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Transcript Exhibit(s)

Docket #(s): RW-000003-07-0051

RSW-000007-07-0051

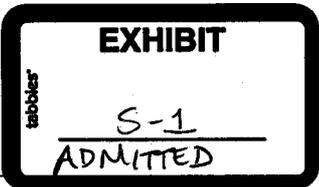
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Exhibit #: 51

Arizona Corporation Commission
DOCKETED

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NOTICES OF RULEMAKING DOCKET OPENING

The Administrative Procedure Act (APA) requires the publication of Notices of Rulemaking Docket Opening when an agency opens a rulemaking docket to consider rulemaking. Under the APA effective January 1, 1995, agencies must submit a Notice of Rulemaking Docket Opening before beginning the formal rulemaking process.

NOTICE OF RULEMAKING DOCKET OPENING CORPORATION COMMISSION FIXED UTILITIES

[R08-26]

- 1. **Title and its heading:** 14, Public Service Corporations; Corporations and Associations; Securities Regulation
- Chapter and its heading:** 2, Corporation Commission – Fixed Utilities
- Article and its heading:** 4, Water Utilities; 6, Sewer Utilities
- Section numbers:** R14-2-402, R14-2-602

2. **The subject matter of the proposed rule:**
 The proposed changes will amend R14-2-402 and R14-2-602, both entitled "Certificate of Convenience and Necessity" ("CC&N") and will require applicants for a new CC&N or for an extension of a CC&N to provide additional information regarding affected landowners, developers and nearby municipalities and nearby water and wastewater service providers in order for the Arizona Corporation Commission and its staff to verify proper notification of the CC&N proceeding.

The agency docket number, if applicable:
 RW-00000B-07-0051 and RSW-0000A-07-0051

3. **A citation to all published notices relating to the proceeding:**
 Notice of Proposed Rulemaking: 14 A.A.R. 452, February 15, 2008 (*in this issue*)

4. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name: Robin Mitchell, Esq.
 Legal Division, Arizona Corporation Commission

Address: 1200 W. Washington St.
 Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: rmitchell@azcc.gov

or

Name: Steve Olea, Assistant Director
 Utilities Division, Arizona Corporation Commission

Address: 1200 W. Washington St.
 Phoenix, AZ 85007

Telephone: (602) 542-7270

Fax: (602) 542-2129

E-mail: solea@azcc.gov

5. **The time during which the agency will accept written comments and the time and place where oral comments may be made:**

Public comment will be held on two separate dates and two separate locations: 1) April 14, 2008, beginning at 10:00 a.m. and in Room 222 in the Tucson offices of the Arizona Corporation Commission located at 400 W. Congress St., Tucson, AZ 85701, or 2) April 15, 2008, beginning at 10:00 a.m. in the Hearing Room of the Arizona Corporation Commission located at 1200 W. Washington St., Phoenix, AZ 85007. Hearing requests initial written comments be received on or before March 17, 2008 and responsive comments be received on or before March 28, 2008. However, written comments will be accepted through April 15, 2008. Comments should be submitted to Docket Control at the above address. Please reference docket number ACC-00000A-05-0613 on all documents.

6. **A timetable for agency decisions or other action on the proceeding, if known:**

The Commission will likely bring this to Open Meeting for final approval in late spring or early summer, 2008.

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Notices of Proposed Rulemaking

per week.

R4-20-118. Unprofessional Conduct

In addition to actions specified in A.R.S. § 32-1696, unprofessional conduct in the practice of optical dispensing includes the following:

1. Substandard care as specified in R4-20-119;
2. Failing to maintain a copy of the customer's prescription and ~~or~~ failing to prepare and maintain a record of optical devices dispensed for at least three years. The record shall include the brand, style and size of the frame, if any, and the style, material, and all other information necessary to accurately reproduce each lens. The records shall be separate from optometrists' or physicians' records;
3. Failing or refusing to make a copy of a record described in subsection (2) promptly available to the customer, who is the subject of the record, the customer's designated representative, the customer's prescribing practitioner, or the Board or its investigator, when requested. Notwithstanding this provision, a dispensing optician need not make the record of contact lenses dispensed on a trial basis available to the customer; ~~and~~
4. Failing or refusing to take corrective action or investigate a customer complaint concerning the manufacture or fit of eyeglasses, contact lenses, or other optical devices dispensed at the establishment by which the dispensing optician is employed if there is a substantial basis for the complaint;
5. Failure of any person, corporation, company, partnership, firm, association or society to maintain an active optical establishment license; and
6. Failure to comply with a Board order.

NOTICE OF PROPOSED RULEMAKING

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 2. CORPORATION COMMISSION
FIXED UTILITIES**

[R08-27]

PREAMBLE

1. **Sections Affected**

R14-2-402	<u>Rulemaking Action</u>
R14-2-602	Amend
	Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: Arizona Constitution Article XV § 3; A.R.S. §§ 40-202; 40-203; 40-321, 40-322, 40-281, 40-282.

Implementing statute: Arizona Constitution Article XV § 3; A.R.S. §§ 40-202; 40-203; 40-321, 40-322, 40-281, 40-282.
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 14 A.A.R. 460, February 15, 2008 (*in this issue*)
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Robin Mitchell, Esq. Legal Division, Arizona Corporation Commission
Address:	1200 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 542-3402
Fax:	(602) 542-4870
E-mail:	rmitchell@azcc.gov
or	
Name:	Steve Olea, Assistant Director

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Utilities Division, Arizona Corporation Commission

Address: 1200 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-7270

Fax: (602) 542-2129

E-mail: solea@azcc.gov

5. An explanation of the rule, including the agency's reasons for initiating the rule:

These amendments will amend existing rules (R14-2-402 and R14-2-602), both entitled "Certificate of Convenience and Necessity" ("CC&N"). The proposed amendments and changes to these rules are designed to provide the Arizona Corporation Commission and the Commission's staff more information in the application for a new CC&N or for an extension of a CC&N. This additional information will aid Staff in its analysis and the Commission in its determination of the public interest when granting or denying a CC&N or a CC&N extension for water service and sewer service.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

NOTE – The Arizona Corporation Commission is exempt from the requirements of A.R.S. § 41-1055 relating to economic, small business, and consumer impact statements. See A.R.S. § 41-1057(2). However, under A.R.S. § 41-1057(2), the Arizona Corporation Commission is required to prepare a "substantially similar" statement.

Companies providing water service or wastewater service may incur additional costs resulting from the requirements for notification to affected landowners, developers and nearby municipalities and nearby water and wastewater service providers of an application for a new CC&N or an extension to a CC&N. Utilities may incur additional costs resulting from additional research and other communications with landowners. However, by providing this additional information in the application, applicants may incur lower organizational costs and may reduce regulatory costs thereby reducing the upward pressure on rates of customers of water and wastewater utilities which are forming or expanding. The rule change amendments should reduce the time period between the date of application and the date of a final order in the matter which would allow for faster development of the property.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Robin Mitchell, Esq.
Legal Division, Arizona Corporation Commission

Address: 1200 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-3402

Fax: (602) 542-4870

E-mail: rmitchell@azcc.gov

or

Name: Steve Olea, Assistant Director
Utilities Division, Arizona Corporation Commission

Address: 1200 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 542-7270

Fax: (602) 542-2129

E-mail: solea@azcc.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

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Public comment will be held on two separate dates and two separate locations: 1) April 14, 2008, beginning at 10:00 a.m. and in Room 222 in the Tucson offices of the Arizona Corporation Commission located at 400 W. Congress St., Tucson, AZ 85701, or 2) April 15, 2008, beginning at 10:00 a.m. in the Hearing Room of the Arizona Corporation Commission located at 1200 W. Washington St., Phoenix, AZ 85007. Hearing requests initial written comments be received on or before March 17, 2008 and responsive comments be received on or before March 28, 2008. However, written comments will be accepted through April 15, 2008. Comments should be submitted to Docket Control at the above address. Please reference docket number ACC-00000A-05-0613 on all documents.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

**TITLE 14. PUBLIC SERVICE CORPORATIONS; CORPORATIONS AND ASSOCIATIONS;
SECURITIES REGULATION**

**CHAPTER 2. CORPORATION COMMISSION
FIXED UTILITIES**

ARTICLE 4. WATER UTILITIES

Section

R14-2-402. Certificate of Convenience and Necessity for water utilities; ~~abandonments~~

ARTICLE 6. SEWER UTILITIES

Section

R14-2-602. Certificate of Convenience and Necessity for sewer utilities; ~~additions/extensions; abandonments~~

ARTICLE 4. WATER UTILITIES

R14-2-402. Certificate of Convenience and Necessity for water utilities; ~~abandonments~~

A. For purpose of this rule, "contiguous" is defined with its common, ordinary and approved meaning: In actual close contact; touching; bounded or traversed by.

A-B. Application for new Certificate of Convenience and Necessity or extension of Certificate of Convenience and Necessity.

1. Any person or entity who desires to construct and/or operate a water utility will, prior to commencement of construction of utility facilities, file an application for a Certificate of Convenience and Necessity with the Arizona Corporation Commission.
2. ~~Six copies of each~~ Each application for a new Certificate of Convenience and Necessity or extension of a Certificate of Convenience and Necessity shall be submitted in a form and number prescribed by the Commission and shall include, at a minimum, the following information:
 - a. The proper name and correct address of the proposed utility company and its owner, if a sole proprietorship, each partner if a partnership, ~~or~~ the President and Secretary if a corporation, or its managers and/or members of the L.L.C. (if management is reserved to the members) if an L.L.C.
 - b. A copy of the applicant's Articles of Partnership or Articles of Incorporation ~~for the applicant~~ and/or Bylaws if the utility is a non-profit organization or association or Articles of Organization if the utility is an L.L.C. for a new Certificate of Convenience and Necessity or the applicant's Certificate of Good Standing for an extension.
 - ~~e.~~ The type of plant, property, or facility proposed to be constructed.
 - ~~d-c.~~ A complete description of the facilities proposed to be constructed, including a preliminary engineering report with specifications in sufficient detail to properly describe the principal systems and components which meet the requirements of the health department. Final and complete engineering specifications shall be supplied when they become available (e.g. source, storage, transmission lines, distribution lines, etc.) in order to verify the costs submitted as part of subsection (B)(2)(d) and to verify that the requirements of the Commission and the Arizona Department of Environmental Quality can be met.
 - d. The estimated total construction cost of the proposed offsite and onsite plant facilities, including documentation to support the estimates, and an explanation of how the construction will be financed, such as, but not limited to debt, equity, advances in aid of construction or contributions in aid of construction.
 - ~~e.~~ The rates proposed to be charged for the service that will be rendered.

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- e. The financial condition of the applicant.
- f. The estimated total cost of the proposed construction.
- f. The rates proposed to be charged for the service that will be rendered.
- g. The manner of capitalization and method of financing for the project.
- h. The financial condition of the applicant.
- i-g. The estimated annual operating revenues and expenses that are expected to accrue from the proposed construction for the first five years of operation, including assumptions made to derive the estimates.
- j-h. The estimated starting and completion date of the proposed construction. If construction is to be phased, the phases shall be described in detail.
- i. A copy of any requests for service for the area under application with the requested water service provider identified.
- k-j. Maps of the proposed service area identifying:
 - i. The boundaries of the area under application with the total acreage noted.
 - ii. Land ownership boundaries indicating the acreage of each parcel within the area under application if the area under application is comprised of two or more parcels that are owned by different parties.
 - iii. The owner of each parcel comprising the area under application.
 - iv. The corporate limits of any city or town that cross or are within five miles of the area under application.
 - v. The service territory of any public service corporation, municipality or district currently providing water or wastewater service within one mile of the area under application, the name of any such entity and types of service being provided.
 - vi. The location of any known water service connections within the area under application.
 - vii. The location of all proposed developments for the area under application.
 - viii. The proposed location of all principal systems and components described in subsection (B)(2)(c).
 - ix. The location of all parcels for which a copy of a request for service has been provided per R14-2-402(B)(2)(i).
- k. A copy of applicant's notice to the municipal manager or administrator of each entity in subsection (B)(2)(j)(iv).
- l. A copy of the applicant's notice of the application to all the landowners in the area under application who did not request service.
- m. The written response to the notice from each landowner who did not request service.
- n. If a landowner did not respond to the notice of the application, the application shall include a description of the action taken by the applicant to obtain a written response from the land owner.
- t-o. Appropriate city, county and/or state agency approvals.
- m-p. The estimated number of customers to be served for each of the first five years of operation, including documentation to support the estimates.
- q. The name of the wastewater service provider in the area under application along with a letter from the wastewater service provider confirming the provision of such service and a description of how the applicant will work with the wastewater service provider to encourage water conservation, including promoting the use of reclaimed water.
- r. A description of how water will be provided for golf courses, ornamental lakes, other aesthetic water features, greenbelts, or parks within the area under application.
- s. Plans or description of water conservation measures. Such plans shall include, at a minimum, the following:
 - i. A description of the information about water conservation or water saving measures that the utility provides to the public and its customers;
 - ii. A description of the sources of water that will be used to supply parks, recreation areas, golf courses, greenbelts, ornamental lakes, and other aesthetic features;
 - iii. A description of plans for the use of reclaimed water;
 - iv. A description of plans for the use of recharge wells;
 - v. A description of plans for the use of surface water; and
 - vi. A description of any other plans or programs in place to promote water conservation.
- t. Backflow prevention tariff, if not already on file.
- u. Curtailment tariff, if not already on file.
- v. Physical Availability Determination, Analysis of Adequate Water Supply, or Analysis of Assured Water Supply from the Arizona Department of Water Resources or, in the alternative, the status of the application.
- w. For applications for extensions of Certificate of Convenience and Necessity, the applicant shall also submit:
 - i. A current compliance status report from the Arizona Department of Environmental Quality. This status report shall be dated no more than 30 days before the filing date of the application for extension.
 - ii. A water use data sheet for existing systems. A separate water use data sheet, identified by the Arizona Department of Environmental Quality Public Water System Identification Number, shall be submitted for each separate water system.

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3. Upon the receipt of such application, the Commission staff of the Utilities Division shall review the application for compliance with the information requirements of this regulation; additional information, amendments and/or corrections to the application to bring the application into compliance with this regulation shall be governed by the Commission's rules of administrative and hearing requirements concerning incomplete applications.
4. Once the applicant has satisfied the information requirements of this regulation, as well as any additional information required by the staff of the Commission's Utilities Division, the Commission shall, as expeditiously as reasonably practicable, schedule hearings to consider such application.

~~B-C.~~ Application for discontinuance or abandonment of utility service

1. Any utility proposing to discontinue or abandon utility service currently in use by the public shall prior to such action obtain authority therefore from the Commission.
2. The utility shall include in the application, studies of past, present and prospective customer use of the subject service, plant or facility as is necessary to support the application.
3. An application shall not be required to remove individual facilities where a customer has requested service discontinuance.

~~C-D.~~ Additions/ or extensions of service contiguous to ~~outside~~ existing Certificates of Convenience and Necessity.

1. Each utility which proposes to extend utility service to a ~~location~~ parcel not within its certificated service area, but located in a non-certificated area contiguous to its certificated service area, shall prior to the extension of service, notify the Commission of such service extension.
2. Such notifications shall be in writing and shall be verified and shall set forth, at a minimum:
 - a. The number of persons or entities proposed to be served by such service extension,
 - b. ~~Their~~ The location of the persons or entities in relation to the certificated area of the utility, and
 - c. A statement of the utility that the service extension is to a non-certificated area parcel which is contiguous to its certificated area, and
 - d. Where emergency service is required to be provided to a customer in a non-certificated area contiguous to the utility certificated area the utility shall advise the Commission simultaneously of such extension and the written notification shall set forth the nature and extent of the emergency.
2. ~~For purpose of this rule the following definition of "contiguous" is: Contiguous—Common, ordinary and approved meaning. In actual close contact; touching; bounded or traversed by.~~

ARTICLE 6. SEWER UTILITIES

R14-2-602. Certificate of Convenience and Necessity for sewer utilities, ~~additions/extensions, abandonments~~

~~A.~~ For purpose of this rule, "contiguous" is defined with its common, ordinary and approved meaning: In actual close contact; touching; bounded or traversed by.

~~A-B.~~ Application for new Certificate of Convenience and Necessity or extension of Certificate of Convenience and Necessity.

1. Any person or entity who desires to construct and/or operate a sewer utility will, prior to commencement of construction of utility facilities, file an application for a Certificate of Convenience and Necessity with the Arizona Corporation Commission.
2. ~~Six copies of each~~ Each application for a new Certificate of Convenience and necessity or extension of a certificate of Convenience and Necessity shall be submitted in a form and number prescribed by the Commission and shall include, at a minimum, the following information:
 - a. The proper name and correct address of the proposed utility company and its owner, if a sole proprietorship, each partner if a partnership, ~~or the President and Secretary if a corporation,~~ or its managers and/or members of the L.L.C. (if management is reserved to the members) if an L.L.C.
 - b. A copy of the applicant's Articles of Co-Partnership or Articles of Incorporation ~~for the applicant and/or Bylaws if the utility is a non-profit organization or association, or Articles of Organization if the utility is an L.L.C. for a new Certificate of Convenience and Necessity or the applicant's Certificate of Good Standing for an extension.~~
 - e. ~~The type of plant, property, or facility proposed to be constructed.~~
 - ~~d.c.~~ A complete description of the facilities proposed to be constructed, including a preliminary engineering report with specifications in sufficient detail to properly describe the principal systems and components and final and complete engineering specifications when they become available (e.g., collection mains, trunk lines, lift stations, treatment plants, effluent disposal areas, etc.) in order to verify the costs submitted as part of subsection (B)(2)(e) and to verify that the requirements of the Commission and the Arizona Department of Environmental Quality can be met.
 - d. A copy of the Aquifer Protection Permit issued by the Arizona Department of Environmental Quality for the proposed area or, in the alternative, the status of the application for the Aquifer Protection Permit.
 - e. The rates proposed to be charged for the service that will be rendered because of the proposed construction. The estimated total construction cost of the proposed offsite and onsite plant facilities, including documentation to support the estimates, and an explanation of how the construction will be financed, such as, but not limited to

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- debt, equity, advances in aid of construction or contributions in aid of construction.
 - f. ~~The estimated total cost of the proposed construction.~~
 - g. ~~The manner of capitalization and method of financing for the project.~~
 - ~~h-f.~~ The financial condition of the applicant.
 - g. The rates proposed to be charged for the service that will be rendered.
 - ~~i-h.~~ The estimated annual operating revenues and expenses that are expected to accrue from the proposed construction for the first five years of operation, including assumptions made to derive the estimates.
 - ~~j-i.~~ The estimated starting and completion date of the proposed construction. If construction is to be phased, the phases shall be described in detail.
 - j. A copy of any request for service for the area under application with the requested wastewater service provider identified.
 - k. Maps of the proposed service area- identifying:
 - i. The boundaries of the area under application with the total acreage noted.
 - ii. Land ownership boundaries indicating the acreage of each parcel within the area under application if the area under application is comprised of two or more parcels that are owned by different parties.
 - iii. The owner of each parcel comprising the area under application.
 - iv. The corporate limits of any city or town that cross or are within five miles of the area under application.
 - v. The service territory of any public service corporation, municipality or district currently providing water or wastewater service within one mile of the area under application, the name of any such entity and the types of services it is providing.
 - vi. The location of any known sewer service connections within the area under application.
 - vii. The location of all proposed developments for the area under application.
 - viii. The proposed location of all principal systems and components described in subsection (B)(2)(c).
 - ix. The location of all parcels for which a copy of a request for service has been provided per subsection (B)(2)(j).
 - ~~l.~~ Appropriate city, county and/or state agency approvals.
 - ~~l.~~ A copy of the applicant's notice to the municipal manager or administrator of each entity in subsection (B)(2)(k)(iv).
 - ~~m.~~ Estimated number of customers to be served for the first five years of operation, including documentation to support the estimates.
 - ~~m.~~ A copy of the applicant's notice of the application to all the landowners in the area under application who did not request service.
 - ~~n.~~ The written response to the notice from each landowner in the area under application who did not request service.
 - ~~o.~~ Appropriate city, county and/or state agency approvals.
 - ~~p.~~ Estimated number of customers to be served for the first five years of operation, including documentation to support the estimates.
 - ~~q.~~ The name of the water service provider in the area under application.
 - ~~r.~~ A description of how effluent from the area under application will be reused, or if not reused, a description of the disposition of the effluent.
 - ~~s.~~ For applications for an extension of a Certificate of Convenience and Necessity, the applicant shall also submit.
 - i. A current compliance status report from the Arizona Department of Environmental Quality. This status report shall be dated no more than 30 days before the filing date of the application for extension.
 - ii. A wastewater flow data sheet for existing systems.
3. Upon the receipt of such application, the Commission staff shall review the application for compliance with the information requirements of this regulation; additional information, amendments and/or corrections to the application to bring the application into compliance with this regulation shall be governed by the Commission's rules of administrative and hearing requirements concerning incomplete applications.
4. Once the applicant has satisfied the information requirements of this regulation, the Commission shall, as expeditiously as reasonably practicable, schedule hearings to consider such application.
- B-C.** Additions/ or extensions of service contiguous to existing Certificates of Convenience and Necessity. Each utility which proposes to extend utility service to a person parcel not located within its certificated service area, but located in a non-certificated area contiguous to its certificated service area, shall, prior to the extension of service, notify the Commission of such service extension. Such notification shall be in writing and shall be verified and shall set forth, at a minimum, the number of persons or entities proposed to be served by such service extension, their location in relation to the certificated area of the utility and a statement of the utility that the service extension is to a non-certificated area parcel which is contiguous to its certificated area. Where emergency service is required to be provided to a customer in a non-certificated area contiguous to the utility certificated area, the utility shall advise the Commission simultaneously of such extension and the written notification shall set forth the nature and extent of the emergency.
- C-D.** Application for authority to abandon, sell, lease, transfer, or otherwise dispose of a utility. Any utility proposing to sell,

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lease, transfer, or otherwise dispose of the utility shall, prior to such sale, lease, transfer, or other disposal, file an application for authority to do so including the following information:

1. The address of the applicant.
2. A description of the utility property proposed to be abandoned, sold, leased, transferred or otherwise disposed of.
3. The financial condition of the applicant.
4. The name of the purchaser, lessee or assignee.
5. The terms and conditions of the proposed abandonment, sale, lease, or assignment and copies of any agreement which has been or will be executed concerning the same.
6. The effect of the proposed transaction upon the service of the applicant.
7. The method by which the proposed transaction is to be financed.
8. The effect the proposed transaction will have on any other utility and, if so, in what respect.

D-E. Application for discontinuance or abandonment of utility service

1. Any utility proposing to discontinue or abandon any type of utility service currently in use by the public shall prior to such action obtain authority therefore from the Commission.
2. The utility shall include in the application, studies of past, present and prospective customer use of the subject service plant or facility as is necessary to support the application.
3. An application shall not be required to remove individual facilities where a customer has requested service discontinuance.