CHAPTER 15 RULES IMPLEMENTING THE PUBLIC UTILITIES AMENDMENT ACT OF 1989

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1500 GENERAL PROVISIONS

1500.1 This chapter shall govern the issuance of certificates of public convenience and necessity under the Public Utilities Amendment Act of 1989.

AUTHORITY: Unless otherwise noted, the authority for this chapter is Paragraph 2(B) of §8 of An Act Making appropriation to provide for the expenses of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 *Stat.* 977; D.C. Code §43-501); as amended by §2(d) of the Public Utilities Amendment Act of 1989, D.C. Law 8-47, D.C. Code §43-501 (1990 Repl. Vol.).

SOURCE: Final Rulemaking published at 38 DCR 16 (January 4, 1991).

1501 FILING REQUIREMENTS FOR AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

1501.1 Applications for a Certificate shall be submitted in writing and on forms prescribed by the Commission.

1501.2 Commission certification shall be obtained before the services enumerated in §1506.2 may be offered in the District of Columbia. Commission approval shall be obtained before any sale or transfer of effective control by means of sale, transfer, assignment or other disposition of ten percent (10%) or more of the stock or voting rights in a public utility holding a certificate of public convenience and necessity. This subsection is inapplicable for those utilities exempted by §1509.1.

1501.3 Each applicant shall be required to address the following matters, in a substantial manner and with particularity, consistent with the scope of the authorization sought:

(a) Demonstrate that the applicant's entry into the requested service field is responsive to public need and demand;

(b) Demonstrate the technical feasibility of the proposed system and the technical competence of the applicant;

(c) Describe the proposed service including terms, conditions, area of coverage, quality, and features of service, and differences from any service presently provided in the proposed service area;

(d) Demonstrate the financial responsibility of the applicant; and

(e) Demonstrate the economic feasibility of the proposed service in the market to be served.

1501.4 Unless otherwise specified by the Commission, to be deemed complete, all application submissions shall include, either in the application itself or in exhibits, the following data:

(a) The name, address and telephone number of the public utility filing the application;

(b) The name of the individual authorized to respond to questions by the Commission or its staff regarding the application;

(c) The service field in which the applicant wishes to operate as well as a full description of the proposed service and the manner in which the same will be provided or constructed;

(d) The names and addresses of all utilities, corporations, persons or other entities, whether publicly or privately operated, with which the proposed service is likely to compete, and of the jurisdictions within which service will be rendered;

(e) A map of suitable scale showing the location or route of any proposed facility, and its relation to other public utilities, corporations, persons or entities with which the same is likely to compete;

(f) Facts showing that the public convenience and necessity requires, or will require, the proposed service;

(g) A statement detailing the estimated annual costs, both fixed and operating, associated with the facility or service contemplated by the applicant;

(h) Statements or exhibits showing the financial ability of the applicant to render the proposed service together with information regarding the manner in which the applicant proposes to finance the cost of the proposed construction or extension;

(i) A statement of the proposed rates to be charged for service or as a result of construction of the facility; and

(j) Projections of estimated demand and revenues for each of the first five (5) years of service contemplated by the applicant.

1501.5 An application submission shall also specify both the time and a timetable that the applicant will require to make the proposed service available.

1501.6 The applicant shall provide any other information the Commission shall indicate will be required to evaluate the application, within fifteen (15) working days of the Commission's request. The information shall be served on the Office of the People's Counsel and all other parties of record.

1501.7 In addition to the copies required to be filed with the Commission pursuant to §100.11 of this title, an applicant shall be required to forward one (1) complete copy of the application submission to the Office of the People's Counsel.

1501.8 Each applicant shall be responsible for the continuing accuracy and completeness of information furnished in a pending application or in Commission proceedings involving a pending application.

1501.9 Whenever the information furnished in the pending application is no longer substantially accurate and complete in all significant respects, the applicant shall amend the application so as to furnish additional or corrected information within twenty (20) days after the applicant becomes aware of the change, unless good cause is shown, and shall serve the parties of record.

1501.10 Whenever there has been a substantial change as to any other matter which may be of decisional significance in a Commission proceeding involving the pending application, the applicant shall submit a statement furnishing such additional or corrected information within twenty (20) days after the applicant becomes aware of the change, unless good cause is shown, and shall serve the parties of record.

1501.11 If the matter is before any court for review, statements and amendments shall also be served upon the Commission's General Counsel.

1501.12 For the purposes of this section, an application is "pending" before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court.

SOURCE: Final Rulemaking published at 38 DCR 16, 17 (January 4, 1991).

1502 NOTICE OF REVIEW

1502.1 Timely written notification of the beginning of the review shall be given by the Commission to all affected persons and to any person who has asked to be placed on the Commission's notification mailing list. Except as provided for in §1502.3, all notification shall be made by mail.

1502.2 For the purposes of this section, the term "affected person" shall mean the following:

(a) The person whose proposal is being reviewed;

(b) The Office of the People's Counsel;

(c) Public utilities in the District of Columbia that provide similar services or that have similar facilities to those proposed; and

(d) Any public utility that, prior to the receipt of the application, indicated to the Commission its intention to provide similar services.

1502.3 Notification to the public shall be given by means of publication of a notice in at least one newspaper of general circulation in the District of Columbia.

1502.4 The notice of the beginning of the review shall include the following:

(a) The proposed schedule of the review;

(b) The manner in which notification will be provided of the time and place of the public hearing; and

(c) The expected date of closure of the record.

1502.5 The review shall began at least thirty (30) days after the Notice of Review, and the hearing shall begin at least thirty (30) days after the notice of the hearing.

1502.6 The date of notification shall be the date on which the notice is mailed or the date the notice first appears in a newspaper, whichever is later.

SOURCE: Final Rulemaking published at 38 DCR 16, 20 (January 4, 1991).

1503 SUBSTANTIAL MODIFICATION OF APPLICATION

1503.1 Substantial modification of a Certificate application requires withdrawal of the original application and submission of a new application reflecting the modifications.

1503.2 For the purposes of this section, a change of ten percent (10%) or more from the applicant's original operating budget or a change in ownership shall be deemed to be a substantial modification. The Commission may deem other examples as substantial modifications of the application.

1503.3 The new application shall constitute a wholly separate application and shall be subject to all elements of the review process, including written notification proceedings, unless waived by the Commission.

SOURCE: Final Rulemaking published at 38 DCR 16, 20 (January 4, 1991).

1504 FORMAL HEARING

1504.1 After the date of notification of review, the Commission shall schedule a date on which a formal hearing regarding the application shall be held.

1504.2 A formal hearing shall be governed by §§120, 127 and 132 through 138 of Chapter 1 of this title relating to formal hearings, unless otherwise ordered by the Commission.

1504.3 Certificates shall not become valid until the expiration of thirty (30) days after issuance, or upon a final Commission decision or opinion on reconsideration, whichever is later. A Certificate may be revoked or modified by the Commission as a result of reconsideration or appeal.

1504.4 The Commission may establish any conditions to the approval of a Certificate as it deems appropriate. If any condition has an expiration date, it shall be specified in the Certificate.

1504.5 If the Commission finds that there has been a violation of a condition under which a Certificate was issued, it may nullify, rescind, or suspend the Certificate as it deems appropriate, in the manner specified in §1508.

SOURCE: Final Rulemaking published at 38 DCR 16, 21 (January 4, 1991).

1505 RECONSIDERATION

1505.1 Requests for reconsideration or modification of any decision of the Commission regarding an application for a Certificate shall be governed by the provisions of §140 of this title.

SOURCE: Final Rulemaking published at 38 DCR 16, 21 (January 4, 1991).

1506 SCOPE OF CERTIFICATE

1506.1 Each Certificate issued by the Commission shall indicate in which service category the holder of the Certificate is authorized to provide utility services, and any attached limitations or conditions.

1506.2 There shall be six (6) service categories as follows:

(a) Electric Service - the activities of owning, operating, controlling, or managing any electric plant, within the District of Columbia, including any water plant, or water property, or water falls, or dam, or interpower stations, except where electricity is made, generated, produced, or transmitted by a private person or private corporation on or through private property solely for its own use or the use of tenants of its building and not for sale to or for use of others;

(b) Gas Service - the activities of manufacturing, making, distributing, or selling gas for light, heat, or power, or for any public use whatsoever in the

District of Columbia, and owning, operating, controlling, or managing any gas plant in the District of Columbia, except where the gas is made or produced and distributed by the maker on or through private property solely for its own use or the use of its tenants and not for sale to or for the use of others;

(c) Telephone Service - the activities of owning, operating, controlling, or managing any plant, wires, poles, or property for the reception, transmission or communication of messages by telephone or telegraph, telephone or telephone apparatus or instruments, or any telephone or telegraph line or part of a telephone or telegraph line, used in the conduct of the business of affording, within the District of Columbia, telephonic or telegraphic communication for hire, or which lets or permits, within the District of Columbia, telephone or telegraph communication for hire;

(d) Common Carrier Service - the activities of owning, operating, controlling or managing any agency or agencies of public use for the conveyance of persons or property within the District of Columbia for hire, except for activities of taxicabs and other passenger vehicles for hire, steam railroads, express companies subject to the jurisdiction of the Interstate Commerce Commission, the Washington Terminal Company, and the Norfolk and Washington Steamboat Company;

(e) Waterpower Service - the activities of owning, operating, managing, or controlling any plant or property, dam or water supply, canal, or power station for the development of waterpower for the generation of electrical current or other power or for the distribution or sale of such electrical current or other power within the District of Columbia; and

(f) Pipeline Service - the activities of owning, operating, managing or controlling the supply of any liquid, steam, or air through pipes or tubing to consumers for use or for lighting, heating, or cooling purposes or for power, within the District of Columbia.

SOURCE: Final Rulemaking published at 38 DCR 16, 21 (January 4, 1991).

1507 SALES OR TRANSFER OF EFFECTIVE CONTROL

1507.1 The sale or transfer of effective control over a public utility for which a current Certificate has been granted shall cause nullification of the Certificate, effective as of the time at which the sale or transfer occurs, unless the sale or transfer has first been reviewed and approved by the Commission pursuant to D.C. Code §43-801 (1990 Repl. Vol.).

1507.2 For the purposes of this section, "effective control" means the ability of any person, by reason of a direct or indirect ownership interest (whether of record or beneficial) of ten percent (10%) or more of the outstanding shares or voting rights in a public utility that holds a Certificate, to direct or cause the direction of the management, operation, or policies of that public utility.

1507.3 For purposes of this section, the term "person" means any individual, corporation, partnership, association, joint stock company, joint venture, trust or unincorporated organization.

1507.4 Where the sale or transfer of effective control over an entity for which a Certificate has been granted, or the transfer, assignment or other disposition of stock or voting rights of an entity which is the holder of a Certificate is contemplated or intended, either voluntarily or involuntarily, a new Certificate shall be applied for by the party proposing to gain effective control.

1507.5 The failure to obtain a new Certificate prior to effecting the sale or transfer of effective control over the holder of record of a current Certificate shall cause the automatic nullification of the current Certificate, effective as of the time at which the sale or transfer of effective control occurs.

SOURCE: Final Rulemaking published at 38 DCR 16, 23 (January 4, 1991).

1508 ENFORCEMENT AND REMEDIES FOR NONCOMPLIANCE

1508.1 Only those services and facilities that are found by the Commission to be required for the present and future public convenience and necessity shall be issued a Certificate.

1508.2 Public utilities shall not furnish service or facilities until after a Certificate has been issued.

1508.3 A public utility shall not obligate capital expenditures, offer new services or acquire equipment if a Certificate authorizing it to provide services in the relevant service category has not been issued or has been nullified, rescinded or suspended by the Commission.

1508.4 A public utility that has been issued a Certificate to provide services in a specified service category shall only provide services which fall within that service category, and any attached limitations and conditions.

1508.5 In any case in which the Commission believes that a violation of the terms of the Act or this chapter of this title has occurred, the Commission may seek an injunction. Any party may file a request that the Commission seek such an injunction.

1508.6 Before nullifying, rescinding or suspending a Certificate, the Commission shall publish a notice of alleged violation in a newspaper of general circulation in the District, and shall notify all interested parties, including the holder of the Certificate.

1508.7 The notice shall specify in general terms the nature of the alleged violation and shall provide the time and location of a hearing to consider the alleged violation.

1508.8 The Certificate holder shall also be given a more detailed specification of the nature of the alleged violation. Copies of the specification shall be furnished to all parties to the certificate application proceeding of that Certificate holder.

1508.9 A hearing regarding the nullification, rescission, or suspension of a Certificate shall be held no later than thirty (30) days from the date of the notice.

1508.10 The hearing shall be conducted in accordance with the procedures specified in Chapter 1 of this title for a reconsideration hearing.

1508.11 A decision to nullify, rescind or suspend a Certificate shall be made following the close of the hearing, shall be made in writing, and shall be based on the complete record of the action. The decision shall include findings of fact and conclusions of law.

1508.12 Any public utility that violates any provision of the Act or of this chapter shall be subject to penalties under the Act, D.C. Code §43-306 (1990 Repl. Vol.).

SOURCE: Final Rulemaking published at 38 DCR 16, 23 (January 4, 1991).

1509 EXEMPTIONS

1509.1 Any public utility that provided services or facilities and was regulated by the Commission prior to June 27, 1989, the effective date of the Emergency Act, shall be deemed to have been granted a Certificate allowing it to provide facilities or services in the service category or categories in which it was operating prior to the effectiveness of the Emergency Act.

1509.2 No provision of this chapter shall be construed to exempt a public utility (an entity) which holds a Certificate from any other chapter or regulation of this code.

SOURCE: Final Rulemaking published at 38 DCR 16, 25 (January 4, 1991).

EDITOR'S NOTE: The original §1509.1 cites the effective date of the Emergency Act as June 28, 1989. This version of §1509.1 cites the actual effective date of the Emergency Act, June 27, 1989.

1599 DEFINITIONS

1599.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed.

Act - the Public Utilities Amendment Act of 1989, D.C. Law 8-47, D.C. Code §43-501 (1990 Repl. Vol.).

Certificate - a certificate of public convenience and necessity issued by the Commission to a public utility upon a showing pursuant to the provisions of this chapter that the service or facility that the public utility wishes to implement or construct is in the present and future public interest.

Commission - the Public Service Commission of the District of Columbia.

Emergency Act - the Public Utilities Amendment Emergency Act of 1989, D.C. Act 8-55.

People's Counsel - the Office of the People's Counsel of the Government of the District of Columbia.

Public Utility - any public utility, as defined under D.C. Code §43-203 (1990 Repl. Vol.).

Service Field - the type or types of utility service that a public utility is authorized by its Certificate, or wishes to be authorized, to provide to the public.

SOURCE: Final Rulemaking published at 38 DCR 16, 25 (January 4, 1991).