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 WRITTEN OBJECTION TO JOINT STAFF MEMORANDUM, AND DEMAND FOR STATUTORY HEARINGS

I am Deborah Heflin, petitioner, resident ratepayer, and former mayor of the Town of Worthington. Pursuant to Rule 4.3.3 of the Commission's Rules of Practice and Procedure, I submit this timely written objection to the Initial and Final Joint Staff Memorandum filed on September 9, 2026.
I demand that the Commission reject Staff's recommendation for summary dismissal and schedule the mandatory public comment and evidentiary hearings commanded by W. Va. Code § 24-2H-6(b).

1. GOVERNING LAW

> "Upon filing of a petition pursuant to subsection (a) of this section, the commission shall establish a proceeding to determine if a utility is a distressed or failing utility. 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's recommendation to dismiss this verified proceeding based on an unsworn telephone inquiry violates controlling, binding syllabus points of the Supreme Court of Appeals of West Virginia:

1. "Shall" Is an Absolute Command:

> "It is well established that the word 'shall,' in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation." Syl. Pt. 1, *Nelson v. W. Va. Pub. Emps. Ins. Bd.*, 171 W. Va. 445, 300 S.E.2d 86 (1982).

The word "shall" leaves no room for administrative discretion, and Staff has no lawful authority to waive or bypass a statutory command.

2. The PSC Has No Inherent Power:

> "The Public Service Commission of West Virginia has no inherent jurisdiction, power or authority and can exercise only such jurisdiction, power or authority as is authorized by statute." Syl. Pt. 1, *Eureka Pipe Line Co. v. Public Service Comm'n*, 148 W. Va. 674, 137 S.E.2d 200 (1964).

Because no statutory provision empowers the Commission or its Staff to bypass a mandatory hearing, recommending summary dismissal exceeds the agency's lawful authority.

3. Agency Practice Cannot Alter or Limit Statutory Duties:

> "In exercising that power, however, an administrative agency may not issue a regulation which is inconsistent with, or which alters or limits its statutory authority." Syl. Pt. 3, in part, *Rowe v. W. Va. Dept. of Corrections*, 170 W. Va. 230, 292 S.E.2d 650 (1982).

Staff's informal practice of relying on unsworn telephone inquiries unlawfully limits the hearing mandate imposed by W. Va. Code § 24-2H-6(b).

4. Plain Statutory Language Must Be Given Full Force and Effect:

> "Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Syl. Pt. 2, *State v. Elder*, 152 W. Va. 571, 165 S.E.2d 108 (1968); *accord* Syl. Pt. 2, *State v. Epperly*, 135 W. Va. 877, 65 S.E.2d 488 (1951); Syl. Pt. 1, *Dunlap v. State Comp. Dir.*, 149 W. Va. 266, 140 S.E.2d 448 (1965).

The statutory directive to hold local hearings is clear, and the Commission must execute it as written.

5. Agencies Cannot Add Exceptions the Legislature Omitted:

> "It is not for this Court arbitrarily to read into a statute that which it does not say. Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted." Syl. Pt. 11, *Brooke B. v. Ray*, 230 W. Va. 355, 738 S.E.2d 21 (2013).

The Legislature enacted exactly one threshold screening gate in W. Va. Code § 24-2H-6(a), which is that high water loss cannot be the sole evidence of distress. The Legislature purposely omitted any other reason for dismissal, including for "prematurity", and Staff has no authority to invent one.

6. The Legislature Presumptively Does Not Enact Meaningless Statutes:

> "It is always presumed that the legislature will not enact a meaningless or useless statute." Syl. Pt. 4, *State ex rel. Hardesty v. Aracoma-Chief Logan No. 4523, VFW*, 147 W. Va. 645, 129 S.E.2d 921 (1963).

If Staff could cancel statutory hearings by conducting an unsworn telephone inquiry and declaring a petition "premature," the Legislature's 25-mile local hearing requirement would be rendered completely useless.

2. UNPRECEDENTED ACTION ON AN ACCEPTED DOCKET

A review of Commission records confirms that accepted, docketed petitions under Article 2H are not dismissed upon an internal Staff memorandum prior to holding the statutory hearings (see, e.g., *Hubbard Heights*, Case No. 23-0857-S-P; *Gauley River PSD*, Case No. 24-0012-S-P).
Petitioner's filing was formally docketed and substantiated by official regulatory documents, including WVDEP Consent Order No. 10174, seven rejected Plans of Corrective Action, and state environmental inspection reports. Dismissing an accepted, fully substantiated petition based on an informal Staff recommendation is an arbitrary departure from established Commission procedure.

3. DISQUALIFICATION OF STAFF'S PRIMARY SOURCE

Staff's recommendation to dismiss this proceeding rests entirely upon an unsworn telephone inquiry conducted on September 2, 2026, with "Interim Mayor Melvin Lindsey." Staff's total reliance on Mr. Lindsey is legally barred and contradicted by municipal meeting records:

1. Mr. Lindsey's legal qualification to hold the office of mayor is actively contested under Article IV, Section 4 of the West Virginia Constitution and W. Va. Code § 8-5-7, which mandate that every municipal officer be a qualified voter and resident of the municipality. During the June 2026 Worthington Town Council meeting, while discussing the agenda item for municipal unincorporation, Mr. Lindsey's wife, seated Councilwoman Janet Lindsey, abstained from the action and stated on the public record: "*I don't feel like I should have a vote because I do not live in that town.*" Because Mr. Lindsey and his wife reside together outside the municipality, his legal qualification to serve as mayor remains unestablished under state law.

2. Between June and July 2026, Mr. Lindsey led an active municipal campaign advocating for municipal dissolution on the public record. At the July 21, 2026 council meeting, the Mayor confirmed on the record that "*this is twice now Melvin's put it on there*" for the town to unincorporate. In response, Councilwoman Janet Lindsey explicitly conceded the town's financial collapse as the primary justification for dissolution, stating on the record:

> "Well, if we don't have money to keep things running, we're going to have to do something."

That statement on the official record that the Town lacks the financial capability to maintain operations directly refutes the informal, unsworn claims of operational stability Mr. Lindsey later provided to Staff.

3. Petitioner's filing under Article 2H was necessitated by municipal paralysis after her own official efforts to petition the Commission were derailed. While serving as Mayor, Petitioner attempted to have the Town Council formally initiate a distressed utility proceeding under W. Va. Code § 24-2H-6(a). That municipal effort was blocked by council resistance, forcing Petitioner to file in her individual capacity as a resident ratepayer to prevent an unmanaged system collapse.

4. Less than six weeks after arguing on the public record that the town is out of money and must dissolve, Mr. Lindsey completely inverted his position during an unsworn telephone inquiry with Engineering Staff on September 2, 2026. Mr. Lindsey represented to Staff that the treatment plant has "made progress," that there are "no new or unresolved customer complaints," and that his administration's efforts are "supported by the customers." These informal assertions directly contradict his recorded July 21 admissions and are unsupported by any field inspection, maintenance logs, or customer records.

5. Moreover, Mr. Lindsey's claim that there are no unresolved customer complaints is demonstrably false on the public record. On August 12, 2026, just three weeks prior to Staff's inquiry, utility customer Andrea Zaleski appeared on the public record before the Marion County Commission to testify that customers continue to suffer from ongoing sewage overflows into yards and homes, an inoperable sewer board, and untreated municipal water. Staff accepted Mr. Lindsey's unsworn, self-serving denial of complaints over the telephone without reviewing public records, checking WVDEP complaint logs, or holding the local public comment hearing commanded by law.

6. Staff's reliance on Mr. Lindsey's unsworn claim of customer support directly usurps the statutory public comment hearing commanded by W. Va. Code § 24-2H-6(b). The Legislature mandated local public comment hearings precisely so ratepayers could appear under oath and provide direct testimony on utility service and conditions. Allowing a non-resident utility operator of contested authority to speak on behalf of the customers subverts the essential purpose and statutory protections of Article 2H.

4. UNLAWFUL SUMMARY ADJUDICATION ON THE MERITS

Staff's assertion that the petition is "premature" constitutes an unlawful summary adjudication on the ultimate merits without a hearing:

1. Determining whether a utility is distressed under W. Va. Code § 24-2H-5(a) requires the Commission to evaluate the utility's financial, managerial, and technical capability, its historical progress toward compliance, and the rate impact of necessary capital expenditures. These statutory factors constitute the substantive merits of the proceeding, which can only be adjudicated following an open evidentiary hearing where evidence is tested under oath.

2. Staff's conclusion that an approved Plan of Corrective Action provides "an appropriate framework for achieving greater stability" constitutes an improper summary adjudication on the ultimate merits without a hearing. Staff decided disputed questions of technical feasibility and managerial competence in an internal memorandum based on an unsworn phone call, depriving Petitioner of the statutory right to cross-examine witnesses and introduce rebuttal evidence.

3. By summarily dismissing the petition, Staff unlawfully blocks Petitioner from submitting direct evidence that the POCA itself proves financial distress. The WVDEP's July 1, 2026 approval of POCA Version 8 was addressed directly to Petitioner as Mayor. Petitioner filed this action with firsthand knowledge that the POCA creates an enforceable schedule of mandatory capital obligations without providing a single dollar of capital funding. With fewer than 150 customers and system replacement estimates exceeding $20,000,000, the Town cannot satisfy the POCA internally. Staff cannot summarily declare the POCA a "framework for stability" when an evidentiary hearing will formally prove it is an unfunded mandate guaranteeing default.

5. STAFF'S FAILURE TO ADDRESS THE SUBSTANTIVE ALLEGATIONS

Staff's unsworn claim that the utility is stabilizing requires the deliberate omission of the undisputed physical, regulatory, and financial evidence Petitioner formally submitted on the docket. Staff completely ignored the following documentary evidence:

1. The April 24, 2026 WVDEP inspection report submitted with the Petition documented ten separate effluent limitation exceedances in the only month sampled. Staff conducted no independent testing, reviewed no recent Discharge Monitoring Reports, and made no factual determination as to whether these unlawful discharges have ceased.

2. WVDEP inspectors documented raw sewage solids actively escaping clarifier weirs and discharging toward the West Fork River. Staff conducted no physical site inspection to determine whether untreated solids continue to discharge into state waters in violation of the Town's NPDES permit.

3. The Town's official regulatory filing of May 2026 admits that its sludge dewatering belt press is completely inoperable due to broken piping and a failed compressor, and that the aeration lagoon contains 10 to 12 feet of accumulated sludge that the Town cannot afford to remove. Staff's memorandum completely ignores the utility's total lack of solids-handling capacity.

4. The WVDEP cited the Town for failing to maintain required semi-annual Inflow and Infiltration logs, pH logs, and Total Residual Chlorine calibration records. Staff made no inquiry into whether essential operating and calibration records are currently maintained.

5. Between August 6, 2025, and May 26, 2026, the Town submitted seven consecutive POCAs, every single one of which was denied by the WVDEP for regulatory inadequacy. Ten continuous months of rejected submittals establishes a persistent pattern of managerial incapacity under W. Va. Code § 24-2H-5(a)(1).

6. Staff concedes that the existing vacuum collection system cannot operate reliably and must be completely replaced with a gravity system. Engineering estimates place the capital cost between $20,000,000 and $30,000,000. Worthington has fewer than 150 sewer customers. Amortizing tens of millions of dollars across 150 ratepayers results in monthly bills exceeding hundreds of dollars, satisfying the rate-impact criteria of W. Va. Code § 24-2H-5(a)(2).

7. On September 14, 2026, Mr. Lindsey admitted publicly that Thrasher Engineering is only now beginning preliminary evaluations to identify where vacuum collection defects are located. A utility that does not understand where its collection failures are occurring after a full year of regulatory enforcement remains severely distressed managerially and technically.

8. Utility operations currently depend on emergency ad hoc municipal bailouts from the Marion County Commission ($12,919 for an aerator motor; $13,000 for grinder stations). A utility dependent on county grants to maintain day-to-day operations satisfies the statutory financial distress criteria of W. Va. Code § 24-2H-3(a)(2).

9. An approved Plan of Corrective Action under a WVDEP Consent Order is merely an administrative compliance schedule, not an exemption from Article 2H.

6. ORDERS REQUESTED

Because W. Va. Code § 24-2H-6(b) mandates local hearings for properly filed petitions, I respectfully request that the Commission enter an order that:

1. Rejects the Joint Staff Memorandum's recommendation to dismiss this case;

2. Schedules a Public Comment Hearing within 25 miles of the Town of Worthington, with customer notice under W. Va. Code § 24-2H-6(b);

3. Schedules an Evidentiary Hearing pursuant to W. Va. Code § 24-2H-6(b) and (c); and

4. Joins all capable proximate utilities as parties pursuant to W. Va. Code § 24-2H-6(a).

Respectfully submitted,

Deborah Heflin

Deborah Heflin, Petitioner *Pro Se*

Post Office Box 346, Worthington, West Virginia 26591-0346

Dated: September 16, 2026

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2026, a true copy of the foregoing Petitioner's Written Objection to Joint Staff Memorandum was served by depositing the same in the United States Mail, first-class postage prepaid, and via electronic mail, addressed as follows:

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