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FURTHER JOINT STAFF MEMORANDUM IN RESPONSE TO PETITIONER'S OBJECTION

TO: **KAREN BUCKLEY** **DATE: September 23, 2026**
Executive Secretary

FROM: **BRENDAN DONEGHY**
Staff Attorney

RE: **CASE NO. 26-0715-S-P**
TOWN OF WORTHINGTON

Having reviewed Ms. Heflin's objection filed September 16, 2026, Staff maintains its position and recommends that the Commission dismiss this matter. In support of this position, Staff states as follows:

1. Ms. Heflin Invented Statutory Language

Ms. Heflin opens her objection by setting out what she calls the Legislature's "controlling" and "absolute" command, block-quoted and attributed to W. Va. Code § 24-2H-6(b):

> "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."

A review of W.Va. Code § 24-2H-6 reveals that the first sentence of Ms. Heflin's quoted language is nowhere to be found. Ms. Heflin would have a legitimate argument if the legislature enacted the language she quoted, but it didn't – that language simply doesn't exist. The actual statute provides:

> "(a) A proceeding under this article may be initiated by the commission on its own motion, or by the staff of the commission, or any other person or entity having a legal interest in the financial, managerial, or operational condition of the utility, by filing a petition with the commission that includes all of the factual data supporting the justification for the utility to be considered as a distressed or failing utility that the petitioner has available to them at the time of filing [...] In any such petition, the utility shall be named as the respondent. The commission shall include, as additional parties, any capable proximate public and private utilities that may be able to acquire the utility.

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(b) The commission shall hold evidentiary and public hearing(s) in a location in or within 25 miles of the utility's service area."

Once Ms. Heflin's made-up statutory command is removed, her legal argument collapses. Her manufactured sentence is the only language that transforms the filing of a petition into a mandatory command for the Commission to open a proceeding. Every authority Ms. Heflin cites depends on a command the Legislature never enacted. No number of citations about the word "shall" can rescue an argument built on a sentence absent from the statute.

In addition to the discretionary language in the statute, Sewer Rule 10.3.1 likewise provides that the Commission *may* open a proceeding. Heflin actually quoted this Rule in her Petition, but she now contends no such discretion exists. This means one disgruntled customer could force a utility, the Commission, the Consumer Advocate Division, one or more capable proximate utilities, and local governments into a resource-intensive acquisition proceeding merely by filing a petition. Article 2H does not confer that power on a customer.

2. Ms. Heflin Requests Relief Already in Effect

The Commission recently handled twenty complaint cases concerning Worthington's sewer system in Cases Nos. 26-0030-S-C through 26-0050-S-C. Staff's investigation in these cases established significant operational, maintenance, staffing, and customer-service problems. That is precisely why Staff recommended a POCA, a formal complaint process, and monthly progress reports. The Commission adopted those recommendations in Case No. 26-0034-S-C.

The DEP approved Version 8 of the POCA on July 1, 2026, with the approval letter addressed to Ms. Heflin in her capacity as mayor. The approved plan addresses collection-system deficiencies, treatment-plant deficiencies, staffing, operations, funding, a Facility Plan, quarterly DEP reporting, and a later POCA addendum containing the long-term schedule. In a distressed utility proceeding, W. Va. Code § 24-2H-7(b) authorizes the Commission to order "any viable alternative" to acquisition. Worthington's approved POCA already performs the corrective function contemplated by that provision, which underscores the practical emptiness of Ms. Heflin's demand. Opening a new Article 2H investigation to consider imposing substantially the same corrective process already in force would be a redundant waste of resources.

Ms. Heflin criticizes Mr. Lindsey and Thrasher for "only now beginning preliminary evaluations." But the POCA (which Ms. Heflin signed) gives the Town six months to submit the Facility Plan to funding agencies, followed by sixty days after approval of that plan to submit the POCA Addendum containing the long-term

implementation schedule. Neither of those deadlines has passed. Ms. Heflin's objection faults the Town for complying with the timetable she approved.

3. Ms. Heflin's Petition Contradicts Her Sworn Testimony

The most probative response to Ms. Heflin's objection is her own sworn testimony on behalf of the Town in Case No. 26-0034-S-C, just weeks before she filed her Petition. Her testimony was more than vague optimism; she had specific examples of progress:

- The DEP accepted the Town's POCA on July 1. Transcript at 21.
- During his April 24 inspection, DEP representative James McClain found that the equalization pond "looks the best he has ever seen it" and identified its level as the operational goal. Ms. Heflin testified that "we are doing better" at the sewage plant and that Flovac had inspected the identified problem pits, addressed each one, and repaired five of them. Id. at 21–23.
- DEP visits had decreased from daily visits to once or twice a week, no one attending a Town meeting accepted a complaint form, Mr. McClain told her the DEP was receiving "no complaints," and customer calls had subsided. Id. at 23–27.
- Thrasher Engineering, Flovac, West Virginia Rural Water, and multiple operators were working on the system, and the Town's wastewater operations were being supervised. Id. at 25–29.
- The Town had "made a lot of progress," Mr. McClain said it was "doing good," DEP Chief Inspector Brad Wright was "really happy," and the Town had "come a long way." Id. at 27.
- At the conclusion of her testimony, she stated that the Town was "proud of the POCA finally getting passed." Id. at 37.

Also, at the hearing, Ms. Heflin presented the DEP's April 24 inspection as evidence of the Town's improvement. Id. at 21–22. But now she submits the same inspection as evidence of Worthington's severe distress. This contradiction cannot be ignored. If her sworn July testimony was reliable, this petition is premature. If it was not reliable, the Commission has even less reason to credit her present reversal.

4. Attacking Staff Does Not Change the Record

Ms. Heflin incorrectly states that Staff relied entirely on an unsworn telephone call with Interim Mayor Melvin Lindsey. Staff also relied on the recently

concluded complaint investigation, the Commission's corrective order, the DEP's approval of Version 8, and the approved plan itself. Ms. Heflin focuses on Mr. Lindsey, but Staff's recommendation doesn't depend on Mr. Lindsey. The Commission could disregard every word attributed to him, and the petition would remain premature and contradicted by Ms. Heflin's own recent testimony. Attacking Staff does not resolve that dilemma.

Ms. Heflin labels Staff's recommendation an "arbitrary departure from established Commission procedure" and an "unlawful summary adjudication." Those accusations are utter nonsense. Staff didn't write the Plan of Corrective Action. Staff didn't sign it. Staff didn't obtain the DEP's approval of it. Staff didn't file it with the Executive Secretary on July 7. Staff didn't testify under oath that same morning that the Town had "made a lot of progress" and that it was "proud" the plan had finally passed. Ms. Heflin did all of that. Her quarrel isn't with Staff's memorandum; it's with the record she created herself.

5. Recommendation

Ms. Heflin resigned on July 31 and filed this Petition on August 5. Worthington's system didn't change in five days; Ms. Heflin's office did. If we look past her misplaced grievances, made-up statutory command, and attacks on Staff, a central question still remains: How did the utility Ms. Heflin touted as making progress on July 7 reach the point that the Commission must convene a distressed utility proceeding only twenty-nine days later?

Because of Staff's recent investigation, the Commission is well aware that Worthington's sewer system is far from perfect. Staff reported that the Town had been irresponsible and inefficient in managing and operating the utility, neglected preventive maintenance, employed no certified Class I operator, and was not complying with the Sewer Rules. Those findings all concerned the system overseen by Ms. Heflin.

The Commission already has a corrective order in effect, an approved POCA, and ample authority to address inadequate service. For these reasons, Commission Staff stands by its recommendation from its *Initial and Final Joint Staff Memorandum* and respectfully requests that the Commission dismiss this case.

BD/sw

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September 23, 2026

Deborah Heflin
PO Box 346
Worthington, WV 26591-0346

The Honorable Melvin Lindsey
Mayor, Town of Worthington
PO Box 265
Worthington, WV 26591-0265

RE: Case No. 26-0715-S-P
Town of Worthington

Dear Ms. Heflin and Mayor Lindsey:

Pursuant to Rule 4.3.3 of the Commission's Rules of Practice and Procedure, we are enclosing a copy of the Staff memorandum in this matter. Any responses must be submitted to the Executive Secretary's Office in writing within 10 days of this date, unless directed otherwise.

Your failure to respond in writing to the utility's answer, Staff's recommendations, or other documents may result in a decision in your case based on your original filing and the other documents in the case file, without further hearing or notice.

Documents submitted to the Public Service Commission of West Virginia may be 1) uploaded to its public website, 2) subject to public disclosure under the West Virginia Freedom of Information Act, and/or 3) subject to disclosure under the West Virginia Open Governmental Proceedings Act. Do not submit personal information with your filings. The Commission is not responsible for confidential or personal information included with your submission. A list of personal information is available here: http://www.psc.state.wv.us/Privacy_Policy/WhatisPII.htm

If you have provided an email address you will automatically receive notifications as documents are filed in this proceeding. The email notifications allow recipients to view a document within an hour from the time the filing is processed. If you have not provided your email address, please send an email to caseinfo@psc.state.wv.us and state the case number in the email subject field. **You are encouraged to file an Electronic Mail Agreement which allows the commission to serve all orders issued in this matter via electronic notification.**

Sincerely,

Karen Buckley
Executive Secretary

KB/mv
Enc.: Memo