

**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 4th day of August 2020.

MC GENERAL ORDER NO. 64.5

In the Matter of Revisions to the Rules Governing Motor Carriers, Private Commercial Carriers, and the Filing of Evidence of Insurance and Financial Responsibility by Motor Carriers, 150 C.S.R. 9

GENERAL ORDER NO. 183.12

In the Matter of Revisions to the Rules for the Construction and Filing of Tariffs, 150 C.S.R. 2

COMMISSION ORDER

The Commission proposes rules amending the Rules Governing Motor Carriers, Private Commercial Carriers, and the Filing of Evidence of Insurance and Financial Responsibility of Motor Carriers, 150 C.S.R. 9 (Motor Carrier Rules) and the Rules for the Construction and Filing of Tariffs, 150 C.S.R. 2 (Tariff Rules).

BACKGROUND AND DISCUSSION

On March 29, 2020, the West Virginia Legislature passed Enrolled Committee Substitute for Senate Bill 686 (SB 686) effective ninety days from passage. SB 686 authorizes the Commission to appoint an emergency substitute carrier when the certificate or permit of common and contract carriers by motor vehicle are either suspended or revoked by the Commission. SB 686 also allows an entity that has had its certificate or permit suspended to petition the Commission to have its certificate or permit reinstituted. SB 686 amended portions of W. Va. Code §§ 24A-1-2, 24A-2-5, 24A-3-2, and 24A-3-3 and the Commission proposes changes to Motor Carrier Rules 1.8.12, 3.17, and adds Motor Carrier Rule 7.9 to implement those statutory amendments.

On March 7, 2020, the West Virginia Legislature passed Enrolled Committee Substitute for House Bill 4587 (HB 4587) effective ninety days from passage. HB 4587 (1) allows for the transfer of certificates to another certificated holder for the same commodity with approval by the Commission within ninety days following the submission of a completed application; (2) allows a motor carrier of solid waste to suspend service for up to five days at its discretion for certain reasons including

dangerous road conditions, inclement weather, flooding, road closures, etc.; and (3) allows for two new methods for motor carriers of solid waste to change their rates. HB 4587 amended portions of W. Va. Code §§ 24-2-4a and 24A-5-2 and created §§ 24A-5-2a and 24A-5-2b. The Commission proposes changes to Motor Carrier Rules 4.20 and 7.2.3 and adds Tariff Rule 30.3 and 30.4 to implement the statutory amendments.

Proposed Tariff Rule 30.4 addresses a timing problem the Commission sees with the rate increase methodology tied to the U.S. Department of Labor Bureau of Labor Statistics Garbage and Trash Collection Index (Index). W. Va. Code § 24A-5-2a states a motor carrier of solid waste may change its rate on January 1 of each year based on the change in the Index from January 1 of the preceding year. At first glance, to allow the carrier a full year Index change, this would appear to mean the Index change from January 1 through December 31 of the year preceding the January 1 proposed rate change. That is not possible, however, because of the timing of a proposed tariff change and notice requirements, all occurring prior to the January 1 proposed rate change. Pursuant to W. Va. Code § 24A-5-2a, the Commission must approve the notice proposed by the motor carrier within five business days of filing and the motor carrier must give thirty days' notice to the Commission and the customers of the intention to change rates. Therefore, any filing to implement the rate change must occur in time to: (1) allow the Commission five business days after receipt of the application and proposed notice to approve or modify the proposed notice; (2) allow sufficient time for the motor carrier to begin the mailing of notices to customers; and (3) allow sufficient time after the date the application is filed for the notice process to be completed at least thirty days prior to January 1.

The Index measures cost change for a one-month period but the U.S. Department of Labor does not release the Index until the middle of the following month. Depending on how the motor carrier gives the notice and bills its customers, a filing that meets the timing requirements could be made between approximately the end of October and the end of November. That timeframe would mean an application could, at best, be based on the change in Index from January 1 through the end of the October preceding the January 1 proposed rate change. Instead of estimating or predicting the annual Index measurement, the Commission proposes to use the increase in the Index from January 1 through December 31 of the year preceding the tariff filing date when determining whether the increase is equal to or less than the percentage increase in the Index from January 1 of the preceding year. For example, if a carrier wishes to change rates on January 1, 2021 and files the proposed tariff in September or October of 2020, the Commission will look at the change in the Index from January 1, 2019 through December 31, 2019.

In addition to the rule amendments required by SB 686 and HB 4587, the Commission proposes certain other amendments. Specifically, the proposed Motor Carrier Rules are renumbered to conform to current Secretary of State requirements, add

the definition of “common or contract carrier by motor vehicle of recyclable solid waste,” and eliminate MC Form Nos. 1, 3, and 4 and replace them with MC Form Nos. 4-N and 4-N UCR. The proposed rules also recognize the Commission no longer has jurisdiction over motor carriers of household goods (SB 174, April 8, 2017).

The proposed Tariff Rules increase the revenue limit for rate filings pursuant to Tariff Rules 8.2.1 and 30.2.1 (Historical Rule 19A and M.C. Rule 19A) to \$3,000,000 for water and sewer utilities and motor carriers, eliminate the need for newspaper notice to be published in a newspaper that is published in the county served, adds clarifying language to Tariff Form No. 10, changes Tariff Rule 23.1.3 to indicate that a municipality is to comply with the bill notice requirement of W. Va. Code § 24-2-4b only if it is waiving the 45-day waiting period to change rates, and adds transfer stations to the entities allowed to file under Tariff Rule 14.1. Additionally, MC Tariff Form No. 42 historically contained forms for the minimum financial information required for Motor Carrier rate filings under Tariff Rule 30.1. The financial information forms were inadvertently omitted from the Rules when they were revised in 2019. The Commission notes that the Staff Reports in Motor Carrier Rate Cases have used different forms for presentation of the financial information. Most Motor Carrier filings have followed the general formatting of the Staff reports rather than the forms previously included in MC Form No. 42. The Commission has included forms for financial information with MC Form No. 42 in these proposed rules following the general formatting used in Staff Reports. Finally, the proposed rules correct some previously incorrect rule references.

CONCLUSION OF LAW

The Commission should promulgate proposed amended Motor Carrier Rules and proposed amended Tariff Rules and establish a time frame for written comments.

ORDER

IT IS THEREFORE ORDERED that the attached amended Rules Governing Motor Carriers, Private Commercial Carriers, and the Filing of Evidence of Insurance and Financial Responsibility of Motor Carriers, 150 C.S.R. 9, are promulgated as proposed rules for comment.

IT IS FURTHER ORDERED that the Commission Executive Secretary file a copy of the text of the proposed Rules Governing Motor Carriers, Private Commercial Carriers, and the Filing of Evidence of Insurance and Financial Responsibility of Motor Carriers with the required forms with the office of the West Virginia Secretary of State.

IT IS FURTHER ORDERED that the attached amended Rules for the Construction and Filing of Tariffs, 150 C.S.R. 2, are promulgated as proposed rules for comment.

IT IS FURTHER ORDERED that the Commission Executive Secretary file a copy of the text of the proposed Rules for the Construction and Filing of Tariffs with the required forms with the office of the West Virginia Secretary of State.

IT IS FURTHER ORDERED that written initial comments concerning the attached proposed rules shall be filed with the Public Service Commission on or before 4:00 p.m., September 3, 2020. Reply comments will be due by 4:00 p.m., October 5, 2020. All comments filed in these matters shall be submitted to Connie Graley, Executive Secretary, P.O. Box 812, Charleston, WV 25323. Comments addressing only one series of the proposed rules (i.e. only Motor Carrier Rules) should reference only the applicable General Order Number.

IT IS FURTHER ORDERED that the Commission Executive Secretary shall cause a copy of the notice attached as Attachment C to be published once in newspapers of general circulation in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling and Williamson. The Executive Secretary shall thereafter file proof of publication of each notice in this proceeding.

IT IS FURTHER ORDERED that the Executive Secretary serve a copy of this Order on all common and contract carriers by motor vehicle subject to Commission jurisdiction, all municipal utilities and all transfer stations in West Virginia by electronic service if e-service agreements are on file, or by United States First Class Mail and on Staff by hand delivery.

JRA/s
mcgo64.5

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

MC GENERAL ORDER NO. 64.5

In the Matter of Revisions to the Rules
Governing Motor Carriers, Private Commercial
Carriers, and the Filing of Evidence of
Insurance and Financial Responsibility by
Motor Carriers, 150 C.S.R. 9

GENERAL ORDER NO. 183.12

In the Matter of Revisions to the Rules for the
Construction and Filing of Tariffs, 150 C.S.R. 2

NOTICE OF RULEMAKING AND COMMENT PERIOD

By Order issued on July 22, 2020, the Public Service Commission of West Virginia issued proposed Rules for the Construction and Filing of Tariffs, 150 C.S.R. 2, (Tariff Rules) and proposed Rules Governing Motor Carriers, Private Commercial Carriers, and the Filing of Evidence of Insurance and Financial Responsibility of Motor Carriers, 150 C.S.R. 9, (Motor Carrier Rules). The majority of the proposed rule changes accommodate legislation passed during the most recent legislative session.

Anyone interested may obtain a copy of the Commission Order and the proposed Tariff Rules and Motor Carrier Rules on the Commission's website (www.psc.state.wv.us) or by request to Connie Graley, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, WV 25323. Please reference MC General Order No 64.5 and General Order No. 183.12.

Written comments on the Proposed Tariff Rules and Motor Carrier Rules may be filed with the Commission Executive Secretary, according to this schedule:

Deadline for written initial comment, 4:00 p.m., September 3, 2020.

Deadline for written reply comments, 4:00 p.m., October 5, 2020.

Persons requesting that the Commission hold a hearing on the proposed rule should include a request and a reasons for the hearing in their written comments.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA