

**Public Service Commission
of West Virginia**

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201 Brooks Street, P.O. Box 812
Charleston, West Virginia 25323



Phone: (304) 340-0300
Fax: (304) 340-0325

November 7, 2025

Karen Buckley, Acting Executive Secretary
Public Service Commission
PO Box 812
Charleston, West Virginia 25323

RE: Case No. 25-0927-W-PC
West Virginia-American Water Company and
Fayette County Commission
Joint Petition for consent and approval for West Virginia-American Water Company to acquire Armstrong Public Service District, Kanawha Falls Public Service District and Page-Kincaid Public Service District after their respective dissolutions by the Fayette County Commission. Request for an Interim Declaratory Order.

Dear Ms. Buckley:

Enclosed for filing in the above-referenced proceeding, please find the *"Staff's Objection and Motion to Dismiss Case"*.

A copy has been served upon all parties of record.

Sincerely,

LESLIE J. ANDERSON
Supervising Attorney
WV State Bar I.D. No. 5777

LJA/pw
Enclosures

s:_staff_files\landerson\la_cases starting 2023\2025\25-0927-w-pc (wvawc and fayette county commission)\staff motion to dismiss case.docx

TABLE OF CONTENTS

Staff's Objection and Motion to Dismiss Case..... 3

Certificate of Service 13

STAFF'S OBJECTION AND MOTION TO DISMISS CASE

CASE NO. 25-0927-W-PC

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 25-0927-W-PC

**WEST VIRGINIA-AMERICAN WATER COMPANY and
FAYETTE COUNTY COMMISSION**

Joint Petition for consent and approval for West Virginia-American Water Company to acquire Armstrong Public Service District, Kanawha Falls Public Service District and Page-Kincaid Public Service District after their respective dissolutions by the Fayette County Commission. Request for an Interim Declaratory Order.

STAFF'S OBJECTION AND MOTION TO DISMISS CASE

Comes now the Staff of the West Virginia Public Service Commission (Staff) by Leslie J. Anderson, Counsel, and files this Objection and Motion to Dismiss the Joint Application for Consent and Approval and for Issuance of Interim Declaratory Order As explained below, the properly noticed majority approval of a Public Service District Board to sell its assets is required pursuant to W.Va. Code §16-13-18a. The County Commission authority over dissolution of public service districts is limited to inactive districts. The assertion that West Virginia-American Water Company may buy assets from an entity that does not have title to the assets is contrary to the law. The Fayette County Commission has no statutory authority to unilaterally sell Public Service District assets.

The Commission should reject West Virginia-American Water Company's (Company's) and the Fayette County Commission's (jointly Applicants') arguments

that the Fayette County Commission may sell the assets of the subject Public Service Districts without the majority approval of each of those Public Service District Boards approving the sale of the systems and assets pursuant to W.Va. Code §16-13A-18a.

In support of Staff's position, Staff states:

1. The Applicants in their request acknowledge that the structure of the Transaction in the Asset Purchase Agreement "is unconventional in that the County Commission, not the District, proposes to sell the Assets." (Application at p. 17, Bates p. 23).
2. Staff agrees W.Va. Code §16-13A-2 gives county commissions broad authority to create, modify, enlarge, reduce and dissolve public service districts subject to the Commission's approval. But, nowhere in the statute does the legislature give county commissions authority to sell a public service district. The legislature could have easily added "sell district's public utility property" to the list of items W. Va. Code §16-13A-2 authorizes county commissions to do.
3. Staff asserts the authority of a County Commission to dissolve a public service district is limited to those districts that are inactive or dormant.
4. W.Va. Code §16-13A-2(g) states, in pertinent part, "The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not

been extended, ***or dissolve the district if inactive*** or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district ***or dissolve the district if inactive***, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the Public Service Commission shall apply.” (emphasis added).

5. Staff acknowledges W. Va. Code §16-13A-3 gives county commissions authority to appoint public service board members, and W.Va. Code §16-13-3a gives county commissions authority to remove board members only for reasonable cause by petitioning the circuit court. But, nowhere in those statutes did the legislature give county commissions authority to sell public service districts.
6. Staff agrees W. Va. Code §16-13-18a provides that once a public service district's system is sold the balance of funds not required for repayment of the public service district's obligations is to be disbursed to the county commission. But, nowhere in this statute did the legislature give the

county commission authority to sell a public service district's system. In fact, W.Va. Code §16-13-18a expressly sets forth how a majority of a public service district's board may go about selling the public service district's system, including obtaining the approval of Public Service Commission as well as the county commission or commissions in counties where the district is located.

7. The Applicants assert "the county commission's general authority over the creation and dissolution of public service districts (subject to the Commission's authority over such actions and its statutory interest in the facilitation and terms of an asset sale) should take precedence, such that a county commission is not effectively held hostage to the determinations or failures to act of public service board members that the county commission itself appoint. A contrary interpretation would allow public service boards to frustrate the orderly development of utility systems that a county commission -and, indeed, the Commission itself—may wish to advance." (Application at p. 18, Bates p. 24).
8. 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 board's authority. Indeed, it appears the legislature sought to set forth checks and balances when providing that the county commissions can only remove board members for cause by

petitioning a circuit court, even though the county commission, itself, appoints those board members.

9. There are many duties and responsibilities given to public service district boards in W.Va. Code §16-13A with regard to their utility systems, including authorizing public service district boards to acquire and purchase public service properties. See W.Va. Code §16-13A-8. Staff fails to understand how property acquired by a public service district by its board as reflected on property deeds filed in county offices can be sold by another entity, like a county commission, who is not on the deed.
10. While the statutes do not provide authority for county commissions to sell a public service district's property, the statutory scheme gives county commissions direction on how to address issues with public service district board members. Specifically, the statutory scheme provides the county commission may seek the removal of board members for reasonable cause such as 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 Public Service Commission. See W.Va. Code §16-13A-3a.
11. Moreover, the Transaction "Closing Mechanism" set forth in the Application and carried out in the Asset Purchase Agreement to ensure the dissolution of the Districts only occur upon completion of the appropriate transfer of the assets to the County Commission and the

discharge of the District's indebtedness is convoluted and not set forth in any statute.

12. The Applicants explained that under the Transaction "Closing Mechanism" the following would occur the same day in the same order listed below:

- a. The Company's payment of Cash Consideration to the County (Agreement at § 2.A);
- b. The County Commission's payment in full of the Districts' outstanding grants and loans (or portions thereof) to the extent repayment is required (*id.* at §§ 2A(ii)(a), 2.C) and the System Debts (*id.* at §§ 2.A(ii)(b), 5);
- c. The effectiveness of the Dissolution as to each of the Districts;
- d. The County Commission's momentary assumption of ownership of the Assets;
- e. The completion of a public auction process(es) for the Assets as required under W. Va. Code § 7-3-3(a);¹
- f. The County Commission's transfer of the Assets to the Company, both under the Agreement and by virtue of the Company's presumed status as the prevailing bidder in the public auction process; and

¹ "Section 7-3-3 requires a county commission wishing to sell real or personal property of the county or held by the county for the use of any district to use either an on-site public auction process or an internet-based public auction service, including in each case the publication of a Class II notice of the auction. The auction process and associated notice would be scheduled such that the auction would conclude on the date of Closing. The terms of the auction would require bidder eligibility as an entity capable of acquiring a public water system." (Application at p. 19, Bates p. 25) (footnote in original, but number 11 in original).

- g. The Company's acquisition of the Assets and its immediate assumption of the public service obligations in respect of the District's former customers.

(Application at p. 19, Bates p. 25).

13. The Commission, in its July 14, 2025 Order in Lincoln County Commission, Case No. 25-0348-PWD-PC, recognized several statutes govern the dissolution of the District and sale of its assets, including W.Va. Code §§16-13A-2, 16-13A-18a and 24-2-12. The Commission made clear that it's the responsibility of the Lincoln County Commission, the Lincoln Public Service District, and West-Virginia American Water Company "to assure that all statutory requirements are complied with." (Id. at p. 4).
14. The Commission has noted the board of a public service district "may sell the utility 'upon such terms and conditions as said, board, in its discretion, considers in the best interests of the district'" pursuant to W.Va. Code §16-13A-18a. See Case No. 13-0732-S-PWD-PC, Morgantown Utility Board and Scotts Run Public Service District.
15. The Commission succinctly stated on page 9 in its March 31, 2021 Order issued in Case No. 20-0718-W-PWD-PC, West Virginia-American Water Company and Page-Kincaid Public Service District, and Case No. 20-0387-PWD-GI, Page-Kincaid Public Service District, that W.Va. Code §16-13A-18a requires the board to take certain actions when a public service district is selling its system: "1) the publication of notice of the

hearing before the public service district board and a finding by at least 60 percent of the board members that the sale is in the best interests of the utility, 2) approval of the sale by the county commission and 3) approval of the sale by the Commission.” W.Va. Code §16-13A-18a sets forth certain timing requirements for the notice of the hearing and the hearing that the Lincoln Public Service District should follow.

16. It is unnecessary for the Public Service Commission to utilize the rule of *in pari materia* where there is no ambiguity in a particular statute. Berkeley County Pub. Serv. Sewer Dist. v. West Virginia PSC, 204 W. Va. 279 at 286, 512 S.E.2d 201 at 208, 1998 W. Va.
17. There is no reason for the Commission to depart from recognizing the statutory requirements where the statutory requirements are clear and unambiguous, including W.Va. Code §16-13A-18a’s requirements on how a public service district board may approve the sale of its utility system. The statutes clearly list a number of actions county commissions are authorized to take, but selling a public service district’s utility property is clearly not one of them.

Accordingly, Staff recommends the Commission dismiss this case.

Respectfully submitted this 7th day of November 2025.

**STAFF OF THE PUBLIC SERVICE
COMMISSION OF WEST VIRGINIA**

By Counsel,



LESLIE J. ANDERSON
Supervising Attorney
West Virginia State Bar I.D. 5777

CERTIFICATE OF SERVICE

CASE NO. 25-0927-W-PC

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
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CERTIFICATE OF SERVICE

I, LESLIE J. ANDERSON, Staff Counsel for the Public Service Commission of West Virginia, hereby certify that I have served a copy of the foregoing "*Staff's Objection and Motion to Dismiss*" upon all parties of record by First Class Mail and/or electronic mail this 7th day of November 2025.

Robert Passmore, Esq.
Corporate Counsel
West Virginia-American Water
Company
1600 Pennsylvania Avenue
Charleston, WV 25302-3932
robert.passmore@amwater.com

Christopher L. Callas, Esq.
Counsel, WVAWC
JacksonKelly PLLC
PO Box 553
Charleston, WV 25322
ccallas@jacksonkelly.com

Nicklaus A. Presley, Esq.
Counsel, WVAWC
JacksonKelly, PLLC
PO Box 553
Charleston, WV 25322
napresley@jacksonkelly.com

Michael W. Taylor
Counsel, Fayette County
Commission
Pence Law Firm PLLC
PO Box 2548
Charleston, WV 25329
mtaylor@pencefirm.com

Alex Worrell, Esq.
Counsel, WVAWC
JacksonKelly, PLLC
PO Box 553
Charleston, WV 25322
aworrell@jacksonkelly.com


LESLIE J. ANDERSON
Supervising Attorney
West Virginia State Bar I.D. 5777