

**WEST VIRGINIA  
SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #5

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

AGENCY: PUBLIC SERVICE COMMISSION TITLE NUMBER: 150

CITE AUTHORITY: WEST VIRGINIA CODE SECTIONS 16-13A-9; 24-1-7

RULE TYPE: PROCEDURAL \_\_\_\_\_ INTERPRETIVE \_\_\_\_\_

EXEMPT LEGISLATIVE RULE X

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

CODE SECTION 24-1-7

AMENDMENT TO AN EXISTING RULE: YES X, NO \_\_\_\_\_

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 17

TITLE OF RULE BEING AMENDED: RULES AND REGULATIONS FOR THE  
GOVERNMENT OF PUBLIC SERVICE DISTRICTS

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: \_\_\_\_\_

TITLE OF RULE BEING ADOPTED: \_\_\_\_\_

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE  
EFFECTIVE DATE OF THIS RULE IS September 1, 1990

[Signature]

WEST VIRGINIA LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION  
150 CSR 17

RULES AND REGULATIONS FOR  
THE GOVERNMENT OF PUBLIC SERVICE DISTRICTS

1.0 GENERAL

1.1 Scope - This legislative rule establishes the procedure and requirements for county plans relating to the creation, consolidation, merger, expansion or dissolution of public service districts, or the merger of management and administrative services and personnel, to be submitted by the county commission or performed by the Public Service Commission of West Virginia, pursuant to West Virginia Code §16-13A-1b, and for the operation and government of public service districts pursuant to the legislative mandate in Code §16-13A-1, et seq. In addition, this legislative rule establishes requirements for notification to property owners of delinquencies in payment for charges for service and the duty of the district to discontinue service at the request of the owner and establishes notice of availability requirements and billing requirements after such notice pursuant to Code §16-13A-9.

1.2 Authority West Virginia Code §24-1-1, et seq., and §16-13A-1, et seq.

1.3 Filing Date - July 3, 1990

1.4 Effective Date - September 1, 1990

1.5 Except as herein modified, these rules incorporate by reference the Commission's Rules and Regulations for the Government of Water Utilities (Series VII) and Rules and Regulations For the Government of Sewer Utilities (Series V.).

2.0 PROCEDURE FOR COUNTY PLANS

2.1 Within ninety (90) days of June 6, 1986, each county commission shall determine whether the county will develop a county plan as required by West Virginia Code §16-13A-1b, or whether the county will have the Public Service Commission staff develop the plan with the county's assistance. Immediately after making such determination, the county commission shall notify the chairman of each public service district in the county of its decision. The county plan shall be developed in accordance with these rules and provide the information herein required.

- 2.2 Within fourteen (14) days after receiving the notice required by Rule 2.1, the chairman of each public service district, or his designated representative, shall submit to the county commission and the Public Service Commission a Public Service District Profile, which shall contain general information about the size, location, history, personnel, operations, and finances of the district, and in which the district expresses its opinion regarding dissolution or consolidation or merger with other districts and which lists major strong areas and major problem areas of the district. The Public Service District Profile shall contain the information indicated in District Form A which is available in the office of the Executive Secretary of the Public Service Commission.
- 2.3 The county commission or Public Service Commission Staff shall supply or obtain the specific information hereinafter required from the chairman of each public service district or his designated representative. The county commission and public service district board(s) shall consult with each other in the development of the county plans prior to the submission of the plan to the Public Service Commission.
- 2.4 The public service district(s) within the county shall be consulted by and shall cooperate to the fullest extent with the county commission and/or Public Service Commission Staff in providing information necessary to complete the county plans in accordance with these rules.
- 2.5 Upon completion of a county plan developed by the Public Service Commission Staff, the plan shall be submitted to the county commission for review and comment. The county commission shall solicit comments and recommendations from each active public service district as part of its review of the plan. The county commission must submit to the Public Service Commission its final plan showing any modifications to the Staff plan within six (6) months of the date the plan is submitted to the county commission.
- 2.6 A plan developed by a county commission shall be submitted to the Public Service Commission within one (1) year of the date that the county elects to develop the plan. The plan shall be made available to active public service districts for review and comment prior to submission of the plan to the Public Service Commission. At the time the plan is filed with the Public Service Commission the county commission shall submit any public service district comments or recommendations along with the plan.
- 2.7 In a case in which the county commission(s) or the Public Service Commission Staff believes it is feasible to develop a multi-county plan, such as in the case that two or more

- 2.2 Within fourteen (14) days after receiving the notice required by Rule 2.1, the chairman of each public service district, or his designated representative, shall submit to the county commission and the Public Service Commission a Public Service District Profile, which shall contain general information about the size, location, history, personnel, operations, and finances of the district, and in which the district expresses its opinion regarding dissolution or consolidation or merger with other districts and which lists major strong areas and major problem areas of the district. The Public Service District Profile shall contain the information indicated in District Form A which is available in the office of the Executive Secretary of the Public Service Commission.
- 2.3 The county commission or Public Service Commission Staff shall supply or obtain the specific information hereinafter required from the chairman of each public service district or his designated representative. The county commission and public service district board(s) shall consult with each other in the development of the county plans prior to the submission of the plan to the Public Service Commission.
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- 2.6 A plan developed by a county commission shall be submitted to the Public Service Commission within one (1) year of the date that the county elects to develop the plan. The plan shall be made available to active public service districts for review and comment prior to submission of the plan to the Public Service Commission. At the time the plan is filed with the Public Service Commission the county commission shall submit any public service district comments or recommendations along with the plan.
- 2.7 In a case in which the county commission(s) or the Public Service Commission Staff believes it is feasible to develop a multi-county plan, such as in the case that two or more

counties are served, or would be better served, by the same public service district, the county commission or Public Service Commission Staff shall request, by petition, that the Public Service Commission investigate the possibility of developing a multi-county plan. Such petition shall specifically state the benefits of a multi-county plan and why such a plan should be considered instead of a single county plan for each of the counties involved.

### 3.0 COUNTY PLANS

- 3.1 The objective of the plan shall be to identify problem areas and study the possible creation, consolidation, merger, expansion or dissolution of existing districts, or consolidation or merger of the management and administrative services and personnel of existing districts, or any combination of the above. The plan shall address the overall goals and objectives of the county commission and/or the Public Service Commission to meet the water and sewer needs of the residents of West Virginia. The plan shall state which of these specific purposes are to be achieved in meeting the water and sewer needs of the county.
- 3.2 The plan shall enumerate specific goals to be achieved in meeting the purposes set forth in section 3.1 and shall describe how each existing public service district relates to one or more of the goals.
- 3.3 The plan shall define specific actions for implementing the goals to be achieved as required by section 3.2. There shall be at least a summary objective for each district and unserved area. If there are no changes proposed for any district or unserved area, the plan shall explain why no changes are necessary and the overall result of making no changes.
- 3.4 A cost-benefit analysis shall be included in the county plan. The plan shall also include other alternatives considered and rejected.
- 3.5 County Information - The following county information shall be incorporated in the county plan.
- (A) Personnel Information:
1. Name, address and term of office of each county commissioner.
  2. Name and address of person(s) or firm who prepared the plan.

(B) Geographic and Demographic Information:

1. A physical description of the county, average income of county residents, employment statistics, types of industries and any business or industries moving into or leaving the county. Provide the total population of the county and projected trends in population, and census figures for 1960, 1970 and 1980, and projected census figures for 1990 and 2000.
2. The names of each active or inactive public service district, designate, "as "AW" Active Water, "AS" - Active Sewer, "IW" - Active Water and Sewer or, "IW" - Inactive Water, "IS" - Inactive Sewer, "IWS" - Inactive Water and Sewer.
3. A topographic map of the county delineating the following areas:
  - a. the location and service area for each public service district, active and inactive, indicating the number of customers served by each district and the number of customers formerly served by each inactive district and indicating how these former customers are obtaining water and sewer service, if any.
  - b. the location and service area of any other type of system of water or sewer service, except individual wells (such as but not limited to, municipal utilities, private water companies, or private districts) and indicating the number of customers served by these other water and/or sewer systems, areas not served by any public source of water or sewer service and the number of people not served by any public source.

3.6 Public Service District Information - The following information shall be included in the county plan.

(A) Personnel Information:

1. The name, address, present occupation, position and length of service with the district for each district board member and employee.
2. The number of full-time and part-time employees, the job description for each position indicating the job title, the nature of the work, hours per week, required skills, minimum training and experience requirements and examples of work performed, and the district's

personnel policies, such as leave policy, employee benefits, and required working hours.

(B) Operations:

1. The district's office facilities and location.
2. The district's billing procedures and whether or not a place is provided for customers to deposit payments after office hours.
3. The district's procedures for customers to report and the district to deal with emergencies or repairs after hours.
4. Any vehicles and heavy equipment owned by the district.

(C) Accounting System:

1. Whether or not the district's billing, accounts receivable, general ledger, accounts payable, inventory, payroll and plant and depreciation are maintained by the district, or by outside accounting services or a combination of in-house and outside services, and whether or not the above functions are performed manually or by computer.
2. The annual cost of outside accounting services and what person(s) or firm(s) provided the service.
3. The cost of the district's annual audit and name and address of the accountant who performs the annual audit.
4. Any computer systems in use, including the manufacturer, model, operating system's RAM memory, external storage memory, capacity of floppy disks, capacity of hard disks, and backup storage system, whether or not the hardware is owned or leased or provided by an outside accounting service or service bureau, and the accounting system software used with the computer system.

(D) General Financial Information:

1. All debt instruments and the purpose for which the debt was incurred, and the outstanding balance on each such debt instrument, including annual payments of principal and interest.

2. The sources, amount and date of any grants received by the district and how the grant was used.
3. Sources of contributions in aid of construction and the amount contributed from each source.
4. The status of all reserve accounts, including the amount of reserves required by bond resolution and the amount now on deposit, and the amount of revenue being deposited in the reserve accounts on a monthly basis.
5. Any funds available to the district.
6. The dollar amount of the gross plant in service and the net plant in service.
7. Operating budgets, construction and equipment budgets and construction projects anticipated within the next twelve months.
8. The district's insurance coverage(s), giving the name of the company, type(s) of coverage, policy period, premium and amount of any increase since last renewal.

(E) Engineering Information:

1. Water The district's distribution system, including the number of customers by class, when the original system was built, the last major extension, the source(s) of supply and describing the number, capacity, age and condition of each storage tank and pump, the quality of water, the district's percentage of unaccounted for water and any necessary repairs, extensions or replacements to the district's distribution system.
2. Sewer - The district's sewage collection system including the type, age, capacity and condition of the lines and the treatment and pumping facilities, when the original system was built, the last major extension, the number of customers by class and any necessary improvements to the system.

(F) Legal Information:

The amount spent annually on legal services itemized by hours and/or cases; the name and case number for all pending lawsuits and proceedings before the Public



Service Commission. A list of customer complaints over the last year and all agreements or contracts to which the District is a party, including, but not limited to operating contracts, legal service contracts, purchase agreements, resale contracts and treatment agreements shall be included.

3.7 A county commission which elects to develop the county plan shall give the Public Service Commission notice if the county intends to use a consultant to develop the plan and shall obtain Public Service Commission approval prior to contracting for the services of such consultant.

4.0 COMMISSION APPROVAL OF COUNTY PLAN, NOTICE AND HEARING,

4.1 Upon submission to the Public Service Commission of a plan developed by the county commission, the Public Service Commission shall set a date for public comment and hearing on the county plan.

4.2 Upon submission of county commission suggestions an proposed modifications to a county plan developed by the Public Service Commission Staff, the Public Service Commission shall set a date for public comment and hearing on the county plan.

4.3 The county commission shall provide notice of any hearings on a county plan by posting a notice of hearing and a copy of the proposed plan at the county courthouse and at all public service district offices where bills are paid in that county. The county commission shall also publish notice of any hearings as a Class II publication in a newspaper published and of general circulation in the county no earlier than thirty (30) days nor later than ten (10) days prior to the hearing.

4.4 After public comment and hearing, the Public Service Commission shall, by order, approve, disapprove or modify the county plan, and establish an implementation date(s) for the recommendations adopted by the plan. In the case of Public Service Commission disapproval of a county plan, the order disapproving such plan shall specifically set forth the reasons for disapproval and necessary steps for re-submission of the plan.

4.5 Within thirty (30) days after the Public Service Commission enters an order approving or modifying a county plan, the county commission or clerk thereof shall file a follow-up report detailing the steps that have been and are being taken to implement the approved plan. Such follow-up report

shall be updated by the first day of October following the filing of the initial follow-up report, and annually thereafter, unless otherwise ordered.

5.0 FORMS

5.1 The following forms are available at the office of the Executive Secretary of the Public Service Commission to facilitate the gathering of information in the development of county plans:

- (A) District Form A - For use in developing public service district profile.
- (B) District Forms B, C and D - For use in providing personnel information.
- (C) District Form E - For use in providing operations information.
- (D) District Form F - For use in providing accounting system information.
- (E) District Form G - For use in providing general financial information.
- (F) District Forms H and I - For use in providing engineering information.
- (G) District Form J - For use in providing legal information.

6.0- CREATION, EXPANSION, MERGER, CONSOLIDATION, REDUCTION OR DISSOLUTION OF PUBLIC SERVICE DISTRICTS

6.1 Upon entering an order or receipt of a petition proposing the creation, expansion, merger, consolidation, reduction or dissolution of a public service district, pursuant to West Virginia Code §16-13A-2, the county commission shall notify the Executive Secretary of the Public Service Commission of the time and place of the hearing to be held by the county commission and shall file a copy with such order or petition with the Executive Secretary of the Public Service Commission at least ten (10) days prior to such hearing.

6.2 The county commission shall file an order creating, expanding, merging, consolidating, reducing or dissolving a public service district with Executive Secretary of the Public Service Commission within ten days of entering such order.

- 6.3 A hearing shall be held in the county affected by a county commission order filed pursuant to Rule 6.2. Such hearing may be waived if the county commission order is entered for the purpose of executing the county plan as required by West Virginia Code §16-13A-1b and as finally adopted and approved by the Public Service Commission.
- 6.4 After public comment and hearing the Public Service Commission shall, by order, approve, disapprove or modify a county commission order creating, expanding, merging, consolidating, reducing or dissolving a public service district. In deliberating on approval, modification or disapproval the Public Service Commission may consider, among other things:
- a. Whether or not the county commission order is consistent with the county plan required by West Virginia Code §16-13A-1b as approved by the Public Service Commission;
  - b. the public convenience and necessity;
  - c. the economic feasibility, including sources of funding, costs and related benefits of the county commission's order;
  - d. the adequacy of facilities;
  - e. other facilities in the area; and,
  - f. other possible alternatives.

7.0 NOTICE OF DELINQUENCY TO PROPERTY OWNER

- 7.1 Public service districts shall give notice to the property owner within sixty (60) days after a bill for service has become delinquent, by United States Certified Mail, return receipt requested. Such notice need only be given once per delinquency. Each successive delinquency shall require separate notification as described above. Such notification shall be sufficient if it contains the following: the name and address of the billing public service district; the address of the property where the delinquency has accrued; that the notification was being made pursuant to Rule 7.1 and 7.2 of the Public Service Commission's Rules and Regulations for the Government of Public Service Districts and West Virginia Code §16-13A-9; the amount owing under the present delinquency; the amount owing under prior delinquencies, if any; that non-payment of the delinquency could result in a lien upon the property where the delinquency accrued; that the property owner may require the

public service district to discontinue service to the property; and, that the amount of present billing charges are subject to the accrual of continued billings.

- 7.2 A public service district shall discontinue service upon written request of the owner of the premises served when any charges for service to the premises remain unpaid by the users for a period of sixty (60) days after such charges become due and payable.

8.0 PUBLIC SERVICE DISTRICT'S NOTICE OF AVAILABILITY OF SERVICE AND BILLING AFTER NOTICE

- 8.1 (a) Notice by publication - When sewer service is made available by a public service district to customers in an area which has not previously been served by the 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 district intends to begin billing for services. The notice shall state, at a minimum, the following information: (1) that sewer services are available; (2) the date that the district will begin billing for services as authorized by West Virginia Code §16-13A-9 and Rule 3.0 of the Public Service Commission of West Virginia's Rules and Regulations for the Government of Sewer Utilities; (3) the district's rates; (4) that West Virginia Code §16-13A-9 authorizes the district to petition the circuit court to compel connection to the sewer system and; (5) the location and telephone number of the district's business office.
- (b) Publication is not required when service is extended to a single customer at the customer's request.
- (c) Personal notice - In addition to notice by publication, when sewer service is made available to customers in an area which has not previously been served by the district, the district shall provide notice with at least the information as described in section (a) above, personally, to all potential new customers by certified mail, return receipt requested, personal service with signed and dated receipt or by posting a notice on the premises. If the premises to be served is not inhabited by the owner, notice shall be given to the owner by certified mail, return receipt requested, in addition to giving notice to the customer inhabiting the premises. In the event that the district is not able to effect personal notice after a good faith effort, or if the district established 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.

- 8.2 Customers of public service sewer districts who are not connected to the sewer system after appropriate notice has been given of availability of service pursuant to West Virginia Code §16-13A-9 and Rule 8.01(c) shall be billed the minimum bill or customer charge for service according to the district's tariff. A district which does not have a minimum bill or customer charge provision in its tariff may bill an unconnected customer on the basis of the lesser of metered water usage or 2,000 gallons of water usage until a tariff proceeding for a minimum bill is filed and approved by the Commission.



KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

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STATE OF WEST VIRGINIA

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PUBLIC SERVICE  
COMMISSION  
LEGAL DIVISION

WILLIAM H. HARRINGTON  
Chief of Staff

JUDY COOPER  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

(Plus all the volunteer  
help we can get)

TO: Lisa Green

AGENCY: Public Service Commission

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 6, 1992

THE ATTACHED RULE RECENTLY FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 17 TITLE: 150 Public Service Commission

\* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: \_\_\_\_\_

TITLE OF PERSON SIGNING: \_\_\_\_\_

DATE: \_\_\_\_\_

\*\*\*\*\*

\* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: Lisa Green

TITLE OF PERSON SIGNING: PLANNER II

DATE: 7-8-92

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.

ABSTRACT OF PROMULGATION HISTORY

West Virginia Code §16-13A-9 provides that a public service district may charge for sewer service after thirty (30) days notice that the sewer facilities are available to the customer. Specifically, the Code states as follows:

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the department of health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

In Gwinn, et al. v. Crab Orchard-MacArthur PSD, Case Nos. 86-190-S-C, 86-217-S-C and 86-230-S-C, the Commission held, by order of July 20, 1989, that publication of notice of the availability of sewer service does not satisfy the notice requirement of the Code and that the District cannot charge customers who have received notice, but are not yet connected, on the basis of metered water usage. In those cases, the Commission stated that since the Code does not specify what charges may be billed to unconnected customers, the District's billing on the basis of metered water usage had been done in good faith, based upon the District's interpretation of the Code. This had been the uniform practice of the District and was very likely the practice of many public service districts in the State. However, after lengthy and careful consideration in those cases, the Commission

determined that the premise for allowing sewer utilities to bill on the basis of metered water usage was absent in the case of an individual to whom the District had made service available, but who was not returning wastewater to the system.

Since the Commission's holding in the Crab Orchard-MacArthur series of cases set a precedent for Commission policy on the issue of appropriate notice and billing under Code §16-13A-9 the Commission instituted this rulemaking proceeding by order of December 4, 1989. The Commission Order of December 4, 1989, established a written comment period ending on January 5, 1990, as provided by the West Virginia Administrative Procedures Act.





WEST VIRGINIA LEGISLATIVE RULE  
PUBLIC SERVICE COMMISSION

TITLE: Rules and Regulations for the Government of Public  
Service Districts

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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 3rd day of July, 1990.

GENERAL ORDER NO. 229.5

IN THE MATTER OF establishing rules and regulations for notice requirements and billing procedures by public service districts pursuant to West Virginia Code §16-13A-9.

COMMISSION ORDER  
ADOPTING FINAL RULE

West Virginia Code §16-13A-9 provides that a public service district may charge for sewer service after thirty (30) days notice that the sewer facilities are available to the customer. Specifically, the Code states as follows:

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the department of health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

In Gwinn, et al. v. Crab Orchard-MacArthur PSD, Case Nos. 86-190-S-C, 86-217-S-C and 86-230-S-C, the Commission held, by order of July 20, 1989, that publication of notice of the availability of sewer service does not satisfy the notice requirement of the Code and that the District cannot charge customers who have received notice, but are not yet connected, on the basis of metered water usage. In those cases, the Commission stated that since the Code does not specify what charges may be billed to unconnected customers, the District's billing on the basis of metered water usage had been done in good faith, based upon the District's interpretation of the Code. This had been the uniform practice of the District and was very likely the practice of many public service districts in the State. However,

after lengthy and careful consideration in those cases, the Commission determined that the premise for allowing sewer utilities to bill on the basis of metered water usage was absent in the case of an individual to whom the District had made service available, but who was not returning wastewater to the system.

Since the Commission's holding in the Crab Orchard-MacArthur series of cases set a precedent for Commission policy on the issue of appropriate notice and billing under Code §16-13A-9 the Commission instituted this rulemaking proceeding by order of December 4, 1989. The Commission Order of December 4, 1989, established a written comment period ending on January 5, 1990, as provided by the West Virginia Administrative Procedures Act.

Ten (10) interested parties filed comments in response to the Commission's December 4, 1989, Order Instituting Rulemaking Proceedings including: Shady Spring Public Service District, Webster Springs Public Service District, the Region I Planning and Development Council, Stafford Consultants, Inc., Steptoe and Johnson law firm, Greenbrier Public Service District No. 1, Lubeck Public Service District, Crab Orchard-MacArthur Public Service District, Elk-Pinch Public Service District, and the West Virginia Water Development Authority.

## DISCUSSION

### I. Notice of Availability

Many of the commentators express concern with the notice requirements of the proposed rule, asserting that the additional costs related to the notice requirements will add to a project's debt service that is built into rates.

The Commission has carefully reviewed the comments regarding the notice requirements and researched the law regarding notice. The Supreme Court of Appeals of West Virginia has held:

"that in the absence of receipt of notice by the owner, tenant or occupant of a garage apartment that public service district sewer facilities are available with respect to that garage apartment, a public service district, under W.Va. Code, 16-13A-9 [1965], is without authority to impose charges and a lien against that dwelling for sewer services, even though the garage apartment is located upon a lot containing another dwelling which is properly subject to district sewer service charges." Rhodes v. Malden Public Service District, 301 S.E.2d 601, 604 (W.Va. 1983).

As we discussed in the Crab Orchard cases, the Commission determined that Code §16-13A-9 requires actual receipt of notice and that decision is supported by the Court's decision in the Rhodes case. The Court has also held that:

"there are proceedings by which the proprietary rights of the individuals are affected, notice of which may be given by publication in the newspaper or by posting copies at certain designated localities. But in order to give such publication the effect of actual notice to the party, whose rights are affected by the proceeding, regardless of whether he reads the advertisement or not, it is necessary that this mode of notification should be authorized by statute, and that the statute by which it is authorized, being in derogation of the common law, should be strictly construed and closely pursued." Dickerson v. Flanagan, 103 W.Va. 233, 236; 136 S.E. 854, 855 (1927).

The proprietary rights of the District's customers which are affected include not only the statutorily required payment of the District's rates and charges, but also a statutory lien is created on the premises if payment is delinquent. In addition, sewer districts may have other utility services terminated for non-payment of sewer charges. Requiring notice by personal service can only work to protect districts and customers in determining when it is appropriate to begin billing and the Legislature apparently recognized this in not specifically providing for notice by publication in the statute.

It is clear that there is no choice other than to find that Code §16-13A-9 requires actual notice of availability of service. As the Court held in Dickerson, notice by publication is not sufficient to satisfy the requirement of actual notice unless specifically authorized by statute. Therefore, the Commission is of the opinion that the type of notice proposed in this rulemaking is necessary to satisfy the requirements of Code §16-13A-9.

## II. Appropriate billing practices after notice of availability

Many of the commentators criticized the proposed rule which requires unconnected persons to be billed on the basis of a minimum billing. The rationale against the "minimum bill" rule is varied. The commentators stated that adoption of this rule will result in increased rates; that connected customers will be subsidizing unconnected customers; that it will be difficult for districts to obtain financing because of difficulty in making revenue assumptions; and, that the proposed rule is simply contrary to the mandatory use policy enunciated in Code §16-13A-9.

The pertinent paragraphs of Code §16-13A-9 reads as follows:

Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the department of health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will flow by gravity or be transported by such other methods approved by the department of health including, but not limited to, vacuum and pressure systems, approved under the provision of section nine [§16-1-9], article one,

chapter sixteen of this code, from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the department of health including but not limited to, vacuum, and pressure systems, approved under the provisions of section nine [§16-1-9], article one, chapter sixteen of this code, and such houses, dwellings and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state: Provided, That if the public service district determines that the property owner must connect with the sewer facilities even when sewage from such dwellings may not flow to the main line by gravity and the property owner must incur costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for such changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the department of health; maintenance and operation costs for such extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of such petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the department of health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

The Commission is of the opinion that the proposed rule is not contrary to the mandatory use policy as stated in the statute. Enforcement measures for compelling connection are specifically provided for by the express terms of the Code and as long as those enforcement measures are properly utilized there should be no subsidization of unconnected customers. If the enforcement measures are not operating to effect the policy of mandatory sewer use, it

would seem that the Legislature would address this issue. The fact that the proposed rule requires a minimum bill for any persons who remain unconnected after notice of availability is given does not relieve the person of the duty to connect to the system. In addition, the Code simply states that a district may charge the rates and charges for services established under §16-13A-9 after notice of availability is given, but does not elaborate or provide any mandate with regard to which of the approved rates and charges will apply when a person remains unconnected and has not been compelled to connect, as provided in the statute. As we discussed in the Crab Orchard order, sewer bills are generally based on volume of water because it is reasonable to assume that there is a connection between the amount of water used on a premises and the amount of water being delivered to the sewer system. In the case of a person who is not connected to a sewer system, the rationale for charging on the basis of metered water usage is absent. By virtue of this rulemaking the Commission is only determining which rates are fair and reasonable to charge someone who remains unconnected to the sewer system. Furthermore, allowing districts to simply bill for metered water usage prior to connection appears to be contrary to the policy of mandatory use since the district would have no incentive to compel connection if the unconnected customer was paying as if he was connected. Depending on the expense of connection a person may defer connecting and choose to avoid this additional expense if the district does not compel connection. Finally, with all the discussion regarding finances there was no evidence given by any of the commentators which showed any projections or actual financial impact of the proposed rule on any particular project or district.

#### FINDINGS OF FACT

1. West Virginia Code §16-13A-9 allows a public service district to charge owners, tenants and occupants for sewer services after thirty (30) day notice of availability of the facilities has been received by the owner and provides that a district may petition the circuit court to compel or require the department of health to compel connection with the sewer facilities.
2. The Supreme Court of Appeals of West Virginia has held that in the absence of actual receipt of notice by the owner, a public service district is without authority to impose charges and a lien against a dwelling for sewer service. Rhodes v. Malden Public Service District, 301 S.E. 2nd 601 (W.Va. 1983).
3. The Supreme Court of Appeals of West Virginia has held that in order to give publication the effect of actual notice, publication should be authorized by statute. Dickerson v. Flanagan, 136 S.E. 854 (W.Va. 1927).
4. The rationale for charging for sewer services on the basis of volume of water is absent in the case of a person who is not connected to the sewer system.
5. There was no evidence provided by any of the commentators of any financial impact of the proposed rule.

CONCLUSION OF LAW

The proposed amendments to the Commission's Rules and Regulations for the Government of Public Service Districts are reasonable and are consistent with prior decisions of the Supreme Court of Appeals of West Virginia.

ORDER

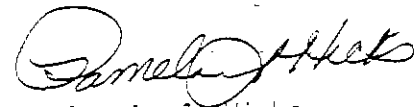
IT IS, THEREFORE, ORDERED that the proposed rules, promulgated on December 4, 1989, should be, and hereby are, adopted as the final rules of the Commission.

IT IS FURTHER ORDERED that, pursuant to West Virginia Code §24-1-7, the effective date of this rule shall be sixty (60) days from the date of this Order.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission file this notice of approval in the State Register and serve a copy of this Order on all public service districts in the State of West Virginia, and all other parties who provided comments by United States First Class Mail and on the Consumer Advocate Division and the Commission Staff by hand delivery.

ARC  
RMA:sn

A True Copy, Teste:



Pamela J. Hicks  
Acting Secretary