IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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(Public Service Commission of West Virginia Case No. 23-0807-W-C)

BECKLEY WATER COMPANY

Petitioner,

v.

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA and CITY OF MOUNT HOPE

Respondents.

RESPONDENT CITY OF MOUNT HOPE'S BRIEF IN OPPOSITION TO BECKLEY WATER COMPANY'S PETITION FOR APPEAL

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I. STATEMENT OF THE CASE

The Respondent the City of Mount Hope ("City" or "Mount Hope"), pursuant to Rule 10(d) of the *Rules of Appellate Procedure*, provides this Statement of the Case for the limited purpose of "correcting any inaccuracy or omission in the petitioner's brief" as distinguished from providing a comprehensive statement of the case.

In the Statement of the Case of the Petitioner the Beckley Water Company ("Petitioner" or "BWC"), the Petitioner cites to *W. Va. Code* § 8-19-1(a) as the statutory authority under which the City provides its water utility services. Brief of Petitioner, footnote 19. The City provides potable water and sanitary sewer service not as a municipal and county waterworks and electric power system under Ch. 8, Art. 19 of the *West Virginia Code*, but rather as a combined waterworks and sewerage system under Article 20 of Chapter 8 of the *West Virginia Code.* This is substantiated by the Commission's statement in *City of Mount Hope*, PSC Case No. 17-1839-S-CN (July 13, 2018 Recommended Decision, Final August 2, 2018) at 2, regarding the City's "proposed bond ordinance authorizing the issuance [of] combined waterworks and sewerage system revenue bonds to fund the project." Because the City operates pursuant to Article 20 and not Article 19, the one mile limit on a municipality providing service outside of its municipal boundaries under *W. Va. Code* § 8-19-1(a) does not apply. Instead, *West Virginia Code* § 8-20-1 applies, which provides in relevant part:

> "Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within **twenty** miles outside its corporate limits with the water or sewer services and facilities, or both, of its combined waterworks and sewerage system: Provided, That such water or sewer services and facilities shall not be served or supplied within the corporate limits of any other municipality without the consent of the governing body of such other municipality." [Emphasis added.]

West Virginia Code § 8-20-1a(c) states:

> "(c) Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within **twenty** miles outside its corporate limits with either the water, sewer or stormwater services, any combination of such services or all such services, of its combined waterworks, sewerage and stormwater system; provided that such water, sewer, stormwater services and facilities shall not be served or supplied within the corporate limits of any municipality without the consent of the governing body of such municipality: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may serve and supply shall be those areas from which stormwater affects or drains into the municipality." [Emphasis added.]

West Virginia Code § 8-20-17 provides, in relevant part:

> "This article is, without reference to any other statute or charter provision, full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined system herein provided for…"

The only limitation upon a municipality's ability to extend its water or sewer system within 20 miles of its municipal limits is the City cannot extend such facilities into another municipality without that municipality's consent. The Legislature did not extend the right of refusal to privately owned water utilities. That omission should be seen as purposeful and should be given effect.

Petitioner's arguments which are premised upon application of Article 19 of Chapter 8 of the *W. Va. Code* should all be disregarded. Petitioner's Brief at 4, 8, and 33.

Similarly, *W. Va. Code* § 8-12-5(31), which is also cited by the Petitioner at footnote 19, only limits a municipality's ability to extend utility services "to serve persons already obtaining service from an existing system of the character proposed." This is consistent with the Commission's own jurisprudence. "Exclusive service territories are those already served by a utility's facilities." *See Berkeley County Pub. Serv. Dist. v. City of Martinsburg*, combined with

Opequon Pub. Serv. Dist. v. City of Martinsburg Case Nos. 96-0381-PSD-S-PC and 96-0607-PWD-P-C (October 22, 1997 Commission Order, Conclusion of Law No. 6) *aff'd sub nom. Berkeley County Pub. Serv. Sewer Dist. v. West Virginia Pub. Serv. Comm'n*, 204 W. Va. 279, 512 S.E.2d 201 (1998). The West Virginia Legislature has adopted no statute which prohibits what the City has done – annexed an undeveloped tract and offered to provide municipal water service to it.

Petitioner asserts that the statute under which the Appalachia Heights Site ("Site") was annexed into the City, *W. Va. Code* § 8-6-5(a), "does not, however, provide that territories subject to annexation give the municipality the superseding rights to a private utility company's exclusive service territory." Petitioner's Brief, at 8. This sentence contains three errors. First, the April 16, 2025 Commission Order ("April 2025 Order") which the Petitioner is appealing did not find that City held a superseding right to serve the annexed area, but rather the Commission stated accurately that "the Site is in BWC's service territory, but not exclusively because it is also in Mount Hope's service territory." April 2025 Order, at 5. While *W. Va. Code* § 8-6-5 does not unequivocally give a municipality exclusive service rights for utility service in the annexed area, one of the mandatory items which a city must include in its application to a county commission for annexation are:

> (4) A statement setting forth the municipality's plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public water and sewer services, and street maintenance services, including to what extent the public services are or will be provided by a private solid waste collection service or a public service district;
>
> (5) A statement of the impact of the annexation on any private solid waste collection service or public service district currently doing business in the territory proposed for annexation in the event the

> municipality should choose not to utilize the current service providers;

W. Va. Code § 8-6-5(c)(4-5).

The annexation statute comports with the common understanding and expectation that a residence or business located within municipal limits can expect to get public service from the municipality if the municipality provides that type of public service. Further, under this statute, concerns about a city entering by annexation into the service area of another type of utility are limited to public service districts and private motor carriers. No mention is made of entering into the service area of private water utilities.

The third error in the sentence is the Petitioner asserts it has an exclusive service territory, which it has not shown, for which there is no supporting statute, and which is one of the principal matters to be decided in this appeal.

Petitioner cites *W. Va. Code* § 8-19-3 for the proposition that "municipalities are specifically prohibited from acquiring property to construct utilities in competition with private utility companies." Petitioner's Brief, footnote 44. Article 19 of Chapter 8 has no applicability to this case, as the City operates under Article 20 of Chapter 8, for the reasons previously demonstrated herein.

The April 19, 2024 Recommended Decision ("April 2024 Recommended Decision") did not consider or address the statutory rights of the City under *W. Va. Code* § 8-20-1 et seq.

II. SUMMARY OF ARGUMENT

This Honorable Court should affirm the Commission's April 2025 Order because the Commission was clearly acting within its statutory authority. Petitioner's procedural arguments,

that the Commission could not vacate the April 2024 Recommended Decision without the City filing exceptions to that Recommended Decision, or the Commission suspending that Recommended Decision *sua sponte,* or the Petitioner raising that issue on reopening, should be rejected out of hand on the basis that Petitioner ignores the Commission's broad statutory right to rescind and vacate its prior orders under *W. Va. Code* § 24-2-2 and to consider all factors bearing upon a situation in a case before the Commission under *W. Va. Code* § 24-1-7.

Petitioner would have the Commission ignore the rights which the Legislature by statute has granted to municipal utilities. When the Commission has before it a party which has been granted certain rights and powers by the West Virginia Legislature, it is right and proper for the Commission to give consideration to those rights. The Commission's "grey and overlapping" jurisprudence developed principally from disputes arising between investor owned utilities, such as private electric utilities and private gas utilities.[1] Those types of utilities did not possess any statutorily different rights as between them.

The City has distinct statutory rights and abilities under Chapter 8, Article 20 of the *West Virginia Code* which Petitioner does not possess; the Commission undertook the correct legal analysis to consider those distinct statutory rights and abilities.

The Commission has had many fewer service disputes involving municipal utilities than it has had involving two investor owned utilities. Municipal utilities are different from investor

[1] *Harrison Rural Electrification Association, Inc. v. Monongahela Power Co.*, Case No. 03-0915-E-C. April 11, 2005 Commission Order) at 7: "When more than one **electric or gas utility** wants to serve the same area, the Commission has considered the following criteria in determining which utility may provide service: (1) Is the proposed customer a new user of the utility services in the area? (2) Is there evidence of prior service to the customer by either utility in the area? (3) Is the customer located in an overlapping service territory of the two utilities?" [Emphasis added.]

owned utilities in that municipal utilities are eligible to receive grants and subsidized loans to finance the cost of extending water lines. *See W. Va. Code* § 31-15A-9(f). Consequently, the ability-to-serve analysis for a municipal utility should include, as the Commission did, a consideration of extending service not only under main line extension rules, but all the means that are available to the utilities that are before the Commission to extend service. When the State's funding agencies and local governments commit funding to a project for the purpose of economic development, that is another factor which the Commission should and did incorporate into its analysis. April 2025 Order, Finding of Fact, No. 4 Conclusion of Law No. 3.

The Commission's "grey and overlapping" jurisprudence contains no prohibition upon buried pipelines crossing, as Petitioner's Brief suggests. Petitioner's Brief, at 29. That limitation understandably is restricted to electric distribution lines, which carry a much greater risk to workers and the public if they are allowed to cross.

As the City explained in its Statement of the Case, Petitioner has based its argument upon the City's statutory limitations under Article 19 of the *West Virginia Code* which does not apply to the City's combined water and wastewater works. Petitioner has mischaracterized the Order, which did not find that the City's right to serve the Site supersedes Petitioner's right, but rather that both parties have the right to serve the Site. April 2025 Order, at 5.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Court has already set this case for oral argument. Nevertheless, the *Rules of Appellate Procedure* require that this brief contain a statement on whether oral argument is necessary — with no explicit exception for where oral argument has already been scheduled. W. Va. R. App.

10(c)(6). Accordingly, the City includes this statement on oral argument to comply with the *Rules of Appellate Procedure* and not out of disrespect for the Court's docketing decision.

It is the City's position that this case may be disposed of by a memorandum decision and that oral argument is not necessary, much less required, because, among other things, the pertinent facts and legal arguments are well-presented by the record, the Commission's Order was impressively thorough in analyzing the pertinent facts and law, and the Commission reached the correct result. Nevertheless, Respondent respects the Court's decision to set this case for oral argument and stands ready to provide the Court any information and/or explanation that might be helpful in addressing the issues raised in this appeal.

IV. STANDARD OF REVIEW

The Court applies a "highly deferential" standard of review for Commission orders. *W. Va. Citizens Action Group v. PSC of W. Va.*, 233 W. Va. 327, 338, 758 S.E.2d 254, 265 (2014) (affirming Commission order "under this Court's highly deferential standard of review[.]"); *Chesapeake & Potomac Tel. Co. v. Public Serv. Comm'n*, 171 W. Va. 494, 498, 300 S.E.2d 607, 611 (1982) (noting this Court's "deference to the [Public Service] Commission's expertise[.]"). Likewise, the Court's function on appeal is not to "supplant the Commission's balance of…interests to one more nearly to its liking." Syl. Pt. 2, *Monongahela Power Co. v. Public Serv. Comm'n*, 166 W. Va. 423, 276 S.E.2d 179 (1981). If the Commission "has given reasoned consideration" to all pertinent factors, its order should stand affirmed. *Id.*

Specifically, the following standard of review applies to this case:

> The detailed standard for our review of an order of the Public Service Commission…may be summarized as follows: (1) whether the Commission exceeded its statutory jurisdiction and powers; (2)

> whether there is adequate evidence to support the Commission's findings; and (3) whether the substantive result of the Commission's order is proper.

Syl. Pt. 1, *Central W. Va. Refuse v. Public Serv. Comm'n,* 190 W. Va. 416, 438 S.E.2d 596 (1993). One of the situations described above must be present for the Commission's Order to be disturbed on appeal. *Jefferson Cty. Citizens for Econ. Preservation v. Public Serv. Comm 'n,* 241 W. Va. 172, 174, 820 S.E.2d 618, 620 (2018) ("This Court may reverse an order by the Public Service Commission when: (1) it exceeded its authority; (2) it made factual findings that are not supported by adequate evidence; or (3) the substantive result of its order is not proper."

V. ARGUMENT[2]

A. THE PSC DID NOT EXCEED ITS POWERS AND JURISDICTION IN VACATING THE APRIL 2024 RECOMMENDED DECISION.

Petitioner advances an incorrect legal premise in support of its contention that the Commission lacked jurisdiction to reconsider or reverse a prior order which found Petitioner had exclusive service rights with respect to the Site, and the Commission could only decide whether the new development of Mount Hope's annexation created a basis for a cessation order to enforce Petitioner's exclusivity in the Site. Petitioner's Brief, at 16, 18. Petitioner quotes *Reed v. Thompson,* 235 W. Va. 211, 772 S.E.2d 617 (2015) for the proposition that "[i]f an agency has authority to reconsiders its own final order under an administrative rule (as opposed to statute), the scope of the agency's authority is strictly limited to what is contained in the rule." Petitioner's Brief, at 18. This argument overlooks that the Commission has been granted STATUTORY

[2] Petitioner's four assignments of errors do not clearly match up with the nine arguments it presents in the Argument section of its brief. The City objects to all of Petitioner's assignments of error and all of the arguments in Petitioner's Argument section. The City's Brief will be focused upon responding to the Arguments in Petitioner's Brief.

authority to revoke its prior orders, and so the Commission is not as constrained as the Petitioner would have the Court believe.

"Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until **revoked or modified** by the commission, unless the order is suspended, modified, or revoked by order or decree of a court of competent jurisdiction." *W. Va. Code* § 24-2-2. (bold added).

The Commission's authority to revoke or vacate a prior order is not contingent upon a party filing exceptions in a timely manner, as Petitioner's Brief asserts. Petitioner's Brief, at 16.

The Commission vacated the April 2024 Recommended Decision in its April 2025 Order. April 2025 Order, at 7. The Commission was acting squarely within its statutorily authorized discretion and authority under *W. Va. Code* § 24-2-2 in doing so.

B. THE COMMISSION PROPERTY CONCLUDED THAT THE AREA WOULD HAVE BEEN IN A GRAY AND OVERLAPPING TERRITORY BEFORE ANNEXATION.

Petitioner advances another argument to this Honorable Court which is plainly inconsistent with exiting statutes. Petitioner asserts:

"a municipal corporation's authority to construct waterworks does not extend more than one mile past its corporate limits:

> Wherever the powers and authority granted in this chapter cannot be reasonably and efficiently exercised by confining the exercise thereof within the corporate limits of the municipality, the powers and authority of the municipality shall extend beyond the corporate limits to the extent necessary to the reasonably efficient exercise of such powers and authority within the corporate limits. **Such powers and authority, unless otherwise provided in this**

> **code or elsewhere in law, shall not, however, extend more than one mile beyond the corporate limits,** and such powers and authority shall not extend into the corporate limits of another municipality without the consent of the governing body thereof.[3]

The Commission's decision in that respect was simply legal error." Petitioner's Brief, at 34.

Petitioner fails to inform the Court that there are other provisions in the *West Virginia Code* which expressly grant municipalities authority to construct water facilities more than one mile outside of municipal limits. *West Virginia Code* § 8-20-1 provides in relevant part:

> "Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with the water or sewer services and facilities, or both, of its combined waterworks and sewerage system: Provided, That such water or sewer services and facilities shall not be served or supplied within the corporate limits of any other municipality without the consent of the governing body of such other municipality."

West Virginia Code § 8-20-1a(c) states:

> "(c) Notwithstanding the provisions of any other law or charter to the contrary, any such municipality may serve and supply the area included within twenty miles outside its corporate limits with either the water, sewer or stormwater services, any combination of such services or all such services, of its combined waterworks, sewerage and stormwater system; provided that such water, sewer, stormwater services and facilities shall not be served or supplied within the corporate limits of any municipality without the consent of the governing body of such municipality: Provided, That for stormwater systems, within the twenty miles beyond the municipality's corporate limits the only areas the municipality may

[3] *W. Va. Code* § 8-12-19 (emphasis added by Petitioner).

> serve and supply shall be those areas from which stormwater affects or drains into the municipality."

West Virginia Code § 8-20-17 provides, in relevant part:

> "This article is, without reference to any other statute or charter provision, full authority for the acquisition, construction, establishment, extension, equipment, additions, betterment, improvement, repair, maintenance and operation of or to the combined system herein provided for…"

Mount Hope is a combined waterwork and sewerage system operating under the provisions of Article 20 of Chapter 8, as evidenced by the fact, among other things, that it has issued bonds that reference such authority. In fact, *City of Mount Hope*, Case No. 17-1839-S-CN (July 13, 2018 Recommended Decision, Final August 2, 2018, at 2) refers to the City's "proposed bond ordinance authorizing the issuance combined waterworks and sewerage system revenue bonds to fund the project."

In *Berkeley County Pub. Serv. Dist. v. City of Martinsburg*, Case Nos. 96-0381-PSD-S-PC and 96-0381-PSD-S-PC and 96-0607-PWD-P-C (October 22, 1997 Commission Order), Conclusion of Law No. 6, *aff'd sub nom. Berkeley County Pub. Serv. Sewer Dist. v. West Virginia Pub. Serv. Comm'n*, 204 W. Va. 279, 512 S.E.2d 201 (1998), the Commission "conclude[d] that because the disputed area has been annexed into the City, because neither [public service] District has facilities in place within the disputed area, and because the customer desires to be served by the City, the City should provide water and sewer service to Picerne."

The City anticipates the Petitioner's protest to the previous citation—that *Berkeley County* was decided based upon *W. Va. Code* Ch. 8, Article 16A governing public service districts which is not applicable to the present dispute. Petitioner's protest is technically accurate, however an

investor owned utility holds no greater statutory rights than a public service district, so on what basis should the Commission or this Honorable Court reach a different result?

The only limitation upon a municipality's ability to extend its water or sewer system within 20 miles of its municipal limits is the City cannot extend such facilities into another municipality without that municipality's consent. The Legislature did not extend the right of refusal to privately owned water utilities. That omission should be seen as purposeful and should be given effect.

The Legislature has placed greater limits upon other types of utilities. By statute, the board of a public service district may not "construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof." *W. Va. Code* § 16-13A-9. The fact that the Legislature did not place similar limitations upon combined municipal waterworks and sewerage systems must be given effect. *See, e.g.*, Syllabus Point 3, *Manchin v. Dunfee*, 174 W. Va. 532, 327 S.E.2d 710 (1984) (holding that that "[i]n the interpretation of statutory provisions the familiar maxim *expression unius est exclusion* alterius, the express mention of one thing implies the exclusion of another, applies."). The City's actions, and the Commission's February and April 2025 Orders fall squarely within this statutory authority for combined municipal utilities.

C. THE SITE IS NOT WITHIN THE EXCLUSIVE TERRITORY OF THE PETITIONER.

Private utilities do not have well-defined territories by metes and bounds. BWC, by being a private utility, does not have a "formal recognized improved service territor[y]." *See* Transcript of March 4, 2024 Hearing, at 40. "[I]t is true that private utilities do not have definitive service territories by metes and bounds…." *Id.* at 43.

In light of Petitioner's lack of a clear statutory or other exclusive right to serve the Site, the Commission properly undertook its grey and overlapping legal analysis, supplemented with consideration given to the fact that one of the utilities before it had distinct legal rights granted to it by the West Virginia Legislature, and had been authorized and encouraged by state funding agencies to pursue an economic development project. April 2025 Order, at 3.

In *Monongahela Power Co. v. Harrison Rural Elec. Assoc.*, Case No. 04-1937-E-C and *Monongahela Power Co. v. Harrison Rural Elec. Assoc.*, Case No. 04-1062-E-C, the Commission established an isolation test to provide guidance on whether a site is in a gray and overlapping area:

> "If we assume only utility A exists, and assume the service location in question requested service from utility A, would the Commission's [rules] and relevant case law, require utility A to provide service? In the alternative, if only utility B existed, would the [rules] and relevant case law require utility B to serve if requested? If the answer to both questions is yes, then the service location is in a gray and overlapping service territory."

Harrison Rural Electrification Association, Inc. v. Monongahela Power Company, Case No. 18-1450-E-C, March 26, 2019 (Final Order, at 9-10), citing Case No. 04-1937-E-C, August 24, 2005 Commission Order at 6 and Concl. of Law 6.

The Commission applied this test, and properly concluded that the answer to both questions in the present matter is yes, which placed the Site in a "gray and overlapping service territory." April 2025 Order, at 5. Therefore, the Commission decided to give the developer of the Site the choice of utility provider consistent with the Commission's prior Orders. *See Lumberport-Shinnston Gas Co., Inc. v. Equitable Gas Co.*, Case No. 86-749-G-C (Commission Order, September 29, 1987) at Conclusion of Law 8; *Harrison Rural Electrification Assoc., Inc. v.*

Monongahela Power Co., Case No. 03-0915-E-C (Commission Order, April 11, 2005) at 11; *Monongahela Power Co. v. Harrison Rural Electrification Assoc., Inc.*, Case No. 04-1062-E-C (Commission Order, August 24, 2005) at Conclusion of Law 7; and *Harrison Rural Electrification Assoc., Inc. v. Monongahela Power Co.*, Case No. 04-1937-E-C (Commission Order, June 9, 2008) at Conclusion of Law 5.

The Commission applied this analysis in a straightforward and convincing manner in its February 20, 2025 Commission Order. February 2025 Order, at 9.

D. ANNEXATION WAS A RELEVANT FACTOR FOR THE COMMISSION TO CONSIDER.

Petitioner asserts that "Mount Hope's annexation is irrelevant to the exclusivity analysis." Petitioner Brief, at 21. While *Berkeley County Pub. Serv. Sewer Dist. v. Pub. Serv. Comm'n of W. Va.*, 204 W. Va. 279, 512 S.E.2d 201(1998) was decided on the basis of the Public Service District Act, *W. Va. Code* Ch. 16, Art. 13A, both the Commission and the Court acknowledged the fact that annexation had occurred. Petitioner suggests that the Commission and this Court should ignore the annexation. The Legislature has directed the Commission that "the Commission shall not be bound by the technical rules of pleading and evidence, but in that respect it may exercise such discretion as will facilitate its efforts to understand and learn all the facts bearing upon the right and justice of the matters before it." *W. Va. Code* 24-1-7.

Petitioner points to no prior decision of the Commission involving a service territory dispute where annexation had recently occurred. The fact that the Commission's precedential decisions on a topic have not addressed a circumstance because that circumstance had not been previously presented does not mean that when the circumstance is presented the Commission should disregard it. One would merely call it an issue of first impression. The Commission is a

creature of statute, and is expected to give fair effect to state statutes in all its decisions. *W. Va. Code* § 24-1-7. There is an expectation, confirmed by statute, that businesses and residences within an incorporated community will or can obtain public service from the municipality if the municipality provides that service. *W. Va. Code* § 8-6-5(c)(4). The Commission gave fair effect to the annexation statute and the fact that annexation had occurred to conclude that the Site is within the City's service territory. April 2025 Order, at 5.

E. THE COMMISSION PROPERLY CONSIDERED STATUTORY RIGHTS IN ADDITION TO EXISTING FACILITIES.

Petitioner asserts that "the Commission should have considered the location of each utilities' facilities as those facilities *currently exist* – i.e., not as they are *proposed* to exist." Petitioner's Brief, at 22. (Italics in original). The heavy weight which the Commission has traditionally given to the location of existing facilities is appropriate where neither of the two utilities involved had any greater statutory authority than the other, and had no ability to construct facilities with grant funds and subsidized loans. But where one of the parties has been granted specific authority by statute by the Legislature, the Commission should and must consider that statutory authority, as it did here. Where the state's funding agencies and local government bodies have endorsed a project, the Commission should give consideration to those facts as well, and not frustrate the state's goal of economic development for slight reasons. April 2025 Order, Conclusion of Law No. 3.

F. PETITIONER'S CRITIQUE OF THE COMMISSION'S APPLICATION OF THE ISOLATION TEST IS INCONSISTENT.

The Commission's application of the isolation test, as stated in its February 2025 Order, is coherent and persuasive, and the City cannot in this brief improve upon its persuasiveness. February 2025 Order, at 9. Further, the Commission should and did properly consider the

availability of means other than standard main line extensions under Rule 7.5 of the Rules for the government of Water Utilities, 150 WVCSR Series 7 ("Water Rules") to extend service. Petitioner faults the Commission's analysis on the basis that "there is not a customer to make the contribution required by *Water Rule* 7.5, " consequently, according to Petitioner "the Commission was incorrect in concluding that Mount Hope would be required to do so in the absence of a customer ready to take service, compromising its isolation test analysis." Petitioner's Brief, at 27. If the City lacks a customer to undertake the duty to extend analysis, then so does Petitioner. However, Petitioner has no hesitation in concluding that it would be obligated to serve a customer at the Site, even though such service is subject to the same incomplete information as would affect the City. Petitioner Brief, at 26. Consistent assumptions must be applied to both analyses. Petitioner's analysis does not do so, and must be rejected.

G. WILLINGNESS SHOULD BE CONSIDERED A FACTOR.

Petitioner asserts that the Commission improperly considered the City's willingness to provide service to the Site, quoting from a prior PSC decision that "Equitable's willingness to provide full service to certain L-S customers does not fall within the exceptions to General Order No. 228 permitting utility to utility competition." Petitioner's Brief at 27-28, citing *Lumberport-Shinnston Gas. Co. Inc. v. Equitable Gas Co.,* Case No. 86-749-G-C (Commission Order September 29, 1987). That case is readily distinguishable in that Equitable was proposing to serve customers which the Lumberport-Shinnston Gas Co. was then serving, and to serve a site which Lumberport-Shinnston had previously served. Neither fact is present here. *Id.,* at 3.

Where one of the parties before it has the ability to pay for an extension with grant funds and subsidized loans, willingness to serve is properly taken into account in a competing service dispute.

Similarly, the availability of such funds dispenses with Petitioner's content that the greater distance alone should be dispositive. Petitioner's Brief, at 28. Petitioner contends that "the facts in this case are identical to the HREA case." Petitioner Brief, at 29. That is not so. The HREA case involved two private utilities, neither of which possessed distinctive statutory rights or an advantageous funding package endorsed by the State and local governments.

H. CROSSING UTILITY LINES IS NOT AN ABSOLUTE BAR.

Petitioner cites to a 2008 Commission Order involving two electric utilities for the proposition that the Commission's precedential decisions do not allow one utility to extend service where the extension of service entails the crossing of lines. The crossing of electric lines was a factor in the decision cited by Petitioner with respect to electric service lines due to the increased safety risk associated with electric service for workers and the public. In another decision in its grey and overlapping jurisprudence, the Commission noted that "the Commission nevertheless found the location in a 'gray and overlapping' service area and permitted Equitable to retain its 120 foot extension which crossed a Lumberport line located directly adjacent to the service location." *HREA v. Monongahela Power Co.,* 92-0319-E-C (Commission Order, April 26, 1993) at 4. The Commission permitted gas lines to cross, and it can permit water lines to cross.

I. THE COURT SHOULD REJECT PETITIONER'S ALTERNATIVE TO REINSTATE THE APRIL 2024 RECOMMENDED DECISION.

Near the Conclusion of Petitioner's Brief, Petitioner proposes to the Court as an alternative that in the event the Court finds it is premature to issue an order directing the City to cease and desist, that instead the Court should reinstate the April 2024 Recommended Decision as a Commission Final Order. Petitioner Brief, at 34. The Court should dismiss this alternative proposal. Petitioner elected to reopen the case after the April 2024 Recommended Decision

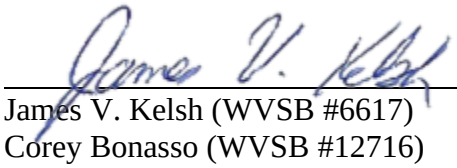
became a final order. The April 2024 Recommended Decision failed to consider or address at all the statutory rights of the City to extend service or annexation. The Commission's orders on the City's exceptions did consider the City's rights to serve, and as such it more comprehensively addresses all the factors which bear upon this situation, as the Legislature directed the Commission to do. *W. Va. Code* § 24-1-7.

VI. CONCLUSION

The Legislature conferred upon the Commission the "authority and duty" to "enforce and regulate" the practices of public utilities in order to provide "the availability of adequate, economical, and reliable utility services throughout the state" and to encourage "the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state's energy resources." *W. Va. Code* § 24-1-1(a)(2)-(3). The Commission also has a duty to appraise and balance the interests of current and future utility service customers, the general interests of the state's economy, and the interests of the utilities subject to its jurisdiction pursuant to *W. Va. Code* § 24-1-1(b).

The Commission's orders in this case gave proper consideration to the statutory authority and abilities of the parties before it, and acted consistently with the authority which the State Legislature both granted to the Commission and wanted the Commission to exercise. The Commission's orders should be affirmed.

Respectfully submitted on January 14, 2026.



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Counsel for Respondent City of Mount Hope

CERTIFICATE OF SERVICE

I certify that I served the foregoing RESPONDENT CITY OF MOUNT HOPE'S BRIEF upon on the below-named individuals on the **14th day of January 2026** by e-filing the same through the File & Serve*Xpress* electronic filing system and by e-mail, where available, and by first-class mail, postage prepaid delivery, to the following counsel of record:

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