



West Virginia Surface Owners' Rights Organization
1500 Dixie Street, Charleston, WV 25311
(304) 346-5891 - www.wvsoro.org

December 18, 2024

West Virginia Public Service Commission
201 Brooks Street
Charleston, WV 25301

Re: COMMENT ON
Hope Gas, Inc.
Case Number: 24-0704-G-P

Introduction/background.

The West Virginia Surface Owners' Rights Organization (WVSORO) is a statewide membership organization formed in 2007 by concerned landowners, public interest lawyer Dave McMahon, and West Virginia Citizen Action Group. WVSORO serves as resource for our members and others who are looking for information and guidance on how to deal with oil and gas related activities on their land and in their communities. Our website appears to have had 536 visits in January of 2024 alone. We also advocate for public policy and regulatory changes that will help surface owners have their rights recognized and respected by the oil and gas drillers and that will help them protect their land, air and water. For a more complete explanation of WVSORO's activities, please see the endnote.¹

From the calls WVSORO receives, WVSORO is well aware of the problems of rural citizens caused by decreasing gas supplies from conventional vertical wells and from pipelines leading from those wells to market. Many calls are regarding "free gas", the right to which is based on oil and gas drilling and production leases on/under surface owners' land. (Generally this gas is obtained by a home owner's service line from their residence to a well head, though often times for convenience sake the service line tapped onto a gathering line instead of the wellhead, and perhaps rarely to a transmission pipeline -- and the distinction/dividing line between those two types of pipelines is murky.²) But WVSORO does get calls regarding "field taps"(also known as "farm taps", though many are not on farms) on transmission/gathering lines. And note that not all of those field taps are on lines regulated by the PSC.

WVSORO was aware of the general investigation into the continuation of natural gas service to field tap customers and areas supplied by and depend on conventional gas production, Case no 19-0467-G-GI. WVSORO participated in that investigation by pointing out the great variety of circumstances that could give rise to disruption of natural gas service supply received from oil and gas exploration and production in the State. Our recommendation was that, given

the great variety of circumstances, there could be no general policy regarding the issue and that problems should be addressed as they arose and addressed according to the best practicable result for residential users in their circumstances.

Comment.

WVSORO understands that Hope intends to abandon certain gathering/transmission lines due to their condition and declining gas wells being served. That will result in citizens with field taps on those lines losing service. WVSORO thanks Hope for proposing a solution to that problem that will replace any lost natural gas service by one of three substitutes with the customer able to choose among those available. The three choices are replacing service with either propane appliances and regulated propane supply service, or with connections to utility distribution company lines within practicable distances, or with electric appliances if the customer can get sufficient electric supply (which we think is likely). We urge the PSC in the circumstances presented to approve Hope's proposal. This comment will continue to comment on at least one of the devilish details. Please do not let the length of that comment shrink the importance of this one paragraph supporting Hope's proposal because that is our major comment point.

WVSORO is aware that there is some question regarding the regulated rate Hope will charge for the propane supply to customers for whom that option is chosen. It is our understanding that current natural gas customers are charged on the volume of natural gas they consume. That volume is measured in MCF's. (One MCF is one thousand cubic feet.) The heating value in an MCF of natural gas is different from the heating value of an identical cubic foot of propane. Propane has more heating value, measured in BTU's (British Thermal Units). So one MCF of propane will provide more heat than one MCF of natural gas. So a customer converted to propane will heat their house using fewer MCF's of propane than if they used natural gas. We understand that Hope is proposing to charge the same rate per MCF volume of propane as it does per MCF of natural gas to other customers. And if, as we suggest, the customer is charged the same rate per volume of MCF for propane as for natural gas, then there is an argument that their heating cost may be subsidized by charging the same rate per MCF as propane as for natural gas. In other words there may be an indirect subsidy of the propane users by those who pay for natural gas at the same rate per MCF.

WVSORO non-the-less continues to support Hope's full proposal for several reasons. First, the amount we are talking about is surely a very small percentage of the total amount gas supplied to customers. Is providing and following and accounting for the difference worth the effort? Exacting measurements do not make the climb worth the view.

Second, no doubt the distances between customers even on Hope's distribution lines is different. And the length of transmission lines between different areas of more dense distribution is different. And the age of the lines that need maintained and may require replacement is different on Hope's distribution and transmission lines. Singling out the potential propane customers for cost accounting should not be done unless others are -- a slippery slope.

Third, rural surface owners have been burdened for many years with pipeline right of ways used to transport natural gas to citizens and businesses in more densely populated areas. These burdens include limitations on crop growth, especially timber, plus limitations occasionally on taking timber trucks and other heavy machinery across pipeline right of ways. In addition the right of ways frequently erode and they can be a pathway for invasive species plus invasive recreational vehicle riders. And they can be undesirable aesthetically and scenically.

True, many citizen surface owners were paid something years ago for the right of ways. However, in WVSORO's experience, the amounts given by the right of way purchasers for the right of ways were computed using the value to the surface owner of the acreage being purchased for the right of way. Or sometimes "a dollar per inch per foot" was the "standard" if the surface owner could get that. (One dollar-per-linear foot of the pipeline right of way times the inches of pipeline diameter.) Modern rights of way purchases are much higher.

However, in most free market transactions, the amount paid for something is the value to the purchaser and not the seller. If a farmer had a meadow next to a highway, and a gas station/convenience store chain wanted to buy it for use as a gas station/convenience store, then the farmer would get a lot more money per acre than what it was worth per acre for growing hay. But the pipeline purchasers were only willing to pay the hay growing value. In condemnation proceedings surface owners were stuck with the unfair use of the seller value, and not the value to the purchaser, by the adoption into condemnation law of the "project influence rule" that negates a true free market result.

Instead of a one-time purchase payment, what should have been used was annual or other periodic payments for pipeline right of ways that were used for decades and decades. That would have been more in line with the value to the pipeline right of way purchaser (and decreased up front pipeline construction costs). Those periodic payment agreements are virtually non-existent except maybe for crossing some governmental lands.

And it should always be remembered that "market value" and "fair market value" are different. Fair market value has the additional requirement that the purchaser and buyer are "informed and knowledgeable".³ And there was rarely a balance of information and knowledge in these transactions with rural folks that resulted in the sale or condemnation of pipeline right of ways across their land.

Yes, the surface owner with a pipeline right of way across the land did have the opportunity value of being able to tap into (and pay for) a natural gas supply -- a supply that was reliable enough to have some value, but probably not as reliable as someone served by a distribution company. None-the-less, good arguments can be made that surface owners with these soon to be abandoned pipelines across their properties have in some senses been burdened by, and underpaid for, underwriting natural gas distribution to others. If balancing underwriting costs was not considered before, it should not be now.

Conclusion.

WVSORO supports fully the Hope proposal.

Respectfully Submitted:



David McMahon, J.D.

Endnotes

1. **Who is the West Virginia Surface Owner's Rights Organization?**

The West Virginia Surface Owner's Rights Organization ("WVSORO") was established in the year 2008 (as a successor to the much earlier Oil and Gas Reform Coalition). (As a technical legal matter the West Virginia Surface Owner's Rights Organization is a registered trade name used by West Virginia Citizen Action Group Incorporated, a West Virginia Corporation.)

WVSORO's interests frequently dovetail with those of environmental organizations. However, WVSORO's interests focus more on damage to and interference with their property rights and property values caused by unreasonable use/trespass, environmental and other issues arising out of oil and gas exploration and development..

More than 900 persons have paid dues and are considered to be members of WVSORO. We also consider ourselves advocates for the 1 Million or more West Virginians who do not live in more densely populated municipalities and so may be subject to abuses of their surface rights by oil and gas drillers. Only about 30% of our dues paying members own any interest in the mineral tracts underlying their surface tracts, and those are often only partial "covenant" mineral interests, and those are often burdened by one-sided "standard" ancestral flat rate leases.

WVSORO serves as resource for our members and all others who are looking for information and guidance on how to deal with oil and gas related activities on their land and in their communities.

WVSORO also advocates for public policy and regulatory changes at the Legislature and state agencies that will help surface owners have their rights recognized and respected by the oil and gas drillers and that will help them protect their land, air, water, and property rights generally. In particular we were responsible for the public pressure, including articles in the State Journal the front page above the fold, that resulted in four pieces of legislation in 2018 increasing funding for the plugging of orphaned wells.

WVSORO in the past has been granted *amicus status inter alia* by the West Virginia Supreme Court of Appeals in the seminal case of *EQT Production Company v. Crowder*, 241 W.Va. 738, 828 S.E.2d 800 (W.Va. 2019) and in *Paulos v LBR Holdings, LLC*, 238 W.Va. 89 at 91, 792 S.E.2d 588 at 589 (2016), and it has been granted intervener status by the West Virginia Supreme Court of Appeals in *EQT Production Company v Hamblet*, 230 W.Va. 183 at 183, 737 S.E. 2d 80 at 80(2012).

2. See "Who regulates which pipelines about what (8/27/2014)" on WVSORO's website at <https://wvsoro.org/who-regulates-pipelines/>

3. MICHIE'S JURISPRUDENCE OF VIRGINIA AND WEST VIRGINIA, *Words and Phrases* "Fair Market Value".