

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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FILED
JUN 8 3 52 PM '93
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.

AGENCY: Public Service Commission TITLE NUMBER: 150

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 2

TITLE OF RULE BEING AMENDED: Rules and Regulations for the Government
Construction and Filing of Tariffs of Public Utilities and Comon Carriers
By Motor Vehicle.

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) _____

SECTION _____, PASSED ON _____

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: August 7, 1993

Boyce Griffith, Chairman

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 8th day of June, 1993.

GENERAL ORDER NO. 166.10

IN THE MATTER OF revision of Tariff Form Nos. 8, 8-A and 9 of the Commission's Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicles.

COMMISSION ORDER ADOPTING RULE

On November 9, 1992, the Commission entered an order stating that the Commission's attention had been brought to the need for clarification of Tariff Form Nos. 8, Public Change in Rates; 8-A, Public Notice of Change in Rates Upon Application; and, 9, Notice of Public Hearing of the Commission's Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicles (Tariff Rules), in order to dispel the possible interpretation that the utility's proposed rates will be the maximum increase in rates ordered by the Commission at the conclusion of the utility's proceeding. Thus, the Commission promulgated revised Tariff Form Nos. 8, 8-A and 9 noting that these Forms will provide the necessary clarification.

Also, in its order, the Commission ordered that a sixty day comment period be established and comments filed with the Commission's Executive Secretary by January 8, 1993, by 4:00 p.m. The Commission also required the Executive Secretary to publish a copy of its order

in a newspaper of general circulation in Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Grafton, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling, and Williamson.

DISCUSSION OF COMMENTS

Hope Gas, Inc. (Hope) suggests that the first paragraph of the proposed language be modified to read as follows:

"The ~~increases~~ changes shown are based on averages of all customers in the indicated class. Individual customers may receive changes ~~increases~~ that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. ~~Any increase in rates and charges will not become effective until authorized and approved by the Public Service Commission.~~ If a hearing is conducted, notice will be given of the time and place of hearing.

According to Hope, its modifications recognize that rates may either increase or decrease. The Commission has decided to reject the modifications since the language as proposed, and adopted herein, does recognize that rates may be increased or decreased.

In their comments, Appalachian Power Company (APCO) and Wheeling Power Company (Wheeling) state that the time limitations specified for the filing of a petition to intervene in the Commission's proposed revisions of Tariff Form Nos. 8 and 8-A are inconsistent with Rule 12 of the Commission's Rules of Practice and Procedure. The Commission does not agree with APCO and Hope.

Tariff Form Nos. 8 and 8-A provide, in part, that:

Anyone desiring to protest or intervene should file a written protest or notice of intervention within 25 days following the date of this publication unless otherwise modified by Commission order.

Rule 12.6 of the Commission's Rules of Practice and Procedure provides, in part, that:

12.6 (a) Any person having a legal interest in the subject matter of any hearing or investigation pending before the Commission may petition or move orally for leave to intervene in such proceeding prior to or at the time it is called for hearing, but not thereafter except for good cause shown. If leave is granted, the petitioner becomes an intervenor and a party to the proceeding with the right to have notice of and appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard on the argument of the case.

At first blush, the language of Form 8 and 8-A appears to be in conflict with Rule 12.6(a). However, upon closer scrutiny, it is obvious that there is no conflict. While the Forms do contain a time period for the filing of petitions to intervene, that time period is not mandatory since it is prefaced by the words should file, rather than shall file. Thus, in accordance with Rule 12.6(a), an interested party could file a petition to intervene after the 25 day time period and still have that petition accepted. Of course, anyone who does not file within the 25 day period runs the risk that the Commission may enter an order adverse to that entity's interests. If the Commission issues a final order, that entity may not have the opportunity to seek intervenor status.

FINDINGS OF FACT

1. On November 9, 1993, the Commission entered an order promulgating, as proposed Legislative Rules, a revision of Tariff Form Nos. 8, 8-A and 9 of the Commission's Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicles.

2. Interested parties were afforded sixty days in which to submit comments. The Commission received four comments.

3. The Commission has reviewed its proposed rule and considered the comments filed by interested parties.

4. West Virginia Code §24-1-7 provides that any rule finally adopted by the Public Service Commission may not become effective sooner than sixty (60) days after the filing of the finally adopted rules the State Register.

CONCLUSION OF LAW


The Commission concludes that it is in the public interest to adopt the amendments attached herein as the final rules of the Commission and that notice of the approval should be filed in the State Register.

ORDER

IT IS, THEREFORE, ORDERED that the proposed Forms, as amended, copies of which are attached hereto, are approved.

IT IS FURTHER ORDERED that the Commission's Executive Secretary serve a copy of this order upon all parties of record by United States First Class Mail and upon Commission Staff by hand delivery.

A True Copy, Teste:


Howard M. Cunningham
Executive Secretary

PGM:sn

Tariff Form No. 8
PUBLIC NOTICE OF CHANGE IN RATES WITH PROPOSED EFFECTIVE DATES
(Tariff Rule No. 23)

NOTICE is hereby given that _____, a public utility, has filed with the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, a tariff containing increased rates, tolls and charges for furnishing _____ service to _____ customers at _____ in the County(ies) of _____.

The proposed increased rates and charges will become effective _____ unless otherwise ordered by the Public Service Commission and will produce approximately \$ _____ annually in additional revenue, an increase of _____%. The average monthly bill for the various classes of customers will be changed as follows:

| | (\$) INCREASE | (%) INCREASE |
|-------------|---------------|--------------|
| Residential | \$ _____ | % _____ |
| Commercial | \$ _____ | % _____ |
| Industrial | \$ _____ | % _____ |
| Resale | \$ _____ | % _____ |
| Other | \$ _____ | % _____ |

(If no rate increase involved, concisely describe nature of filing)

The increases shown are based on averages of all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. Any increase in rates and charges will not become effective until authorized and approved by the Public Service Commission. (If a hearing is scheduled, notice will be given of the time and place of hearing.)

Anyone desiring to protest or intervene should file a written protest or notice of intervention within 25 days following the date of this publication unless otherwise modified by Commission order. Failure to timely protest or intervene can affect your rights to protest any rate increases and to participate in future proceedings. All protests or request to intervene should briefly state the reason for the protest or intervention. Request to intervene must comply with the Commission's rules on intervention. All protests and intervention should be addressed to The Secretary, Public Service Commission of West Virginia, P. O. Box 812, Charleston, West Virginia 25323.

A complete copy of this tariff, as well as a representative of the Company to provide any information requested concerning it, is available to all customers, prospective customers or their agents at any of the following offices of the Company:

(List with each publication only those offices applicable)

A copy of this tariff is also available for public inspection at the Office of the Secretary of the PUBLIC SERVICE COMMISSION at 201 Brooks Street, Charleston, West Virginia.

Anyone desiring to protest the increased rates and charges contained in this tariff should do so in writing at least five (5) days prior to the effective date. All protests should briefly state the reason for the protest and should be addressed to the Secretary, Public Service Commission of West Virginia, P. O. Box 812, Charleston, West Virginia 25323.

NOTE: Certificate of publication to be filed with Commission within 15 days of date of publication.

Tariff Form No. 8-A

PUBLIC NOTICE OF CHANGE IN RATES UPON APPLICATION
PUBLIC NOTICE OF CHANGE IN RATES UPON APPLICATION
WITHOUT PROPOSED EFFECTIVE DATES

(Tariff Rule No. 19)

NOTICE is hereby given that _____, a public utility, has on _____, 19____, filed with the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, an application containing increased rates, tolls and charges for furnishing _____ service to _____ customers at _____ in the County(ies) of _____.

The proposed increased rates and charges will produce approximately \$_____ annually in additional revenue, an increase of _____%. The average monthly bill for the various classes of customers will be changed as follows:

| | (\$ INCREASE | (% INCREASE |
|-------------|--------------|-------------|
| Residential | \$ _____ | % _____ |
| Commercial | \$ _____ | % _____ |
| Industrial | \$ _____ | % _____ |
| Resale | \$ _____ | % _____ |
| Other | \$ _____ | % _____ |

(If no rate increase involved, concisely describe nature of filing)

The increases shown are based on averages of all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. The proposed/increased Any increase in rates and charges will not become effective until a public hearing has been held and have been authorized and approved by the Commission. (If a hearing is scheduled, notice will be given of the time and place of hearing.)

Anyone desiring to protest or intervene should file a written protest or notice of intervention within 25 days following the date of this publication unless otherwise modified by Commission order. Failure to timely protest or intervene can affect your rights to protest any rate increases and to participate in future proceedings. All protests or requests to intervene should briefly state the reason for the protest or intervention. Request to intervene must comply with the Commission's rule on intervention. All protests and intervention should be addressed to The Secretary, Public Service Commission of West Virginia, P. O. Box 812, Charleston, West Virginia 25323.

A complete copy of the proposed rates, as well as a representative of the Company to provide any information requested concerning it, is available to all customers, prospective customers or their agents at any of the following offices of the Company:

(List with each publication only those offices applicable)

A copy of proposed rates is available for public inspection at the Office of the Secretary of the PUBLIC SERVICE COMMISSION at 201 Brooks Street, Charleston, West Virginia.

Anyone desiring to protest the increased rates and charges contained in this application should do so in writing, stating the reason for the protest and should be addressed to The Secretary, Public Service Commission of West Virginia, P. O. Box 812, Charleston, West Virginia 25323.

NOTE: Certificate of publication to be filed with Commission within 15 days of date of publication.

Tariff Form No. 9

NOTICE OF PUBLIC HEARING
(Tariff Rule No. 19)

A hearing will be held by the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA, in its Hearing Room at 201 Brooks Street, Charleston on _____, at _____ concerning the increased rates and charges filed by _____, a public utility, for furnishing _____ to _____ customers at _____ in the County(ies) of _____. Anyone desiring to protest the approval of these increased rates may appear at the hearing or may file a written protest to: The Office of the Secretary of the PUBLIC SERVICE COMMISSION at 201 Brooks Street, Charleston, West Virginia.

The proposed increased rates and charges will produce approximately \$_____ annually in additional revenue, an increase of _____%. The average monthly bill for the various classes of customers will be changed as follows:

| | (\$) INCREASE | (%) INCREASE |
|-------------|----------------|--------------|
| Residential | \$ _____ | % _____ |
| Commercial | \$ _____ | % _____ |
| Industrial | \$ _____ | % _____ |
| Resale | \$ _____ | % _____ |
| Other | \$ _____ | % _____ |

(If no rate increase involved, concisely describe nature of filing)

The increases shown are based on averages of all customers in the indicated class. Individual customers may receive increases that are greater or less than average. Furthermore, the requested rates and charges are only a proposal and are subject to change (increases or decreases) by the Public Service Commission in its review of this filing. The proposed/increased Any increase in rates and charges will not become effective until authorized and approved by the Commission.

A complete copy of the proposed rates, as well as a representative of the Company to provide any information requested concerning it, is available to all customers, prospective customers or their agents at any of the following offices of the Company:

(List with each publication only those offices applicable)

A copy of this tariff is also available for public inspection at the Office of the Secretary of the PUBLIC SERVICE COMMISSION at 201 Brooks Street, Charleston, West Virginia.

NOTE: Certificate of publication to be filed with Commission within 15 days of date of publication.