

MEMORANDUM

TO: Municipal Utilities

FROM: Legal Division

DATE: January 2010

RE: RFA # 10-05w (Important Clarifications/Revisions to the Water, Sewer, and Combined Water and Sewer Municipal Ordinance Rate Adoption Process and Time Line)

IMPORTANT NOTE: These materials are compiled as a guide. The Commission's limited jurisdiction with regard to municipal rates is set forth in W. Va. Code §24-2-4b. The municipal ordinance process used to change utility rates may also be challenged in circuit court. Thus, if a municipality has questions about the legality of its ordinance process, the municipality should consult with its attorney.

Several issues have been brought to the Legal Division's attention which warrant clarification and/or revisions to both the Water and the Sewer and Combined Water and Sewer Municipal Ordinance Rate Adoption Process and Time Line materials we distributed several years ago and which have been available on our website. At the outset, we have **renamed** the forms to: **(1) Procedure to Change Municipal Water Rates and (2) Procedure to Change Municipal Sewer Rates**. The reason for this revision is that the statutory process to change rates differs depending on whether a municipal utility is changing water rates or sewer rates. If a combined water and sewer municipal utility is only changing its water service rates, then that utility should follow the process for water rates. However, if a combined water and sewer municipal utility is changing both its water and sewer rates, then the municipal utility should follow the process for changing sewer rates as that process requires more notice.

The attached Procedure to Change Municipal Water Rates and Procedure to Change Municipal Sewer Rates contain revisions to clarify the process municipalities must use when enacting an ordinance to change its utility rates. Additionally, the attached revised Procedure to Change Municipal Water Rates and Procedure to Change Municipal Sewer Rates Water is also available on the Public Service Commission's website at www.psc.state.wv.us. Below is a summary of the issues that have been addressed in the revised materials.

Pre-Adoption Notice Issues:

- ***Important Information Regarding Municipal Sewer Rate Changes:*** W. Va. Code §16-13-16 (which applies to municipal sewer utilities) requires the pre-adoption notice to be published as a **Class II-0** legal ad in compliance with W. Va. Code §59-3-1 et seq. This means, according to W. Va. Code §59-3-2(b), that municipal sewer utilities must publish the pre-adoption notice in two qualified newspapers of opposite politics if two are published within the area in question for two weeks. If two newspapers of opposite politics are not available within the utility's service area, then the utility should publish the pre-adoption notice in one newspaper for two weeks.

Additionally, W. Va. Code §16-13-16 requires municipal sewer utilities to include in the pre-adoption notice in addition to the hearing date, location and time, **the schedule of the new rates, fees and/or charges that the municipality is proposing to charge. Thus, the pre-adoption notice provided by a municipal utility seeking to change the rates and charges charged by the sewer utility must contain the schedule of new rates, fees and/or charges.**

NOTE: Below is a discussion regarding the requirements set forth in the general ordinance process statutes which apply to all municipalities. Some of the requirements are different and/or even less cumbersome than the pre-adoption notice requirements set forth in W. Va. Code §16-13-16 for municipal sewer utilities. However, when a statute expressly directs certain actions to be taken by a particular municipal utility, then the municipality must follow those express directives. In other words, municipal sewer utilities are required to follow the more detailed requirements for pre-adoption notice set forth above instead of the general requirements for pre-adoption notice discussed below and in the attached documents. Moreover, if a municipality is **changing both water and sewer utility rates in one ordinance**, then the municipality should follow the more stringent pre-adoption notice requirements for changing sewer rates.

- ***Important Information Regarding Municipal Water Rate Changes:*** W. Va. Code §8-11-4 (which applies to municipal utilities generally) requires the pre-adoption notice to be published as a **Class I-0** legal ad in compliance with W. Va. Code §59-3-1 et seq. This means, according to W. Va. Code §59-3-2(b), that municipal water utilities must publish the pre-adoption notice in two qualified newspapers of opposite politics if two are published within the area in question for one week. If two newspapers of opposite politics are not available within the utility's service area, then

the utility should publish the pre-adoption notice in one newspaper for one week.

Post-adoption Notice Issues:

- ***Important Information for Both Municipal Water and Sewer Rate Changes:*** Rule 44 of the Commission's *Rules for the Construction and Filing of Tariffs* (150 CSR 2.22.1.c.3.A) states that if post-adoption notice is given by publication, then publication must be by a Class II legal ad in compliance with W. Va. Code §59-3-1 et seq. The fact that 0 is missing after the Class II notice requirement matters. As explained below, since the **pre-adoption** notice statutes for sewer and water rate changes contain a 0 after the Class of legal ad, the pre-adoption must be published in two qualified newspapers of opposite politics if such are available. However, since no 0 is found in the rule outlining the **post-adoption notice** requirements, the post-adoption notice does not have to be published in both newspapers if there are two newspapers of opposite politics available. Instead, the post-adoption notice need only be published for two weeks in one qualified newspaper published in the county where the utility provides service.

I note that this memorandum and the attached revised Procedure to Change Municipal Water Rates and Procedure to Change Municipal Sewer Rates constitute the informal opinion of the Legal Division of the Public Service Commission as to the legally required process a municipality should use when changing its water and/or sewer rates. I further note that an informal opinion of the Legal Division is not binding upon the Public Service Commission when acting in its quasi-judicial capacity during the decision-making process or on any other court. Thus, if a municipality has any questions or concerns regarding its process to change utility rates, the municipality should consult with its attorney.

LJA/lcw

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