BEFORE THE PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON

CASE NO. 26-0715-S-P

TOWN OF WORTHINGTON,
a municipal corporation and public utility.

PETITION OF DEBORAH HEFLIN FOR A DETERMINATION THAT THE TOWN OF WORTHINGTON SEWER UTILITY IS A DISTRESSED OR FAILING UTILITY.

PETITIONER'S RESPONSE TO FURTHER JOINT STAFF MEMORANDUM

Petitioner Deborah Heflin, pro se, resident ratepayer, and former mayor of the Town of Worthington, submits this Response to the Further Joint Staff Memorandum filed on September 23, 2026.

Staff's lead argument is a drafting error. Staff says Petitioner "invented" and "manufactured" statutory language. She did not. She prepared a seven-page objection without a lawyer, quoting the statute and the Supreme Court's syllabus law, and a working note from her research was accidentally copied into the draft, inside the quotation marks around the statute. That is the whole of it.

Staff says that once the note is removed, Petitioner's "legal argument collapses." Further Joint Staff Mem. at 2. That is like opposing counsel in a major lawsuit or a criminal case finding one minor drafting mistake and insisting the whole case be thrown out. It does not pass the smell test.

Staff has already shown how to handle this. When Petitioner objected to Staff's reliance on the interim mayor, Staff said the Commission "could disregard every word attributed to him" and its recommendation would stand. *Id.* at 4. Apply the same principle here. Strike the errant note. The argument is exactly the same, and Staff's lead argument disappears with it.

Staff agrees. In its own words, "Ms. Heflin would have a legitimate argument if the legislature enacted the language she quoted." *Id.* at 1. With the note struck, the language she quoted is exactly what the Legislature enacted: "The commission shall hold evidentiary and public hearing(s) in a location in or within 25 miles of the utility's service area." W. Va. Code § 24-2H-6(b). Staff printed that sentence itself as "[t]he actual statute." Further Joint Staff Mem. at 1–2.

Set aside the personal attacks, and Staff's recommendation rests on two legal claims. Both are forbidden by Supreme Court syllabus law that Petitioner quoted and Staff does not dispute.

The first is the heart of Staff's case: that DEP's plan already does the Act's job, so the Act's proceeding would be "a redundant waste of resources." *Id.* at 2. That is an argument that the Legislature wrote a useless law, and the Legislature is presumed never to write one. Syl. Pt. 4, *State ex rel. Hardesty v. Aracoma-Chief Logan No. 4523, VFW*, 147 W. Va. 645, 129 S.E.2d 921 (1963). Under the Act, the corrective alternatives Staff points to come only after the evidentiary hearing and a final order finding the utility distressed. W. Va. Code § 24-2H-7(a)–(b).

The second is that a procedural rule, Sewer Rule 10.3.1, gives the Commission discretion to skip the hearings. Further Joint Staff Mem. at 2. It does not. A procedural rule cannot override a statute. Syl. Pt. 3, *Rowe v. W. Va. Dep't of Corr.*, 170 W. Va. 230, 292 S.E.2d 650 (1982). The statute says "shall" at every step: the Commission "shall hold" the hearings, "shall receive evidence to determine if the utility is a distressed or failing utility," and "shall enter a final order stating whether" it is. W. Va. Code §§ 24-2H-6(b)–(c), -7(a). The only limit the Legislature put on a petition is that "high water loss or unaccounted for water shall not be considered the sole evidence of a distressed or failing utility." § 24-2H-6(a). The Legislature knew how to write an exception. It wrote none for a utility with a DEP plan.

Staff also calls Petitioner "one disgruntled customer." A disgruntled customer does not ask a state agency to come to her town and hear every customer, in public, on the record. That is what Petitioner asked for.

And Staff says the petition reverses Petitioner's July 7 testimony. The record says otherwise. While the plan Staff now relies on was being negotiated, Petitioner, as mayor, put this petition on the council's agenda in May and June, and the council never voted on it. Three news reports said so before Staff wrote a word. The only reversal is the Commission's. In July 2025, when WBOY asked whether the State could take over Worthington's sewer, the Commission's spokesman told DEP that "either the utility would have to file something or our staff would for us to act." Then he sent the reporter this Act. Now that someone has filed, Staff calls it a waste. Commission emails produced under FOIA Request No. 26-0084; WDTV (June 2, 2026); WDTV (Aug. 5, 2026); WAJR (Aug. 5, 2026).

Cut through the noise, and Staff is left with personal attacks and two legal positions the law does not allow. All of it is in answer to a request that the people of Worthington be heard where they live.

I. THE RIGHTS OF THE PEOPLE OF WORTHINGTON

The statute gives the people on this system the right to be heard where they live: in public, within 25 miles of the service area, with notice on their bills. W. Va. Code § 24-2H-6(b). Staff has not heard from them. Its only account of what the customers support came from a phone call with Mr. Lindsey, and a FOIA request for Staff's notes of that call produced none. With Staff setting his words aside, the Commission has no account from the customers at all. Mr. Lindsey has said on the record that he does not live in Worthington, and the Constitution reserves the Town's offices to its voters. W. Va. Const. art. IV, § 4. Nine days before Staff's call, the Commission's own spokesman wrote to a reporter about him: "Yes, I suspect he's fobbing you off."

The people of Worthington are being held hostage by a sewer crisis. This is what the Legislature wrote the Act for: utilities that "face substantial capital investment needs to maintain and replace aging infrastructure with limited financial resources." W. Va. Code § 24-2H-2(c). The plan Staff calls the fix says funding is "the most significant barrier" to compliance and that "initial resources have been exhausted," and it sets no date for compliance. Plan of Corrective Action approved July 1, 2026, §§ IV.B, V. When Engineering summarized the plan for the Commission, it left out "initial resources have been exhausted." It also made its own recommendation depend on a Utilities Division review of the Town's finances. Engineering Mem. (Sept. 8, 2026) at 3, 5. No such review appears on the docket. Staff's own investigation found the Town "not complying with the Sewer Rules." Further Joint Staff Mem. at 4. Estimates Petitioner has seen run from $20 million to $40 million to replace the vacuum system, roughly $50,000 to $100,000 for each of about 400 customers. The Town has secured about $2.2 million, and the State's fund for distressed utilities is capped at $5 million for the entire State. W. Va. Code § 31-15A-9(i). The council has not passed the rate increase the plan says the Town needs to qualify for funding. With eight votes cast at its last election, the Town is too small to exist under the Legislature's own test, and a petition to dissolve it is pending. W. Va. Code § 8-35-1(a). Its sewer is too big to fail. Staff's recommendation would keep the people of Worthington right where they are.

The Commission goes to the people. It did so for a utility far smaller than this one. In the Hubbard Heights case, a Commission manager told one man to file under this Act, for a Wayne County subdivision sewer the Court described as having twenty-seven customers, and the Commission held a public hearing and evidentiary hearings. *Huntington Sanitary Bd. v. Pub. Serv. Comm'n*, 916 S.E.2d 138, n.4 (W. Va. 2025). This year it scheduled the public comment and evidentiary hearing on the City of Gary's water system at the McDowell Armory in Welch. Refusing the people of Worthington the same hearings would be unequal treatment under the same law, and arbitrary. Syl. Pt. 4, *Israel v. W. Va. Secondary Schs. Activities Comm'n*, 182 W. Va. 454, 388 S.E.2d 480 (1989);

Syl. Pt. 6, *Huntington Sanitary Bd.* Worthington deserves the same.

The hearings would put on the record what Staff's memoranda leave out. The statute requires the Commission to weigh "the level of expenditures necessary to make improvements" and "the impact of those expenditures on customer rates." W. Va. Code § 24-2H-5(a)(2). Staff's memoranda never mention either. Staff asks how the utility went from "making progress" on July 7 to needing a distressed utility proceeding twenty-nine days later, and it answers its own question: "Worthington's system didn't change in five days." Further Joint Staff Mem. at 4. Whether that system is distressed is exactly what the hearings decide.

II. RELIEF REQUESTED

Petitioner asks the Commission to hold the hearings the law says it shall hold, and to enter an order:

1. Striking the first sentence of the quotation on page 1 of Petitioner's objection filed September 16, 2026;

2. Denying Staff's recommendation to dismiss;

3. Scheduling a public comment hearing and an evidentiary hearing in or within 25 miles of the utility's service area, with notice under W. Va. Code § 24-2H-6(b);

4. Including as additional parties any capable proximate public and private utilities that may be able to acquire the utility, as W. Va. Code § 24-2H-6(a) requires; and

5. In the alternative, if the Commission declines to hold the hearings, making findings on each factor in § 24-2H-5(a), including the cost of replacement and its effect on rates, and stating which facts it found insufficient.

Respectfully submitted,



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Dated: September 25, 2026

CERTIFICATE OF SERVICE

I certify that on the 25th day of September, 2026, I served a true copy of the foregoing Petitioner's Response to Further Joint Staff Memorandum by United States Mail, first-class postage prepaid, and by electronic mail, addressed as follows:

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