



**Comments to the Proposed Legislative Rule, 157 C.S.R. 6,
"Use of State Road Rights of Way or Adjacent Areas"**

To: West Virginia Division of Highways
Attn: Rita A. Pauley
1900 Kanawha Blvd. East, Building 5, Room 109
Charleston WV 25305

Via E-mail: rita.s.pauley@wv.gov

West Virginia Oil & Natural Gas Association ("WVONGA") appreciates the opportunity to submit the following comments on the proposed legislative rule, Use of State Road Rights of Way or Adjacent Areas, 157 C.S.R. 6 ("Proposed Rule"). Chartered in 1915, WVONGA is one of the oldest trade organizations in West Virginia and serves the entire oil and gas industry. The activities of WVONGA members include construction, environmental services, drilling, completion, gathering, transporting, distribution and processing of oil, natural gas and their constituents. WVONGA members operate in almost every county in West Virginia and employ thousands of people across the State, with payrolls totaling hundreds of millions of dollars annually. Members have cumulative investment of nearly ten billion dollars in West Virginia, account for most of the production and recent well work permits, operate more than 20,000 miles of pipeline across the state and provide oil and natural gas to more than 300,000 West Virginia homes and businesses. As such, WVONGA's members have a keen interest in all aspects of regulation associated with oil and gas activities, including the Proposed Rule.

Specifically, WVONGA is concerned with the revision proposed in Section 3.8 of the Proposed Rule that would apply to the Division of Highway's manual, "Accommodation of Utilities on Highway Right of Way and Adjustment and Relocation of Utility Facilities on Highway Projects." Currently, the version of the manual dated June 15, 2007 is part of the rule and must be complied with to remove or relocate a utility facility. The Proposed Rule removes the reference to the June 15, 2007 manual and references the "current version" of the manual and provides a website link to such version. However, the version available on the website is the June 15, 2007 version. The proposal also removes the language that incorporates the manual as part of the regulation. Therefore, WVONGA is concerned that any future revisions to the manual will not be subject to public comment. Denying the opportunity to review and comment on changes to the manual is a denial of due process and a violation of the Administrative Procedures Act, to which we object. We request that the proposed changes to Section 3.8 not be part of the final rule.



WVONGA requests that these comments be given serious and careful consideration and we look forward to reviewing the response to comments required pursuant to the West Virginia Administrative Procedures Act.

Respectfully Submitted,

Anne C. Blankenship

Executive Director, West Virginia Oil and Natural Gas Association

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**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION**

1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • (304) 558-0444

Byrd E. White, III
Cabinet Secretary

July 29, 2019

Anne C. Blankenship
Executive Director
West Virginia Oil and Natural Gas Association
10 Hale Street, 5th Floor
Charleston, West Virginia 25301

Dear Ms. Blankenship:

The Division of Highways appreciates your taking the time to review and comment on the proposed changes to 157CSR6, "Use of State Road Rights of way and Adjacent Areas." In your comment, you objected to the removal of the specific date reference and incorporation by reference the Division of Highway's manual, "Accommodation of Utilities on Highway Right of Way and Adjustment and Relocation of Utility Facilities on Highway Projects", (utility manual).

The Division is making this change in order to be able to update the utility manual as needed. The utility manual is a guidance or policy document that must be updated to accommodate statutory changes made in the past two legislative sessions. The manual referred to in the rule is the 2007 version. If the manual is changed without changing the rule the changes would not apply to the "dig once" and "small wireless facilities" or anything else changed after 2007.

The Division will make all proposed changes to the utility manual available on its website and invite public comment. Since proposed changes have not completed the internal process, they are not yet available to the public for comment. The Division looks forward to continuing to work with you and WVONGA on the utility manual and 157CSR6 as they progress through process. If you have any questions, please contact me at the above address or email or phone me at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rita A. Pauley".

Rita A. Pauley
Special Assistant to the Secretary

RAP:jd

July 29, 2019

West Virginia Division of Highways
Attn: Rita A. Pauley
1900 Kanawha Blvd., East
Building 5, Room 109
Charleston, WV 25305

Re: Proposed Legislative Rule, 157 C.S.R. 6, *Use of state Road Rights of Way or Adjacent Areas*

Dear Ms. Pauley,

FirstEnergy Corporation, on behalf of its electric utility subsidiaries Monongahela Power Company (Mon Power) and the Potomac Edison Company, collectively referred herein as the "Companies," would like to thank the West Virginia Division of Highways for the opportunity to provide comments on the proposed legislative rule 157 C.S.R. 6, *Use of State Road Rights of Way or Adjacent Areas*.

Mon Power serves about 390,000 customers in 34 West Virginia counties, and Potomac Edison serves about 140,000 customers in the eastern panhandle of West Virginia in 8 counties.

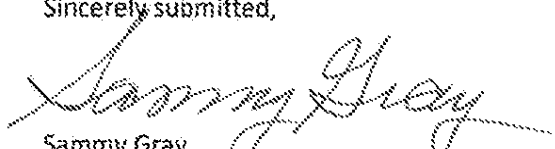
The Companies are concerned about the proposed revision to Section 3.8 of the proposed rule that applies to the Division's *Accommodation of Utilities on Highway Right of Way and Adjacent and Relocation of Utility Facilities on Highway Projects* manual. The proposed rule removes the reference to the June 15, 2007 manual and refers to the current version of the manual, to which a website link is provided. The concern is that the most current version on the website is the June 15, 2007 version. Also, the proposed rule removes the language that makes the manual a part of the proposed rule.

The Companies are concerned that the manual would no longer be open to public comment and would no longer be subject to the state's rulemaking review process outlined in the Administrative Procedures Act, and that further revisions of the manual would deny opportunities to comment on revisions of the manual. The Companies are specifically concerned about changes to the manual because it contains specifications and requirements on distances, clearances, costs, and permit provisions that apply to utilities operating within the state.

FirstEnergy, on behalf of the Companies, respectfully requests that the proposed changes to Section 3.8 not be part of the final rule.

FirstEnergy, on behalf of the Companies, urges that you please consider these comments as you contemplate making changes to the proposed rule, and looks forward to your response comments.

Sincerely submitted,



Sammy Gray
Senior Advisor, WV Government Affairs



WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION

1900 Kanawha Boulevard East • Building Five • Room 109
Charleston, West Virginia 25305-0440 • (304) 558-0444

Byrd E. White, III
Cabinet Secretary

July 29, 2019

Sammy Gray
Senior Advisor, WV Government Affairs
FirstEnergy
7 Greenbrier Street
Charleston, West Virginia 25311

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Sincerely,

Rita A. Pauley
Special Assistant to the Secretary

RAP:jd