

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #7

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1989 APR. 28 PM 12:52

OFFICE OF THE SECRETARY OF STATE

NOTICE OF AN EMERGENCY RULE

AGENCY: Public Service Commission TITLE NUMBER: _____

CITE AUTHORITY: §§24-1-1, 24-1-7, 24-2-1, 24-2-2, 24A-1-1 and 24A-2-4a

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES X, NO _____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: II

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

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: _____

TITLE OF RULE BEING FILED AS AN EMERGENCY: _____

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE UPON FILING.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

On April 8, 1989, the West Virginia Legislature passed Enrolled Committee Substitute for Senate Bill No. 301 which, inter alia, provided for the pass-through of increases in landfill tip fees as rate surcharges for motor carriers of solid waste. In pertinent part, specifically Code, §24A-2-4a, this enactment provides that common carriers transporting solid waste pursuant to the Commission's jurisdiction may make application to the Commission for approval of a rate surcharge to pass through any increases in disposal rates charged by landfills at which said carriers dispose of solid waste.

Said section also provides that the Commission shall process such rate surcharge applications within fourteen days of the receipt thereof.

Use Additional Sheets If Necessary.

Olis D. Castro

Said section further provides that the Commission shall immediately promulgate emergency rules which set forth the procedures for the filing of the tip fee rate surcharge application in order to provide an expedited process which will allow the subject motor carriers to pass through tip fee increases to all customers. This enactment recognizes, and the Commission is aware, that solid waste common carriers operating in this state are oftentimes faced with rapidly escalating landfill costs (tip fees), the effects of which may not be fully realized or quickly recovered in the context of a more extensive rate case procedure.

West Virginia Code, §29A-3-15 gives the Public Service Commission authority to promulgate emergency rules which are effective upon the filing of such rules, with a statement of facts and circumstances constituting the emergency, in the State Register. An emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

The Commission is of the opinion that it is reasonable and necessary to promulgate the rules attached hereto as emergency rules in order to respond to the mandate of Code, §24A-2-4a, since said enactment will allow motor carriers of solid waste to apply for rate surcharges on an expedited basis when increases in landfill tip fees occur. The use of emergency rulemaking powers is essential to a timely response to the legislative mandate, and to exigencies in the solid waste transportation industry.

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF EMERGENCY RULE

RULE TITLE; Emergency Rate Surcharge Application for Common Carriers of Solid Waste to Recover Increase in Tip Fees Pursuant to West Virginia Code, §24A-2-4a.

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

On April 8, 1989, the West Virginia Legislature passed Enrolled Committee Substitute for Senate Bill No. 301 which, inter alia, provided for the pass-through of increases in landfill tip fees as rate surcharges for motor carriers of solid waste. In pertinent part, specifically Code, §24A-2-4a, this enactment provides that common carriers transporting solid waste pursuant to the Commission's jurisdiction may make application to the Commission for approval of a rate surcharge to pass through any increases in disposal rates charged by landfills at which said carriers dispose of solid waste.

Said section also provides that the Commission shall process such rate surcharge applications within fourteen days of the receipt thereof.

Said section further provides that the Commission shall immediately promulgate emergency rules which set forth the procedures for the filing of the tip fee rate surcharge application in order to provide an expedited process which will allow the subject motor carriers to pass through tip fee increases to all customers. This enactment recognizes, and the Commission is aware, that solid waste common carriers operating in this state are oftentimes faced with rapidly escalating landfill costs (tip fees), the effects of which may not be fully realized or quickly recovered in the context of a more extensive rate case procedure.

West Virginia Code, §29A-3-15 gives the Public Service Commission authority to promulgate emergency rules which are effective upon the filing of such rules, with a statement of facts and circumstances constituting the emergency, in the State Register. An emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety, or welfare.

The Commission is of the opinion that it is reasonable and necessary to promulgate the rules attached hereto as emergency rules in

order to respond to the mandate of Code, §24A-2-4a, since said enactment will allow motor carriers of solid waste to apply for rate surcharges on an expedited basis when increases in landfill tip fees occur. The use of emergency rulemaking powers is essential to a timely response to the legislative mandate, and to exigencies in the solid waste transportation industry.

Date: April 28, 1989


Boyce Griffith, Chairman

WEST VIRGINIA EMERGENCY RULE
PUBLIC SERVICE COMMISSION
CHAPTER 24-1
SERIES II

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

RULES AND REGULATIONS FOR
THE GOVERNMENT OF THE
CONSTRUCTION AND FILING OF TARIFFS
OF PUBLIC UTILITIES AND
COMMON CARRIERS BY MOTOR VEHICLE

1.0 GENERAL

1.1 Scope - These rules govern the construction and filing of tariffs of public utilities in West Virginia subject to the jurisdiction of the Public Service Commission of West Virginia pursuant to West Virginia Code §24-2-1.

1.2 Authority - West Virginia Code §§24-1-1, 24-1-7, 24-2-1, 24-2-2, 24A-1-1, and 24A-2-4a.

1.3 Filing Date - April 28, 1989.

1.4 Effective Date - April 28, 1989.

13. ACCELERATED RATE PROCEDURE FOR GAS, WATER AND ELECTRIC UTILITIES AND COMMON CARRIERS OF SOLID WASTE.

13.4 Rule 30-E. The following accelerated procedure may be used by motor common carriers of solid waste applying for a rate surcharge because of an increase or decrease in the disposal rates, commonly known as tip fees, charged by landfills.

Section A. If any motor carrier of solid waste is required to pay higher tip fees as a result of increased landfill costs, or as a result of a rate filing pending before this Commission, or any increases imposed by landfills prior to July 1, 1989, such motor carrier may file amended tariffs with this Commission stating rates and charges designed to produce additional revenues sufficient, but no more than sufficient to offset such increased costs for tip fees and request an effective date for such amended rates not prior to the date it incurs said higher costs.

The Commission may investigate the reasonableness of the new rates so sought by the motor carrier to determine:

(1) Whether the increase in tip fees is duly authorized and collectible by the landfill, or whether such increase in tip fees has in fact been imposed, if such increase is to occur prior to July 1, 1989;

(2) Whether the increase in rates filed by the motor carrier are no more than sufficient to offset such increased costs;

(3) The effective date of such costs and the permanency thereof; and

(4) The possibility of the motor carrier receiving a refund at the termination of the proceeding in which the increased tip fees are pending.

Any motor carrier using the foregoing procedure shall file a petition simultaneously with the tariff filing, invoking the provision of this rule.

Before placing rates into effect pursuant to this procedure, the motor carrier shall enter into an agreement and undertaking that, if it shall receive a refund or reduction of all or part of the higher tip fees upon which are based its increased rates and charges placed into effect as authorized by this procedure, it will comply with such order as the Commission shall thereafter make in reference to such refund or tip fee reduction so received.

Section B. When any motor carrier which has increased its rates pursuant to proceedings under this rule receives a reduction, or a refund, on the tip fees of any landfill whose rates and charges were the basis for the rate increase proceedings under this rule, it shall report promptly to this Commission the new reduced rates and charges so ordered and the annual savings in costs resulting to the motor carrier from such reduction from the date said landfill increased its rates under this rule, or the amount of refund and the period to which it relates. Whereupon, this Commission may conduct an investigation to determine:

(1) The amount of the reduction;

(2) The effective date of the reduction;

(3) The manner in which, and the extent to which, the motor carrier shall make refunds to its customers as a result of any refund received from a landfill to which it transports solid waste; and

(4) The manner in which, and the extent to which, the motor carrier shall amend or adjust its rates to give effect to such reduction.

Any motor carrier which invokes the proceedings provided under Section A, hereof shall be deemed to have consented in advance to the proceedings under Section B.

Nothing in this rule shall be construed to prevent the Commission from investigating, in a separate proceeding, whether a motor carrier should absorb all or part of an increase in tip fees from a landfill.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
CHARLESTON, WEST VIRGINIA

RULE 30-E APPLICATION
COMMON CARRIERS OF SOLID WASTE
EMERGENCY RATE SURCHARGE

1. Name, address and phone number of Applicant:

Area Code () _____
(telephone number)

2. M. C. Certificate Number(s) affected:

3. Landfill name and address:

4. Tons dumped at landfill annually ^{*} _____ tons.
Old rate per ton [most recent] \$ _____/ton.
New rate per ton \$ _____/ton.
Effective date of new rate _____
5. Number of residential customers [for each certificate] _____
Number of commercial customers [for each certificate] _____
Annual residential revenues ^{*} \$ _____.
Annual commercial revenues ^{*} \$ _____.

* Most recent 12-month period.

STATE OF WEST VIRGINIA,

COUNTY OF _____, to-wit:

_____, being first duly sworn, says that the facts and allegations contained in the foregoing Application are true, except so far as they are therein stated to be on information and belief, and that where therein stated to be on information and belief affiant believes them to be true.

(Signature)

(Relationship to Applicant)

Taken, sworn to and subscribed before me, the undersigned authority, this _____ day of _____, 19____.

My commission expires _____.

(Notary Public)

[If you have questions concerning this application, you may call the Commission's Motor Carrier Rates Section, Utilities Division, at (304) 340-0386, between the hours of 9:00 A.M. - 5:00 P.M. Monday-Friday.]