

**STATE OF WEST VIRGINIA**

**Update of the**  
**PRELIMINARY PERFORMANCE REVIEW OF THE**  
**PUBLIC SERVICE COMMISSION**

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The PSC begins the 270 day statutory time standard when the water and sewer case information has been reviewed rather than when its received

Sampled cases show the prefile period consistently extended past the statutory period for water and sewer certificate of convenience and necessity cases

Codification of certificate of convenience and necessity rules, case law and policies is insufficient to disclose the certification process, rules and precedents

**OFFICE OF LEGISLATIVE AUDITOR**  
**Performance Evaluation and Research Division**  
**Building 1, Room W-314**  
**State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305**  
**(304) 347-4890**

August 2000

PE-00-21-179

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**August 2000**

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Antonio E. Jones, Ph.D.  
Director

August 20, 2000

The Honorable Edwin J. Bowman  
State Senate  
129 West Circle Drive  
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas  
House of Delegates  
Building 1, Room E-213  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting an Update of the Preliminary Performance Review of the **Public Service Commission**, which will be presented to the Joint Committee on Government Operations on Sunday, August 20, 2000. The issues covered herein are *"The PSC begins the 270 day statutory time standard when the water and sewer case information has been reviewed rather than when its received; Sampled cases show the prefile period consistently extended past the statutory period for water and sewer certificate of convenience and necessity cases; and Codification of certificate of convenience and necessity rules, case law and policies is insufficient to disclose the certification process, rules and precedents."*

We conducted an exit conference with the Public Service Commission on August 14, 2000. We received the agency response on August 14, 2000.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia  
Acting Director

JS/wsc



## TABLE OF CONTENTS

Objective, Scope and Methodology .....	3
<b>Issue Area 1:</b> The PSC begins the 270 day statutory time standard when the water and sewer case information has been reviewed rather than when its received .....	7
<b>Issue Area 2:</b> Sampled cases show the prefile period consistently extended past the statutory period for water and sewer certificate of convenience and necessity cases .....	9
<b>Issue Area 3:</b> Codification of <i>certificate of convenience and necessity</i> rules, case law and policies is insufficient to disclose the certification process, rules and precedents .....	13

### List of Tables

<b>Table 1:</b> Levels of Compliance .....	5
<b>Table 2:</b> Discrepant File Dates .....	8
<b>Table 3:</b> Prefile Period of Sample Cases .....	10
<b>Table 4:</b> Initial Review Statistics vs. Update Review Statistics .....	11
<b>APPENDIX A:</b> PSC Proposed Rules .....	17
<b>APPENDIX B:</b> Revised Case Processing Procedures .....	31
<b>APPENDIX C:</b> Status of Active Cases .....	35
<b>APPENDIX D:</b> Agency Response .....	39



## Objective, Scope and Methodology

This report is an update to the Preliminary Performance Review of the Public Service Commission June 1998 Report and is conducted in accordance with the West Virginia Sunset Law, West Virginia *Code*, Chapter 4, Article 10, Section 11a. Preliminary performance reviews are intended to assist the Joint Committee on Government Operations in making one of five recommendations. These recommendations include:

- The department, agency or board be terminated as scheduled;
- The department, agency or board be continued and reestablished;
- The department, agency or board be continued and reestablished, but the statutes governing it be amended in specific ways to correct ineffective or discriminatory practices or procedures, burdensome rules and regulations, lack of protection of the public interest, overlapping of jurisdiction with other governmental entities, unwarranted exercise of authority either in law or in fact or any other deficiencies;
- A performance audit be performed on a department, agency or board on which a preliminary review has been completed; or
- The department, agency or board be continued for a period of time not to exceed one year for the purpose of completing a full performance audit.

A preliminary performance review as defined in Chapter 4, Article 10, Section 3 of the West Virginia Code, as amended, is to determine the goals and objectives of a department, agency, or board and to determine the extent to which the plan of a department, agency, or board has met or is meeting those goals and objectives. The criteria for a preliminary performance review set forth in Chapter 4, Article 10, Section 11 of the West Virginia Code, as amended, enable the determination of the following:

- If the board or agency was created to solve a problem or provide a service;
- If the problem has been solved or the service has been provided;
- The extent to which past board or agency activities and accomplishments, current projects and operations, and planned activities and goals for the future are or have been effective;
- The extent to which there would be significant and discernible adverse effects on the public health, safety or welfare if the board or agency were abolished;
- Whether or not the board or agency operates in a sound fiscal manner.

As a part of the Preliminary Performance Review conducted in 1998 of the Public Service Commission, the Office of the Legislative Auditor completed an inquiry of the PSC's process for issuing *certificates of public convenience and necessity* for water and sewer projects. The objective of the review was to ascertain whether the cases were disposed of in an expedient manner and in compliance with all laws applicable to the case at hand. The inquiry involved obtaining an understanding of pertinent laws and the Commission's procedures in disposing of a case. Initially,

a small judgmental sample of cases was drawn to determine the risk of case processing being untimely. Results justified capturing a relatively large random sample of cases for more intensive review.

The population for the initial review was defined as all water and sewer *certificate of public convenience and necessity* cases initiated during calendar year 1996. The population was identified to be 70 cases. Epistat statistical software was used to determine sample size based on the following parameters:

- Population size: 70
- Expected rate of occurrence: 5%
- Tolerable rate of misstatement: 5%
- Reliability rate: 95%

A sample size of 36 was indicated by the software, and a sample of 40 cases was drawn to provide insurance against the possibility of having to draw replacements later. Cases were selected by computer generated random numbers.

The cases selected in the sample were then reviewed and the following information was extracted from each case:

1. The case number
2. Applicant name
3. Estimated cost: >\$50 million or <\$50 million
4. Applicant type: Public Service District or Other
5. Date of 2nd publication of Class II legal advertisement
6. Date of conversion request and all requested materials submitted, PSD's only
7. Date application was received by PSC, non PSD's only
8. Date of final submission following hearing
9. Date of final decision #1

The above information was then inputted to a database which calculated the amount of days to dispose of the case, the sample cases' average time for pre-filing, sample cases' average time from filing date to recommended decision, sample cases' average time before a recommended decision was reached after a hearing, the standard deviation of days for each, variance of days for each, the median of days for each and the modes for each.

In addition to the procedures listed above, the applicants of the sampled cases were also interviewed. The interview consisted of questions which gave our evaluation qualitative testimonial evidence regarding their dealings with the Public Service Commission. All sampled applicants, or an agent as referred by the applicant, were interviewed. Audit staff also interviewed employees of the PSC and other state agencies, as well as attorneys, engineers and others closely involved with this process.



The scope of the update consists of the issue areas of the initial report, the applicable recommendations and the agencies compliance thereto. *The methodology of the update is the same as the initial with the exception of interviews.*

The population of water and sewer certificate cases for the update was all certificate cases filed in calendar year 1999. There were a total of 62 water and sewer certificate cases for 1999. The sample size for the update was the same as the initial review's sample at 36. This update uses the following designations to describe the agency's level of compliance with the recommendations made in the original review.

**TABLE 1**  
**Levels of Compliance**

<u>In Compliance</u> - The Agency has corrected the problems identified in the final draft of the audit report.
<u>Partial Compliance</u> - The Agency has partially corrected the problems identified in the final draft of the audit report.
<u>Planned Compliance</u> - The Agency has not corrected the problem but has provided sufficient documentary evidence to find that the agency will do so in the future.
<u>In Dispute</u> - The Agency does not agree with either the problem identified or the proposed solution.
<u>Non-Compliance</u> - The Agency has not corrected the problem identified in the final draft of the audit report.
<u>Requires Legislation</u> - Legislation is required to comply with the recommendation.



**Issue Area 1:       The PSC begins the 270 day statutory time standard when the water and sewer case information has been reviewed rather than when its received.**

The 1998 report stated the PSC was not properly denoting the file date for certificate cases. West Virginia *Code* §24-2-11 states that an order must be issued by the PSC within 270 days of filing. For a municipality or private utility, filing occurs when the applicant submits an application. For a public service district, it is 1) 30 days from public notification of pre-filing, or 2) the date all required supporting information has been received, whichever occurs last.

In this evaluation of sampled cases, 18 of 36 cases with file dates were found to have been assigned an incorrect file date. One case was a municipality and the other seventeen were public service districts. The file dates are set by the date the Commission declares it *ready for filing*, rather than when the information was received. The longest time frame for a case identified in this study was one *declared to be filed* 86 days after the actual file date. The effects of discrepant file dates can be significant. Two cases were found to be in excess of the 270 day default *certificate* statutory period based on the file date as determined by the Office of the Legislative Auditor. If these cases had been dismissed after the 270<sup>th</sup> day (instead of issued certificates) the utility may have had cause for litigation since the statute requires the PSC to issue a default certificate. In addition, because milestone dates for the disposition of individual cases are often based upon what is understood to be the 270<sup>th</sup> day based on the erroneous file date, the disposition of some cases is delayed because the understood 270<sup>th</sup> day postdates the actual 270<sup>th</sup> day. Another effect is the loss of governmental accountability. By claiming discretion to determine file dates anytime after an application has been submitted, the PSC is removing what should be an objective process. The current practice of establishing file dates has a disparate effect upon public service district applicants, which accounted for 17 of the 18 (94%) cases found to have file date discrepancies.

**Recommendation 1:**

*The Public Service Commission should recognize the actual file date as the official file date on its Notice of Filings.*

**Level of Compliance: Partial compliance**

Issue Area 1 dealt almost exclusively with public service districts. Although the PSC did not specifically comply with our recommendation, they have compiled proposed rules of procedure which will, in effect, resolve the problem. The PSC proposed rules, dated 01/24/00, should become effective within the end of the year and will significantly change the pre-filing process.

This proposed rule (See Appendix A) basically lets the public service district (PSD) applicant determine when it makes an actual filing and the statutory time limit begins. The PSC staff will assist the PSD as usual in getting its information in order during the pre-filing period, but it will be the PSD's decision as to when they believe they are ready to file. In effect, the Notice of Filing will be the date the PSD notifies the PSC of its intentions to file, not once the PSC staff determines it to

be ready. The PSD will still have to prefile with the PSC and submit an affidavit of publication to satisfy all legal requirements, but they will decide when it becomes an actual filing. In the event an application is filed prematurely by the PSD applicant, the PSC will give the PSD limited time to get their case in order or it will be dismissed.

Therefore, the recommendation of the initial review will be a moot point since the PSC will no longer determine the file date for PSD's. Once this proposed rule becomes effective it is the Legislative Auditor's position that the Public Service Commission will be in compliance with the recommendation.

However, based on 1999 cases reviewed during the update, the Commission is still using the date of the "Notice of Filing" as the official date of filing instead of the date staff confirms receipt of necessary information. Table 2 details the discrepancies noted between the date staff receives all required information for a filing and the official date of filing prepared at the request of the Legal Division. As with the initial review, in which all but one of the cases with discrepant file dates were PSD's, the update revealed the same disparate treatment of PSD's.

The amount of days of the discrepancies have decreased overall. The range of discrepancies of the initial review was from 4 days to 86. The updates range in discrepancies is 5 days to only 34 days. In addition, the PSC has improved the percentage of discrepant PSD cases per the updated review since 80% were discrepantly designated as filed versus 89% in the initial review.

**TABLE 2  
Discrepant File Dates**

<b>Case</b>	<b>Date staff noted case was ready for filing</b>	<b>Date of Notice of Filing</b>	<b>Difference</b>
1	11/29/99	12/07/99	8
2	11/10/99	11/17/99	7
3	02/14/00	02/22/00	8
4	01/25/00	02/07/00	13
5	11/09/99	11/18/99	9
6	09/08/99	03/13/99	5
7	05/11/99	06/14/99	34
8	09/27/99	10/06/99	9

**Issue Area 2:                    Sampled cases show the prefile period consistently extended past the statutory period for water and sewer certificate of convenience and necessity cases.**

West Virginia *Code* §16-13a-25 requires public service districts to prefile 30 days prior to filing an application for a certificate. As a part of the prefile requirement, the *Code* requires public service districts to publish a Class II legal advertisement during the prefiling stage, though the advertisement is duplicitous of another required once filing status is achieved. The prefile period was established to provide the public early notice of forthcoming projects and to allow the PSC greater control to ensure complete filing with the ultimate goal of expediting the process.

In 100% of the relevant sampled cases, the prefiling period required by §16-13A-25 exceeded the statutory time period. Prefile periods for sampled cases ranged from 36 to 495 days and averaged 152 days in length. Compared with sampled certificate cases for Class III and IV municipalities which represent comparably-sized utilities which are not required to prefile, public service district cases required just as much processing time from file date to final decision, despite prefile periods averaging 152 days. On the basis of total processing time, public service district cases averaged 307 days and required twice as much time for certificate decisions as Class III and IV municipalities, which required 153 and 169 days respectively. In September 1997, the PSC adopted a new policy for managing the prefile period. Because of the newness of the policy, there are too few cases to gauge the policy's impact. *The Legislature should consider repealing the redundant prefile advertisement and requiring the updating of this review in the 1999 Interim to determine whether the prefile requirement should be continued or repealed.*

**Recommendation 2:**

*Because of its redundancy with West Virginia Code §24-2-11, the Legislature should consider amending West Virginia Code §16-13A-25 to repeal the prefile advertisement for Public Service Districts.*

**Level of Compliance: Requires Legislation**

**Recommendation 3:**

*The Public Service Commission should expedite the prefile process, dismiss stagnant or poorly constructed prefilings and expedite the processing of cases after conversion to filed status.*

**Level of Compliance: In Compliance**

Effective October 19, 1998, the PSC modified its staff structure and case processing procedures (See Appendix B). The change has allowed for more flexible assignment of certificate cases between the Utilities Division and the Water and Wastewater Division (WWD). The Class A publicly owned utility cases will be initially assigned to the Utilities Division and the caseload of Class B, C and D publicly owned utilities will initially be assigned to the WWD. The memo

states that since workload may become unbalanced, flexibility in assignment of cases between Divisions will be maintained. So if it becomes necessary, cases may be assigned to the Utilities Division or the WWD. The memo goes on to state that the Divisions will establish a cooperative procedure to assure that workload is reasonably balanced between Divisions.

This change in case processing appears to have had a positive effect in certificate case processing. The PSC has decreased the average time of the prefile period and the processing of cases after conversion. The average prefile period for the initial review was 152 days versus 78 days for the update. This is a 49% decrease in the prefile period. Table 3 below shows the date of the beginning of the prefile period and the conversion date by the PSC. In addition, the PSC is now more aggressive in dismissing poorly prepared or stagnant prefile cases. Of the 11 PSD cases reviewed, two were recommended by staff for dismissal.

**TABLE 3**  
**Profile Period of Sample Cases**

<b>Case</b>	<b>Profile Date</b>	<b>Conversion Date</b>	<b>Days</b>
1	12/23/99	01/20/00	28
2	10/05/99	12/07/99	63
3	09/24/99	11/17/99	54
4	12/13/99	02/22/00	71
5	11/05/99	02/07/00	94*
6	09/03/99	11/18/99	76
7	04/14/99	09/13/99	152
8	02/17/99	06/14/99	117
9	03/31/99	04/30/99	30
10	06/23/99	dismissed	n/a
11	07/01/99	10/06/99	97

\*Recommended dismissal by staff due to inadequate filing. The applicant responded, however, with the necessary information and the case was allowed to proceed.

One of the two cases was never actually dismissed since the applicant responded with the necessary information. The PSC staff has shown they are no longer allowing stagnant prefilings to stay on the PSC docket.

The processing of cases after conversion has also shown improvement for PSD's and upon actual filing for non PSD's. Table 4 below shows the difference in average processing times for case processing between the initial review and the update. There were four cases that were still active within our sample. Two of the active cases are PSD's, one is a private water association and the fourth is a municipal utility. However, three of these cases are in their final stages of completion while the municipal utility's case has recently gone to hearing. Final stages means staff has filed their Final Internal Memorandum stating their recommendations (See Appendix C). The active cases were not included for calculating average of time to final orders since none have been issued to date.

**TABLE 4  
Initial Review Statistics vs. Update Review Statistics**

Initial Review Average (1996 cases)	Update Review Average (1999 cases)	Difference	Percentage Change
<b>Comparison of Average Times for PSD Cases Processing Once Converted</b>			
163	148	15	(9) %
<b>Comparison of Average Times for PSD's Prefiling to Final Order</b>			
307	225	82	(27)%
<b>Comparison of Average Times for PSD Prefiling Periods</b>			
152	78	74	(49)%
<b>Comparison of Average Times for All Applicants from File Date to Final Decision</b>			
172	162	10	(6)%

**Recommendation 4:**

*Because of its nonuse, potential for causing delay of a ready case and lack of justification for notice, the Legislature should consider repealing the 30 day notice requirement in Chapter 24, Article 2, Section 11.*

**Level of Compliance: Requires Legislation**





**Issue Area 3: Codification of *certificate of convenience and necessity* rules, case law and policies is insufficient to disclose the certification process, rules and precedents.**

The PSC has not published Commission case orders since 1986. Internal policies dictating procedures for each division within the Commission are piecemeal, noncomprehensive and as a whole, unofficial. The PSC does not have pertinent information codified as administrative rules with respect to certificate of convenience and necessity cases. In filing a certificate of convenience and necessity, the applicant is at the mercy of the system. If the applicant is unable to obtain information that is relevant to the task at hand, its ability to provide a complete application, or litigate its case, can be impaired. The PSC does not have its internal procedures formally documented. The lack of formal procedures leaves many functions performed by the PSC open for interpretation by individual staff members. This can create confusion and delays. *The PSC should publish its orders on the Internet to improve public access, and promulgate rules on the certificate process and procedures and internal procedures for evaluating applications.*

**Recommendation 5:**

*The PSC should publish Commission orders on the Internet to allow for public access. In designing the access, the PSC should provide for the execution of Boolean searches and sorts by year, case type and case number. This is an inexpensive way to give the public access to this information.*

**Level of Compliance: In Compliance**

The PSC now has its orders and recommended decisions posted by month on its web site. The site also has search capabilities to find specific cases. The Commission noted that it has had positive feedback from interested parties since it implemented this feature on its web site.

**Recommendation 6:**

*The Public Service Commission should promulgate rules on the certificate of public convenience and necessity process and procedures, and on internal procedures for staff processing of a certificate case.*

**Level of Compliance: Partial Compliance**

As mentioned previously in the report, the PSC has compiled proposed rules specifically revising the prefiling period procedures and revising the checklist (See Appendix A) in filing a certificate case. This gives the applicant a detailed list of necessary information to submit to the PSC for certificate cases. With the availability of PSC orders now online, the proposed rule, PSC training seminars and a very detailed checklist of necessary information to submit for certificate cases within the rules, it appears the PSC has made the certificate process more visible.

However, the PSC failed to address a key element within this issue regarding the definition of ordinary course of business and is in non compliance with this aspect of the recommendation. The new proposed rules do not define ordinary course of business as the report specified as lacking in the Commission's Rules of Practice and Procedure.

The PSC informed the Legislative Auditor this is due to the fact that a definition of ordinary course of business was attempted during the spring of 1997 and failed. The PSC stated it failed because a job which is ordinary course of business for one utility may not be ordinary course of business for another. This is due to the varying sizes, operations and methods of various utilities.

In addition, due to the role of the PSC as a regulatory agency of utilities, they have concerns that a specific definition would allow utilities to avoid correspondence with the PSC. A certain ratio, minimum dollar amount or minimum pipe extension to determine ordinary course of business could allow utilities to plan projects to specifically avoid PSC scrutinization.

Recommendation 6 also dealt with internal procedures of the PSC. The Executive Secretary of the PSC has completed a procedure manual for all tasks and job descriptions of Executive Secretary personnel. A procedures manual dated 1986 for the WWD Case Control Section was also reviewed by the Legislative Auditor. In addition, the PSC has produced memos for the restructuring of certificate case processing and time deadlines for each division in flow chart form depicting the required flow of information through various PSC divisions.

The Legislative Auditor believes the PSC's current internal procedures make clear each divisions responsibility and the time deadlines for completing tasks. But the PSC should make an effort to assure every division has a thorough, updated version of internal procedures. These procedures should provide PSC employees a general guide denoting the objective for requesting certain information from applicants and how Division directors expect these objectives be achieved. The procedures should be updated when necessary and adhered to in a *prudent manner*. Some material received by the Legislative Auditor as internal procedures appeared to be more of a tool to assure all information is obtained for the project versus what the PSC employee should do with it to complete their task.

#### **Recommendation 7:**

*In view of the highly specialized and ever changing nature of utility laws and regulations, the PSC should contact the West Virginia State Bar, and within it, the committee on continuing legal education to determine interest in the PSC offering continuing legal education credits (CLEs) in utility law and procedures. Likewise, the PSC should contact the Board of Accountancy and the Board of Registration for Professional Engineers to determine the interest in the PSC offering continuing education for accountants and engineers. With few exceptions, attorneys, accountants and engineers handle virtually all aspects of certificate filings. If these professionals are better informed of the Commission's policies and procedures they will be better equipped to serve their clients and improve the timeliness of their certificate applications.*

**Level of compliance: Planned Compliance**

The Commission stated that they have been reluctant to contact the applicable licensure boards to offer continuing education since it is currently revamping its Rules of Practice and Procedure. This is because any education seminars would revolve around the Commission's Rules of Practice and Procedure. The PSC is waiting to implement any education seminars until the proposed rules are final.



**APPENDIX A**  
**PSC Proposed Rules**



**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 24<sup>th</sup> day of January, 2000.

GENERAL ORDER NO. 182.4

In the matter of a rulemaking to amend the Commission's Rules of Practice and Procedure, 150 C.S.R. Series 1.

RECEIVED  
00 JAN 25 PM 4: 07  
LEGAL DIVISION

**COMMISSION ORDER**

**Background**

By Order issued October 22, 1999, in General Order Nos. 182.3 and 252, the Commission dismissed rulemaking proceedings to determine requirements for the filing of applications for certificates of convenience and necessity, and the filing of certificates of need by commercial solid waste facilities. Both general orders involved amendments to the Commission's Rules of Practice and Procedure, 150 C.S.R. Series 1 (Procedural Rules). The Commission's Order explained that the proceedings were dismissed because the Commission wished to consider comprehensive amendments to the Procedural Rules instead of limiting its consideration to certificate issues. Those proceedings were dismissed with the intention of commencing this proceeding in which the Commission would promulgate new proposed Procedural Rules. As this proceeding will include consideration of the amendments proposed in General Order Nos. 182.3 and 252, all comments filed in those proceedings will be docketed in this case.

IT IS THEREFORE ORDERED that the amendments to the Commission's Procedural Rules, attached hereto, are hereby promulgated as proposed legislative rules.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall give notice of these proposed rules to the West Virginia Department of Environmental Protection, all regulated utilities in the State, and Commission Staff, by service of a copy of this order and the proposed rules, upon them.

IT IS FURTHER ORDERED that the Executive Secretary shall cause a copy of the Notice of Rulemaking attached hereto as Appendix A to be published once, 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,

1

Public Service Commission  
of West Virginia  
Charleston

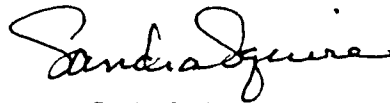
in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser, New Cumberland, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Welch, Wheeling, and Williamson.

IT IS FURTHER ORDERED that the Executive Secretary shall file a copy of these rules and the requisite forms with the Office of the Secretary of State.

IT IS FURTHER ORDERED that a comment period shall be provided with respect to the proposed rules identified in this Order and comments shall be filed with the Commission's Executive Secretary by March 20, 2000, by 4:00 p.m. Any interested party who files comments shall set forth specific comments concerning the proposed rules. Any party seeking a hearing on the proposed rules shall make a specific written request before the close of the comment period and shall explicitly state the grounds upon which the request is made.

IT IS FURTHER ORDERED that the Executive Secretary shall provide copies of these proposed rules to interested parties who address inquiries to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, Post Office Box 812, Charleston, West Virginia 25323.

A True Copy, Teste:



Sandra Squire  
Executive Secretary

Commissioner Reger dissents in part to this decision. A copy of his dissent is attached.

2

Public Service Commission  
of West Virginia  
Charleston



APPENDIX A

NOTICE OF RULEMAKING

GENERAL ORDER NO. 182.4

In the matter of a rulemaking to amend the  
Commission's Rules of Practice and Procedure.

By Order issued January 24, 2000, the Public Service Commission of West Virginia commenced a rulemaking to amend its Rules of Practice and Procedure, and issued proposed rules. The rulemaking substantially revises the Rules of Practice and Procedure as a whole, and includes, but is not limited to, changes in motion and pleading practice, discovery, the requirements for the filing of applications for certificates of convenience and necessity and the requirements for the filing of certificates of need for commercial solid waste facilities. This rulemaking replaces two prior proceedings, General Order Nos. 182.3 and 252, which have been dismissed. Any interested person may obtain a copy of the proposed Rules of Practice and Procedure by addressing a request to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, WV 25323. Any interested person or corporation may file specific comments on the proposed rules by March 24, 2000, by 4:00 p.m., with the Executive Secretary. Any party seeking a hearing on the proposed rules shall make a specific written request by the same date and explicitly state the grounds upon which the request for a hearing is made.

Public Service Commission  
of West Virginia  
Charleston

10.1. Change or discontinue service.

A railroad, or any other public utility or motor carrier, desiring to discontinue any regular passenger train, or her public service facility or service, or to change any regular passenger train schedule or timetable, shall file with the Commission its application for authority so to do, together with ~~seven (7)~~ twelve (12) additional copies thereof, substantially in the form prescribed by the Commission; provided (in the case of train schedule or timetable) uniform rules and regulations for such change have not theretofore been filed by such railroad and approved by the Commission. (See Form No. 3)

10.2. Change of rates.

A public utility or motor carrier desiring to change its rates, rules and/or regulations ~~may file with the Commission its application for authority so to do, together with seven (7) additional copies thereof, substantially in the form prescribed by the Commission. Such application shall set forth accurately and fully all the rates, rules and regulations of the applicant in effect on the date the application is made, also the proposed rates, rules and regulations in full, and the reasons for the change. (See Form No. 4.) should comply with the Commission's Rules for the Construction and Filing of Tariffs, 150 CSR 2.~~

10.3. Certificate of convenience and necessity.

~~10.3.1. A public utility, person or corporation desiring to construct any plant, equipment, property or facility for furnishing public utility service or to obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of its existing system in the usual course of business, or to construct an extension of its existing system into new territory shall file with the Commission an application for a certificate that public convenience and necessity require such construction, franchise, license, permit or extension, together with seven (7) additional copies thereof, substantially in the form prescribed by the Commission. Such application shall set forth, or by exhibits attached thereto show, the following: Name and address of petitioner, the city, town or community affected, the nature of the utility service to be furnished, the municipality of other governmental agency from which a franchise, license or permit is to be obtained, a full description of the proposed new construction or extension, including the manner in which the same will be constructed, the names of all public utilities, corporations or persons with whom the proposed new construction or extension is likely to compete, the rates proposed, cost, and estimate of operating revenues and expenses of new construction or extension, the manner, in detail, in which it is proposed to finance the same, and a concise~~

~~statement of the reasons why a certificate should be issued. (See Form No. 5.) Any public utility, person or corporation, required by statute to obtain from the Commission a certificate of convenience and necessity or a certificate of need, shall comply with the following as applicable. (For motor carrier certificates of convenience and necessity, see 150 CSR 9.)~~

~~10.3.2. Any municipality, governmental agency, or political subdivision desiring to construct a new system or to make major extensions to an existing system shall include in its feasibility study:~~

- ~~a. A complete customer listing, which is cross-referenced to the system or project map showing the location of each customer,~~
- ~~b. Which customers have signed contracts for service,~~
- ~~c. Which customers have paid tap fees,~~
- ~~d. Which houses and buildings are plumbed, and~~
- ~~e. Which customers have a private water supply.~~

~~Any public service district intending to file an application for a certificate of convenience and necessity shall, at least thirty days prior to the date it intends to file its application, pre-file with the Commission's Executive Secretary, an original and twelve (12) copies of, a letter from the public service district attaching a completed Pre-Filing Notice in the form of Form No. 15, attached hereto, and a report describing the scope of the proposed project. (This report may be an engineering report if such report is available at the time of pre-filing.) (Only one copy of the engineering report is necessary.) At the same time that the public service district pre-files its application with the Commission, it shall (1) give notice to the public of its pre-filing by publishing its Pre-Filing Notice in the form of Form No. 15 as a Class II legal advertisement in a qualified newspaper(s), published and of general circulation in each county where the public service district's customers reside, and (2) separately mail Form No. 15 to each of its resale customers, via certified mail, return receipt requested. The public service district shall file affidavits of publication provided by the newspaper(s) with the Commission as soon as possible after the Pre-filing Notice of Filing is published.~~

~~10.3.3. Any public utility, person or corporation, other than a public service district, intending to file an application for a certificate of convenience and necessity shall,~~

at least thirty days prior to the date it intends to file its application, give the Commission notice of its intent to file an application by filing with the Commission's Executive Secretary, an original and two (2) copies of, a letter of notification. The Commission may modify or waive this requirement.

10.3.4. To file an application for a certificate of convenience and necessity, a public utility, person or corporation, shall, thirty days following a pre-filing by a public service district as described in Rule 10.3.2., or the filing of a notice of intent to file a certificate application as described in Rule 10.3.3., file with the Commission's Executive Secretary, an original and twelve (12) copies of, its application for a certificate of convenience and necessity. To be acceptable, an application shall include (i) a completed Form No. 5, attached to these Rules, (ii) a completed Form No. 16 with the exception that the utility shall leave blank the date of the order and the case number, and (iii) for water and sewer utilities - all information included on the checklist appearing at Rule 26.1 of these Rules. When the Executive Secretary's office has assigned a case number, a completed Form No. 16 will be issued to the utility as an order requiring publication of the Notice of Filing as a Class I legal advertisement in a qualified newspaper(s), published and of general circulation in each county where the utility's customers reside, and requiring that the utility separately mail Form 16 to each of its resale customers, via certified mail, return receipt requested. The utility shall file affidavits of publication provided by the newspaper(s) with the Commission as soon as possible after the Notice of Filing is published.

**NOTE: (See section 26.1 Appendix checklist for water and sewer utilities filing applications for certificates of convenience and necessity.)**

~~10.3.3-10.3.5.~~ Any public utility, person or corporation, desiring to construct a high voltage transmission line of two hundred thousand (200,000) volts or higher, shall file with the Commission its original application for authority to do so, together with seven (7) ~~eight (8)~~ additional copies thereof, substantially in the form prescribed by the Commission. its notice of intent to file an application, and its application for a certificate of convenience and necessity in accordance with Rules 10.3.1, 10.3.3. and 10.3.4. Such application shall include, in addition to the appropriate information required by Rule ~~10.3.1-10.3.4.~~ above, the application shall include all of the information required by Rule 9 of the Commission's Rules and Regulations for the Government of Electric Utilities, 150 CSR 3.

~~require the proposed service.~~

~~B. Whether the proposed system will provide adequate service.~~

~~C. Whether the project is adequately financed.~~

~~D. Whether the project is economically feasible.~~

~~E. Whether the proposed rates are just and reasonable and are not unduly discriminatory.~~

~~g. At the hearing the applicant should be prepared to introduce evidence showing the actual amounts of the construction contracts when let, whether bids are higher than originally estimated, whether additional financing will be required and source thereof. If rates higher than the rates originally requested are needed, an amended application should be filed.~~

The following checklist will aid applicants for certificates of convenience and necessity in assuring that they have submitted all information that the Commission needs for proper review. Water and Sewer Utilities may apply for a waiver of any provision of this checklist for good cause, provided, that no application for a waiver will be considered by the Commission unless there is submitted therewith a full and complete justification for such action.

1. Application as per Form No. 5.
2. Verification as per Form No. 13.
3. Rule 42 Accounting information:

a. Existing System

1. The Rule 42 presents the entire system at per books adjusted to going-level.
2. At the discretion of the Commission and for good cause shown, adjustments related to non project related costs may be included in the revenue requirements of the certificate case, subject to Rule 42.
3. All adjustments related to the proposed project are presented at Pro-Forma.

- b. New System - All financial information related to the proposed project is presented at Pro-Forma.
  - c. Project related adjustments to operation and maintenance expenses shown in Rule 42 must agree with, and be supported by, detailed engineering calculations.
- 4. Proposed Rate Structure in tariff form.
- 5. Existing Rate Structure (if applicable) in tariff form.
- 6. Facility Plan or Feasibility Study (if applicable).
- 7. Agreements between Applicant and Other Utilities (as applicable).
- 8. A project map(s) showing the location of each customer cross-referenced to a complete customers list indicating which customers have signed contracts for service and paid connection fees, which houses and buildings are plumbed and which customers have a private water supply.
- 9. Proposed bond and/or municipal rate ordinances (as applicable)
- 10. Permits and/or approvals
  - a. Letter from applicant stating that applications for all necessary permits and/or approvals have been made.
  - b. It is preferable that any required permits are granted prior to the final order, but if the permits are not available the certificate may, for good cause shown, be issued contingent on receipt of the permit.
- 11. Letters showing funding sources
  - a. Privately owned utilities - statement of projected sources of funds from the project. If debt funds are included show the expected source and cost of debt.
  - b. Publicly owned utilities - Letters showing commitment of funds for all grants and loans. Terms and conditions for all loans must also be shown.
- 12. Interim Financing Information including funding sources and

terms and conditions of funding.

13. Name, Classification, and License No. of Operator(s) (as applicable).

- a. Identification of initial or additional utility personnel required for the project and/or estimated overtime hours, as the case may be.

14. Engineering Report

- a. Population Projections (if not identified in preliminary report).
- b. Number of existing, potential, and future customers.
- c. Existing and estimated future water consumption or wastewater flows related to the project.
- d. Design criteria and system hydraulic information.
- e. Itemized construction and total project cost estimates.
- f. Detailed Operation and Maintenance budget including supporting information and calculations.
- g. Description of all maintenance requirements associated with the project.
- h. Identification of need for renewal and replacement reserves.
- i. Existing and future conditions.
- j. Identification of need for the utility service to be provided, including supporting documentation such as enforcement actions from appropriate agencies.
- k. Alternative analysis of all reasonably available alternatives that could fulfill the need, including present worth analysis of the capital, operation and maintenance expenses over each of the alternatives expected service life. Benefits and detriments of each alternative should be discussed. The selection of the preferred alternative should be explained.
- l. If water and sewerage treatment service is to be

purchased by the applicant, the filing should include documentation from the seller of such services that adequate capacity exists and projections of the duration of such adequacy. The utility filing for the certificate of convenience and necessity should be required to simultaneously file the purchased services contract with this Commission to allow the Commission to determine whether or not adequate capacity exists.

- m. Information concerning increase in operating times of existing treatment facilities that will result from the project.

#### 15. Project Plan Drawings

- a. One paper copy of the engineering design plans and project maps.
- b. One electronic copy of the engineering design plans and project maps in AutoCAD format or similar file type. The file(s) should be provided on a 3.5-inch floppy disk or CD-ROM disk.
- c. The plans and maps should show line size, type, length and drawn to scale.
- d. Identification/numbering of customers that have applied for service and identification of customers who may be served by the project.
- e. Identification of property lines for customers to be served and location of service lateral stubs (sewer) or customer service lines and meters (water). (If available)
- f. Water storage tank and booster station drawings.
- g. Sewer lift station drawings.
- h. Master metering location and detailed information.
- i. Treatment facility drawings.

#### 16. Specifications

- a. Bid quantities.
- b. Equipment sizing/specifications.



17. Maximum Service Elevation Information (water systems only).
18. For public service districts - affidavit of publication of Class II legal advertisement notice of pre-filing, in the form of Form No. 15 attached hereto, pursuant to West Virginia Code §16-13A-25.
19. Proposed Notice of Filing, in the form of Form 16 attached hereto, for review by the Commission. The utility shall not publish this form until directed to do so in a Commission Order.
20. Copy of letter from utility providing thirty (30) day advance notice of filing pursuant to West Virginia Code §24-2-11.
21. If the proposed project requires modification of a public service district boundary, a statement that the county commission process is complete.
22. If the proposed project will infringe upon any other utility's service area or affect any other utility financially or otherwise, a statement to that effect.
23. Evidence of SHPO compliance.
24. Statement showing when bids are anticipated to be let.
25. Other information as needed.
26. Case number and approval date of engineering agreements involving public service district. A copy of the engineering agreements must be submitted for municipalities and private utilities.

~~26.2. APPENDIX CHECKLIST FOR FILING MOTOR CARRIER APPLICATIONS~~

~~This is a checklist that may be used as an aid in filing applications for common carrier operating authority, contract carrier operating authority, amendment of certificates, transfer of certificates, and applications to change rates, tolls and charges.~~

~~26.2.1. APPLICATIONS~~

~~A. All motor carrier applications shall be filed with the Commission on the form prescribed and shall be accompanied by the appropriate filing fee. Forms will be provided by the Motor Carrier Division upon request. If a petition is filed in lieu of a prescribed form, the petition~~



## **APPENDIX B**

### **Case Processing and Staff Organization**



**To:** PSC Staff  
**From:** Chairman  
**Subject:** Case Processing and Staff Organization  
**Date:** October 15, 1998

The Commission has reviewed its staffing levels, staff structure and case processing procedures and has determined that some modifications to staff structure and case processing procedures will enable us to more efficiently and effectively utilize staff. The changes outlined in the Memorandum will be effective October 19, 1998.

With regard to case assignment procedures, the present split of cases between the Utilities Division and the Water/Wastewater Division will be modified as follows:

New cases that would be assigned to the Utilities Division under the present structure will remain with that Division.

New cases that would be assigned to the Water/Wastewater Division under the present structure will be split between Utilities Division and Water/Wastewater. All new cases from Class B, C and D publicly owned utilities will be initially assigned to the Water/Wastewater Division for processing. All new cases from Class A publicly owned utilities cases will be initially assigned to the Utilities Division for processing.

New infrastructure reviews will be split between Utilities and Water/Wastewater following the same procedure.

Formal requests for advise and/or assistance from PSD's and Class III and IV municipalities will continue to be handled by the Water/Wastewater Division.

There will be no changes in the processing of informal complaints and customer requests for assistance.

Since workload may become unbalanced from time to time, flexibility in assignment of cases between Divisions will be maintained. If it becomes necessary, cases may be assigned to the Utilities Division or the Water/Wastewater Division differently than described above. The Utilities Division and Water/Wastewater Division will establish a cooperative procedure to assure that workload is reasonably balanced between Divisions.

Attached is a list of Class A Municipal utilities and Public Service Districts. Until modified, the Secretary's office will use this list to initially transmit new incoming cases to the appropriate Division.

With regard to staff structure, the Commission has determined that certain modifications should be made to allow for the most efficient processing of cases by staff.

Certain changes in the Utilities Division will be made, and the creation of a separate Engineering Division is under consideration. No final decision has been made regarding Engineering; however, the following structural changes will be implemented immediately:

Utilities Division:

The Utilities Division will be restructured to have three relatively equal case processing groups.

The Utilities Division will have a fourth group, Special Studies, that will be responsible for special projects, case review and customers' assistance.

Engineering in Utilities Division will remain a separate group managed by Earl Melton.

Case processing groups will be managed by Tod Carden, Cleo McGraw and Paul Stewart.

All cases assigned to the Utilities Division will be received at a central Divisional Management point, and will be assigned to the case processing groups in a way that will best balance the workload between those groups.

Water Wastewater Division:

No changes in structure at this time.

## **APPENDIX C**

### **Status of Active Cases**





## **Status of Active Cases Within Sample**

**Case 1:** Final Staff Memorandum dated July 7, 2000 recommended that the application for a Certificate be approved.

As of July 28, 2000 the case was 211 days old.

**Case 2:** Further Final Staff Memorandum dated June 6, 2000 recommended the PSD's application for a Certificate be approved once a revised publication is made by the applicant and there are no protests filed during the 30 day protest period.

Further, Commission Order dated June 26, 2000 stated that if no protests are received within the 30 day protest period subsequent to revised publication, the formal hearing may be waived and the application granted.

As of July 28, 2000 the case was 172 days old.

**Case 3:** Final Joint Staff Memorandum dated May 25, 2000 recommended the Commission issue a certificate, subject to the standard condition that the District obtain Commission approval of any change in financing or engineering for the project.

Further Final Joint Staff Memorandum dated July 3, 2000 recommends the District should promptly file verification of the increase in funds from the Drinking Water Treatment Revolving Fund and approval by the Infrastructure Council. Upon receipt of that information, the commission should approve the rates originally sought by the District without hearing. With the exception of the changes in funding and rates, Staff otherwise reiterates the recommendations contained in its Final Joint Staff Memorandum.

The docket denotes the necessary items substantiating additional funding were filed as of July 5, 2000 and a Procedural Order dated July 7, 2000 canceled the hearing, so a recommended decision should be forthcoming.

The case received a recommended decision on July 20, 2000. The decision will be final in 20 days, August 9, 2000, if there are no exceptions filed.

As of July 28, 2000 the case was 157 days old.

**Case 4:** Commission Order dated June 27, 2000 set hearing for July 10, 2000.

As of July 28, 2000 the case was 238 days old.



**APPENDIX D**  
**Agency Response**



# Public Service Commission

Richard E. Hitt, General Counsel



201 Brooks Street, P.O. Box 812  
Charleston, West Virginia 25323

Phone: (304) 340-0317  
FAX: (304) 340-0372

August 14, 2000

J. A. Haught, CPA  
Building 1, Room W-314  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25305-0610

Dear Jason:

The Commission would suggest that the third and fourth paragraphs in Recommendation six be modified to include the following additional discussion:

The PSC informed the Legislative Auditor this is due to the fact that a definition of ordinary course of business was attempted during the spring of 1997 and failed. The PSC stated it failed because a job which is ordinary course of business for one utility may not be ordinary course of business for another. This is due to the varying sizes, operations, methods, and financial circumstances including available financing, of various utilities.

In addition, due to the role of the PSC as a regulatory agency of utilities, they have concerns that a specific definition would allow utilities to avoid correspondence with the PSC. A certain ratio, minimum dollar amount or minimum pipe extension to determine ordinary course of business could allow utilities to plan projects to specifically avoid PSC scrutinization. The PSC Staff is in frequent communication with utilities concerning the need to apply for certificates given particular circumstances. Furthermore, the Commission has issued several orders in the last few years declaring whether or not a certificate is required in specific cases.

Except for these modifications, the Commission has no further comment.

Sincerely,

A handwritten signature in black ink that reads "Richard E. Hitt". The signature is stylized and written over the printed name.

Richard E. Hitt

REH/cbd  
rickmisc/haught.wpd

