UCF
- 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 UCF installation 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 UCF extension, including length, diameter conveyance methods and any major components such as, pump stations, etc.

NOTE: A paragraph such as "The Developer/Customer waives his rights under paragraph 5.3 or 5.4 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.

**Stormwater Form No. 8**  
(Stormwater Rule7)

**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 boundaries 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]