



500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130
www.jacksonkelly.com

**Public Service Commission of West Virginia
EFS Cover Sheet (G.O. 262.8)**

Filing Date: November 14, 2025

Case Number(s): Case No. 25-0927-W-PC

Case Name(s): West Virginia-American Water Company and the
Fayette County Commission

Filing Party/Parties: West Virginia-American Water Company and the
Fayette County Commission

Title of Document: Response to Staff Motion to Dismiss and Request for
Issuance of Interim Declaratory Order

Attachments: Response to Staff Motion to Dismiss and Request for
Issuance of Interim Declaratory Order

Confidential Materials: None

Filer Contact: Christopher L. Callas
304.340.1251
ccallas@jacksonkelly.com

Copied Persons: Service List

Certificate of Service: The signature on the enclosed pleading certifies service
on the date above by electronic mail to the parties on the
Executive Secretary's service list(s) for the referenced
dockets (if any) and any additional persons listed above.

JACKSONKELLY^{PLLC}

500 LEE STREET EAST • SUITE 1600 • P.O. BOX 553 • CHARLESTON, WEST VIRGINIA 25322 • TELEPHONE: 304-340-1000 • TELECOPIER: 304-340-1130

www.jacksonkelly.com

DIRECT TELEPHONE: (304) 340-1251

E-Mail: ccallas@jacksonkelly.com

State Bar No. 5991

DIRECT TELECOPIER: (304) 340-1080

November 14, 2025

Via EFS

Karen Buckley
Executive Secretary
Public Service Commission
of West Virginia
201 Brooks Street
Charleston, West Virginia 25323

Re: Case No. 25-0927-W-PC
West Virginia-American Water Company and the
Fayette County Commission

Dear Ms. Buckley:

The Applicants submit the attached Response to the Staff Motion to Dismiss and Request for Issuance of Interim Declaratory Order.

Staff's arguments opposing the propriety of a County Commission dissolution and immediate sale of PSD assets are materially identical to those it raised in its "Staff Response to the Applicants' Request for an Interim Declaratory Order" filed on August 6, 2025 in West Virginia-American Water Company and the Lincoln County Commission, Case No. 25-0681-W-PC. Unsurprisingly, the Applicants' reply to those arguments in this case, as outlined in the enclosed Response, are materially identical as well.

The Applicants respectfully request that the Commission determine the legal issues presented in the Interim Declaratory Order requests in both cases. Only then can these cases be advanced and adjudicated on their merits.

Karen Buckley
Executive Secretary
November 14, 2025
Page 2

Please contact me if you have any questions or concerns. As always, we appreciate your assistance in this matter.

Sincerely yours,



Christopher L. Callas

CLC/mv
Attachment

c: Service List

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 25-0927-W-PC

**WEST VIRGINIA-AMERICAN WATER COMPANY
AND THE FAYETTE COUNTY COMMISSION**

Joint Application for consent and approval of
an acquisition of utility assets and related arrangements and
for the issuance of an Interim Declaratory Order.

**APPLICANTS' RESPONSE TO THE STAFF MOTION TO DISMISS AND
REQUEST FOR ISSUANCE OF INTERIM DECLARATORY ORDER**

West Virginia-American Water Company ("Company") and the Fayette County Commission ("County Commission") (together, the "Applicants") (i) present this Response in opposition to the Commission Staff's November 7, 2025 Motion to Dismiss ("Motion") and (ii) urge the Commission to adjudicate and grant their request for an Interim Declaratory Order approving the Transaction Structure¹ detailed in the Application. The issues raised in the Motion are substantively identical to those presented in West Virginia-American Water Company and the Lincoln County Commission, Case No. 25-0681-W-PC, which were fully briefed on August 21, 2025 and have awaited a Commission determination since then.

Applicants appreciate the Staff's prompt address of their request for the Interim Declaratory Order and its acknowledgement that the Commission should

¹ Capitalized terms not otherwise defined in this Response have the meanings ascribed to them in the Application.

adjudicate the legal issue presented in that request before considering the remainder of the relief requested in the Application. Motion at ¶ 16. Nonetheless, Applicants believe that Staff's overly rigid approach neglects the real concerns Applicants outlined in Part VII of the Application, including the potential for a county commission to be held hostage to a PSD board's unwillingness to act. For the reasons expressed in Part VII of the Application and those presented in this Response, Applicants encourage the Commission to deny the Motion and enter an interim declaratory order in which it determines as a matter of law that the Transaction Structure is an appropriate and legal means for the Company to acquire the Assets.

I. Staff's Identification of the Relevant Statutes Does Not Helpfully Address the Tension Detailed in the Application.

The overriding theme of the Motion is Staff's identification of several provisions of the PSD statute: a county commission's authority to create, modify, and dissolve PSDs (§ 16-13A-2), the appointment and removal of PSD board members (§§ 16-13A-3 and -3a), the powers entrusted to a PSD board (§ 16-13A-8), and the process by which a PSD board approves the sale of assets (§ 16-13A-18a). Motion at ¶¶ 2-5, 7, 8. These facts offer the Commission little more than what the Applicants themselves cited in the Application. Application at ¶¶ 22-24. Staff unhelpfully asserts that there is "no reason" for the Commission not to insist on strict adherence to the PSD sale process in § 16-13A-18a, pointing out the

unsurprising fact that the Closing Mechanism outlined in paragraph 25 of the Application is “not set forth in any statute.” Motion at ¶ 9.

Staff’s observations, correct as they may be, do not assist the Commission in confronting the situation presented in Part VII of the Application: how should the Commission deal with “the potential tension between a county commission that may wish to dissolve a public service district and sell its utility assets to a Commission-approved buyer and a public service district board that may be opposed (or at least be unwilling to endorse) such a sale”? Application at ¶ 24. Indeed, Staff only minimizes this concern, recommending that the Commission merely consult the statutory provisions it identifies and then give up:

This assertion that county commissions could be held hostage to failures of public service board members to act ignores the clear, unambiguous statutory language that sets forth the county commission’s authority and the public service district’s board’s authority.

Motion at ¶ 6.²

Staff essentially suggests that the problem doesn’t exist, and even if it does, a county commission can always petition to remove one PSD board members (or even two, if the circumstances dictate) for “cause,” which includes “failure to perform a duty required by law, failure to attend meetings or failure to perform any duty required by a final order” of the Commission. Motion at ¶ 8. This purported solution, however,

² Staff’s supposition that the Legislature intended to insert “checks and balances” by allowing county commissions to appoint PSD board members but requiring them to petition a circuit court to remove them (Motion at ¶ 6) is without any apparent support, and in any event does not squarely address the tension described above.

ignores the obvious: voting to sell PSD assets is a discretionary determination on the part of a PSD board. Thus a board member's refusal to participate in county-level utility planning by approving an asset sale is not a failure to perform a legal duty and would be an unlikely basis for removal under § 16-13A-3a. A county commission's only other option—not mentioned in the Staff's advocacy—would be to wait two or potentially even four years to appoint one or two new board members, hoping each of them will prove to be more supportive of the county commission's priorities for the county's utility systems.

In view of the urgency at which the need to resolve county-level utility infrastructure crises can arise—the Mount Olive Correctional Center outages come immediately to mind—Staff's suggestion that the County Commission wait years to advance its goals for the county's water service amounts to this: "Sorry, there's nothing you can do."

II. Staff's Response Likewise Fails to Account For What County Commissions Are Empowered to Do.

The Commission might reasonably expect its Staff to at least attempt to develop solutions to identified problems, not merely to assert that they cannot be solved. Yet missing from the Motion is any recognition of the powers that county commissions do have and how those powers might be applied in this instance:

- Section 16-13A-3 unequivocally allows a county commission to dissolve a PSD. This section does not condition a county commission's dissolution authority on a PSD board's willingness to be dissolved or to dispose of its utility

assets and public service obligations. Critically, nor does § 16-13A-3 provide any guidance as to how a county commission should handle the assets and obligations of a dissolved PSD once a dissolution determination has been made.

- However, Section 16-13A-3 does require Commission approval of a dissolution determination, which the Commission obviously would grant only after approving a plan for continuity of service involving a technically and financially capable utility provider. The Commission's May 6, 2025 and July 14, 2025 orders in Lincoln County Commission, Case No. 25-0348-PWD-PC, essentially stand for this proposition: each indicates that a dissolution of a public service district would necessarily be contingent on the Commission's approval of the Company's acquisition of its assets and public service obligations.
- Section 16-13A-18a provides that upon a sale of a PSD's assets, any proceeds remaining after the payoff of the PSD's obligations are to be transferred to the county commission. Thus, a county commission has an identifiable statutory interest in any post-obligation proceeds of a sale conducted in the conventional manner under § 16-13A-18a.
- A county commission is also empowered to own and sell real and personal property, meaning that if it were to acquire momentarily the assets of a PSD that it had dissolved under the Commission's supervision and authority, it is authorized to sell those assets to a utility provider approved by the Commission. See. W. Va. Code § 7-3-3 and Application at 19, n.11.

In summary, in enacting the existing statutory framework, the Legislature left an unanswered question: how is the Commission to honor a county commission's authority to dissolve a PSD and simultaneously to respect the Commission's own obligation to provide for the continuity of utility service under a statute (§16-13A-3) that does not specify an obvious outcome?

III. To Address This Unanswered Question, the Commission Should Approve the Transaction Structure and Reject the Staff's Conclusion That It Has No Solution.

The parties present divergent recommendations on how the Commission should address the unanswered question presented in §§ 16-13A-3 and -18. The Commission must choose which of the competing recommendations is both (i) permissible from a statutory perspective—that is to say, is not prohibited by statute—and (ii) advances the Commission's policy goals.

For its part, Staff's recommendation is only a partial one. Staff correctly identifies how a **PSD** is authorized to sell its assets. Staff does not address, however, how the public service assets and obligations of a PSD should be managed when **a county commission** votes to dissolve a district and presents the dissolution for Commission approval, a situation that the Legislature authorized but did not provide a roadmap for. Staff's practical recommendation—that a PSD board holds the reins unless a county commission can persuade a circuit judge to remove PSD board members for cause—is no solution at all.

By contrast, in proposing the Transaction Structure, the Applicants have presented a solution path that is permissible from a statutory perspective, is workable in practice, and advances important policy objectives:

- ***The Transaction Structure is Permissible.*** The Transaction Structure is permissible from a statutory perspective because it essentially allows the Commission to fill in the missing details from the statutory framework that expressly authorizes a county commission-directed, Commission-approved PSD dissolution. Because a county commission's dissolution authority is not conditioned on a PSD's board prior approval, and because most if not all PSDs have utility assets and utility service obligations, it is entirely foreseeable that a county commission-ordered PSD dissolution would necessitate the transfer of the PSD's assets and obligations to a capable utility provider. Fortunately, the Legislature provided the Commission with the tools to address this situation in a way that gives force to a statutorily-authorized PSD dissolution: the Commission's overarching authority to approve or disapprove both a PSD dissolution and a transfer of utility assets (W. Va. Code §§ 16-13A-3 and 24-2-12) and a county commission's ability to own and sell real and personal property (§ 7-3-3). Nothing in the Transaction Structure is prohibited by statute, and the Staff has not shown otherwise. Staff's criticism that the Closing Mechanism is "not set forth in any statute" (Motion at ¶ 9) is part and parcel of the Legislature's lack of direction under the circumstances and does not preclude the Commission's approval of it.

- ***The Transaction Structure is Practical.*** The Transaction Structure will be workable in practice. In the Closing Mechanism, the Applicants presented a series of near-simultaneous events that, subject to the Commission’s prior approval and supervision, will enable the completion of the Dissolutions, the discharge of the Districts’ grants, loans, and System Debts, and the County Commission’s momentary assumption of the Assets and immediate transfer of the Assets to the Company. These efforts will all occur “at the closing table” and will be seamless for the Districts’ customers. Although Staff argues that the Closing Mechanism is “convoluted” (Motion at ¶ 9), Staff does not contend that it is unworkable.
- ***The Transaction Structure Advances Policy Objectives.*** Unlike the Staff recommendation, the Applicants’ recommendation allows the Commission to efficiently address a proposed change in the utility asset ownership structure in Fayette County that the County Commission is both authorized to propose and has legitimately advanced. The Commission should embrace a county’s efforts to consolidate and improve utility services, not make those efforts more difficult by adopting a hyper-technical approach. Moreover, under the Transaction Structure, the Commission’s required determinations—whether the Company is a capable operator of the Districts’ utility assets and whether the Transactions satisfies the three-part test in § 24-2-12—are essentially the same whether the County Commission proposes this outcome or whether the Districts’ board had authorized it.

IV. Conclusion

The Legislature cannot anticipate every situation, and its statutes should not be so narrowly read as to preclude transaction solutions that both fit the circumstances presented and are not prohibited by statute. The Transaction Structure is a well-considered, legally permissible mechanism to allow the County Commission to dissolve the Districts and entrust the Districts' utility assets and public service obligations to a qualified utility provider, with every step of the process defined in advance and subject to the Commission's prior approval.

For these reasons, the Applicants respectfully request that the Commission deny the Motion and issue an interim declaratory order at its first opportunity, and in any event within thirty days of the Application filing date, all as detailed in Parts VII and X of the Application.

Dated November 14, 2025.

West Virginia-American Water Company

By Counsel

CCallas

Christopher L. Callas (WVSB No. 5991)
Nicklaus A. Presley (WVSB No. 12293)
Alex Worrell (WVSB No. 14826)
JACKSON KELLY PLLC
500 Lee St., East
Charleston, WV 25301
(304) 340-1000
ccallas@jacksonkelly.com
napresley@jacksonkelly.com

Robert O. Passmore (WVSB No. 10538)
Vice-President and General Counsel
West Virginia-American Water Company
1600 Pennsylvania Avenue
Charleston, WV 25302
(304) 340-2007
Robert.Passmore@amwater.com

Fayette County Commission

By Counsel

Michael Taylor (by ele per consent)

Michael Taylor (WVSB No. 11715)
Pence Law Firm PLLC
#10 Hale Street, 4th Floor
Charleston, WV 25301
mtaylor@pencefirm.com