

**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 31st day of October 2024.

CASE NO. 22-0456-PWD-DU

GAULEY RIVER PUBLIC SERVICE DISTRICT

Staff Petition asking the Commission to Establish a
Proceeding to Determine whether Gauley River Public
Service District is a Distressed or Failing Utility.

COMMISSION ORDER

The Commission denies the Petition for Reconsideration and orders the Gauley River Public Service District (Gauley River) and West Virginia-American Water Company (WVAWC) to enter into the attached Operation and Maintenance Agreement (Attached Agreement) within 20 days of entry of this order. Gauley River is also ordered to file for a tariff modification and to provide the attached notice to its customers.

BACKGROUND¹

This matter remains pending before the Commission on the petition of Commission Staff, filed on May 16, 2022, requesting the Commission determine whether Gauley River is a distressed or failing utility.

On August 25, 2023, the Commission ordered WVAWC and Gauley River to negotiate and file an operation and maintenance agreement and corrective action plan by September 25, 2023.

On November 17, 2023, the parties submitted a proposed agreement titled Proposed Operation and Maintenance Agreement (Proposed Agreement). The Proposed Agreement did not contain standard elements of a traditional operation and maintenance agreement, i.e. with such operation and maintenance to be conducted by WVAWC, as directed by the Commission. Instead, the Proposed Agreement merely contained limited terms outlining a consulting and advisory role

¹ This background section is abbreviated. For a complete procedural history, refer to the previous orders and filings in the above captioned case found on the Commission's web docket at www.psc.state.wv.us.

for WVAWC for a term of 36 months.²

On March 15, 2024, the Commission entered an Order that denied the parties' joint request for consent and approval to enter into the Proposed Agreement, and again directed that the parties enter into a standard operation and maintenance agreement containing terms and conditions previously and repeatedly specified by the Commission.

On March 25, 2024, Gauley River filed a Petition for Reconsideration of the March 15, 2024 Commission Order.

DISCUSSION

On August 25, 2023, the Commission entered an order directing the parties to create and enter into a standard operation and maintenance agreement. In response on November 17, 2023, Gauley River and WVAWC filed the Proposed Agreement that did not contain the terms of a standard operation and maintenance agreement and did not follow the Commission directives that the agreement have WVAWC performing operating and maintenance functions on behalf of and as agent for Gauley River. On March 15, 2024, the Commission clearly and categorically rejected the Proposed Agreement filed by the parties, repeated the terms that must to be contained in an acceptable operation and maintenance agreement between the parties, and again directed the parties to file an agreement with such terms.

On March 25, 2024, Gauley River filed a Petition for Reconsideration stating vague and unsupported allegations regarding the hypothetical possibility of it losing grant money if it participated in a standard operation and maintenance agreement because WVAWC is not an eligible entity for those grants. These concerns are not credible reasons to abandon the Commission's orders for Gauley River and WVAWC to contract for services. An operation and maintenance agreement does not cause Gauley River to cease to be a separate legal entity subject to the legal obligations and entitled to the legal benefits of a public service district. Pursuant to W. Va. Code § 16-13A-3, a public service district is... "a public corporation and political subdivision of the state... that may acquire, own, and hold property, both real and personal, in its corporate name.... and contract for the operation, maintenance, servicing, repair, and extension of any properties owned by it."

Gauley River's current grant funding, and its ability to apply for and receive future grant funding, would not diminish or be in jeopardy if it contracts for an

² Proposed Operation and Maintenance Agreement at Bates 8.

outside organization to provide operating and management services. In fact, W. Va. Code § 16-13A-18 authorizes operation and management contracts for the protection of bondholders by authorizing that a public service district may:

[E]nter into contracts or agreements with any persons, firms or corporations for the operation and management of the public service properties within the district, or any part thereof... The board shall have power to provide in the resolution authorizing the issuance of bonds, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the district as long as any of said bonds, or interest thereon, are outstanding and unpaid.

It is not uncommon for public service districts to contract for legal services, accounting services, meter reading and collecting services, pipeline, and other water supply construction services. When a public service district decides to contract out services that it could provide internally, it does not lose its identity as a legally organized public service district. Gauley River's Petition for Reconsideration failed to provide any concrete evidence supporting its allegations.³

Qualifications and rules for the use of grant funding and grant reporting are common for public service districts. In its performance of services for Gauley River, WVAWC will be required to assure that all rules, debt covenants, debt service payments, and reporting requirements are followed. Grant funds previously received will remain invested in facilities owned by the receiving entity, in this instance, Gauley River, as will loan funds previously received. Future capital expenditure requirements of Gauley River may well arise even under the operation and maintenance services of WVAWC. If Gauley River seeks future loans or grants to fund district facilities, they should be considered by funding agencies using the same rules that apply to any district without regard to operation and maintenance services performed in-house or contracted to outside firms.

After reviewing Gauley River's objections to the terms of a standard operation and maintenance agreement and its filed testimony, the Commission is not persuaded that the best interests of Gauley River's customers can be served by its continued effort to perform operation and maintenance activities in-house,

³ The Commission understands that USDA funding is also common for public service districts that have entered into operation and maintenance agreements. Gauley River's allegation that it was advised "the water company is not an eligible applicant" for USDA funding is unpersuasive. Petition For Reconsideration, Bates at 5. Entering into an operation and maintenance agreement does not strip Gauley River of its identity as a legally authorized public entity under W. Va. Code § 16-13A-1 et seq. Gauley River would, in fact, still be the entity applying for and receiving such funds.

without the assistance of WVAWC. Also, because it has been over six months since the Commission directed that Gauley River and WVAWC negotiate a full-service operation and maintenance agreement with no progress, the Commission finds it necessary and reasonable to structure an operation and maintenance agreement for the parties to enter into. The Commission decision to form an acceptable operation and maintenance agreement and order that it be entered into posthaste should not come as a surprise to WVAWC or Gauley River. As stated in the August 25, 2023 Order:

If WVAWC and Gauley River are unsuccessful in their negotiations, WVAWC must make a filing within thirty days of the entry of this order that provides the terms that have been agreed upon, the terms that WVAWC proposed but which were not agreed to, and testimony in support of WVAWC's proposed terms that are not agreed to. Gauley River and any other party shall respond within ten days of such a filing. Gauley River's response must include testimony explaining why it disagrees with the proposed term(s) and redline alternative language which it would agree to.

In lieu of filing and explanation why an agreement could not be reached, the parties instead filed the Proposed Agreement. Because the Proposed Agreement does not contain the semblance of any terms of a standard operation and maintenance agreement, the Commission will provide the parties with the Agreement, attached as Appendix A, and require them to enter into it.

It is in the best interests of Gauley River's customers for both parties to sign the Attached Agreement and file it in this case within 20 days of the date of this Order. If alternative terminology is preferred by either WVAWC or Gauley River, and the parties can agree to minor modifications to accommodate their terminology preferences, then they may make minor textual changes to the attached Agreement and file an informational filing for the Commission to consider along with verifications that the changes do not change the scope nor intent of the attached Agreement. The parties should not make significant modifications because the attached Agreement contains sufficient language to protect Gauley River, WVAWC, and their customers from any public funding agency attempts to limit Gauley River's financing options because Gauley River contracts operation and maintenance activities to a third party.

The Commission also attaches, as Appendix B, a Notice of Rate Change (Notice) for Gauley River to publish. This Notice is necessary because following the operation and maintenance agreement model that is usually preferred by WVAWC and which the Commission included in the terms of the attached Agreement, Gauley River must file for a tariff modification to adopt the WVAWC

tariff rates as district tariff rates. Due to the differences in rate design and block usage rates, the WVAWC tariff rates billings for customers using a 5/8-inch meter will result in decreases for Gauley River customers at low usage levels (between zero and approximately 2,500 gallons) and at relatively high usage levels (above approximately 46,000 gallons). However, for monthly usage levels between approximately 2,500 gallons and 46,000 gallons, bills will increase. This rate change should be explained to customers. Therefore Gauley River is directed to file for a tariff modification and issue the attached Notice.

WVAWC should verify the calculations made by the Commission and included in the attached Notice and notify Gauley River of the changes before the publication is made. In addition, to aid Gauley River in responding to customer inquiries, WVAWC should prepare a table in spreadsheet format with cell borders showing monthly bills at Gauley River's present rates and at WVAWC's present rates for usage from zero to 10,000 gallons in steps of 1,000 gallons; from 10,000 to 100,000 gallons in steps of 10,000 gallons; and from 100,000 to 1,000,000 gallons in steps of 100,000 gallons. The table should show the usage and monthly bills for a 5/8-inch meter at Gauley River's present rates and at WVAWC's present rates; the dollar difference between bills at Gauley River's present rates and WVAWC's present rates; and the percentage difference for each in five side-by-side columns. The table should be duplicated in structure on multiple pages for each size of meter used by any Gauley River customers. Gauley River should file the table when it files for tariff modification to adopt the WVAWC tariff.

FINDINGS OF FACT

1. On August 25, 2023, the Commission found Gauley River to be a distressed utility, as defined by W. Va. Code § 24-2H-3(a) and directed that WVAWC and Gauley River negotiate an operation and maintenance agreement that contained standard terms.

2. On November 17, 2023, the parties submitted their Proposed Agreement, which did not contain the necessary terms and conditions of an operation and maintenance agreement, that would guarantee WVAWC would be solely managing and operating the Gauley River water system, as required by the Commission.

3. With or without an operation and maintenance agreement with WVAWC, grant and loan funds previously received by Gauley River will remain invested in facilities owned by Gauley River.

4. Gauley River's Petition for Reconsideration failed to provide evidence that entering into a standard operation and maintenance agreement would cause it to lose current grant funding or prevent it from applying for future grant money.

CONCLUSIONS OF LAW

1. The Commission should deny Gauley River's Petition for Reconsideration.

2. Public service districts are authorized by law⁴ to enter into contracts or agreements with any persons, firms or corporations for the operation and management of the public service properties within the district, and, based on problems with Gauley River and the expertise of WVAWC, as discussed in prior Commission orders, the Commission should require Gauley River to contract with WVAWC for the operation and maintenance of the Gauley River utility system.

3. Because the parties have been unable to negotiate the terms and conditions of a functional agreement that allows WVAWC to provide for the operation and maintenance of the Gauley River water system, it is reasonable and necessary for the Commission to create the Operation and Maintenance Agreement, attached as Appendix A, and to order Gauley River and WVAWC to enter into this agreement posthaste and file a signed copy within 20 days of this Order.

4. WVAWC should check the bill impact numbers in the attached Notice and advise Gauley River of any changes that are required before publication occurs. WVAWC should also prepare bill comparison tables at different monthly usage levels and meter sizes as discussed herein.

ORDER

IT IS THEREFORE ORDERED that the Petition for Reconsideration filed on March 25, 2024 is denied.

IT IS FURTHER ORDERED that the parties sign the Operation and Maintenance Agreement, attached as Appendix A, within 20 days of this Order and file a signed copy with the Commission. Provided, that if the parties desire minor editing of the terminology listed, they may make such minor edits and file the signed edited agreement in redline and clean format, as an informational filing in this proceeding.

⁴ W. Va. Code § 24-2-12.

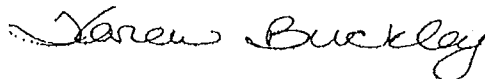
IT IS FURTHER ORDERED that if there are any minor edits to the terminology in the signed agreement it will not become effective until the Commission has reviewed the informational filing and issued an order determining that such minor edits do not change the intent, purpose, and operational details of the rights and obligations of the parties to the agreement as developed by the Commission.

IT IS FURTHER ORDERED that West Virginia-American Water Company check the numbers in the attached Notice of Rate Change and prepare rate comparison tables as discussed herein. The table should be filed at the same time that the signed Operation and Maintenance Agreement is filed.

IT IS FURTHER ORDERED that upon receiving a signed Agreement, a petition from Gauley River Public Service District for approval of a tariff filing conforming its tariff to that of West Virginia-American Water Company, and the rate comparison tables discussed herein, the Commission will issue a further order which will include instructions to Gauley River Public Service District for publication of Notice of Rate Change.

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.

A True Copy, Teste,



Karen Buckley,
Executive Secretary

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