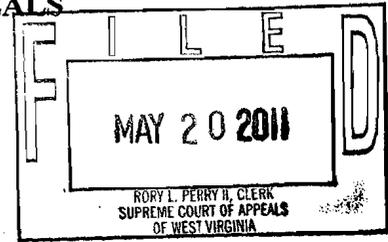


# ARGUMENT DOCKET

IN THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA  
CHARLESTON



**JEFFERSON UTILITIES, INC.,**

**Petitioner,**

v.

**No. 11-0505**

**PUBLIC SERVICE COMMISSION OF WEST VIRGINIA;  
HOMEOWNERS ASSOCIATIONS OF BRECKENRIDGE,  
DEERFIELD, GAP VIEW, MEADOWBROOK, SHERIDAN ESTATES,  
AND BRIAR RUN; CITIZENS FOR FAIR WATER, INC.; AND  
KAY MOORE, SCOTT TATINA AND REGINA FITE, INDIVIDUALS,**

**Respondents.**

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**PUBLIC SERVICE COMMISSION'S MOTION FOR  
LEAVE TO SUPPLEMENT ITS STATEMENT OF  
REASONS IN RESPONSE TO THE PETITIONER'S  
NEW ISSUE IN ITS REPLY BRIEF**

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**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
By Counsel,**

**RONALD E. ROBERTSON, JR., ESQ.**

201 Brooks Street  
Charleston, WV 25301  
(304)340-0336

WV BAR No. 4658

[rrobertson@psc.state.wv.us](mailto:rrobertson@psc.state.wv.us)

**RICHARD E. HITT, ESQ.**

GENERAL COUNSEL

WV BAR No. 1743

**CARYN WATSON SHORT, ESQ.**

DIRECTOR, LEGAL DIVISION

WV BAR No. 4962

May 20, 2011

**IN THE SUPREME COURT OF APPEALS  
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CHARLESTON**

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**TO THE HONORABLE JUSTICES OF THE SUPREME COURT  
OF APPEALS OF WEST VIRGINIA:**

The Respondent, Public Service Commission of West Virginia (hereinafter "Commission"), hereby tenders for filing with this Honorable Court the Commission's Motion for Leave to Supplement its Statement of Reasons in response to a new issue raised for the first time by the Petitioner's Reply Brief filed with this Court on May 10, 2011.

On May 10, 2011, the Petitioner (JUI) filed its Reply Brief in response to the Commission's Statement of Reasons filed on April 25, 2011. In its Reply Brief on Page 2, JUI states:

Because of the incredible financial burden placed upon JUI by the PSC's decision not to decide but to order additional proceedings, JUI has filed a Notice of Termination and Operation and Maintenance Agreements, **Exhibit A**, and will not be pursuing its assignment of error related to those agreements. Moreover, JUI will not be leasing space from Mr. and Ms. Snyder, rendering moot JUI's appeal of the PSC's refusal to approve the proposed lease agreement.

JUI also stated that the effective date of the termination of the Operation and Maintenance (O&M) and Lease agreements provided by Snyder Environmental Services (SES) will be on September 30, 2011. After September 30, 2011, SES intends to no longer provide services to JUI. See, **Exhibit A**, JUI Reply Brief. This is an extremely significant development. The ability of JUI to provide utility services to customers presently depends entirely upon services provided by its affiliate, SES.

The Notice of Termination of the O&M agreement between SES and JUI **and** the termination of the affiliated agreements, which were a central part of the appeal, dramatically affects the structure, nature and potentially the costs incurred by JUI. This Notice of Termination was not part of the original record for this Court to consider and this "eleventh-hour" action by JUI denies the Commission the opportunity to review and meaningfully comment on this new development.

This intent to abandon service to JUI is not only critical to an examination of JUI costs, which are the basis of this appeal, but also involves the future viability of JUI the utility. The rate decision, which is on appeal, was based upon costs incurred by SES which provides JUI with all services required by JUI to operate as a utility. According to the notice given by SES, SES will provide no services to JUI after September 30, 2011.

Based on these actions of SES, JUI contends that review of the O&M and Lease agreements has been rendered moot. In fact, this dramatic restructuring of JUI's operations removes any basis for this Court to review the current rates of JUI based on SES being the provider of all utility functions and operations for JUI. JUI's Notice of Termination of the O&M and Lease agreements

removes the entire basis of its appeal because this Termination of service leaves JUI with unknown costs upon which to calculate reasonable rates. Given this uncertainty, the Commission will have to review JUI's new cost of service when JUI provides the Commission with new numbers for its cost of service in the pending general investigation proceeding or in a future rate filing.

On May 11, 2011, the Commission entered an Order (**Exhibit I attached hereto**) that sets a hearing on June 7, 2011, when JUI is expected to describe its transition plan to provide utility service in light of SES's intent to abandon its services. JUI's transition plan will have new and different cost components for O&M and lease/rent, both of which were major issues stressed in the Petition for Appeal.

Because of the proposed drastic changes in JUI's utility operations and potentially, in JUI's cost of service, beginning September 30, 2011, JUI's petition for appeal now is flawed and should be dismissed. Frankly, given the action of SES, assuming this Court was inclined to grant the appeal, receive final brief and argument and decided to remand the rate case to the Commission, the underlying costs which are driven by SES services will no longer be present. It would be a meaningless act and a waste of judicial resources.

Wherefore, the Commission moves this Honorable Court to grant this motion and, for the reasons stated herein and its Statement of Reasons, deny this Petition for Appeal.

Respectfully submitted this 20th day of May, 2011.

THE PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA

By Counsel,



RONALD E. ROBERTSON, JR.

State Bar I.D. No. 4658

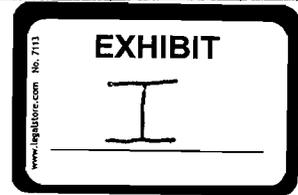
RICHARD E. HITT

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State Bar I.D. No. 4962

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**



At as session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 11<sup>th</sup> day of May 2011.

CASE NO. 11-0235-W-GI  
JEFFERSON UTILITIES, INC.

General Investigation of utility operations, including proposed O&M Agreement and Leases; whether customers are better off with an affiliate furnishing all required services as opposed to the utility employing its own personnel; a study of long-term plans to operate and rehabilitate its utility facilities; details of current and future use of \$12 surcharge; and future possibilities for private-public agreements.

**COMMISSION ORDER**

The Commission schedules a discovery conference and an additional hearing, and changes the location of a previously scheduled hearing.

**Background**

By Order issued February 18, 2011, the Public Service Commission initiated this General Investigation of the utility operations of Jefferson Utilities, Inc. (JUI). The Commission Consumer Advocate Division (CAD) and Citizens for Fair Water, Inc. (Citizens) and the Jefferson County Public Service District (District) are each intervenors in this proceeding.

Recent filings include notifications to the Commission that a discovery dispute between CAD and JUI is not resolved and a notice of termination of the Operation and Maintenance Agreements between Snyder Environmental Services, Inc. (SES) and JUI. JUI and CAD progress reports filed May 2, 2011, CAD response filed May 3, 2011, JUI notification filed May 4, 2011, CAD reply filed May 10, 2011.

**DISCUSSION**

The discovery dispute between JUI and CAD has not been resolved and the Commission will reverse its prior denial of JUI's request for a discovery conference. A discovery conference will occur on Monday, May 16, 2011 at 1:00 p.m., in Charleston. On the morning of May 16, 2011, by 9:30 a.m., the Commission requires each of the parties to the discovery dispute to file a listing of each specific discovery request at issue, the specific

objection, and a statement as to whether there is any willingness to compromise with respect to that item. The Commission anticipates ruling from the bench on each disputed item of discovery at the discovery conference.

The Commission has reviewed the notification from JUI that SES is terminating the Operation and Maintenance Agreements between JUI and SES. The filing raises a number of concerns as to JUI's ability to accomplish an orderly transition of responsibility for operating and maintaining the JUI utility systems. To address Commission concerns, this Order schedules an additional hearing in this proceeding on Tuesday, June 7, 2011, at 9:30 a.m. in Charleston, at which JUI will bear the burden to show the Commission that it has a reasonable transition plan and explain the details of that plan. The Commission puts JUI on notice that in the event the Commission is not assured that a reasonable transition plan will be executed, the Commission will assess whether circumstances are developing to justify a conclusion that the utility is unable to adequately serve customers, or that other circumstances as described in W. Va. Code 24-2-7(b) exist to justify a receivership action in circuit court.

The Commission advises the parties that the procedural schedule previously established remains in effect, except that the location of the July 26, 2011 hearing in Charles Town has been moved from the Council Chambers, City Building, 101 East Washington Street, Charles Town to The Holiday Inn Express in Ranson, West Virginia.

### **FINDING OF FACT**

Recent filings include notifications to the Commission that a discovery dispute between CAD and JUI is not resolved and a notice of termination of the Operation and Maintenance Agreements between Snyder Environmental Services, Inc. and JUI. JUI and CAD progress reports filed May 2, 2011, CAD response filed May 3, 2011, JUI notification filed May 4, 2011, CAD reply filed on May 10, 2011.

### **CONCLUSIONS OF LAW**

1. The Commission will reverse its prior denial of JUI's request for a discovery conference.
2. The notification from JUI that SES is terminating the Operation and Maintenance Agreements between JUI and SES raises a number of concerns as to JUI's ability to accomplish an orderly transition of responsibility for operating and maintaining the JUI utility systems.
3. The Commission will hold a hearing at which JUI will bear the burden to show the Commission that it has a reasonable transition plan.

4. In the event the Commission is not assured that a reasonable transition plan will be executed, the Commission will assess whether circumstances are developing to justify a conclusion that the utility is unable to adequately serve customers, or that other circumstances as described in W. Va. Code 24-2-7(b) are likely to develop, to justify a receivership action in circuit court.

### **ORDER**

IT IS THEREFORE ORDERED that on the morning of May 16, 2011, by 9:30 a.m., both CAD and JUI must file a listing of each specific discovery request at issue, the specific objection, and a statement as to whether there is any willingness to compromise with respect to that item.

IT IS FURTHER ORDERED that CAD and JUI attend the discovery conference set forth on the procedural schedule below. Other parties to this proceeding may, but are not required to, attend.

IT IS FURTHER ORDERED that an additional hearing on June 7, 2011, as provided in the procedural schedule below at which JUI will bear the burden to show the Commission that it will execute a reasonable transition plan in view of the SES termination of Operations and Maintenance Agreements with JUI.

IT IS FURTHER ORDERED that the following procedural schedule is adopted or remains in effect:

May 16, 2011, 9:30 a.m. - CAD and JUI to file a listing of each specific discovery request at issue, the specific objection, and a statement as to whether there is any willingness to compromise with respect to that item.

Monday, May 16, 2011, 1:00 p.m - Discovery Conference, Howard M. Cunningham Hearing Room, Commission offices, 201 Brooks St. Charleston, West Virginia.

Tuesday, June 7, 2011, 9:30 a.m. - Hearing, Howard M. Cunningham Hearing Room, Commission offices, 201 Brooks St. Charleston, West Virginia.

June 22, 2011 - Pre-filed direct testimony and Staff report on the issues encompassed in this General Investigation due from all parties.

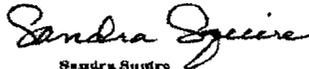
July 11, 2011 - Responsive testimony due date for all parties.

Tuesday, July 26, 2011, 9:00 a.m. - Hearing, Holiday Inn Express, 681 Flowing Springs Road, Ranson, West Virginia - **Note new location.** The hearing may continue on the morning of Wednesday, July 27, 2011, if necessary.

IT IS FURTHER ORDERED that at least twenty days prior to the hearing date, the Executive Secretary publish the attached notice to this Order as Attachment A in lieu of the notice attached as Attachment B to the Commission Order issued on March 22, 2011.

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, by United States First Class Mail on all parties of record in those cases who have not filed an e-service agreement, and on Staff by hand delivery.

A True Copy, Testor

  
Sandra Riquero  
Executive Secretary

JML/tt  
110235cc.wpd

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

CASE NO. 11-0235-W-GI  
JEFFERSON UTILITIES, INC.

General Investigation of utility operations, including proposed O&M Agreement and Leases; whether customers are better off with an affiliate furnishing all required services as opposed to the utility employing its own personnel; a study of long-term plans to operate and rehabilitate its utility facilities; details of current and future use of \$12 surcharge; and future possibilities for private-public agreements.

**NOTICE OF HEARING**

By Order issued February 18, 2011 in this proceeding, and in consolidated Case Nos. 10-0974-W-PC and 10-1329-W-42T, the Public Service Commission initiated a General Investigation of Jefferson Utilities, Inc. (JUI). JUI operates eight water systems in Jefferson County known as Walnut Grove, Meadowbrook, Deerfield, Shenandoah Junction, Burr/Bardane, Harpers Ferry Campsites, Westridge Hills, and Keys Ferry Acres. The purpose of the investigation was to review JUI's utility operations, including a proposed Operation and Maintenance Agreement (O&M Agreement) and certain real property Leases as well as other issues. The Commission Order required JUI to show that JUI customers are better off with an affiliate furnishing all required services as opposed to JUI employing its own personnel. In addition, the Commission will study JUI's long-term plans to operate and rehabilitate its utility facilities, and receive further details of JUI's current and future use of a \$12 monthly surcharge that customers have been paying since December 2009. The Commission also requested information about future possibilities of private-public agreements, combinations or partnerships that might be beneficial to customers of JUI.

The O&M Agreement was a proposed agreement pursuant to which JUI's affiliate, Snyder Environmental Services, Inc. (SES), would continue to provide operation and maintenance services for the eight water utility systems owned by JUI. The Leases are four proposed lease agreements relating to an office building at 270 Industrial Boulevard, Kearneysville, West Virginia, and the lots, Lots 16 and 17, on which the building is located.

JUI recently notified the Commission that SES has terminated the existing Operations and Maintenance Agreements between JUI and SES and anticipates that JUI will relocate its offices. Accordingly, the status of the proposed leases and the proposed O&M Agreement have changed since the date the Commission initiated this general investigation.

The Commission previously published a Notice of this investigation and provided an opportunity to file written comments or requests to intervene. The deadline to intervene expired after May 1, 2011. Interested parties may attend a hearing scheduled in this case to begin on Tuesday, July 26, 2011 at 9:00 am at the Holiday Inn Express, 681 Flowing Springs Road, Ranson, West Virginia. The Commission will hear public comment at the beginning of the hearing.

CERTIFICATE OF SERVICE

I, RONALD E. ROBERTSON, Counsel for the Public Service Commission of West Virginia, do hereby certify that a copy of the foregoing "Public Service Commission's Motion for Leave to Supplement its Statement of Reasons in Response to the Petitioner's New Issue in its Reply Brief" has been served upon the following parties of record by First Class United States Mail, postage prepaid this 20th day of May, 2011.

E. Dandridge McDonald, Esq.  
Counsel, Jefferson Utilities, Inc.  
Steptoe & Johnson PLLC  
PO Box 1588  
Charleston, WV 25326-1588  
**(VIA MAIL AND HAND-DELIVERY)**

James Casimiro III, Esq.  
Jefferson County Prosecutor's Office  
PO Box 729  
Charles Town, WV 25414  
**(VIA MAIL)**

Samuel F. Hanna, Esq.  
Counsel, The Homeowners Associations of  
Breckenridge, Deerfield, Gap View,  
Meadowbrook, Sheridan Estates, Briar Run,  
Kay Moore, Scott Tatina, and Regina Fite  
PO Box 2311  
Charleston, WV 25328-2311  
**(VIA MAIL AND HAND-DELIVERY)**



RONALD E. ROBERTSON, JR.  
State Bar I.D. No. 4658  
RICHARD E. HITT  
State Bar I.D. No. 1743  
CARYN WATSON SHORT  
State Bar I.D. No. 4962