

Performance Update

Public Service Commission

**New Rules of Practice and Procedure Have Resolved
Questions Concerning the Correct Filing Date**

**The Public Service Commission Has Promulgated
Appropriate Rules Addressing Certificate of Public Convenience
and Necessity Process and Procedures and Internal Procedures
for Staff Processing of a Certificate Case**

**The Public Service Commission Now Offers General Training
for Public Service Districts and Plans to Offer Specialized
Training for Attorneys, Accountants and Engineers**



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John Sylvia
Director

December 15, 2002

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 a *Performance Update of the Public Service Commission*, which will be presented to the Joint Committee on Government Operations on Sunday, December 15, 2002. The issues covered herein are "New Rules of Practice and Procedure Have Resolved Questions Concerning the Correct Filing Date;" "The Public Service Commission Has Promulgated Appropriate Rules Addressing Certificate of Public Convenience and Necessity Process and Procedures and Internal Procedures for Staff Processing of a Certificate Case;" and "The Public Service Commission Now Offers General Training for Public Service Districts and Plans to Offer Specialized Training for Attorneys, Accountants and Engineers."

We transmitted a draft copy of the report to the Public Service Commission on November 25, 2002. The PSC opted not to have an Exit Conference. We received the agency response on December 3, 2002.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

JS/wsc

Joint Committee on Government and Finance

Contents

Executive Summary	5
Review Method, Scope and Methodology	7
Issue 1: New Rules of Practice and Procedure Have Resolved Questions Concerning the Correct Filing Date.....	9
Issue 2: The Public Service Commission Has Promulgated Appropriate Rules Addressing Certificate of Public Convenience and Necessity Process and Procedures and Internal Procedures for Staff Processing of a Certificate Case.....	11
Issue 3: The Public Service Commission Now Offers General Training for Public Service Districts and Plans to Offer Specialized Training for Attorneys, Accountants and Engineers.....	13
 List of Tables	
Table 1: Levels of Compliance.....	6
 List Of Appendices	
Appendix A: Transmittal Letter to Agency.....	15
Appendix B: Rule 10.3 of the Public Service Commission's <i>Rules of Practice and Procedure</i>	17
Appendix C: Section 26.1 Appendix to the Public Service Commission's <i>Rules of Practice and Procedure</i> (checklist for water and sewer utilities filing applications for certificates of convenience and necessity).....	21
Appendix D: Agency Response.....	27

Executive Summary

This report is the second compliance monitoring and update of the Preliminary Performance Review of the Public Service Commission conducted in 1998 as required by WVC §4-10-4a. The last update was presented in August 2000.

Case processing is conducted by the Commission's Utilities Division and Water/Wastewater Division. Three recommendations from the August 2000 report required action by the Commission. They are:

1. *The Public Service Commission should recognize the actual file date as the official date on its Notice of Filings (corresponds to Recommendation 1 of the August 2000 report #PE-00-21-179).*
2. *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 (corresponds to Recommendation 6 of the August 2000 report, #PE-00-21-179).*
3. *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 procedure. Likewise, the PSC should contact the Board of Accountancy and the Board of Registration for Professional Engineers to determine the interest the PSC offering continuing education for accountants and engineers. With few exceptions, attorneys, accountants and engineers handle virtually all aspects of certificate filings. If those 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 (corresponds to Recommendation 7 of the August 2000 report, #PE-00-21-179).*

The Public Service Commission was found to be in compliance with the first two recommendations and in partial and planned compliance with the third. This Compliance Monitoring of the Preliminary Performance Review uses the following designations of levels of compliance:

Table One
Levels of Compliance

In Compliance - The Commission has corrected the problems identified in the 1998 audit report.

Partial Compliance - The Commission has partially corrected the problems identified in the 1998 audit report.

Planned Compliance - The Commission has not corrected the problem, but has provided sufficient documentary evidence to find that the Commission will do so in the future.

In Dispute - The Commission does not agree with either the problem identified, or the proposed solution.

Non-Compliance - The Commission has not corrected the problem identified in the 1998 audit report.

Requires Legislative Action - The recommendation was intended to call the attention of the Legislature to one or more statutory issues.

Review Method, Scope & Methodology

This Performance Update Report of the Public Service Commission is required and authorized by the West Virginia Sunset Law §4-10-5a of the West Virginia Code, as amended. The Commission's Utilities Division and Water/Wastewater Divisions are responsible for the processing of all cases for which a utility requests the issuance of a certificate of public convenience and necessity.

Objective

The objective of the report is to monitor the Public Service Commission's progress on recommendations made in the August 2000 Performance Update Report.

Scope

The scope of this evaluation covers the period from August 2000 to November 2002.

Methodology

The methodology for this report included reviewing relevant statutes with the West Virginia Code, as amended, relevant rules within the Code of State Rules, internal memoranda regarding recent changes to the case processing procedure, as well as interviews and correspondence with the Public Service Commission. Every aspect of this review complied with Generally Accepted Auditing Standards (GAGAS).

Issue 1

New Rules of Practice and Procedure Have Resolved Questions Concerning the Correct Filing Date.

Recommendation 1

The Public Service Commission should recognize the actual file date as the official date on its Notice of Filings (corresponds to Recommendation 1 of the August 2000 report, #PE-00-21-179).

Level of Compliance: In Compliance

On August 28, 2001, the Public Service Commission (PSC) adopted Rules of Practice and Procedure which have resolved the problem (see Appendix B). While a Public Service District (PSD) must still pre-file at least 30 days prior to filing an application, the PSC has ended the procedure of converting Public Service District pre-filings to certificate cases. Attorneys are now assigned upon receipt of the Notice of Intent, as opposed to the formal certificate filing. The PSC staff assists the PSD in getting its information in order during the pre-filing period; however, the PSD applicant determines when it makes an actual filing and the statutory time limit begins. Therefore, the official filing date for a PSD certificate case is now the date that the PSD actually files the case.

The Public Service Commission Has Promulgated Appropriate Rules Addressing Certificate of Public Convenience and Necessity Process and Procedures and Internal Procedures for Staff Processing of a Certificate Case.

Recommendation 2

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 (corresponds to Recommendation 6 of the August 2000 report, #PE-00-21-179).

Level of Compliance: In Compliance

As mentioned previously in this report, the PSC adopted new Rules of Practice and Procedure which became effective August 28, 2001. Rule 10.3 sets out the process and procedure for all filings by utilities for a certificate of public convenience and necessity (see Appendix B). In addition, the Rule references revised forms and a detailed checklist to be used in the application process (see Section 26.1 in Appendix C). Copies of the Rules were sent to every utility in the state. They are also available from the Public Service Commission's website.

The Public Service Commission Now Offers General Training for Public Service Districts and Plans to Offer Specialized Training for Attorneys, Accountants and Engineers.

Recommendation 3

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 procedure. Likewise, the PSC should contact the Board of Accountancy and the Board of Registration for Professional Engineers to determine the interest the PSC offering continuing education for accountants and engineers. With few exceptions, attorneys, accountants and engineers handle virtually all aspects of certificate filings. If those 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 (corresponds to Recommendation 7 of the August 2000 report, #PE-00-21-179).

Level of Compliance: Partial and Planned Compliance

The Commission now conducts regular seminars for training for Public Service Districts, which are open to both municipal and private water and sewer utilities and open to any professional who wishes to attend them.

With regard to specialized continuing education, the Commission is planning a minimum of one workshop during calendar year 2003. Their intention is to work with the West Virginia State Bar, Board of Accountancy and Board of Registration for Professional Engineers to obtain continuing education approval. The workshop will be publicized through normal media outlets. In addition, the PSC would circulate flyers to attorneys, accountants and engineers who work with the agency on a regular basis.

Appendix A: Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
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John Sylvia
Director

November 25, 2002

Mr. Mike Browning
Executive Director, Administrative Division
Public Service Commission
201 Brooks Street
P.O. Box 812
Charleston, West Virginia 25301

Dear Mr. Browning:

This is to transmit a draft copy of the Performance Update Report of the Public Service Commission. This report is scheduled to be presented Sunday, December 15, 2002 at the interim meeting of the Joint Committee on Government Operations. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committee may have. If you would like to schedule an exit conference to discuss any concerns you may have with the report please notify us. We need your written response by noon on Wednesday, December 4, 2002 in order for it to be included in the final report.

We request that your personnel treat the draft report as confidential and request that it not be disclosed to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

Handwritten signature of John Sylvia in cursive script.
John Sylvia

Joint Committee on Government and Finance

Appendix B: Practice & Procedures 10.3

10.1. Change or discontinue service.

Any public utility or motor carrier subject to the Commission's jurisdiction, desiring to discontinue any regular service shall file with the Commission its application for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 3 attached hereto.

10.2. Change of rates.

A public utility or motor carrier desiring to change its rates, rules and/or regulations shall 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.a. Any public utility, person or corporation, or other entity 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.b. Any public service district intending to file an application for a certificate of convenience and necessity shall, at least thirty (30) 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. 13, 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. 13 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. 13 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.c. Any public utility, person or corporation, or other entity, other than a public service district, intending to file an application for a certificate of convenience and necessity pursuant to W.Va. Code §24-2-11 shall, at least thirty (30) 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.d. To file an application for a certificate of convenience and necessity pursuant to W.Va. Code §24-2-11, a public utility, person or corporation, or other entity, shall, thirty (30) days following a pre-filing by a public service district as described in Rule 10.3.b., or the filing of a notice of intent to file a certificate application as described in Rule 10.3.c., 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. 4, attached to these Rules, (ii) a completed Form No. 14 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. 14 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 provides service, and requiring that the utility separately mail Form No. 14 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. Furthermore, whenever a utility seeks a rate increase in a certificate application, the utility shall, within thirty (30) days of the date the Commission issues the completed Form No. 14, have completed the mailing of separate notices to each of its customers by one or a combination of the following methods: (i) inclusion of Form No. 14 as a bill insert; (ii) separately mailing Form No. 14; or (iii) only for utilities that bill by postcard instead of in an envelope, and who elect not to separately mail Form 14, inclusion of a statement on a postcard billing as follows: "This utility is seeking a rate increase. Details available in newspaper publications or at the utility office after [utility to insert date application filed with Commission] by calling [utility to insert utility office telephone number]."

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

10.3.e. 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 its notice of intent to file an application, and its application for a certificate of convenience and necessity in accordance with Rules 10.3.a, 10.3.c. and 10.3.d. In addition to the information required

by Rule 10.3.d., the application shall include all of the information required by Rule 9 of the Commission's Rules for the Government of Electric Utilities, 150 CSR 3, and by W.Va. Code §24-2-11a.

10.3.f. Any person, association, firm or corporation desiring to operate as a common or contract carrier by motor vehicle in the transportation of persons or property for hire over the public highways of this State shall file an application for a certificate of convenience and necessity or a permit to operate as a common or contract motor carrier, together with twelve (12) copies thereof, in the form identified in section 10.1 et seq. of the Commission's Rules for the Government of Motor Carriers of Passengers and Property, 150 CSR 9.

10.3.g. An owner and/or operator of a commercial solid waste facility must obtain a certificate of need before commencing any additional or new commercial solid waste facility activities not explicitly authorized by an existing certificate of need, regardless of whether such additional or new activities would require a major permit modification from the West Virginia Department of Environmental Protection, when such activities would have a significant impact upon rates, upon the applicant, upon the applicant's competitors, or upon the public. Such additional or new commercial solid waste activities include, but are not limited to, the following -- composting activities, recycling activities, and transfer station activities -- regardless of the location of such activities relative to the currently permitted commercial solid waste activity.

1. An owner and/or operator of a commercial solid waste facility shall apply for a certificate of need by filing a completed Form No. 15, attached hereto, together with twelve (12) copies of the same with the Commission's Executive Secretary. In addition to Form No. 15, the utility shall file a completed Form No. 17 with the exception that the utility shall leave blank the date of the order and the case number. When the Executive Secretary's office has assigned a case number, a completed Form No. 17 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 in the watershed where the commercial solid waste facility is or will be located, and in a newspaper certified by the Secretary of State to have statewide circulation. 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.

2. An owner and/or operator of an existing commercial solid waste facility may file an application for an amendment of a certificate of need and for expedited processing, in the form

attached hereto as Form No. 16, together with twelve (12) copies of the same, and receive expedited processing of its application, if the owner and/or operator seeks to engage in additional activities within the facility's permitted acreage, if the activity is determined not to have a significant impact upon rates, upon the applicant, upon the applicant's competitors, or upon the public, regardless of whether the new activities have been classified as a major modification by the Department of Environmental Protection. In addition to Form No. 16, the utility shall file a completed Form No. 17 with the exception that the utility shall leave blank the date of the order and the case number. When the Executive Secretary's office has assigned a case number, a completed Form No. 17 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 in the watershed where the commercial solid waste facility provides, or will provide service, as indicated in its certificate application and/or its Department of Environmental Protection permit. 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.

3. After receiving Form No. 16, the Commission may issue the applicant an amended certificate of need without a hearing, unless the Commission determines that the planned expansion or construction has a significant impact upon rates, upon the applicant, upon the applicant's competitors, or upon the public. In the alternative the Commission may, if appropriate, issue an order requiring the applicant to file a standard application for a certificate of need in the form of Form No. 15.

10.4. Contracts between utilities.

10.4.a. Whenever a public utility, except railroads other than street railroads, desires to enter into any contract with any other utility to operate its line or plant or to enter into any contract to operate their lines or plants in connection with each other (except physical connections between utilities supplying the same service or commodity for temporary purposes only) the utilities shall file a joint petition with the Commission for authority so to do, together with twelve (12) additional copies thereof, substantially in the form of Form No. 5. Such petition shall set forth the names and addresses of the petitioners, a detailed statement describing the proposed contract, the effect it will have upon the service of the petitioners, the consideration to be paid for the service to be rendered, whether or not any other utility will be affected by the proposed operation and a statement why the prayer of the petition should be granted.

10.4.b. If the connection is physical between utilities supplying the same service for temporary purposes only, the parties

Appendix C: Practice & Procedures 26.1

21.9. Detailed income statement and balance sheet for latest calendar year.

A reference in the petition to annual or other reports filed or to be filed with the Commission will not be deemed compliance with the provisions of this rule.

§150-1-22. Rule 22, Certified copies.

22.1. Withdrawal of papers.

No original paper in any case shall be withdrawn from the file, except upon special order of the Commission.

22.2. Certified copies.

Certified copies of papers on file in the Executive Secretary's office may be obtained by any person desiring the same upon payment to the Executive Secretary of a copying fee plus a fee for certifying such copy, as established by the Executive Secretary's office.

§150-1-23. Rule 23, Notice of orders.

23.1. The Executive Secretary shall serve copies of all orders issued by the Commission upon the parties of record.

§150-1-24. Rule 24, Address.

24.1. All official communications to the Commission and all correspondence in relation thereto should be delivered or mailed to:

Executive Secretary
Public Service Commission of West Virginia
201 Brooks Street, P. O. Box 812
Charleston, West Virginia 25323-0812

§150-1-25. Rule 25, RESERVED

§150-1-26. Rule 26, Appendix

26.1. CHECKLIST FOR APPLICATIONS FOR CERTIFICATES OF CONVENIENCE AND NECESSITY FOR WATER AND SEWER UTILITIES

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. 4.
2. Verification as per Form No. 4 or Form No. 12.
3. Tariff Rule 42 Accounting information:
 - a. Existing System
 1. The Tariff Rule 42 exhibit presents the entire system at per books adjusted to going-level.
 2. Subject to the requirements of Tariff Rule 42, non project-related adjustments may be included in the revenue requirements of the certificate case. If the rate increase relating to non-project related adjustments is proposed to go into effect prior to a rate increase relating to project-related adjustments, then the applicant must separately set forth the proposed increases.
 3. All adjustments related to the proposed project are presented at Pro-Forma.
 - b. New System
 1. All financial information related to the proposed project is presented at Pro-Forma.
 - c. Project related adjustments to operation and maintenance expenses shown in the Tariff Rule 42 exhibit 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. Applicants shall mail single copies of signed user agreements for water projects to the Commission's Engineering Division. The user agreements shall not be made a part of the case file.

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- 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 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, or, one electronic copy of the engineering design plans and project maps in a format compatible with the Commission's electronic technology.
 - b. The plans and maps should show line size, type, length and drawn to scale.
 - c. Identification/numbering of customers that have applied for service and identification of customers who may be served by the project.
 - d. Identification of property lines for customers to be served and location of utility service lateral stubs (sewer) or utility service lines and meters (water).
 - 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. 13 attached hereto, pursuant to West Virginia Code §16-13A-25.
 19. Proposed Notice of Filing, in the form of Form 14 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.

Appendix D: Agency Response

Public Service Commission Of West Virginia

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Charleston, West Virginia 25323



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December 3, 2002

John Sylvia, Director
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610

Re: Legislative Audit

Dear Mr. Sylvia:

This is in response to your November 25, 2002 letter concerning the Performance Update Report.

The Public Service Commission concurs with the report you have provided. As we have discussed, it is our intention to reach full compliance with recommendation 3 during the 2003 calendar year. Also, Rick Hitt, General Counsel for the Public Service Commission and I will attend the December 15, 2002 Joint Committee on Government Organization meeting.

Should you need additional information prior to the meeting, feel free to contact me.

Sincerely,

A handwritten signature in black ink that reads "Mike Browning".

Mike Browning
Executive Director

MB/cbd
Sylvia.wpd

