



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Public Service Commission TITLE-SERIES: 150-40

RULE TYPE: Legislative Exempt Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Trench Sharing Rules

CITE STATUTORY AUTHORITY: 17-2E-5.

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

January 13, 2023

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Janet A Terry -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION**

**SERIES 40
Trench Sharing Rules**

§150-40-1. General.

1.1. Scope. -- The following rules govern the procedure for filing and processing trench sharing formal complaints. Due to the statutory obligation for the Commission to resolve such formal complaints within 45 days of filing, these rules apply to such formal complaints, to the exclusion of Rules 6 and 7 of the Rules of Practice and Procedure, 150 WVCSR Series 1. In the event of a conflict between these rules and the Rules of Practice and Procedure, these rules govern. The Rules of Practice and Procedure apply to trench disputes except to the extent that these rules differ from the Rules of Practice and Procedure.

1.2. Authority. -- W. Va. Code §17-2E-5.

1.3. Filing Date. -- November 14, 2022.

1.4. Effective Date. -- January 13, 2023.

§150-40-2. Application of rules; Formal Complaints.

2.1. Application of rules.

If hardship results from the application of any rule contained within these rules, or if unusual difficulty is involved in immediately complying with any rule, or upon other good cause shown, an applicant may request that the Commission grant a temporary or permanent modification, exemption or waiver from its provisions. The Commission will not consider any application for modification, exemption or waiver in the absence of a full and complete justification for such action.

2.2. The contact information for the Commission is:

Public Service Commission of West Virginia
201 Brooks St.
P.O. Box 812
Charleston, WV 25323
Main switchboard telephone 304-340-0300
Main telefax 304-340-0325
Web site: www.psc.state.wv.us

2.3. Formal complaints.

2.3.1. Any telecommunications carrier may complain to the Commission by petition substantially in the form of Form No. 1 of the Rules of Practice and Procedure of anything done or omitted to be done by any other telecommunication carrier regarding an application to the Division of Highways (DOH) to install telecommunication facilities in a DOH trench and a request by another telecommunications carrier to share such trench.

2.3.2. A formal complaint must state the names of all parties in full without abbreviation, and the

mailing and email addresses and telephone numbers (if available) of each complainant with the name, mailing and email addresses, telephone numbers and West Virginia Bar ID Number of his/her attorney, if any.

2.3.3. A formal complaint shall fully and completely advise the defendant or defendants and the Commission of the provision or provisions of the law that have been or will be violated. The formal complaint shall state each distinct charge concisely in a separate paragraph. The formal complaint shall state specifically the relief sought. If the relief sought includes a determination of an allocation of trench sharing expense, the complaint must present in full the basis for the complainant's proposed cost allocation. The formal complaint shall include as an attachment all correspondence exchanged between the complainant and the DOH concerning the trench(es) at issue, and between the complainant and all defendants concerning the trench(es) at issue, which do not constitute confidential settlement material. If the complainant wishes to undertake any discovery in the case, the complainant must include a discovery request with the complaint.

2.3.4. A formal complaint shall be signed and sworn to as set forth on Form No. 1 of the Rules of Practice and Procedure.

2.3.5. Upon the filing of a formal complaint and the issuance of an order to investigate, the Commission will require that a copy of the complaint be served on each defendant, together with a copy of an order requiring each defendant to satisfy or answer the complaint within five (5) days. Such service shall be by email or first class mail unless otherwise ordered.

2.3.6. When substantial issues are raised, the Commission may set a time and place for an evidentiary hearing at the Commission's offices in the City of Charleston or elsewhere in the State at the Commission's discretion. If a formal complaint does not present substantial issues of fact requiring a hearing, the Commission may issue an order on the merits based on the information contained in the file.

2.3.7. The complainant must in all cases establish the facts alleged to constitute a violation of the law, unless the defendant admits the same or fails to answer the complaint.

2.3.8. In case of failure to answer, the Commission may hear proof of facts as the Commission deems proper and reasonable, and may investigate and enter an order justified by the facts and circumstances.

§150-40-3. Answer.

3.1. Answer to Formal Complaint. -- Within five (5) days from the date of service of the complaint each defendant named in the complaint shall file an answer, duly verified, and substantially in the form of Form No. 2 of the Rules of Practice and Procedure. The Commission may shorten or extend the five (5) day period when it deems advisable.

3.2. Content. -- The answer shall fully and completely advise the parties and the Commission of the nature of the defense, and shall admit or deny specifically and in detail each material allegation of the pleading answered. The answer shall attach any relevant written documents omitted from the complaint. If the relief sought includes a determination of an allocation of trench sharing expense, the defendant must present in full the basis for the defendant's proposed cost allocation. If the defendant wishes to undertake any discovery in the case, the defendant must include a discovery request with the answer.

3.3. Satisfaction. -- If a defendant satisfies a formal complaint, it shall file a verified statement to that effect. The complainant shall have five (5) days to file a response if the complainant disputes that the complaint has been satisfied. If the complainant does not file such a response, the Commission will then

consider whether the proceeding should be dismissed.

3.4. Computation of Time. -- In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the computed period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday or a legal holiday. When calculating a period of time from the date of service of a notice or other paper, the date of service shall be the date the sender certifies in writing that he or she emailed or mailed an item by first class mail, or the date of personal service.

§150-40-4. Discovery.

4.1. Discovery Requests.

4.1.1. "Discovery requests" as used in these rules, include interrogatories, requests for the production of documents and things, and requests for admissions. Discovery requests do not include Staff or Commission requests made pursuant to statutory authority.

4.1.2. A party may serve discovery requests in writing upon the attorney for a party, if such party is represented by an attorney, or directly upon unrepresented parties, by first class mail, email or by hand delivery. Discovery requests must be pertinent to substantial issues in the proceeding. Copies of discovery requests, together with a certificate of service, shall be filed with the Executive Secretary and served upon all parties.

4.1.3. Parties served with discovery requests shall respond to each request separately and fully, in writing. The responses shall re-state each request, and give the response to that request. The party responding shall verify the responses. If responses prepared by several persons are compiled by one person the person compiling the responses shall verify the responses one time. Responses to discovery requests shall be served within seven (7) days after such discovery requests were served, or within such specified time as may be fixed by the Commission. Responses shall be served only upon the requesting party and any other party that has made a written request for the responses. The party responding shall file one (1) copy with the Executive Secretary.

4.1.3.a. Responses to discovery requests are not part of the evidentiary record of a case unless identified responses are made a part of the record by the parties or by Commission order.

4.1.4. The party responding to discovery requests shall file any written objections to discovery requests within seven (7) days after service of discovery requests or such shorter time as directed by the Commission. The responding party may defer responses to discovery requests to which it has made objection until the Commission rules on any motion to compel. If a motion to compel is granted, the responses shall be served within two (2) days after notice of the Commission's action, or as otherwise ordered by the Commission.

4.1.5. Objections to discovery requests not timely filed are waived, except for good cause shown.

4.1.6. The Commission will not resolve discovery disputes unless a motion is filed seeking Commission action. The parties have the responsibility to file timely discovery motions, including motions to compel the production of information or motions seeking protective orders.