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June 3, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Public Service Commission

RULE: 150CSR2, Government of the Construction and Filing of Tariffs of Public Utilities and Common Carrier by Motor Vehicle

DATE FILED AS AN EMERGENCY RULE: May 20, 2014

DECISION NO. 11-14

Following review under W. Va. Code §29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **approved**. A copy of the complete decision with required findings is available from this office.

NATALIE E. TENNANT
Secretary of State

EMERGENCY RULE DECISION
(ERD 11-14)

AGENCY: Public Service Commission
RULE: 150CSR2, Amendments, Government of the Construction and Filing
of Tariffs of Public Utilities and Common Carrier by Motor Vehicle
FILED AS AN EMERGENCY RULE: May 20, 2014

- par. 1 The Public Service Commission (PSC) has filed the above amendments to an existing rule as an emergency rule.
- par. 2 W. Va. Code §29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15a].
- par. 4 (A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The PSC filed this emergency rule with supporting documents with the Secretary of State May 20, 2014 and with the LRMRC May 20, 2014.
- par. 7 It is the determination of the Secretary of State that the PSC has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.
- par. 8 (B) Statutory Authority -- W. Va. Code §24-1-7 reads:

*24-1-7. Rules of procedure; commission not bound by rules of evidence or pleadings; inscription on, use of and judicial notice of seal.
The commission shall prescribe such rules and regulations as may be necessary to carry out the provisions of this chapter, including rules of procedure and for taking evidence in all matters that may come before it, and enter such orders as may be just and lawful: Provided, That no such rule or regulation shall be effective unless promulgated pursuant*

to the provisions of sections one through ten, article three, chapter twenty-nine-a of this code: Provided, however, That no such rule or regulation shall become effective until sixty days after its final adoption or until the effective date proposed by the commission, whichever is later: Provided further, That any rules and regulations promulgated prior to the effective date of this section shall remain in full force and effect unless changed, modified or repealed in accordance herewith. The rules and regulations promulgated hereunder by the public service commission shall not be subject to the legislative rule-making review procedures established in sections eleven through fifteen, article three, chapter twenty-nine-a of this code. In the investigations, preparations and hearings of cases, the commission shall not be bound by the technical rules of pleading and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justice to the matters before it.

par. 9 It is the determination of the Secretary of State that the PSC has not exceeded its statutory authority in promulgating this emergency rule.

par. 10 (C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the PSC are as follows:

House Bill 4601 was passed effective June 6, 2014. The Bill will substantively change prior law and the current Commission Tariff Rules conflict with the new law. The new statutory language will allow qualifying public service districts and municipal utilities to place rate increases that will result in less than a twenty-five percent increase in utility gross revenues into effect on the date of the filing of a rate application, or in the case of a municipal utility, on the date stated in the ordinance. Prior to passage of the bill, rate increases did not go into effect until after Commission investigation and review of the financial justification for the rate increase unless a utility could demonstrate financial distress. In the absence of corresponding new rules, there will be substantial confusion on the part of utilities and customers to the detriment of the public interest. Emergency Tariff Rule amendments should be in effect on June 6, 2014.

par. 13 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(f). . . "immediate preservation of public peace, health, safety or welfare" and "prevent substantial harm to the public interest."

par. 14 This decision shall be cited as Emergency Rule Decision 11-14 or ERD 11-14 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Public Service Commission, the Attorney General and the Legislative Rule Making Review Committee.



NATALIE E. TENNANT
Secretary of State

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