

# Public Service Commission

Richard E. Hitt, General Counsel



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January 15, 2004

FILED IN THE OFFICE OF  
THE SECRETARY OF STATE  
THIS DATE Jan. 20, 2004  
ADMINISTRATIVE LAW DIVISION

Judy Cooper, Director  
Administrative Law Division  
Secretary of State's Office  
Building 1, Suite 157K  
1900 Kanawha Blvd. E.  
Charleston, WV 25305-0771

Re: Proposed Rulemaking 150 C.S.R. 4A

Dear Judy:

As indicated in the attached order, the Commission has decided to withdraw its proposed rules issued September 17, 2002, entitled "Rules for the Licensing of Competitive Gas Service Providers", 150 C.S.R. 4A.

If we are required to file something further with your office, please let me know and I will promptly take care of it. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. Hitt", written over a large, stylized circular flourish.

Richard E. Hitt  
General Counsel

REH/cbd

Enclosure

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**PUBLIC SERVICE COMMISSION**  
**OF WEST VIRGINIA**  
**CHARLESTON**

2004 JAN 20 P 2:00  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 20<sup>th</sup> day of January, 2004.

**GENERAL ORDER NO. 185.19**

In the matter of a rulemaking to govern open access to the gas supply market and gas utilities' conduct toward affiliates and competitive suppliers.

**COMMISSION ORDER**

By this Order the Commission withdraws its Proposed Rules and closes this proceeding.

**Background**

By notice of proposed rulemaking entered May 18, 2001, the Commission instituted this proceeding for the purpose of developing rules governing the provision of open access to the gas supply market and gas utilities' conduct toward their affiliates and competitive suppliers. Prior to proposing rules, the Commission sought comments regarding the content, extent and nature of such proposed Rules. The Commission invited general comments on the scope of the rules, and recommended language for proposed rules.

Considering the recent aggregation rules and other developments in the natural gas supply market, the Commission requested that interested parties file comments addressing the following issues:

- (1) rules for licensing, certification or registration of gas suppliers;
- (2) a code of conduct for participants in a competitive market; and
- (3) any other consumer protection issues that should be addressed within the context of a developing competitive supply market for natural gas.

The Commission set forth a schedule for the filing of preliminary and reply comments in this proceeding and stated its intention to issue proposed rules in the Fall of 2001. The Commission stated that when the proposed rules were issued, a further procedural schedule would be established. Appropriate notice of this proceeding was published.

Initial and Reply comments were received.

By Order issued September 5, 2001, the Commission formed a task force for the purpose of deliberating upon and proposing consensus rules to the Commission. The Commission further required Commission Staff to file "strawman" rules in this proceeding on or before September 30, 2001. Notice of the formation of the task force and the opportunity for interested parties to participate was properly published.

On April 3, 2002, Staff filed a letter explaining that the parties had not reached a consensus on rules and that the parties were fractured between two principal groups: the Consumers Group and the Market Participants.

The Market Participants group stated that they believe the current state of development of the competitive gas market does not merit the imposition of a Code of Conduct. In support of this position, the Market Participants state that gas marketers have little or no interest in expanding business in West Virginia. In the tiny gas market that does exist for large industrial customers, marketers are not worried that utility affiliates enjoy an unfair advantage over other marketers. The Market Participants fear that the imposition of regulatory requirements will deter, if not preclude, development of a vigorous competitive market.

Weirton Steel Corporation filed a "Position Regarding the Various Rules Proposed By Task Force Participants." Weirton did not join with either the Consumers Group or the Market Participants Group. Weirton indicated that it regarded the proposals of both groups to be extreme and went on to advocate its preferences in each category of rules. The West Virginia Energy Users Group later filed a letter in support of Weirton's position.

By Order issued September 17, 2002, the Commission promulgated as proposed legislative rules the following: Rules for the Licensing of Competitive Gas Service Providers, 150 C.S.R. 4A. In so doing, the Commission reduced the scope of this rulemaking proceeding from three separate sets of rules down to one set of rules for licensing. The Commission did not propose code of conduct or consumer protection rules

in view of its opinion that end users of competitive gas supply will be limited to large industrial and commercial customers who are in a position to protect themselves in the marketplace, and that participation by individual residential and small commercial customers will be very limited. The Commission stated that it would take up rules on those topics when the gas market matured to the point where the issuance of code of conduct and consumer protection rules are necessary. The Order set a sixty-day comment period and the last comments were filed in December 2002.

### DISCUSSION

Upon review of these proceedings, the Commission has determined to withdraw its proposed rules, and to study this matter independently prior to deciding whether to commence a new rule making on the same subject.

Accordingly, upon entry hereof, the proposed Rules for the Licensing of Competitive Gas Service Providers, 150 C.S.R. 4A, adopted by Commission Order issued September 17, 2002, will be withdrawn and this case shall be closed.

### ORDER

IT IS THEREFORE ORDERED that the proposed Rules for the Licensing of Competitive Gas Service Providers, Title 150 Code of State Regulations, Series 4A, and the forms attached thereto, are hereby withdrawn.

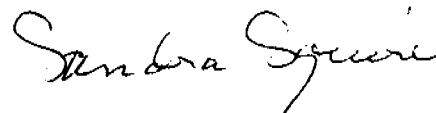
IT IS FURTHER ORDERED that the Executive Secretary shall file a copy of this Order with the Office of the Secretary of State.

IT IS FURTHER ORDERED that upon entry hereof, this case is resolved and shall be removed from the Commission's open docket.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall serve a copy of this order upon all parties of record in this proceeding, and all natural gas utilities operating in the State, by First Class United States Mail, and upon Commission Staff by hand delivery.

A True Copy, Teste:

JML/ljm  
go18519cd.wpd

  
Sandra Squire  
Executive Secretary