

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 7th day of October 2020.

GENERAL ORDER NO. 228.3

In the matter of a rulemaking to amend the Rules Governing the Transportation of Natural Gas,
150 C.S.R. Series 16, relating to bypass.

COMMISSION ORDER

The Commission promulgates proposed amendments to the Rules Governing the Transportation of Natural Gas (Gas Transportation Rules), 150 C.S.R. Series 16, to address recently enacted W. Va. Code § 24-2-20. The Commission invites interested parties to comment on the revisions to these rules.

BACKGROUND

In 1987 pursuant to W. Va. Code § 24-3-3a, the Commission adopted the Gas Transportation Rules, which provide that all customer classes may enter into their own contracts for transportation of their own non-utility gas supplies. Thereafter, many customers moved from purchasing natural gas supplies and transportation under a full-service utility tariff to contracting for their own gas supplies and transportation service. When an end-user chooses to buy its own natural gas supplies and transportation service, the arrangement is known as a bypass of the public utility.

Under current Gas Transportation Rule 4 (renumbered as proposed Rule 6), any person or entity that desires to construct or operate any facilities to transport gas to an end-user must obtain a bypass certificate from the Commission. The Commission will grant a bypass certificate application on the 31st day after notice is provided, unless the utility files a *bona fide* protest that includes an affidavit that that the utility can, in good faith, provide the proposed transportation service more economically. A public utility is relieved from its service obligation with respect to any end-user located in the utility service territory that bypasses the utility's facilities, but the end-user may return to utility service under a rate approved by the Commission.

DISCUSSION

In the 2020 Legislative Session, W. Va. Code § 24-2-20 was enacted, which provides an alternate method of notice and certification to bypass utility facilities for a person, entity or facility that has not previously been a natural gas customer that will use large volumes of natural gas produced in West Virginia. The Commission addresses the new statutory alternative in the amendments to the Gas Transportation Rules that we promulgate today.

The new statute and the bypass provision of the existing Gas Transportation Rules both relieve a public utility of its service obligations with respect to any end-user located in the utility service territory that bypasses the utility facility. If a bypassing end-user wishes to return to utility service, though, there is an important difference. Existing Gas Transportation Rule 4.2 (renumbered as proposed Rule 6.3), provides that an end-user may reestablish service from the utility at a Commission-approved rate and any such end-user is not automatically entitled to average cost pricing of any service. W. Va. Code § 24-2-20(d),¹ however, simply terminates the utility obligation to offer or provide service after the bypass. Thus, an end-user that bypasses a utility under the statutory process may ask the utility to reestablish service, but the utility is under no obligation to do so.

Further, the Gas Transportation Rules are renumbered to conform to the current requirements of the West Virginia Secretary of State. Dates that are no longer relevant are removed, and the certificate application form for operators of multiple member pools, which is available upon request from the Commission Executive Secretary, is added to the Gas Transportation Rules. These amendments are entirely ministerial and administrative. No substantive change is intended by these changes.

FINDING OF FACT

Recently enacted W. Va. Code § 24-2-20 provides an alternate method of notice and certification for a person, entity or facility that has not previously been a natural gas customer and that will use large volumes of natural gas produced in West Virginia to bypass utility facilities.

¹ W. Va. Code § 24-2-20(d) provides,

If a utility has an obligation to offer or provide service to an end user who elects its own supply pursuant to this section, the obligation shall terminate upon the Commission's receipt of a certification provided by this section.

CONCLUSIONS OF LAW

1. The Commission should promulgate proposed amendments to the Gas Transportation Rules to address recently enacted W. Va. Code § 24-2-20 and adopt ministerial changes.

2. A comment schedule will give interested parties an opportunity to provide input to the Commission.

ORDER

IT IS THEREFORE ORDERED that the changes in the attached Rules Governing the Transportation of Natural Gas, 150 C.S.R. Series 16, are promulgated for comment as Commission-proposed legislative rules.

IT IS FURTHER ORDERED that the Commission's Executive Secretary shall give notice of these proposed rules to all natural gas transporters, natural gas poolers, and natural gas utilities operating in the State and to Commission Staff by service upon them of a copy of this Order.

IT IS FURTHER ORDERED that the Executive Secretary shall cause a copy of the notice attached hereto as Attachment A to be published once in a newspaper, duly qualified by the Secretary of State, published and of general circulation in each of the following cities: Beckley, Bluefield, Charleston, Clarksburg, Elkins, Fairmont, Grafton, Huntington, Keyser, Lewisburg, Logan, Martinsburg, Morgantown, Moundsville, Parkersburg, Point Pleasant, Weirton, Welch, Wheeling and Williamson.

IT IS FURTHER ORDERED that the Executive Secretary shall file a copy of these rules and the requisite forms with the Office of the Secretary of State.

IT IS FURTHER ORDERED that a comment period shall be provided with respect to the proposed amendments. Initial comments shall be filed with the Commission's Executive Secretary by 4:00 p.m. October 27, 2020. Reply comments shall be filed with the Commission's Executive Secretary by 4:00 p.m. November 16, 2020. Any interested party who files comments shall set forth specific comments concerning the proposed rules. Any party seeking a hearing on the proposed rules shall make a specific written request before the close of the comment period and explicitly state the grounds upon which the request is made.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

Charlotte R. Lane, Chairman

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NOTICE OF RULEMAKING & COMMENT PERIOD

GENERAL ORDER NO. 228.3

In the matter of a rulemaking to amend the Rules Governing the Transportation of Natural Gas, 150 C.S.R. Series 16, relating to bypass.

By Order issued October 7, 2020, the Public Service Commission of West Virginia commenced a rulemaking to consider amendments to its Rules Governing the Transportation of Natural Gas, 150 C.S.R. Series 16, relating to bypass and issued proposed rules. The revisions address recently enacted W. Va. Code § 24-2-20.

Anyone interested may obtain a copy of the Commission Order and the proposed rules on the Commission's website, www.psc.state.wv.us, by entering "228.3" in the "Case Information" tab, or by written request to Connie Graley, Executive Secretary, Public Service Commission of West Virginia, P.O. Box 812, Charleston, WV 25323. Please refer to General Order No. 228.3 in any written request.

Written comments may be filed with the Commission Executive Secretary according to this schedule:

Deadline for written initial comments	4:00 p.m. October 27, 2020
Deadline for written reply comments	4:00 p.m. November 16, 2020

Initial and reply comments also may be filed electronically by the deadlines set forth above on the Commission website under the "Submit a Comment" tab. Any request for a hearing must explicitly state the grounds upon which the request for a hearing is made.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA