

**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 16th day of August, 2000.

GENERAL ORDER NUMBER 255

In the matter of a Proposed Rulemaking
Related to Restructuring the Electric Utility
Industry in West Virginia.

COMMISSION ORDER

By Order issued March 14, 2000, the Commission identified the rulemaking proceedings that are necessary prior to implementation of customer choice pursuant to the Commission's plan for restructuring the electric supply market in the State, whereby users of electricity in the State will have open access, across existing and new utility delivery systems, to a competitive market for power supply (the "Plan").⁽¹⁾ Further Orders in this proceeding issued April 14, 2000, and May 11, 2000, modified the original procedural schedule and established the following schedule to accommodate issuances of final rules on or about December 2000: On or before May 22, 2000, interested parties were permitted to file initial general comments on the rulemaking proceeding and Commission Staff (Staff) was permitted to file proposed content and format of rules (Staff Strawman); on or before June 19, 2000, parties could file reply comments to the Staff Strawman; the Commission established a tentative date of August 1, 2000, to issue proposed rules; and tentative dates were also established for the receipt of comments and a hearing. Since the filing date of the Commission proposed rules is August 16, 2000, these dates for comments and hearing are herein modified. The Commission is informed that the parties have met on numerous occasions in an attempt to reach consensus regarding the content and format of these rules. Their efforts at consensus have been successful in some instances, and unsuccessful in other instance. By this Order, the Commission issues proposed rules identified as Series 3, "*Rules for the Government of Electric Utilities, Electric Service Providers and Retail Electric Service*" (New Electric Rules). The proposed New Electric Rules modify and greatly enhance the Commission's current *Rules and Regulations for the Government of Electric Utilities*, 150 CSR, Series 3 (Existing Electric Rules). The enhancements are necessitated by the Commission's Restructuring Plan. After the starting date of the Restructuring Plan, the Commission will not normally establish rates for the retail supply of electricity, and customers will be able to exercise choice in the procurement of electricity. The Commission will, however, have jurisdiction over the issuance of licenses and will regulate the conduct of competitive electric service (CES) providers in the electricity market to ensure that consumers have adequate information to make informed choices and that consumers are protected from unfair, misleading and deceptive practices in the procurement of electric supplies and services. Accordingly, in addition to the Existing Electric Rules' provisions governing transmission and distribution functions of electric utilities, the proposed New Electric Rules include provisions addressing: (1) licensing of competitive electric service providers; (2) a code of conduct for transactions between electric utilities, their affiliates and competitive electric service providers; (3) consumer protection; (4) emergency service; (5) protection of employees of incumbent utilities; and (6) a system benefits charge and joint labor-management council. In proposing these rules, the Commission has considered all of the comments filed in this proceeding. § 150-3-1 The provisions of proposed § 150-3-1 constitute a general section including definitions of terms used throughout the proposed New Electric Rules and an index to the remainder of Series 3. The Commission finds that it is not necessary to include a summary of its Plan in Series 3. The Commission

has revised the definition of "aggregator" in Rule 1.8.c. from the definition proposed in Staff's Strawman. The Commission's definition mirrors that in the Restructuring Plan, which contemplated that all aggregators be licensed. Staff's Strawman definition included exemptions for labor organizations and common interest groups. The Commission sees merit in the proposed exemptions in certain instances, but our concerns for the protection of the ultimate consumer outweigh the merits of the broad blanket exemption as proposed by Staff. However, if specific organizations feel that licensing is unwarranted those organizations may seek an exemption from the licensing requirement pursuant to proposed Rule 1.7.b. Justification for an exemption may be found if an aggregator is acting on behalf of a non-profit organization and is obtaining supply through a West Virginia licensed CES provider. §§ 150-3-2 through 150-3-12 The provisions of proposed §§ 150-3-2 through 150-3-12, are titled "Rules for the Government of the Distribution of Electricity," and constitute a modified version of the Commission's current *Rules and Regulations for the Government of Electric Utilities*, 150 CSR 3. § 150-3-13 The provisions of proposed 150-3-13 *et seq.* are titled, "Rules for the Licensing of Competitive Electric Service Providers." These Rules apply to applicants and CES providers as defined in Series 3. The licensing requirements do not apply to a local distribution company (LDC) acting as a default service provider or an emergency service provider, but do apply to affiliates of local distribution companies providing competitive electric service. § 150-3-14 The provisions of 150-3-14 are reserved for Rules on Interconnection, Reliability, Distributed Generation and Net-metering which will be the subject of a future task force and will be promulgated at an appropriate time. § 150-3-15 The provisions of 150-3-15 *et seq.* are titled, "Code of Conduct for Transactions between Electric Utilities, Their Affiliates and Competitive Electric Service Providers." These rules establish safeguards with regard to the transactions and interaction between LDCs, their affiliates, and CES providers to avoid potential market-power abuses and cross-subsidization between regulated and unregulated activities, to promote effective competition in the electricity market in the State and to carry out the provisions of the State's Restructuring Plan. These rules prohibit an LDC, its affiliates or a CES provider from circumventing the provisions or the intent of these rules in any manner, including but not limited to, using an affiliate to provide information, services, products, or subsidies between it, or another affiliate, and the LDC. These rules are not intended to affect or modify the obligation or duties relating to any rules or standards of conduct that may apply to an LDC or its affiliates under orders or regulations of the Federal Energy Regulatory Commission (FERC) or the Securities and Exchange Commission (SEC). An LDC must file with the Commission a notice of any provision in these Rules that conflicts with a FERC or SEC order or regulation. Section 15.1.c.1. (Strawman 2.2.1. of Series 3D) of these rules will require that incumbent electric utilities separate generation and non-regulated businesses into separate corporate entities from transmission and distribution operations. Strawman 2.2.2 of Series 3D (now numbered 15.1.c.2.) dealing with corporate separation, has been simplified from the versions proposed by both Staff and by AEP to eliminate the post-starting date requirement that incumbent electric utilities file either semi-annual or annual reports detailing efforts towards corporation separation of generation and non-regulated businesses from transmission and distribution operations. This rule will require that the incumbent electric utilities file a corporate separation plan one year prior to each utility's completion of corporate separation of generation and non-regulated businesses from transmission and distribution operations. Strawman 2.3.1. and 2.3.2. of Series 3D are not proposed in the accounts and records section of the Code of Conduct (now numbered 15.1.d) because the requirements contained in Staff's proposed language repeat requirements contained elsewhere in Series 3. Section 15.1.d. (Strawman 2.6. of Series 3D) will be titled "Employees" instead of "Sharing of Employees." The language of paragraph 15.1.d.1. (Strawman 2.6.1. of Series 3D) has been modified slightly and a sentence added to indicate that electric utilities may petition the Commission, pursuant to W.Va. Code § 24-2-12, for approval to employ persons who have also been employed by an affiliate. Strawman 3.5. of Series 3D was deleted on grounds that Commission approval of transactions between electric utilities and affiliates are always required under W.Va. Code § 24-2-12. Therefore, this rule is unnecessary. Rule 15.5. (Strawman 150-3D-6) has been retitled, "Marketing and advertising," instead of "Prohibition against joint marketing and advertising." The Commission deleted section 6.2. of Staff's Strawman because Rule 15.5.a.1 (Strawman

6.1.a. of Series 3D) already prohibits the same conduct. The Commission has not included a prohibition on an affiliate's use of the electric utility name or logo in paragraph 15.5.d. of the proposed rules (Strawman 6.5. of Series 3D). However, the Commission will continue to consider whether a limit on such use is appropriate. Parties supporting a prohibition should comment on the justification for a prohibition such as that proposed by Staff and the Commission will consider any recommended alternative treatments of the name and logo issue. § 150-3-16 The provisions of 150-3-16 *et seq.* are titled, "Rules for Consumer Protection." These Rules govern the provision of competitive electric service and default electric service to consumers. Except for default service, local distribution companies, other than Public Systems, shall not be authorized to provide electric energy as competitive electric service providers; provided, however, that any affiliate of a local distribution company may qualify as a competitive electric service provider, subject to the Commission's Rules. Public Systems may also qualify as competitive electric service providers, subject to the requirements of the Commission's rules. The purpose of these Rules is to (a) provide minimum standards for service quality, safety and reliability in the provision of competitive electric service and default electric service; (b) provide consumers with sufficient information to make informed decisions about competitive electric services and default electric service; and (c) protect consumers against deceptive, unfair, and misleading acts and practices in the marketing, solicitation and sale of competitive electric services and default electric service, and in the administration of any contract or tariff for those services. The Commission has not included provision governing net-metering in these proposed rules. However, we recognize that such provisions will be necessary and are part of an overall set of inter-related issues. The Commission will reserve all issues relating to net-metering for a future rulemaking and/or task force which will address Interconnection, Distributed Generation, Reliability and Net-Metering. § 150-3-17 The proposed provisions of § 150-3-17 are titled, "Emergency Service Rules." These Rules govern the provision of electric service to customers in the event that a CES provider fails to meet its obligations to deliver into the control area sufficient amounts of electrical energy to meet the requirements of its retail customers. Rule 17.2.b.3. (Strawman 2.2.c. of Series F) is drafted to reduce from 30 to 15 days, the time during which a customer, whose competitive electric supplier is in default, may continue to receive service from the default service provider at the contract rate between the customer and the CES. On the 16th day following notice of the CES's default, unless arrangements for a new CES provider have been made, the customer must begin paying the default service provider's default service rate . The protection of Rule 17.2.b.4. which provides that a return to default service due to a CES provider's default shall not be considered an exercise of the customer's right to return under Section 11 of the Plan, has been limited by the requirement that the customer choose an alternate CES provider within 75 days of its return to default service. § 150-3-18 The proposed provisions of § 150-3-18 are titled, "Rules for Employee Protection Plans." These Rules govern employee protection plans submitted by incumbent electric utilities pursuant to the Commission's Restructuring Plan. § 150-3-19 The proposed provisions of § 150-3-19 are titled, "Rules for the System Benefits Charge and Joint Labor-Management Council." These Rules govern the system benefits charge and the Joint Labor-Management Council established pursuant to the Commission's Restructuring Plan. Nothing in these Rules shall reduce the assistance provided to customers pursuant to West Virginia Code §24-2A-1 et seq. **Not included in the proposed rules:** The Commission notes that although Section 3 (e) of its Plan contemplates that within four years after its starting date, residential and small commercial customers shall be permitted to exercise choice in the procurement of metering and billing services, these proposed rules do not fully address metering and billing choice. The Commission will monitor the development of the competitive market for metering and billing and propose additional rules at an appropriate time, or appoint a task force to make recommendations on this issue. **ORDER** IT IS THEREFORE ORDERED that the *Rules for the Government of Electric Utilities, Electric Service Providers and Retail Electric Service*, 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 all regulated electric 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, 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 no later than 4:00 p.m. September 18, 2000. Any interested party who files comments shall set forth specific comments concerning the proposed rules. IT IS FURTHER ORDERED that parties may file reply comments. Such comments shall be filed with the Commission's Executive Secretary no later than 4:00 p.m. October 10, 2000. IT IS FURTHER ORDERED that this matter shall be set for hearing. The hearing will commence on October 26, 2000 at 9:30 a.m. in the Howard M. Cunningham Memorial Hearing Room, 201 Brooks Street, Charleston West Virginia. If necessary, the hearing shall continue on October 27, 2000 at the same location. 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.

Otis D. Casto, Commissioner

Troy M. Stewart, Jr., Commissioner

Charlotte, R. Lane, Chairman

Footnote 1. The Plan was approved by concurrent resolution of the West Virginia Legislature in March 2000.

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APPENDIX A

NOTICE OF RULEMAKING GENERAL ORDER NO. 255

In the matter of a Proposed Rulemaking
Related to Restructuring the Electric Utility

Industry in West Virginia. By Order issued March 14, 2000, the Commission identified rulemakings necessary prior to implementation of customer choice pursuant to the Commission's plan whereby users of electricity in the State will have open access, across existing and new utility delivery systems, to a competitive market for power supply (the "Plan"). Further Orders in this proceeding issued April 14, 2000, and May 11, 2000, modified the original procedural schedule and resulted in a schedule whereby on or before May 22, 2000, interested parties were permitted to file initial general comments on the rulemaking proceeding and Commission Staff (Staff) was permitted to file proposed content and format

of rules (Staff Strawman). On or before June 19, 2000, parties could file reply comments to the Staff Strawman. By Order issued August 16, 2000, the Commission issued proposed Series 3, titled, *Rules for the Government of Electric Utilities, Electric Service Providers and Retail Electric Service*. Proposed Series 3 would replace the Commission's current *Rules and Regulations for the Government of Electric Utilities*, 150 CSR, Series 3. Proposed Series 3 modify and greatly enhance the Commission's current *Rules and Regulations for the Government of Electric Utilities*, 150 CSR, Series 3 (Existing Electric Rules). The enhancements are necessitated by the Commission's Restructuring Plan for the electric supply market in the State which was passed into law by the West Virginia Legislature in March 2000. The Restructuring Plan will provide users of electricity in the State with open access, across existing and new utility delivery systems, to a competitive market for power supply. After the starting date of the Restructuring Plan, the Commission will not normally establish rates for the retail supply of electricity, and customers will be able to exercise choice in the procurement of electricity. The Commission will, however, have jurisdiction over the issuance of licenses and will regulate the conduct of competitive electric service (CES) providers in the electricity market to ensure that consumers have adequate information to make informed choices and that consumers are protected from unfair, misleading and deceptive practices in the procurement of electric supplies and services. Any interested person may obtain a copy of the proposed *Rules for the Government of Electric Utilities, Electric Service Providers and Retail Electric Service* by addressing a request to Sandra Squire, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, WV 25323. An internet accessible copy of the Commission's August 16, 2000 Order and the Proposed Rules is available at www.psc.state.wv.us. Any interested party may file comments with the Commission's Executive Secretary's Office. Comments should be filed no later than 4:00 p.m. September 18, 2000. Any interested party who files comments shall set forth specific comments concerning the proposed rules. Reply comments may be filed with the Commission's Executive Secretary no later than 4:00 p.m. October 10, 2000. The Commission has scheduled a hearing on these proposed rules. The hearing will commence on October 26, 2000 at 9:30 a.m. in the Howard M. Cunningham Memorial Hearing Room, 201 Brooks Street, Charleston West Virginia. If necessary, the hearing shall continue on October 27, 2000 at the same location.

Links to Proposed Rules Attached To General Order:

The Proposed Rules issued by the Commission have been converted to html for ease of internet access. In addition, to reduce file size and minimize download time, the Proposed Rules have been divided into separate sections for the purposes of internet access.

The following links can be used to view the html version of the Proposed Rules, as divided into smaller sections, or to access a WordPerfect copy of the individual sections. The html version will be immediately available for viewing. If you prefer, you can download the WordPerfect version by saving to disk.

[150-3-1 through 150-3-12: General provisions and Rules for the Government of the Distribution and Metering of Electricity \(html version\).](#)

[150-3-1 through 150-3-12: General provisions and Rules for the Government of the Distribution and Metering of Electricity \(WordPerfect version\).](#)

[150-3-13: Rules for Licensing of Competitive Electric Service Providers \(html version\).](#)

[150-3-13: Rules for Licensing of Competitive Electric Service Providers \(WordPerfect version\).](#)

[150-3-15: Code of Conduct for Transactions Between LDCs, Their Affiliates and Competitive Electric Service Providers. \(html version\).](#)

[150-3-15: Code of Conduct for Transactions Between LDCs, Their Affiliates and Competitive Electric](#)

[Service Providers. \(WordPerfect version\).](#)

[150-3-16: Rules for Consumer Protection \(html version\).](#)

[150-3-16: Rules for Consumer Protection \(WordPerfect version\).](#)

[150-3-17: Rules Governing Emergency Service \(html version\).](#)

[150-3-17: Rules Governing Emergency Service \(WordPerfect version\).](#)

[150-3-18: Employee Protection Plans \(html version\).](#)

[150-3-18: Employee Protection Plans \(WordPerfect version\).](#)

[150-3-19: Systems Benefits Charge and Joint Labor-Management Council \(html version\).](#)

[150-3-19: Systems Benefits Charge and Joint Labor-Management Council \(WordPerfect version\).](#)

[Forms attached to Proposed Electric Rules \(html version\).](#)

[Forms attached to Proposed Electric Rules \(WordPerfect Version\).](#)