IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
DOCKET NO. 22-0351

MASON COUNTY PUBLIC SERVICE DISTRICT,

Petitioner,

v.

THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA and RALPH AND CARLA HUFF,

Respondents.

REPLY BRIEF OF THE MASON COUNTY PUBLIC SERVICE DISTRICT

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Submitted: July 11, 2022

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I. INTRODUCTION

With the adoption of Senate Bill 234 in 2015, the Legislature broadly stripped the authority of the Public Service Commission ("PSC" or "Commission") to set the rates, fees, and charges of Locally Rate Regulated[1] public service districts. The Legislature set specific conditions which must be satisfied before the Commission would have rate jurisdiction over LRR utilities. In its April 4, 2022 Commission Order ("Final Order") and in its June 21, 2022 Statement of the Respondent Public Service Commission of West Virginia of its Reasons for the Entry of Its Order of April 4, 2022 ("SOR"), the Commission acknowledges those statutory preconditions were not satisfied in the case. Having broadly transferred rate setting authority away from the PSC, and identified the only circumstances under which the PSC would have rate jurisdiction over LRR PSDs, it is unreasonable to infer, as the PSC does, that the Legislature in the same enactment, give rate jurisdiction back to the Commission by retaining the Commission's authority to correct "unreasonable practices." It is unreasonable to infer that the Legislature's transfer of rate-setting authority from the PSC to county commissions did not extend so far as to enable county commissions to depart from the PSC's policy prohibiting disconnect fees. Plainly, the phrases "rates, fees, and charges" and "unreasonable practices" are distinct, and those distinctions should be given effect. The Final Order does not give those distinct phrases distinct effects, but rather applies an expansive interpretation of "unreasonable practices" which would encompass "rates, fees, and charges."

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[1] The West Virginia Code differentiates PSDs with more than 4,500 customers and $3 million in **annual** revenue from PSDs with fewer customers or less annual revenue. *See W. Va. Code* § 16-13A-9(a)(2). For simplicity, the District will use the term "Locally Rate Regulated PSD."

The Commission warps those distinct words and phrases used in Senate Bill 234 into an overlapping morass; advances an unreasonable reading of its own jurisdiction; takes direct aim at the Mason County Commission's ("MCC's") statutory authority to enact rates, fees, and charges; guesses at the components of the District's rate structure; advances a theory of application of charges at odds with State Code requiring utilities to apply tariffs in a non-discriminatory manner; and violates its own procedural rules and precedent in an effort to claw back what the Legislature took away in Senate Bill 234. The District requests that the Final Order be vacated.

II. ARGUMENT

A. The Commission does not have jurisdiction to regulate a Locally Rate Regulated PSD's "act of charging a disconnect fee."

The Commission argues that the District's "act of charging a disconnect fee" constitutes an "unreasonable practice" sufficient to confer the Commission jurisdiction under *W.Va. Code* § 24-2-1(b)(2). SOR at 13. This argument is unsupported by the text and purpose of Senate Bill 234.

1. The Commission bucks Senate Bill 234's purpose and mandate.

The June 21, 2022 Brief of the West Virginia Rural Water Association as *Amicus Curiae* in Support of Petitioner ("Amicus Curiae Br.") aptly explains the conditions that led to the enactment of Senate Bill 234. *See Amicus Curiae* Br. at 8-9. The Commission's historical rate setting practices imposed "the highest obstacles of all the states that regulate publicly-owned utility rates, making it difficult for such utilities to increase revenues, upgrade infrastructure . . . engage in long-term financial planning and meet rate covenants." *Id.* at 8 (quoting Seymour, *Most US Municipal Entities Enjoy Unlimited Authority Over Rates*, Moody's Investor Service, Special Comment, August 19, 2014). The State of West Virginia was historically an outlier under the Commission's pre-2015 top-down rate setting practices.

To address this, in 2015, the Legislature enacted Senate Bill 234 which "limited" the Commission's jurisdiction over Locally Rate Regulated PSDs to the grounds "granted specifically in this code." *W. Va. Code* § 24-1-1(j). Subject to the satisfaction of specific conditions precedent, the Legislature did provide for the PSC to retain authority to modify "rates, fees, and charges" of LRR PSDs in *W.Va Code* § 24-2-1(b)(6 and 7).[2] The Legislature did not include a Locally Rate Regulated PSD's "rates," "fees," or "charges" among the bases for the Commission's § 24-2-1(b)(2) "measurements, practices, acts, or services, as granted and described in §24-2-7 of this code" jurisdiction. Elsewhere in Senate Bill 234, the Legislature entrusted the enactment of "rates, fees, and charges" to the Locally Rate Regulated PSD's local governing body. *See W.Va. Code* § 16-13A-9. The express and principal purpose of Senate Bill 234 was to transfer the authority to set rates, fees, and charges from the Commission—where it historically rested—to local government bodies. *See id.* at § 24-1-1(j) (2015) ("The Legislature finds that [Locally Rate Regulated PSDs] are most fairly and effectively regulated by the local governing body with respect to rates, borrowing and capital projects.").

The Commission is in denial as to what occurred with Senate Bill 234, why it occurred, and what the intended outcome of that legislation was. The Commission contends that "the District's status as an LRR should not constitute a free pass for the District to skirt the application of the [PSC's] *Water Rules*." SOR at 17. In fact, that is much of what was intended with Senate Bill 234: to relieve LRR utilities of the Commission's hyper-technical, inside-baseball rules, and replace those with more common-sense approaches of locally elected public officials.

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[2] Subsection (b)(6) was never invoked or addressed by any of the parties or the Commission, and the Commission acknowledges that the conditions precedent of subsection (b)(7) were not satisfied. SOR at 8.

The Commission is so eager to re-assert jurisdiction over the subject matter which the Legislature removed from its oversight that it advances a non-sensical interpretation of the *Rules of Practice and Procedure,* 150 WVCSR Series 1 ("*Procedural Rules*") and ignores its own precedental decision to retain jurisdiction of this case, even though the Complainant failed to appear at hearing. *See* SOR at 18. The Commission's assertion that the discretion in *Procedural Rule* 12.10 —which allows it to take one of two options depending on circumstances—also allows it to take a third option not mentioned or suggested by the text of that *Procedural Rule* is entirely unpersuasive and indicative of the Commission's desire to claw back the jurisdiction which the Legislature removed from it.

There is no support for the notion that the Legislature—while stripping the Commission's jurisdiction over rates, fees, and charges—intended to give such jurisdiction right back in the same enactment, and did so coyly by having the Commission retain jurisdiction over "measurements, practices, acts, or services". Yet that is the reading of Senate Bill 234 that the Commission advances here.

2. The Commission's expansive reading of Senate Bill 234 fails as a matter of statutory interpretation.

The Legislature "limited" the Commission's jurisdiction over Locally Rate Regulated PSDs to the grounds "granted specifically in this code." *W. Va. Code* §§ 24-1-1(j), 24-2-1(b).

The Commission's jurisdiction to award relief under subsection (b)(7) is conditioned upon a complaint being filed by a customer within 30 days of the "act or omission complained of." In this case, the Commission acknowledges that the Complaint initiating this matter was not filed within the 30-day time limit of subsection (b)(7). SOR at 8. Yet the Commission adopts the Recommended Decision which is based upon subsection (b)(7). Final Order, Finding of Fact 11. In the Final Order the Commission states that the authority for its Final Order is based upon

subsection (b)(7), as well as (b)(2) and *W.Va. Code* §24-2-7(a). Final Order, Conclusions of Law Nos. 7 -10.

By continuing to assert authority to invalidate the District's disconnection fee on the basis of subsection (b)(7), the Commission untethers its authority from the complaint requirements of subsection (b)(7) and the attendant time frame limitations. This is an unreasonable interpretation of the statute, as subsection (b)(7) is entirely tied to a properly filed complaint meeting all of its conditions precedent. That proper adherence to the complaint process is integral to the PSC's authority under this subsection is confirmed by the last clause of this subsection: "if the matter complained of would affect rates, fees, and charges so fixed by the political subdivision . . . the rates, fees and charges shall remain in full force and effect." Subsection (b)(7) provides no basis for the Commission to undertake an "unreasonable practices" investigation where the conditions precedent of subsection (b)(7) have not been satisfied.

The fact that the conditions precedent to its authority under (b)(7) were not satisfied limits the basis for the Final Order to subsection (b)(2), the "[r]egulation of measurements, practices, acts, or services, as granted and described in § 24-2-7 of this code." SOR at 12-13.

The Final Order adopted a January 28, 2022 Recommended Decision ("Recommended Decision") by a PSC Administrative Law Judge. In the Conclusions of Law in the Recommended Decision, reference is made to *W.Va. Code* § 24-2-1(b)(7), and there is no reference in the Conclusions of Law to subsection (b)(2). The "Discussion" portion of the Recommended Decision confirms that the Recommended Decision was based upon a reading of subsection (b)(7). Recommended Decision, at 8-9. The Recommended Decision does not address at all the conditions precedent to the Commission's ability to exercise its authority under subsection (b)(7). The Recommended Decision would clearly affect "rates, fees, and charges" as its first ordering

provision directs that the District's disconnection fee be struck from its tariff. Recommended Decision, at 12.

The Final Order does address the 30-day limitation period in subsection (b)(7) and concludes that Commission's jurisdiction to award relief pursuant to *W.Va. Code* §24-2-7(a) is not subject to the statutory conditions precedent in subsection (b)(7) or any time constraints. Final Order, at 8. The Final Order and SOR attempt to support the Commission's jurisdiction for its adoption of the Recommended Decision on a different, broader basis than that asserted in the Recommended Decision. The SOR acknowledges that the Complainant did not satisfy the procedural prerequisites to the Commission exercising its jurisdiction under § 24-2-1(b)(7). *See* SOR at 8. The Final Order attempts to base its adoption of the Recommended Decision on an additional basis, on *W.Va. Code* § 24-2-1(b)(2), and general application of *W.Va. Code* § 24-2-7(a) and its own prior decisions applying that section of the Code prior to the adoption of Senate Bill 234. SOR at 13. The Commission did not consider in this case or in its SOR the effect of Senate Bill 234 on the Commission's procedural practices as they existed prior to the adoption of Senate Bill 234. Senate Bill 234 sets out specific criteria which must be satisfied in order for the Commission to have jurisdiction over the rates, fees, and charges of LRR utilities. *W.Va. Code* § 24-2-1(b)(6,7). The Commission's procedural practices in use prior to the adoption of SB 234 do not supersede the terms of Senate Bill 234 as the Commission's SOR implies. The Commission's prior procedural practices are subordinate to the terms of Senate Bill 234—not the other way around.

Neither *W.Va. Code* § 24-2-1(b)(2) nor § 24-2-7 make any reference whatsoever to a Locally Rate Regulated PSD's "rates, fees, and charges." Those terms are nowhere to be found in either of the statutes the Commission relies upon here. The Legislature used the terms "rates, fees,

and charges" in other parts of Senate Bill 234—most notably, in its grant of authority to local governing bodies. *See W. Va. Code* § 16-13A-9.[3] By employing different terms in § 24-2-1(b)(2) and § 16-13A-9, the Legislature defined different scopes to the Commission's jurisdiction and the local governing body's authority. Had the Legislature intended a Locally Rate Regulated PSD's "rates, fees, and charges" to be included in the Commission's (b)(2) jurisdiction, the Legislature would have used that language in either § 24-2-1(b)(2) or § 24-2-7. But it did not. And it is no mystery why not. The Legislature affirmatively set out to limit the Commission's jurisdiction over a Locally Rate Regulated PSD's rates, fees, and charges. *See W. Va. Code* § 24-1-1(j).

The Commission argues nonetheless that Senate Bill 234 left the backdoor open. The Commission argues that it may freely regulate a Locally Rate Regulated PSD's fees, rates, and charges so long as the Commission labels the fee, rate, or charge "***the act of charging***" it and finds it "unreasonable." SOR at 13.

This argument proves too much. Despite the fact that the Legislature plainly "limited" the Commission's jurisdiction, the Commission acknowledges no boundaries to § 24-2-1(b)(2). The Commission argues that it may regulate both the existence ***and even the amount*** of a Locally Rate Regulated PSD's rate, fee, or charge under subsection (b)(2) so long as the Commission labels it unreasonable. *See* SOR at 13-14, n.2 ("That is not to say . . . that the amount charged for a

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[3] Likewise, the Legislature acknowledged that the Commission's jurisdiction to entertain consumer complaints pursuant to subsection (b)(7) may "***affect*** rates, fees, and charges." *W. Va. Code* § 24-2-1(b)(7) (emphasis added). But critically, subsection (b)(7) provides a required procedure for consumer complaints. *See id.* As explained in the District's Petition, this is not a consumer complaint case because the Huffs failed to appear, did not mention the disconnect fee in their complaint, and did not initiate the Complaint within the time period required to challenge it.

But the Commission's notion that the Legislature conveyed "essentially the same authority" in § 24-2-7 and § 24-2-1(b)(7) is incorrect. *See* SOR at 13. Subsection (b)(7) expressly contemplates that a consumer complaint may "affect rates, fees, and charges." But nowhere does the Code authorize the Commission to take direct and unsolicited aim at rates, fees, and charges.

reconnect fee . . . could not rise to the level of an unreasonable practice."). But the Commission's jurisdiction over a Locally Rate Regulated PSD is not a sliding scale—it is "limited to that granted specifically in [the] code." *W. Va. Code* § 24-1-1(j). The Legislature made ***no*** mention of "rates, fees, and charges" in this jurisdictional grant, *id.* at § 24-2-1(b)(2)—and it certainly did not "grant[]" such jurisdiction "specifically." *Id.* at § 24-1-1(j). Rather, Senate Bill 234 openly stripped the Commission of that authority.

The Commission's argument reduces Senate Bill 234 to a nullity that the Commission can disregard by using the magic word "unreasonable." But the Commission's jurisdiction does not rise and fall on what it finds unreasonable. It is "limited" to the grounds "granted specifically" in subsection (b). *W. Va. Code* § 24-1-1(j). Those grounds include "measurements, practices, acts, or services"—but not "rates, fees, and charges." The Commission reads a conflict into the *Code* where no such conflict exists. *See Barber v. Camden Clark Mem. Hosp. Corp.*, 240 W. Va. 663 at 670, 815 S.E.2d 474 at 481 (2018) ("Statutes which relate to the same subject matter should be read and applied together so that the Legislature's intention can be gathered from the whole of the enactments."). If a conflict were to exist, the Legislature's specific grant of rate-making authority to local governing bodies and the conditions precedent to the Commission's jurisdiction over rates, fees, and charges, would prevail over the general reservation of "unreasonable practice" jurisdiction to the Commission. *See id.*

Further, it suggests that the Commission would condone a double standard that is not consistent with state law—that a utility could retain a charge in its tariff so long as it did not apply it. This is inconsistent with *W. Va. Code* § 24-3-2, which requires utilities to fairly and fully apply the terms in their tariffs.

3. Construing the disconnect fee as "the act of charging a disconnect fee" unravels Senate Bill 234.

The Commission labels the disconnect fee as the District's "act of charging a disconnect fee." SOR at 13. The Commission does not allege any unreasonable application of the disconnect fee—but merely challenges the District's "act of charging" it generally. *See id.* This labeling act is nonsensical and unravels other provisions of Senate Bill 234.

The disconnect fee at issue was approved by the MCC pursuant to *West Virginia Code* § 16-13A-9. Once a charge or fee is enacted into a PSD's rate structure, the PSD has no choice but to charge it. *W.Va. Code* § 24-3-2. It would be unlawful for the District to pick and choose when to charge a fee that has been duly enacted into its tariff. The District's "act of charging a disconnect fee" cannot be an "unreasonable act" given that the MCC enacted it, and once enacted, the District was duty-bound to charge it. *W.Va. Code* §24-3-2.

The Commission's posture on this issue is disingenuous. The first ordering provision of the Recommended Decision states "IT IS THEREFORE, ORDERED that Mason County Public Service District shall immediately remove its water disconnection regulation from its tariff and cease and desist from engaging in the practice of assessing its delinquent customers a disconnection fee pursuant to that regulation." Recommended Decision, at 12. In the SOR, the Commission's attempt to shift the focus to the *practice* of charging the disconnect fee seemingly ignores that the Recommended Decision which the Commission adopted does not just direct the District to refrain from imposing its disconnect fee, but orders the District to have that term removed from its tariff.

By creatively labeling the disconnect fee as the District's "act of charging" it, the Commission takes direct aim at the MCC's statutory authority to "approve, modify, or reject" such fees. *See W. Va. Code* § 16-13A-9. That is the real "act" that the Commission challenges in this

case—but the Senate Bill 234 expressly gave this authority to local governing bodies. *See id.* The Commission's reading of "measurements, practices, acts, or services" to encompass the "act of charging a disconnect fee" is illogical, subverts local rule, and renders Senate Bill 234 a nullity that the Commission can disregard by employing creative terminology.

None of these absurdities exist in Senate Bill 234. Instead, and straightforwardly, the Legislature stripped the Commission of jurisdiction to *sua sponte* set aside a fee that is duly enacted by a local governing body. *See W. Va. Code* § 24-1-1(j) ("The Legislature finds that [Locally Rate Regulated PSDs] are most fairly and effectively regulated by the local governing body with respect to rates, borrowing, and capital projects. Therefore . . . the jurisdiction of the [Commission] . . . is limited to that specifically granted in this code."). Calling such a fee the "act of charging the fee" is a creative but baseless fiction designed to claw back what Senate Bill 234 has stripped away. The Final Order is an open revolt against Senate Bill 234.

4. This Court's decision in Town of Fayetteville does not support the Commission's position.

To support its exercise of jurisdiction in this case, the Commission cites the following passage from *SER Pub. Serv. Comm'n v. Town of Fayetteville*:

> The statute [W. Va. Code § 24-2-4b] merely exempts municipalities from the rate approval sections of 24-2-4 and 24-2-4a; it does not deprive the PSC of jurisdiction over the municipality or eliminate the PSC's authority to otherwise address issues of the municipally operated public utilities. In exempting municipalities from the extremely detailed rate procedures outlined in [the West Virginia Code], the statutory scheme does not remove municipalities from the authority of the PSC to exercise its general powers to require reasonable, non-discriminatory practices based primarily upon the cost of service.

212 W. Va. 427 at 433, 573 S.E.2d 338 at 344 (2002).

At the outset, this passage is mostly inapposite. The *Town of Fayetteville* decision not only pre-dates Senate Bill 234, it interprets another code section entirely. *West Virginia Code* § 24-2-

4b exempted municipalities from certain rate-making procedures—and this Court concluded that this exemption does not "undermine" the Commission's jurisdiction. *Town of Fayetteville*, 212 W. Va. at 433, 573 S.E.2d at 344. But unlike § 24-2-4b, Senate Bill 234 does not "merely exempt[]" Locally Rate Regulated PSDs from rate-making procedures—it expressly limits the Commission's jurisdiction and sets specific prerequisites to the Commission's exercise of rate jurisdiction. The *Town of Fayetteville* decision does not relieve the Commission of the obligation to demonstrate it has satisfied the jurisdictional prerequisites to its authority to modify the rates, fees, or charges of a locally rate regulated PSD under Senate Bill 234.

In any event, the challenged "practice" in *Town of Fayetteville* was the municipality's charge of a disconnect fee when the service had not actually been performed. *See* 212 W. Va. at 433, 573 S.E.2d at 344 ("The Commission concludes it would be an unreasonable practice for a utility . . . to charge two reconnection fees when . . . the utility . . . is physically making only one reconnection."). As explained previously, the practice of charging a fee for a service that was not actually performed is certainly an "unreasonable practice" that would provide a sound basis for the Commission to exercise jurisdiction pursuant to *West Virginia Code* § 24-2-1(b)(2). But the "act of charging a disconnect fee" in a consistent and nondiscriminatory fashion is not. The Commission here does not challenge any unreasonable application of a fee; rather, it challenges the fee itself. The District does not "miss[] the mark" with *Town of Fayetteville*—the Commission's SOR expands it without regard for the intervening Senate Bill 234.

B. The disconnect fee is reasonable; and the Commission's argument to the contrary illustrates the problem Senate 234 was addressing.

In finding the District's disconnect fee to be unreasonable, the Commission relies solely on its historical distaste for disconnect fees based on its own rate-setting preferences. *See* SOR at

16-17. According to the Commission, under its old structure, the rate-paying public subsidized the disconnect fees at issue and disconnect fees generally and historically constitute a double recovery to a utility. *See* SOR at 17. The evidence in this case shows that no double recovery is occurring; the PSD does not fully recover its cost of disconnecting and reconnecting service with either its disconnect fee or reconnect fee. The Commission cites a number of decisions in which the Commission struck down similar fees back when the Commission had total control over rate-setting for all West Virginia public service districts. *See id.* at 7 (citing Case No. 09-0433-PWD-T-PW, *Fountain Public Service District* (Sept. 8, 2009); Case No. 08-1867-PWD-T-PC-CN, *Jane Lew Public Service District* (Mar. 13, 2009); Case No. 04-1865-PWD-T, *Green Valley-Glenwood Public Service* (Jan. 25, 2005)).

Indeed, prior to Senate Bill 234, the Commission had near-plenary authority to set a PSD's tariff. No longer. The Commission no longer sets the District's tariff and the Commission is no longer privy to the District's rate structure. By finding the subject disconnect fee to be a "double recovery," the Commission is ***openly guessing*** as to how the MCC and the District structure its tariff. *See* SOR at 17 ("Moreover, utilities will include the cost of disconnects for water service only in their operation and management costs."). Since the Commission does not set the District's rates, it does not know whether the cost of performing disconnects is included in the District's volumetric rates or not. Further, even for those utilities over which the PSC has full rate jurisdiction, the PSC's very detailed "Historical Rule 42" Financial Reports, Rule 20, *Rules and Construction for the Filing of Tariffs*, 150 WVCSR Series 2 ("*Tariff Rules*"), do not include a separate line item for the cost of disconnecting or reconnecting services. The notion that the cost of disconnecting is embedded in operation and maintenance ("O&M") expenses while the cost of reconnecting is distinct and outside O&M expenses is just an inside baseball inference the PSC

has adopted over the years. This sort of top-down, theory over facts blanket reasoning is exactly the kind of overreach that the Legislature sought to remedy with Senate Bill 234. The Commission's pre-Senate Bill 234 decisions are irrelevant both to the jurisdictional question and its reasonableness finding.

The Final Order makes no mention of the unique local features of the District. The District is the geographically largest PSD in the state of West Virginia and service trips are uniquely expensive given the physical size of the District. The Final Order makes no effort to determine whether the disconnect fee at issue is *actually* a double recovery. As the District has repeatedly maintained, the disconnect fee recoups only a portion of the District's costs of disconnecting services. The Commission simply ignores the District's evidence and speculates that the District is double-dipping based only on the Commission's historical rate structure, the Commission's historical practices, and the Commission's historical authority to set rates for all PSDs. *See* SOR at 16-17.

Notably, the Commission's historical rate structure and *Water Rules* allow for a reconnect fee. *See* SOR at 16. Disconnect and reconnect services are functionally identical services—but they require separate trips and constitute separate expenses to the PSD. Why one fee is reasonable but the other is not defies explanation. The only explanation the Commission offers is that this is how the Commission historically structured its tariff. *See id.* The Commission knows that it no longer has the authority to impose its rate-setting preferences on Locally Rate Regulated PSDs—but in this case, it did so anyway.

Throughout these proceedings, the District has repeatedly explained that this disconnect fee is (i) cost-based, (ii) only partially re-coups the District's losses in performing these services, and (iii) reduces the extent to which the rate-paying public subsidizes those who fail to make

payment arrangements. By ignoring these facts and relying solely on historical, pre-2015 practices and rate structures that the District is no longer bound by, the Commission simply pretends that Senate Bill 234 was never enacted and that the Commission is still in charge of the District's rate-setting. But those days are over.

The Commission's reasonableness finding is not just far beyond its jurisdiction—it is not true. It is entirely reasonable to charge a disconnect fee to recoup a fraction of the losses attributable to disconnect trips. It is wholly unreasonable to force the rate-paying public to subsidize all these costs by command of a Commission acting far beyond its authority.

CONCLUSION

Senate Bill 234 removed the PSC's jurisdiction over the rates, fees, and charges of locally rate regulated utilities except under limited and specific circumstances. The Commission in its Final Order and Statement of Reasons admits those pre-conditions were not satisfied in this case. The Commission contends that it still has the jurisdiction to strike a fee from the District's County Commission approved tariff on the basis that the Commission retains jurisdiction over the unreasonable practices of locally rate regulated utilities. That contention rests upon numerous mistaken ideas. First, it rests upon the misguided notion that when the Legislature used the phrases "rates, fees, and charges" and "unreasonable practices" in the same bill, those terms had overlapping, and not distinct meanings. Second, it rests on the belief that the Commission's general retention of jurisdiction over unreasonable practices supersedes the specific directives in the same bill regarding the limited circumstances in which the PSC does have rate jurisdiction over locally rate regulated utilities. Third, it infers that the Legislature gave back to the Commission that which it took away elsewhere in the bill. None of these bases are credible.

To give proper effect to SB 234, the Commission's Final Order must be vacated.

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CERTIFICATE OF SERVICE

I, James V. Kelsh, hereby certify that the foregoing Reply Brief of the Mason County Public Service District filed with the Court on July 11, 2022 have been served upon the following parties of record in the underlying Public Service Commission of West Virginia proceeding on this 11th day of July, 2022, via first class U.S. Mail.

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