



1987 MAR 11

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help we can get)

STATE OF WEST VIRGINIA
SECRETARY OF STATE
Charleston 25305

PROPOSED RULES

STATE REGISTER FILING

=====

AGENCY PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

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TYPE OF RULE Legislative

TITLE OF RULE Rules and Regulations Governing the Transportation of Natural Gas

CHAPTER 24 ARTICLE 1 SERIES XVI

AUTHORITY 24-1-7

CHECK APPLICABLE ITEMS BELOW TO SHOW KIND OF ACTION BEING TAKEN

NEW RULE

NOTICE OF HEARING

AMENDMENTS TO EXISTING RULE

NOTICE OF AGENCY APPROVAL
(legislative rules only)

REPEAL OF EXISTING RULE

NOTICE OF AGENCY ADOPTION
(interpretive & procedural
rules only)

NOTE: ALL FILINGS REQUIRE ONLY
ONE COPY, EXCEPT FINAL
FILING OF RULES WHICH
REQUIRES AN ORIGINAL AND
A COPY.

FINAL FILING

FIRST EMERGENCY FILING

SECOND EMERGENCY FILING

PSC
Leg. Rule/Adm. Reg. 24-1
Series XVI

GENERAL ORDER NO. 228

Rules and Regulations Governing
the Transportation of Natural Gas.

ABSTRACT OF PROMULGATION HISTORY

The Public Service Commission is authorized by West Virginia Code §§24-3-3a(b), 24-2-11(b) and related provisions of the West Virginia Code to issue rules and regulations governing the construction and operation of gas pipeline facilities within the State of West Virginia and the associated rates and practices of gas pipeline operators in order to regulate and promote the transportation of natural gas within the State of West Virginia, in accordance with the mandate of Senate Bill No. 117, which became effective on March 12, 1983.

On June 10, 1986, the Commission issued proposed rules and regulations governing the transportation of natural gas within the State of West Virginia. A period for receiving written public comment was extended from July 11, 1986 until July 31, 1986, by order entered on July 8, 1986. Further, public hearings on the proposed rules were conducted on August 20 and 21, 1986. After the hearings, all interested parties were provided the opportunity to submit further comments or briefs on or before September 17, 1986.

Upon review of the comments submitted by various parties the Commission has determined that some of the proposed modifications should be adopted, and other changes made on the Commission's own initiative. Therefore, on March , 1987, the Commission adopted the rules hereinafter set forth as the Rules and Regulations Governing the Transportation of Natural Gas as final rules to become effective sixty days after promulgation, in accordance with West Virginia Code §24-1-7.

GENERAL ORDER NO. 228

Rules and Regulations Governing
the Transportation of Natural Gas.

FISCAL NOTE

This is a Fiscal Note issued pursuant to §§29A-3-4, 29A-3-5, 29A-3-9, and 24-1-7 of the West Virginia Code, relating to General Order No. 228, State Implementation of Natural Gas Transportation Policies.

I. OBJECTIVES OF THE RULE

The purpose of these rules and regulations is to provide a flexible framework within which transporters of natural gas can operate to maximize the economic utilization of their pipeline systems, maximize the benefits of open access to local and interstate gas supplies for West Virginia customers and eliminate non-economic bypass of existing pipeline facilities.

II. COST OF IMPLEMENTING THE ATTACHED FINAL RULES

A. Cost of Implementation for the State

The administration and enforcement of these rules will require no new personnel, equipment or supplies and will require no substantial changes in work assignments or procedures.

B. Cost of Implementation for Persons Affected by the Proposed Rule

The cost of implementing the proposed rule is difficult to determine at this stage of this rulemaking proceeding, however, it should be minimal.

PSC
Leg. Rule/Adm. Reg. 24-1
Series XVI

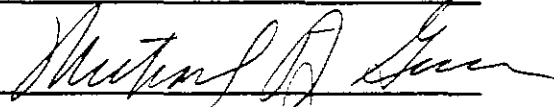
III. THE EFFECT THIS MEASURE WILL HAVE ON THE COSTS AND REVENUES OF STATE GOVERNMENT (Information required by fiscal notes for either house of the Legislature)

There will be no effect on the cost and revenues of State Government:

IV. ECONOMIC IMPACT OF THE RULES ON THE STATE OR ITS RESIDENTS

A quantifiable economic impact is difficult to predict at this time. However, the Commission foresees a positive economic impact of the proposed rule as it will allow transporters of natural gas to maximize the economic utilization of their pipeline system, maximize the benefits of open access to local and interstate gas supplies for West Virginia customers and eliminate non-economic bypass of existing pipeline facilities.

DATE March 11, 1987 AGENCY Public Service Commission

SIGNATURE OF AUTHORIZED REPRESENTATIVE 

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
LEGISLATIVE RULE
CHAPTER 24-1
SERIES XVI

FILED
MAY 11 1971
MARTIN

TITLE: RULES GOVERNING THE TRANSPORTATION OF NATURAL GAS

- SECTION: 1.0 General
2.0 Transportation Obligations
3.0 Transportation Rates, Practices and Services
4.0 Bypass
5.0 Utility to Utility Competition
6.0 Existing Transportation Arrangements
7.0 Priority of Service
8.0 Reporting Requirements
9.0 Modifications

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
LEGISLATIVE RULE
CHAPTER 24-1
SERIES XVI

RULES GOVERNING THE TRANSPORTATION OF NATURAL GAS

1.0 GENERAL

1.1 Scope - This legislative rule applies to the transportation of natural gas within the State of West Virginia.

1.2 Authority - West Virginia Code §§24-3-3a, 24-1-1, 24-1-7, 24-2-7, and 24-2-11.

1.3 Filing date -

1.4 Effective date -

1.5 Definitions

(a) Benchmark Fully Distributed Cost Based Rate

The term "benchmark fully distributed cost based rate" means a rate for a transportation service which represents the full embedded costs associated with providing the service.

(b) Benchmark Incremental Rate

The term "benchmark incremental rate" means a rate for a transportation service which represents the short-run variable costs associated with providing the service.

(c) Bypass

The term "bypass" means the connection by an end-user to facilities other than facilities owned by a utility for the purpose of receiving natural gas through such alternate facilities.

(d) End-User

The term "end-user" shall mean any person, firm or corporation which is the ultimate consumer of natural gas.

Title 150

FILED

MAR 11 1987

PUBLIC SERVICE COMMISSION
~~OF WEST VIRGINIA~~
LEGISLATIVE RULE
~~CHAPTER 24-1~~
SERIES XVI *16*

SECRETARY

RULES GOVERNING THE TRANSPORTATION OF NATURAL GAS

1.0 GENERAL

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1.2 Authority - West Virginia Code §§24-3-3a, 24-1-1, 24-1-7, 24-2-7, and 24-2-11.

1.3 Filing date - *March 11, 1987*

1.4 Effective date - *May 11, 1987*

1.5 Definitions

(a) Benchmark Fully Distributed Cost Based Rate

The term "benchmark fully distributed cost based rate" means a rate for a transportation service which represents the full embedded costs associated with providing the service.

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The term "benchmark incremental rate" means a rate for a transportation service which represents the short-run variable costs associated with providing the service.

(c) Bypass

The term "bypass" means the connection by an end-user to facilities other than facilities owned by a utility for the purpose of receiving natural gas through such alternate facilities.

(d) End-User

The term "end-user" shall mean any person, firm or corporation which is the ultimate consumer of natural gas.

(e) Full Commodity Service

The term "full commodity service" means the supplying of utility owned natural gas.

(f) Gathering Facilities

The term "gathering facilities" shall include all pipelines and related facilities used to collect the gas production of one or more wells for the purpose of moving such production from the well(s) into the facilities of an interstate pipeline, a utility, or an intrastate pipeline. For the purposes of these rules, gathering facilities shall not be considered either public utilities or intrastate pipelines.

(g) Interstate Pipeline

The term "interstate pipeline" means any person, firm, or corporation engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. §717.

(h) Intrastate Pipeline

The term "intrastate pipeline" means any person, firm or corporation engaged in natural gas transportation in intrastate commerce to or for another person, firm or corporation for compensation.

(i) Public Utility Service Area

The term "public utility service area" includes those present and future end-users located within the communities and environs specified in the utility's tariff sheets.

(j) Unbundle

The term "unbundle" shall mean the separation of distinct transportation services, or services associated therewith, which allows an identification of the charge for each component of the service provided.

(k) Utility

The term "utility" or "public utility" means any person, firm or corporation subject to the Commission's jurisdiction under West Virginia Code §24-2-1.

2.0. TRANSPORTATION OBLIGATIONS

- 2.1 All natural gas public utilities and intrastate pipelines shall provide non-discriminatory transportation of customer-owned gas, upon request, upon a first come/first served basis, to persons requesting such service over the existing facilities of the utility or intrastate pipeline.
- 2.2 The obligation to provide transportation service shall be subject to valid capacity restraints.
- (a) A rebuttable presumption shall exist that adequate capacity exists to provide the requested transportation service.
- (b) In the event of a dispute between an existing or potential transportation customer and a public utility or intrastate pipeline over the adequacy of capacity to provide the requested transportation service, the Commission shall resolve the dispute through its complaint procedures in which the utility or intrastate pipeline will have the initial burden of overcoming a presumption that adequate capacity does exist.
- 2.3 The information required by a utility or intrastate pipeline to process a request for transportation service shall be clearly set forth within an application form which shall be made available, at the time of the request, to the person requesting transportation service.
- (a) The application form shall be contained within the utility's or intrastate pipeline's proposed transportation tariffs.
- (b) The requirements of such forms shall be just and reasonable and shall not be unduly burdensome upon the applicant for transportation services.
- 2.4 All requests for transportation services shall be processed, approved or rejected, by the utility or intrastate pipeline within ten working days following the submission of a completed application form which requests such service. If

the request has been rejected, written reasons for such rejection shall be given at the time of the rejection together with an indication of the revisions which would make the application acceptable, if at all.

- 2.5 All transportation services to be offered and policies and practices with respect thereto shall be applied without unjust discrimination or preference, either as to affiliates or nonaffiliates.

3.0 TRANSPORTATION RATES, PRACTICES AND SERVICES

- 3.1 No later than the effective date of these rules each gas utility shall file proposed transportation tariffs, to be effective within fifteen days following the filing date, which unbundle the transportation services to be rendered by the utility, set forth the conditions of service, and establish just and reasonable rates for service. The proposed tariffs may be suspended and will become effective, revised or rejected upon the further order of the Commission.

- (a) Unless otherwise acted upon by the Commission, the tariffs filed pursuant to this section shall be considered interim provisions with respect to transportation which will be reviewed by the Commission in the entity's next general rate filing or upon complaint or the Commission's own motion.
- (b) All workpapers, data, and calculations which support and demonstrate the proposed rates and any other calculated numbers in the filed tariffs shall be filed with the proposed tariffs.
- c) Small utilities whose total annual throughput is less than 500,000 Mcf, excluding residential sales, and intrastate pipelines are exempt from the tariff filing requirements of this section. However, although exempt, such entities must offer services and charge rates with respect thereto in accordance with the provisions of this rule. This exemption is subject to future modification by the Commission. Additionally, the Commission's complaint procedure is available for the purpose of reviewing any service, practice, or policy of an entity claiming exemption under this section. Specific exemptions may be revoked by the

Commission on a case by case basis for good cause shown.

- 3.2 Utilities and intrastate pipelines shall offer, at a minimum, both firm and interruptible transportation services. Utilities and intrastate pipelines may further propose to unbundle services associated with both firm and interruptible transportation which may be appropriate to their individual operating capabilities and characteristics.
- 3.3 Tariffs filed or rates charged pursuant to these rules must, at a minimum, contain the following provisions:
- (a) Rates must be flexible, both downward and upward, from a benchmark fully distributed cost based rate. The Commission will review flexible pricing practices in rate cases, complaint cases, or in cases initiated upon its own motion.
 - (b) Generally, the benchmark fully distributed cost based rate should be the rate imposed upon a transportation service; however, flexibility, at the discretion of the transporter, is provided in order to reflect market conditions on a case by case basis.
 - (c) For natural gas produced within West Virginia, the transportation rate may not flex upward from the benchmark fully distributed cost based rate.
 - (d) The benchmark fully distributed cost based rate shall include an allowance for return on allocated rate base equal to the last rate of return authorized by the Commission for the particular utility. For entities which do not have an authorized rate of return, the benchmark fully distributed cost based rate shall include a reasonable return, which shall be documented and supported by sufficient information and data at the time of the filing, until modified by the Commission.
 - (e) The flexibility of transportation rates for each entity subject to this rule must be determined according to the following standards:
 - (1) Negotiated rates for services provided under this rule may flex downward from the benchmark fully distributed cost based rate but not below the

benchmark incremental rate, as defined in Section 1.5(b).

- (2) The provisions of this subsection (3.3(e)(2)) shall apply to utilities which provide, in addition to transportation services; full commodity service to non-transportation customers.
- (i) Negotiated rates for services provided under this rule by a utility may flex upward from the benchmark fully distributed cost based rate but not above the utility's otherwise applicable sales tariff rate excluding the utility's avoidable purchased gas commodity costs. For the purpose of calculating this maximum rate, the "utility's otherwise applicable sales tariff rate" shall be the average per unit rate computed on the basis of the utility's tariff that would apply to the volumes of throughput contemplated in the transportation agreement.
- (ii) To the extent standby sales service is contracted for, the maximum provided in this subsection shall be calculated by deducting all of the utility's purchased gas costs from the utility's otherwise applicable sales tariff rate.

EXAMPLE

The following calculations provide an example of a maximum rate determination, which has flexed upward from the benchmark fully distributed cost based rate. The example assumes a customer requesting transportation for 500 Mcf per month. To calculate the maximum transportation rate you first determine the average rate under the serving utility's applicable rate schedule. A typical rate schedule may appear as follows:

Customer Charge	\$34.00
First Mcf	6.00 per Mcf
Next 49 Mcf	5.00 per Mcf
Over 50 Mcf	4.70 per Mcf

The above rates include a PGA of \$4.30 per Mcf.

Under this rate schedule the total bill for 500 Mcf would be \$2,400 and the average per unit rate is \$4.80.

Avoidable purchased gas commodity costs are deducted from the average tariff rate to arrive at the maximum transportation rate for non-standby customers. For standby customers all purchased gas costs are deducted from the average tariff rate. Typical purchased gas costs may be made up of the following components:

Avoidable Commodity Costs	\$ 3.45 per Mcf
All Other Purchased Gas Costs	.85 per Mcf
Total PGA	\$ 4.30 per Mcf
	=====

Given the above assumed tariff rates and purchased gas costs the maximum transportation rate is determined as follows:

Non-Standby Customers:	
Average Tariff Rate	\$ 4.80
Less Avoidable Purchased Gas Costs	(3.45)
Maximum Transportation Rate	\$ 1.35
	=====

Standby Customers:	
Average Tariff Rate	\$ 4.80
Less Total Purchased Gas Costs	(4.30)
Maximum Transportation Rate	\$.50
	=====

- (iii) In the event the maximum flex rate calculated under this subsection is less than the total benchmark fully distributed cost based rate for the transportation services to be provided, the total benchmark fully distributed cost based rate shall be the maximum rate that may be charged.
- (3) Nothing within these rules regarding rate flexibility should be construed as allowing, or Commission authorization for, an elimination of a reasonable differential between rates for firm and interruptible service.
- (e) Utilities shall provide for optional standby sales service. Standby sales service shall entitle a transportation service end-user to purchase natural gas at the applicable full service commodity tariff rate, i.e., the utility's retail sales rate applicable to the particular end user. Each transportation service end-user shall be entitled to standby sales service subject to the following conditions:
 - (1) The transportation service end-user must be in compliance with the terms and conditions of the tariff relating to standby sales service, including the payment of fees.
 - (2) The transportation service end-user and the utility shall agree upon the maximum sales volumes. Volumes taken in excess of this amount may require the payment of a penalty.
 - (3) The standby sales service shall include all fixed costs, including the fixed costs associated with gas supply, associated with providing standby sales service to the transportation service end-user.
 - (4) The rate for standby sales service shall not be flexible.
 - (5) For a transportation service end-user which is not paying a standby sales service fee, the utility is

relieved from its service obligation to provide full commodity service to such end-user.

- (f) If transportation service to an end-user requires the capacity of other pipelines, the transportation rate to such end-user shall recover the costs incurred by the utility or intrastate pipeline in reserving such capacity.
- 3.4 All transportation rates and policies with respect thereto shall be applied without unjust discrimination or preference, either as to affiliates or nonaffiliates.
- 3.5 In the event the person requesting transportation service and the transporter cannot negotiate a mutually agreeable rate and/or terms of service, the dispute shall be resolved by the Commission through its complaint procedures.
- 4.0 BYPASS
- 4.1 Any person, corporation, or other entity desiring to construct or operate any facilities for the purpose of transporting natural gas to an end-user is required to file for and obtain a certificate of public convenience and necessity from the Commission prior to such construction or operation.
- (a) Ordinary extensions of existing utility systems in the usual course of business are exempt from the certificate requirements of this section.
- (b) (1) Except for pending cases before the Commission, all persons operating facilities engaged in flowing gas transportation arrangements to specific end-users as of June 10, 1986 are exempt from the certificate filing requirements of this section. However, within ninety days from the issuance of these final rules, the entities operating such facilities shall register with the Commission by filing PSC Gas Transportation Form No. 1, provided for in Section 8.0, for the twelve-month period ending December 31, 1986.
- (2) The Commission intends to proceed on a case by case basis regarding the construction or operation of facilities in gas transportation arrangements

after June 10, 1986 and prior to the effective date of these rules. Such transportation arrangements shall be subject to the reporting requirements of Section 8.0.

(c) In the case of an application pursuant to this section, the Commission intends to apply the following procedure:

- (1) The thirty-day prefiling notice provided for in West Virginia Code §24-2-11(a) is waived.
- (2) The certificate applied for will be granted, unless otherwise ordered by the Commission, on the thirty-first day following the notice required by West Virginia Code §24-2-11(a), i.e., a Class I legal advertisement, unless a bona-fide protest is received by the Commission within the thirty-day notice period.
- (3) In order to constitute a bona-fide protest, a protest must include an affidavit that the protestant, in good faith, can provide the proposed transportation service more economically.
- (4) Upon the receipt of a bona-fide protest, the Commission will proceed with a disposition of the application in an expeditious manner.

4.2 A public utility is relieved from its service obligation with respect to any end-user located in its service territory which bypasses the utility's facilities.

5.0 UTILITY TO UTILITY COMPETITION

5.1 A public utility shall not provide sales or transportation service to end-users located within the service area of another utility unless the proposed sales or transportation service meets one of the following exceptions:

- (a) the facilities of the utility whose service area is involved will be used and compensated for transportation; or,
- (b) the end user has requested transportation services from the utility whose service area is involved and has been refused the requested service due to capacity

restraints. Prior to service under this exception, the transporting utility must petition for and obtain the approval of the Commission.

- 5.2 Any dispute regarding utility to utility competition shall be resolved through the Commission's complaint procedures.

6.0 EXISTING TRANSPORTATION ARRANGEMENTS

- 6.1 All transportation arrangements pursuant to contracts which were executed and made effective prior to the effective date of this rule, will be exempt from the rate requirements of this rule, unless renegotiated to conform to such requirements, until the expiration of the term of the agreement as it existed on date of issuance of this final rule. Except as otherwise specifically exempted by these rules, all other provisions of these transportation rules shall apply to existing transportation arrangements.

7.0 PRIORITY OF SERVICE

- 7.1 For the purpose of establishing service priority, the Commission recognizes four categories of service by public utilities: firm and interruptible sales and firm and interruptible transportation. In the event of the need for curtailment, because of utility capacity reasons or utility supply shortages, firm sales and firm transportation shall have a higher priority than interruptible sales and interruptible transportation.
- 7.2 In the event of future curtailment problems, the Commission, at that time, will establish priorities among customers within the firm and interruptible services, e.g. the priority of firm residential sales as compared to firm industrial sales, the priority of interruptible commercial transportation as compared to interruptible industrial transportation.

8.0 REPORTING REQUIREMENTS

- 8.1 Every August 1, each utility and intrastate pipeline shall file reports with the Commission which shall set forth information relating to volumes of gas transported in a consecutive twelve-month period commencing thirteen months prior to the report due date. The report due on August 1

will cover volumes transported for the period beginning July 1 of the previous year through June 30 of the current year.

8.2 The information required by this subsection shall be provided upon PSC Gas Transportation Form No. 1, which will be available from the office of the Executive Secretary, Public Service Commission, P.O. Box 812, Charleston, W.Va. 25323.

9.0 MODIFICATIONS

For good cause shown in instances when the provisions of this rule adversely affect the public interest, the Commission may modify the application of these provisions on a case-by-case basis.

Detail Information

This information must be filed by all Class A or B Natural Gas Utilities. For all other transportation entities subject to General Order No. 228 this information is not required unless specifically requested by the Commission.

Annual report of.....Year ended June 30.....

Address of respondent.....

(Complete one form for each transportation contract. Add pages as needed.)

1. Name of the entity receiving the transportation service from respondent

2. Name and addresses of the end-user ultimately receiving the benefit of the transportation service

3. Applicable transportation tariff

4. Monthly transportation revenues received: (If less than the fully distributed cost based rate, add a brief statement of the justification for such lower rate.)

	<u>Per Unit Transp. Rate</u>	<u>Revenues Received</u>	<u>Volume Delivered</u>	<u>If Explanation Required See Note</u>
July	()
August	()
September	()
October	()
November	()
December	()
January	()
February	()
March	()
April	()
May	()
June	()
TOTAL	()

If Standby Service is Contracted:

Volumes Contracted

Revenues Received

Annual report of.....Year ended June 30.....

5. Disclose the affiliation, if any, of the respondent to: the entity receiving the transportation service, the end-user, and the producer

Entity Receiving Transportation

.....

.....

End User

.....

.....

Producer

.....

.....

6. Gas Supplier(s):

<u>Name</u>	<u>Location</u>
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7. Other transportation entities involved:

<u>Name</u>	<u>Address</u>	<u>Fees to be Received</u>
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8. Date deliveries commenced.....Projected termination date.....

9. Estimated maximum daily quantity.....

10. Estimated total quantity to be transported.....

Annual report of.....Year ended June 30.....

11. Locations where the gas is received and delivered and the approximate pipeline distance between such locations:

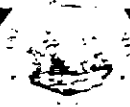
<u>Received</u>	<u>Delivered</u>	<u>Distance</u>
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12. Notes to Report:

<u>Reference</u>	<u>Explanation</u>
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Public Service Commission Of West Virginia

Michael D. Greer, Chairman
Otis D. Casto, Commissioner
Charlotte A. Lane, Commissioner



201 Brooks Street, P. O. Box 812
Charleston, West Virginia 25323

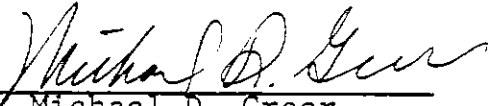
1987 MAR 11

NOTICE OF AGENCY ADOPTION

RULE TITLE: Rules and Regulation Governing the Transportation
of Natural Gas.

RULE TYPE: Legislative

The attached rule constitutes the official rule adopted by the
Public Service Commission of West Virginia on March 11, 1987, and
filed with the Secretary of State.



Michael D. Greer
Chairman

PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA on the 11th day of March, 1987.

GENERAL ORDER NO. 228
State Implementation of Natural
Gas Transportation Policies.

COMMISSION ORDER ADOPTING FINAL RULES

On June 10, 1986, the Commission issued proposed rules and regulations governing the transportation of natural gas within the State of West Virginia. All interested parties desiring to comment on the proposed rules, which were designated as a new series entitled the Rules Governing the Transportation of Natural Gas, were to file written testimony or comments on or before 12:00 noon on July 11, 1986. By Order entered on July 8, 1986, the deadline for filing written comments to the proposed rules was extended until July 31, 1986, at 12:00 noon. Further, public hearings in the matter were scheduled to commence in the Commission's hearing room on Wednesday, August 20, 1986, at 9:30 A.M.

Written comments were filed by the following natural gas utilities: Mountaineer Gas Company, Cabot Corporation (Gas Utility Unit), Hope Gas, Inc., Pennzoil Company, Equitable Gas Company, West Virginia Small Public Utilities Association (WVSPUA), Carnegie Natural Gas Company, Shenandoah Gas Company, and Cameron Gas Company. The

following pipeline companies submitted written comments to the proposed rules: Columbia Transmission Corporation, Cabot Corporation (Oil and Gas Division), and Eastern American Energy Corporation and Eastern Pipeline Company (jointly referred to as "Eastern"). The following independent producers submitted written comments: Independent Oil & Gas Association of West Virginia (IOGA), Cumberland Gas Company, Denex Petroleum Corporation, Energy Development Corporation, D.C. Malcolm, Inc., and Ensource, Inc. The following entities submitted comments as end users of gas: West Virginia Industrial Gas Consumers (WVIGC), Anchor Hocking Corporation, Eagle Convex Glass, and the West Virginia Hospital Association (WVHA). Written comments were also filed by the Consumer Advocate Division (CAD) of the Public Service Commission and the PSC Staff. During the scheduled hearings, further oral statements were made by representatives of Mountaineer, Cabot Corporation (Gas Utility Unit), Hope, Pennzoil, Equitable, WVSPUA, Cameron, Eastern, Cabot Corporation (Oil and Gas Division), IOGA, the WVIGC and the CAD.

At the conclusion of the hearings, the Commission allowed for the filing of additional comments or briefs by September 17, 1986. Additional comments were filed by Cameron, Union Oil & Gas, Inc., Shenandoah, Cabot Corporation (Gas Utility Unit), Cabot Corporation (Oil & Gas Division), the West Virginia Department of Finance and Administration, Eastern, WVHA, WVIGC, Pennzoil, IOGA and Hope.

DISCUSSION

The West Virginia legislature, in legislation which became effective on March 12, 1983, granted the Commission the power and authority to regulate the transportation of gas within this State to further the public interest. In West Virginia Code §24-1-1(h)(3), the legislature found "that it is in the best interest of the citizens of West Virginia to encourage the transportation of natural gas in intrastate commerce by interstate or intrastate pipelines or by local distribution companies in order to provide competition in the natural gas industry and in order to provide natural gas to consumers at the lowest possible price." In order to achieve this goal, the legislature granted the Commission certain authority to regulate gas transportation.

West Virginia Code §24-3-3a(b) provides that the Commission may, by rule or order, authorize and require the transportation of natural gas in intrastate commerce by intrastate pipelines, by interstate pipelines with unused or excess capacity not required to satisfy interstate commerce demands or by local distribution companies for any person for one or more uses, as defined by rule, by the Commission in the case of:

- 1) Natural gas sold by a producer, pipeline or other seller to such person; or
- 2) Natural gas produced by such person.

Under Subsection (d) of the same Code provision, the Commission may regulate the transportation rates and charges of any intrastate pipeline so that the associated rates shall be fair and reasonable. The transportation rates and charges of any interstate pipeline would reflect the transportation rates established for that pipeline by the Federal Energy Regulatory Commission (FERC). Further, under Code §24-2-11(b), the Commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution company to engage in the transportation of such gas in intrastate commerce.

To date, the Commission has exercised this authority in the context of complaint cases and through other forms of scrutiny. In recent years, a number of pipelines and distribution companies have voluntarily entered into transportation agreements. Agreements between utilities and end-users have been filed as special contracts with this Commission, and the terms and conditions have been negotiated by the parties. During that period, a number of pipelines have voluntarily provided transportation services in response to a growing competitive market in which end users seek and obtain cheaper supplies of natural gas. This Commission has also exercised its authority to investigate, review and regulate the bypass of local distribution facilities (LDCs) on a case-by-case basis.

On October 9, 1985, the Federal Energy Regulatory Commission issued Order No. 436 which, in part, established a comprehensive, voluntary transportation program whereby participating interstate pipelines would provide non-discriminatory transportation services upon

request, on a first come, first serve basis. The open access of pipelines set forth in FERC Order No. 436 was a result of fundamental changes that have occurred in the gas industry, and this federal innovation provided market options for suppliers, pipelines and end users. FERC Order No. 436 provides gas producers with an increased ability to market gas to a variety of purchasers, provides gas purchasers with the opportunity to buy gas from new sources, and provides pipelines with the ability to market gas from vast areas of the country previously inaccessible because of FERC transportation limits.

Consistent with this competitive climate, the Public Service Commission has developed rules governing gas transportation within the State which encourage the development of the natural gas market in a manner which balances the needs of gas consumers in West Virginia, while balancing the interests of the State's economy and all the interests affected by these rules. In devising the rules, the Commission has provided a flexible framework within which transporters of natural gas can maximize the economic use of pipeline systems, maximize open access to local and interstate gas supplies for West Virginia customers and eliminate the need for the non-economic bypass of existing pipeline facilities.

The rules require the mandatory transportation of gas by intrastate pipeline facilities and public utilities to the extent there is available capacity. In light of the expanded access to interstate pipelines pursuant to FERC Order No. 436 and the applicable tariffs of interstate pipeline companies, the Commission has made a preliminary

determination not to include interstate pipelines in the mandatory transportation requirements.

The key features of the Commission's transportation rules include the establishment of procedures and practices which provide for the processing of transportation requests and guard against discriminatory transportation practices by the pipelines.

The rules and regulations also provide for flexible transportation rates, with upper limits which allow captive end users to seek the benefits of securing cheaper supplies of natural gas, and lower limits based upon the pipeline operator's avoided cost of providing transportation service to ensure that a utility's remaining sales customers do not unreasonably subsidize a utility's transportation operations. The Commission has also placed lower flexing limits on the rates which can be charged to transport natural gas produced in West Virginia to further benefit the West Virginia economy and consumers.

Further, the Commission's rules place certain limitations on utility-to-utility competition and upon the bypass of a utility's facilities. These limitations recognize that the utility has an obligation to serve entities within a service area, and it has made extensive investments to construct facilities which are adequate to serve those entities. Accordingly, the utility absorbs certain costs to ensure that it has access to supply sources which are sufficient to provide the service.

The Commission's rules do not prohibit bypass of utility facilities. However, the Commission finds that the non-economic bypass of utilities is not in the public interest. Thus, the certificate

process as required by West Virginia Code §24-2-11(b) and the rules will safeguard the utility's investment in existing facilities and avoid the unnecessary construction of redundant pipeline facilities. Further, end users who reduce takes or who are no longer sales customers of the utility can choose to reserve adequate supply sources by paying a standby charge, or the end user can choose to sever all ties to the utility system and the rules would relieve the utility of its service obligation to that customer.

The policies and standards established by these transportation rules shall have a substantial positive impact on the general public in this State. The views of the commentators often conflict with one another because of the divergent interests represented. All the comments represented by these interests will not be discussed, but we shall address the major concerns presented to the Commission, and we shall describe the reasons and policies behind the final modifications to the proposed rules.

Overview

Modifications to the proposed rules reflect four primary changes. First, consistent with West Virginia Code §24-3-3a(c), the Commission has excluded gathering facilities from the provisions of this rule. By doing so, it is the Commission's intent that pipeline facilities connecting producing wells to larger transmission lines will not be subject to the mandatory transportation requirements of these rules. Second, the Commission has granted certain exemptions to limit the

administrative burdens of these rules. Third, the Commission restructured the rate flexibility standards to resolve a number of perceived ambiguities. Fourth, the Commission streamlined the certification requirements and procedures to ensure that the construction and operation of new facilities would not be unreasonably delayed by bad faith or unsubstantiated protests. Further, the Commission made a number of minor modifications to provide additional clarity to the rules.

Under the modified rules, all gas pipeline facilities constructed and in operation prior to the effective date of these final rules will not be required to seek a certificate of public convenience and necessity by virtue of the regulations; but such facilities must be registered with the Commission. In addition, the Commission has the authority to regulate construction and operation of these facilities on a case-by-case basis, and the specific complaint cases which have been initiated to date shall not be affected by this exemption.

To eliminate certain administrative burdens associated with the filing and maintenance of transportation tariffs, utilities whose total annual throughput is less than 500,000 MCF, excluding residential sales, and all intrastate pipelines other than utilities shall not be required to file specific transportation tariffs. However, such entities must offer services and rates consistent with the standards of the rules.

The Commission has also modified the methods for calculating the maximum transportation rate standard for utilities.

The various changes to the rules are set forth below in more detail on a section-by-section basis.

1.5 Definitions

The definitions have been placed in alphabetical order. The definitions shall be identified according to their current location, and their former location shall be shown in parenthesis.

The definition of "interstate pipeline", set forth as Rule 1.5(g) (formerly 1.5(b)) was modified for clarity.

The definition of "end-user" set forth in Rule 1.5(d) (formerly Rule 1.5(h)) is modified to mean any person, firm or corporation which is the ultimate consumer of natural gas. This simpler definition eliminates any ambiguity as to whether certain consumers should be included within this definition. (See written comments of Cabot Corporation (Gas Utility Unit) at p. 2; (Cabot Oil & Gas) at p. 10; and WVIGC at p. 9).

A definition of "gathering facilities" was included as Rule 1.5(f). The Commission has made an initial determination that gathering facilities, which are pipelines and facilities used to collect the gas production of one or more wells so it can be introduced into a transportation system, should not be subject to the requirements of these rules. As the critical issue shall be the determination of where specific gathering facilities end and transportation lines begin, the Commission had requested proposed definitions of gathering facilities. The Commission adopted, with modification, the definition

proposed by IOGA. (See IOGA September 17, 1987 Comments at p. 2). As defined, gathering facilities shall not be considered either public utilities or intrastate pipelines. If subsequent issues arise concerning whether specific facilities are properly designated as gathering facilities, they will be addressed by the Commission.

2.0 Transportation Obligations

The title of Section 2.0 was changed from "Transportation" to "Transportation Obligations" to more accurately reflect the provisions of this section.

For clarity, the content of proposed Section 2.2 has been moved to Section 3.1, which addresses tariff and rate standards, and the remaining items were subsequently renumbered. Modifications to the proposed rules are identified as located in final Rule 2.0, with reference to its previous location in parenthesis.

Section 2.3 (formerly 2.4) was modified to require utilities or intrastate pipelines who receive a request for transportation service to provide an application form at the time of the request, rather than provide that such forms be made available without undue delay. This modification requires the immediate availability of the forms so that transportation requests can be processed expeditiously.

Section 2.4 (formerly 2.5) was modified so that transportation requests are to be processed within ten working days following submission of a completed application form requesting transportation

service, as opposed to ten days. This modification provides adequate time to process the request while avoiding unnecessary delay.

Section 2.5 (formerly 2.6) was modified to require transportation practices to be applied without unjust discrimination, as suggested by IOGA. (See comments of IOGA, pp. 4-5).

3.0 Transportation rates, practices and services

The heading of Section 3.0 was changed from "Tariffs" to "Transportation Rates, Practices and Services" in recognition of the Commission's intent that the stated rate standards, practices and services contained in Section 3.1 were to apply to all gas utilities and intrastate pipelines, regardless of whether such entities are required to file tariffs.

3.1

Section 3.1 has been expanded to include a number of subparagraphs. Subparagraph (a) clarifies the various regulatory mechanisms used to review the terms of the proposed transportation tariffs. Subsection (b) sets forth the type of supporting data which should accompany proposed tariffs for the Commission to evaluate the tariff.

Subsection (c) exempts from tariff filings small utilities whose total annual throughput, excluding residential sales, is less than one 500,000 Mcf per year. Further, intrastate pipelines other than utilities are completely exempted from filing tariffs. Since these

entities are likely to receive few requests for transportation services or may have limited experience in constructing tariffs, the Commission has made an initial determination to relieve these entities from the burden of establishing and filing unbundled transportation tariffs. However, when such entities are presented with a transportation request, they shall comply with the standards regarding transportation rates, practices and services which are set forth in Sections 3.2 through 3.4. Of course, the Commission may modify the exemption or revoke a specific exemption on a case-by-case basis for good cause shown. Further, any challenge to the rates, service, practices or policies of an entity claiming an exemption may be addressed through the Commission's complaint procedure. (See comments of Pennzoil; West Virginia Small Public Utilities Association, p. 2; and Carnegie pp. 5-6).

The original paragraph of 3.1 was modified so that the proposed tariff provisions would be effective within fifteen days following the date of filing to allow the Commission Staff to make an initial determination regarding the reasonableness of the tariff before it becomes effective.

3.3(b)

Section 3.3 was modified to reflect that the rate standards are applicable whether or not the entity is required to file tariffs.

Rule 3.3(b) provides that authorized rates of return are to be included in the benchmark fully distributed cost based rate.

Originally, the section indicated that the allowable rate of return would be established by Commission order, but did not address the rate of return which would be applied prior to Commission order. As modified, the allowable rate of return for utilities shall be the last rate of return authorized by the Commission for the particular utility. Section 3.3(b) also provides for the establishment and eventual authorization of a reasonable rate of return for entities which do not have an authorized rate of return.

3.3(d)

Section 3.3(d) establishes the permissible range of transportation rate flexibility. Flexible transportation rates are in the public interest and allow transporters and end users to function efficiently in the competitive market. Lower limits on rate flexibility are necessary to protect the interests of the utility's general service customers and guard against destructive predatory pricing by intrastate pipelines, and limitations on upward flexibility are necessary so captive customers can seek alternative supply sources and thus benefit from this state's open access transportation policies.

After establishing this concept, the Commission clarified the flexing standards to determine the maximum rates to be applied to all transporters. After considering the policies which are to be furthered by the flexible rates, the Commission restructured this section and established appropriate flexing limitations. The primary features of these modified provisions are as follows:

- Rule 3.3(d)(2) provides specific flexible standards for utilities which provide both transportation and full commodity service to promote the public interest within the competitive environment;
- Specific rate standards are not established for the upward flexing of entities covered by the rule which do not provide full commodity service. Their customers can primarily rely upon competitive market forces to establish reasonable rates and provisions. Disputes regarding the rates and services of those entities can be addressed on a case-by-case basis;
- The maximum flexible rate established for standby sale service customers of utilities shall not include utility demand costs since a separate standby service charge already includes those demand charges;
- A reasonable differential between rates for firm and interruptible transportation service shall be preserved; and,
- To further promote the public interest, the maximum transportation rate for natural gas produced in West Virginia shall not be above the benchmark fully distributed cost base rate.

Further, the Commission included sample calculations under Section 3.3(d)(2) to illustrate the application of the methodology.

3.3(e)

The second sentence of proposed Rule 4.3, which relates to standby service charges, is included as a part of 3.3(e)(5) for purpose of clarity.

3.5

Rule 3.5 was amended to state that complaints can be filed with the Commission regarding both rates and terms of service.

3.6

Proposed Rule 3.6, relating to exit charges for end users who would cease to be a full service or transportation customer of a utility, has been eliminated from the final rules. When a customer bypasses the utility, Rule 4.2 provides that the affected public utility would be relieved from its service obligation with respect to the customer. Since an exit charge would not necessarily be cost based, the exit charge provisions were eliminated.

4.0 Bypass

Any proposed bypass of public utility facilities shall be reviewed to determine whether the bypass is consistent with the public interest through the certification requirements of West Virginia Code §24-2-11(b) and these rules. The issuance of a certificate pursuant to

Rule 4.0 shall not, in and of itself, automatically subject the transporter to full Commission regulation as a public utility.

After further review of the proposed certificate requirements, the Commission made a number of modifications to streamline the certificate procedure to make it more efficient.

Subsection (a) was added to provide that ordinary extensions of existing utility systems in the ordinary course of business are exempt from the certificate requirements.

Subsection (b) was added to Rule 4.1 to exempt existing facilities from the certificate requirement of Rule 4.1. Even though existing facilities shall not be subject to the certificate requirements of the rule, Code §24-2-11(b) provides that the Commission can require an entity to obtain a certificate either by rule or by order. Existing cases before the Commission address whether the Commission shall require the pipeline operators to obtain a certificate of convenience and necessity to construct or operate certain bypass facilities. This exemption from the rule shall affect a Commission determination of whether those entities should be required to obtain certificates of convenience and necessity.

Entities whose facilities are determined to be exempt from certificate requirements under Rule 4.1 are required to register such facilities with the Commission.

Subsection (c) of Rule 4.1 specifies procedures to be applied to certificate proceedings under Rule 4.1. The focus of these procedures is to streamline the certification process and provide for prompt resolution of the matters. Challenges to a requested certificate must

be supported by a good faith protest to ensure that the construction and operation of new facilities would not be unreasonably delayed by bad faith or unsubstantiated protests.

Proposed Rule 4.2, which established a rebuttable presumption in favor of transportation arrangements which include utility facilities, was eliminated from the final draft. Appropriate standards concerning construction of bypass facilities and alternate transportation routes shall be developed during the review of cases which come before the Commission.

Proposed Rule 4.3 was renumbered as Rule 4.2, and the second sentence of that proposed section, which related to standby charges, was relocated and renumbered as 3.3(e)(5) for purpose of clarity.

5.0 Utility to Utility Competition

Utility to utility competition is not consistent with the public interest. The Commission recognizes that the service area boundaries of utilities are not clearly defined and disputes may arise, which will be resolved by the Commission's complaint procedures.

Rule 5.1(a), which provides that a utility may provide service within another utility's service area so long as the second utility's facilities are used and compensated for in transportation, was modified for clarity.

6.0 Existing Transportation Arrangements

Rule 6.1 was modified to exempt the terms of existing transportation contracts from the rate standards established in the Commission's transportation rules until the expiration of the agreement. This exemption shall be effective for all transportation arrangements in effect prior to the effective date of the rule. However, all other requirements of the rules remain in effect.

Proposed Rule 6.2, which noted that non-rate requirements remained in effect for entities exempted by Rule 6.1, was eliminated as redundant because the concept was fully developed in Rule 6.1.

8.0 Reporting Requirements

The reporting requirements under Rule 8.0 require each utility and intrastate pipeline to file information regarding the volumes of gas transported and other information which is deemed necessary for the Commission to regulate the activities of these entities. The proposed rule required this information to be submitted on a semi-annual basis, but the final rule requires an annual report. The reporting form has also been simplified for entities other than Class A and B gas utilities.

9.0

Rule 9.0 was added to reflect the Commission's authority to exercise discretion, upon good cause shown, to grant waivers or

necessary relief to alleviate problems or hardships which arise as a result of the application of any provision of the Commission's rules. In light of this broad provision, a similar clause found in proposed Rule 3.3(g) was eliminated.

Minimum Transportation Standards

A number of utilities and pipeline operators recommended that the Commission establish minimum volumetric and gas quality standards. They were concerned that a transporter would be innundated with requests from small commercial and residential customers. Also, Cabot wanted minimum quality standards to protect the gas quality in its system.

The Commission rules do not impose minimum volumetric limitations for transportation service. Each transporter is able to determine the costs associated with providing transportation services to individual customers, and may establish an appropriate cost-based transportation rate. Although the utilities have certain apprehensions about the number of transportation requests which may be generated by open access, any projection is purely speculative. The Commission is not convinced that the utilities will be beseiged with transportation requests from small customers because of the complexities associated with obtaining such service. Therefore, the Commission determines that the public interest is best served by initially providing open access to all customers, regardless of size, to allow the benefits of competition to flow to all customer classes. The Commission may reconsider this policy if it proves to create an unmanageable burden.

The Commission also finds it unnecessary to establish minimum quality standards by rule since the transporter can establish reasonable quality standards which accurately reflect system requirements.

FINDING OF FACT

1. On June 10, 1986, the Commission issued proposed rules and regulations governing the transportation of natural gas within the State of West Virginia. Public comment periods and public hearings were conducted in accordance with Article 3 of the State Administrative Procedures Act (West Virginia Code, Chapter 29A).

2. At the conclusion of public hearings conducted on August 20 and 21, 1986, the Commission permitted the filing of additional comment or briefs on related matters by the close of business on September 17, 1986.

3. The Commission has reviewed and considered all comments and briefs filed or submitted.

CONCLUSIONS OF LAW

1. The Public Service Commission is authorized by West Virginia Code §§24-3-3a(b) and 24-2-11(b) and other provisions of the West Virginia Code to issue rules and regulations governing the construction and operation of gas pipeline facilities within the State of West Virginia and the associated rates and practices of gas pipeline operators in order to regulate and promote the transportation of

natural gas within the State of West Virginia, in accordance with the mandate of Senate Bill No. 117, which became effective on March 12, 1983.

2. Under the provisions of Code §29A-3-3, the Commission is obligated to permit the filing of written comments on any proposed rule and may conduct public hearings and receive oral statements regarding the proposed rule; however, the Commission is not obligated to accept every or any comment.

3. After review of the various matters raised by the comments and after further consideration of the provisions of the proposed rule, the Commission is of the opinion that the proposed modifications described in the body of this order should be embodied in the final rule.

4. The rules governing the transportation of natural gas, identified as Series XVI at the Commission's rules and regulations, attached to this order as Appendix A, represents the compilation of the Commission's decision and rulings on the various comments filed herein. The Commission determines that the final rules attached to this order are just, reasonable and consistent with the Commission's authority to regulate transportation of natural gas within West Virginia as authorized by West Virginia Code §§24-2-11(b), 24-3-3a and related provisions, and should be adopted and promulgated as final rules of the Commission.

5. If any problems or hardships arise as a result of the application of any provision of the Commission's Rules, the Commission has the authority to immediately implement emergency rules to correct

any such problem, and it may proceed to promulgate any appropriate amended rules.

ORDER

IT IS, THEREFORE, ORDERED that the attached rules and regulations are hereby adopted and promulgated as the final rule of the Commission to be included in a new series to be identified as the Commission's Rules Governing the Transportation of Natural Gas.

IT IS FURTHER ORDERED that the Executive Secretary shall file the text of the attached rules as finally adopted, with a notice of final adoption and a fiscal note, with the Secretary of State of the State of West Virginia, as required by the West Virginia's Administrative Procedures Act.

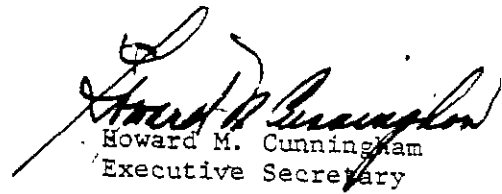
IT IS FURTHER ORDERED that the Commission's rules governing the transportation of natural gas, as finally adopted by this order, shall take effect sixty (60) days from the date of the filing of the rules, the notice of final adoption and the fiscal note in the State register, in accordance with the procedures of the West Virginia Administrative Procedures Act and West Virginia Code §24-1-7.

IT IS FINALLY ORDERED that the Executive Secretary is hereby directed to serve a copy of this order upon the Commission Staff by hand delivery, and upon all parties of record by United States First Class Mail.

IT IS SO ORDERED.

A TRUE COPY

TESTE:


Howard M. Cunningham
Executive Secretary

Public Service Commission Of West Virginia



201 Brooks Street, P. O. Box 812
Charleston, West Virginia 25323

FILED

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SECRETARY OF STATE

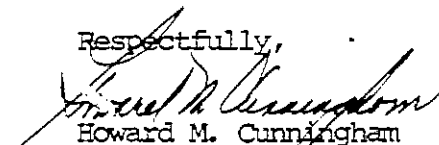
March 11, 1987

TO ALL PARTIES ON THE ATTACHED SHEET:

We are enclosing a copy of the Commission's General Order No. 228 entered today which adopts final rules governing the transportation of natural gas within the State of West Virginia.

You will note that the rules, as finally adopted by this order, will take effect sixty (60) days from this date, or on May 10, 1987. The final rules, as adopted by the Commission, have today been filed with the Secretary of State for inclusion in the State Register.

Respectfully,


Howard M. Cunningham
Executive Secretary

HMC/s
Encl.

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Public Service Commission Of West Virginia

Michael D. Greer, Chairman
Otis D. Gasto, Commissioner
Charlotte R. Lane, Commissioner



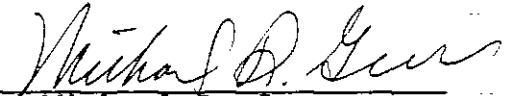
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Charleston, West Virginia 25323

NOTICE OF AGENCY ADOPTION

RULE TITLE: Rules and Regulation Governing the Transportation
of Natural Gas.

RULE TYPE: Legislative

The attached rule constitutes the official rule adopted by the
Public Service Commission of West Virginia on March 11, 1987, and
filed with the Secretary of State.


Michael D. Greer
Chairman

FILED
103 MAR 11 PM 3:43
SECRETARY OF STATE



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

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PROPOSED RULES

STATE REGISTER FILING

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AGENCY PUBLIC SERVICE COMMISSION OF WEST VIRGINIA

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TYPE OF RULE Legislative

TITLE OF RULE Rules and Regulations Governing the Transportation of Natural Gas

CHAPTER 24 ARTICLE 1 SERIES XVI

AUTHORITY 24-1-7

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CHECK APPLICABLE ITEMS BELOW TO SHOW KIND OF ACTION BEING TAKEN

NEW RULE

NOTICE OF HEARING

AMENDMENTS TO EXISTING RULE

NOTICE OF AGENCY APPROVAL
(legislative rules only)

REPEAL OF EXISTING RULE

NOTICE OF AGENCY ADOPTION
(interpretive & procedural
rules only)

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