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August 20, 2026

VIA ELECTRONIC FILING

Ms. Karen Buckley
Executive Secretary
Public Service Commission of West Virginia
201 Brooks Street
Charleston, WV 25301

Re: CASE NO. 26-0633-E-GI

General Investigation into Adopting
and Implementing Rules Governing
Electric Generating Capacity
Regulations

Dear Ms. Buckley:

Please find attached for filing the "*Reply Comments of the West Virginia Energy Users Group*" in the above-referenced matter.

Please contact the undersigned if you have any questions concerning this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "Derrick Price Williamson".

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Enclosures

c: Certificate of Service

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 26-0633-E-GI

General Investigation into Adopting
and Implementing Rules Governing
Electric Generating Capacity
Regulations

**REPLY COMMENTS OF THE
WEST VIRGINIA ENERGY USERS GROUP**

Antero Resources Corporation
The Chemours Company, LLC
Constellium Rolled Products Ravenswood, LLC
Kibar Americas Fairmont Operations, Inc.
Marathon Petroleum Company LP (MarkWest)
Messer LLC
Phibro Animal Health Corporation
Quad
Rockwool
Westlake Natrium LLC
Weyerhaeuser Company NR
WVA Manufacturing LLC

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 26-0633-E-GI

General Investigation into Adopting
and Implementing Rules Governing
Electric Generating Capacity
Regulations

REPLY COMMENTS OF THE WEST VIRGINIA ENERGY USERS GROUP

Pursuant to the Order issued by the Public Service Commission of West Virginia ("Commission") on July 20, 2026 ("Order"), in the above-referenced matter, the West Virginia Energy Users Group ("WVEUG")¹ hereby submits its Reply Comments in this matter addressing the Commission's proposed rules governing the regulation of electric generating capacity requirements subject to the Commission's jurisdiction conferred by W. Va. Code § 24-2-1d ("Proposed Rules"). WVEUG's Reply Comments succinctly identify the areas of agreement amongst majority of parties who filed Initial Comments² and reiterate WVEUG's position that House Bill ("H.B.") 2014 requires economic dispatch of generation facilities to

¹ For purposes of its participation in this general proceeding, WVEUG's membership currently consists of the following companies: Antero Resources Corporation; The Chemours Company, LLC; Constellium Rolled Products Ravenswood, LLC; Kibar Americas Fairmont Operations, Inc.; Marathon Petroleum Company LP (MarkWest); Messer LLC; Phibro Animal Health Corporation; Quad; Rockwool; Westlake Natrium LLC; Weyerhaeuser Company NR; and WVA Manufacturing, LLC.

² The following entities filed Initial Comments: (1) Appalachian Power Company and Wheeling Power Company (collectively, "AEP"); (2) Monongahela Power Company and Potomac Edison Company (collectively, "FE"); (3) West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia (collectively, "CAG/SUN/EEWV"); (4) West Virginia Coal Association ("WVCA"); (5) Sierra Club; and (6) United Mine Workers of America ("UMWA").

produce electricity at the lowest reasonable cost while reliably meeting consumer demand. To the extent the Commission schedules any further proceedings addressing the Proposed Rules, WVEUG intends to fully participate in any such proceeding.

1. The majority of parties who submitted Initial Comments generally align with WVEUG's position regarding Sections 5.3 and 5.3.2 of the Proposed Rules. Specifically, WVEUG and the vast majority of stakeholders who submitted Initial Comments agree that neither the 69 percent capacity factor nor Self-Scheduling should be mandated; instead, utility Generation Resources³ should be operated and dispatched in an economic manner that results in the lowest reasonable cost to ratepayers (referred to as "economic dispatch" in other stakeholders' Initial Comments).⁴ To the extent the Proposed Rules mandate a 69 percent capacity or for utilities to Self-Schedule, WVEUG and most other parties agree it could increase costs to ratepayers. WVEUG thus respectfully requests that the Commission incorporate the broad consensus amongst the diverse stakeholders as reflected in the Initial Comments to ensure that Sections 5.3 and 5.3.2 of the Proposed Rules comports with H.B. 2014's requirement that utility Generation Resources are subject to economic dispatch and that the resulting impact on

³ As defined in the Proposed Rules.

⁴ See Initial Comments of Appalachian Power Company and Wheeling Power Company ("AEP Comments"), Bates Nos. 10-12; Comments of Monongahela Power Company and Potomac Edison Company ("FE Comments"), p. 8; Comments of West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia ("CAG/SUN/EEWV Comments"), pp. 3-7; Sierra Club Comments, pp. 1-3. WVCA similarly provides support for the "economic dispatch provisions" of the Proposed Rules while providing recommendations for further oversight and reporting. See WVCA Comments, p. 5.

customers' rates is the critical determinant. WVEUG's proposed edits to both Sections, as provided in its Initial Comments, ensure alignment with that statutory requirement.

2. The only Initial Comment filed by a stakeholder that appears to oppose the principles of economic dispatch and lowest reasonable cost to ratepayers is the UMWA Initial Comments, which interprets H.B. 2014 to "require coal-fired plants to operate at the highest achievable capacity factor."⁵ As demonstrated in WVEUG's Initial Comments, that interpretation is inaccurate. H.B. 2014 is clear in its language that a utility is not required to "operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule."⁶ As such, the Commission should disregard the UMWA Initial Comments in that regard and ensure that the Proposed Rules align with H.B. 2014's requirement that the impact to customers' rates is the critical determinant of whether AEP and FE dispatch their plants.

3. Finally, AEP proposes workshops and potential deferral of development of the Proposed Rules until completion of related proceedings.⁷ While WVEUG does not take a position on that recommendation, if the Commission agrees to workshops or delayed development of some or all of the

⁵ UMWA Initial Comments, p. 4.

⁶ W. Va. Code § 24-2-19(e).

⁷ See AEP Comments, Bates No. 9.

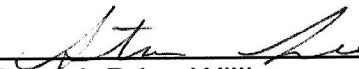
Proposed Rules, then WVEUG intends to fully participate in any such workshops or further proceedings.

CONCLUSION

The overwhelming majority of Initial Comments align with WVEUG's position that the Proposed Rules must adhere to H.B. 2014's requirement that any actions taken by a utility, whether it be operating and dispatching its Generation Resources or Self-Scheduling into PJM, should only be done when it is economic to do so and benefits ratepayers. WVEUG's proposed edits to the Proposed Rules, and specifically its edits to Sections 5.3 and 5.3.2, as provided in its Initial Comments, ensure that the Proposed Rules comport with the legislative directive set forth in H.B. 2014. For this reason, WVEUG respectfully requests that the Commission adopt the edits to the Proposed Rules set forth in WVEUG's Initial Comments.

Respectfully submitted,

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Date: August 20, 2026

CERTIFICATE OF SERVICE

I, Steven W. Lee, counsel to the West Virginia Energy Users Group, do hereby certify that on this 20th day of August, 2026, a copy of the "*Reply Comments of the West Virginia Energy Users Group*" was served upon the parties and/or counsel of record in this proceeding as follows:

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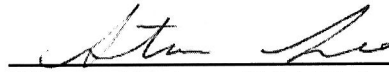
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03:24 PM AUG 20 2026 EXEC SEC DIV

Reply Comments of The Seneca Center for Energy and Critical Minerals Policy

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

GENERAL INVESTIGATION INTO ADOPTING AND **CASE NO. 26-0633-E-GI**
IMPLEMENTING RULES GOVERNING ELECTRIC 150 C.S.R. 41
GENERATING CAPACITY REGULATIONS
PURSUANT TO W. VA. CODE § 24-2-1d

**REPLY COMMENTS OF THE SENECA CENTER FOR ENERGY
AND CRITICAL MINERALS POLICY IN SUPPORT OF
PROPOSED RULE 150 C.S.R. 41**

I. INTRODUCTION AND STATEMENT OF INTEREST

The Seneca Center for Energy and Critical Minerals Policy (“Seneca Center”) respectfully submits these reply comments in the above-captioned proceeding in support of the Public Service Commission of West Virginia’s (“Commission”) proposed legislative rule, 150 C.S.R. 41, Rules Governing Electric Generating Capacity Utilization. The Seneca Center is a 501(c)(3) research and policy institute organized to advance sound, evidence-based energy and critical minerals policy for West Virginia and the Appalachian region, with a particular focus on the reliability, affordability, and dispatchability value that West Virginia’s coal-fired generating fleet provides to the region and the PJM grid it serves.

These reply comments respond to the initial comments filed August 10, 2026 by Monongahela Power Company and The Potomac Edison Company (collectively, the “FirstEnergy Companies”) and by Appalachian Power Company and Wheeling Power Company (collectively, the “AEP Companies”), both of which oppose material portions of the proposed rule.

The Seneca Center has no financial interest in any regulated utility that is a party to this proceeding. Its interest is the same interest the Legislature identified when it enacted House Bill 2014, the Power Generation and Consumption Act: ensuring that West Virginia’s existing, paid-for, dispatchable generating capacity is operated to its full and prudent potential for the benefit of the ratepayers and the reliability of the system they depend on.

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Reply Comments of The Seneca Center for Energy and Critical Minerals Policy

The Seneca Center urges the Commission to adopt 150 C.S.R. 41 substantially as proposed. This rulemaking is not a discretionary policy initiative of the Commission's choosing — it is the Commission's response to a specific legislative directive, framed in mandatory rather than permissive terms. W. Va. Code § 24-2-1d(f) provides that “[t]he commission shall propose rules for legislative approval in accordance with the provisions of § 29A-3-1 et seq. of this code to carry out its duties and obligations as set forth herein.” That is a directive, not an invitation. The Commission is not weighing whether to regulate consumer economic dispatch and capacity factor; the Legislature has already made that decision in HB 2014, and the Commission's task in this docket is to propose rules that carry it out, subject to the Legislature's own review and approval in the 2027 Regular Session under the legislative-rule process the statute itself specifies.

The Seneca Center is a policy and research institute. It is not counsel to any party in this proceeding, does not engage in the practice of law, and offers no legal opinions. Nothing in these comments should be construed as legal advice or legal counsel to the Commission, to its Staff, or to any party. Several parties have raised questions in this docket concerning federal preemption and the effect of a federal consent decree. Those are matters for the Commission and its General Counsel. Where these comments address such questions, they do so only to describe what the cited authorities state on their face and to recommend rule text that keeps the disputed questions from arising, rather than to advance a legal position of the Seneca Center's own. The analysis offered here is policy, economic, and factual in nature, and the Commission should evaluate it on that basis.

II. THE PROPOSED RULE CORRECTLY RECOGNIZES THAT PJM'S DISPATCH STACK IS NOT A NEUTRAL, PURELY ECONOMIC MECHANISM

Opponents of this rule will argue, in one form or another, that the Commission cannot ask a utility to guarantee a level of output it does not fully control, because PJM — not the utility, and not this Commission — decides which units run. That argument rests on an assumption that deserves to be examined rather than accepted at face value: that PJM's dispatch and capacity accreditation processes are a neutral scorekeeping of production cost, indifferent to fuel type. They are not. PJM's treatment of every resource class, coal included, is the product of a series of administrative constructs of PJM's own design — constructs that shift from year to year based on PJM's own modeling choices and stakeholder process, not on any change in what a given West

Virginia plant can actually deliver. As shown below, that administrative discretion has left coal's capacity accreditation stable, while the same discretion — operating through a different market, the energy market rather than the capacity market — is where subsidized bidding is actually eroding West Virginia coal's dispatch and output.

A. PJM sets capacity value by administrative formula, not by physical performance — and the real erosion for West Virginia is happening in the energy market, not the capacity market.

Under the very definitions this rule adopts at Section 2.3, PJM applies an ELCC “capacity value fractional multiplier” to a resource's rated capacity, revised annually by PJM itself. This is not a measurement of what a unit can physically deliver; it is a statistical construct built around a fleet-wide risk model that PJM redesigned in 2023 — shifting from an “average” to a “marginal” ELCC methodology — and continues to recalibrate every delivery year. Coal's own accreditation has in fact held up well under this construct: PJM's published Class Ratings show coal accredited at 83% in both the 2025/2026 Third Incremental Auction and the 2026/2027 Base Residual Auction — unchanged — while over the same interval gas combined cycle fell from 78% to 74%, gas combustion turbine from 63% to 60%, and solar, battery storage, and demand response all declined as well. (PJM Interconnection, 2026/27 BRA IRM, FPR, and ELCC Class Ratings, Mar. 13, 2025.)

That comparison makes the more important point sharper, not weaker: coal's strong, stable capacity accreditation reflects exactly what one would expect of a dispatchable resource — but accreditation is a capacity-market construct that determines what a unit is paid to be available. It is not the energy-market mechanism that determines whether the unit actually runs and earns the capacity factor this rule measures. That distinction is precisely why the erosion West Virginia should be concerned with is not happening in PJM's capacity accreditation, where coal already performs well, but in the day-ahead and real-time energy markets that determine actual dispatch — the subject of subsection B below.

B. Subsidized and must-take resources are bid into the stack at zero or negative cost, displacing coal for reasons unrelated to production economics.

PJM's energy market clears on offered price, and the federal production tax credit allows wind and other qualifying resources to profitably offer energy at zero or even negative prices, since the subsidy is earned on production regardless of the price received for it. When such resources

clear ahead of a coal unit, the coal unit is displaced from the dispatch stack not because its own marginal cost of production is higher in any ordinary market sense, but because a federal subsidy — external to the plant’s own economics — allowed a competitor to underbid it artificially. This “merit order effect” of subsidized zero-cost bidding is well documented in the energy-economics literature and is consistent with the concern the Legislature identified when it directed the Commission, in the newly enacted W. Va. Code § 24-2-1d(e), to review each generating unit’s consumer economic dispatch. Recent federal legislation curtailing eligibility for these credits going forward does not change the analysis for the period this rule will govern: the credit is earned over a ten-year window from a facility’s placement in service, so the substantial existing subsidized fleet in PJM will continue to bid on this basis well into the next decade.

C. PJM’s own market rules — not the coal fleet’s performance — have been in flux.

PJM’s capacity construct has undergone repeated, PJM-initiated redesign in recent years, including the 2023 shift in accreditation methodology referenced above, which FERC approved over the objection of parties who argued it did not go far enough to reflect resource-specific risk. Each redesign has been adopted through PJM’s own stakeholder process and FERC review, not through any change in the physical characteristics of West Virginia’s coal units. A rule that measured a utility’s compliance purely against “what PJM happened to dispatch” in a given year would be measuring West Virginia utilities against a moving target that PJM itself moves. The Commission’s decision to focus the capacity factor standard on maintenance discipline and self-scheduling — matters within the utility’s own control — rather than on PJM’s clearing outcomes, is the approach most capable of being administered fairly, because it measures utilities against conduct they themselves determine.

For these reasons, the premise underlying the anticipated utility objection — that the 69% capacity factor standard is invalid because PJM, not the utility, controls dispatch — does not hold up. PJM’s stack position for a coal unit is substantially a function of administrative choices PJM itself makes about accreditation and subsidized-resource treatment, not a pure referendum on that unit’s cost or reliability. A rule that responded to that reality by requiring utilities to guarantee their own output through self-scheduling, as Section 5.3.2 does, is not asking utilities to do the impossible. It is asking them to use the tool available to them — self-scheduling under PJM

Manual 11 — to stop ceding the fate of paid-for, reliable West Virginia generating capacity to a market design process in which West Virginia ratepayers have no vote.

III. THE PREEMPTION OBJECTION TURNS ON A SPECIFIC FEATURE THE RULE CAN BE DRAFTED TO EXCLUDE

As noted in Section I, the Seneca Center does not offer a legal opinion on the scope of federal preemption, and the Commission's General Counsel is the appropriate body to assess the jurisdictional questions the AEP Companies raise. The Seneca Center's purpose in this section is narrower and practical: to identify what the authorities the Companies cite have in common, and to recommend drafting language that keeps the proposed rule clear of that common feature so the question does not have to be litigated at all.

As a factual matter, the rule as proposed does not direct PJM to take any action, does not purport to amend PJM's tariff, and does not address what any generator is paid for a wholesale sale. It addresses how utilities subject to this Commission's jurisdiction maintain their plants, what bidding options they exercise, and what they report to this Commission in connection with retail ratemaking and prudence review.

The authorities the AEP Companies invoke — *PPL EnergyPlus, LLC v. Nazarian*, 753 F.3d 467 (4th Cir. 2014), *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373 (2015), and *Alico Fin. Ltd. v. Klee*, 861 F.3d 82 (2d Cir. 2017) — share an identifiable common feature: in each, the state established or guaranteed the compensation a participant received in connection with a wholesale transaction. In affirming *Nazarian*, the Supreme Court in *Hughes v. Talen Energy Marketing, LLC*, 578 U.S. 150 (2016), described its own holding as a limited one, rejecting Maryland's program "only because it disregards an interstate wholesale rate required by FERC," and stating that "[s]o long as a State does not condition payment of funds on capacity clearing the auction, the State's program would not suffer from the fatal defect that renders Maryland's program unacceptable." Whether Proposed Rule 5.3.2 implicates that feature is a legal question the Seneca Center leaves to the Commission and its counsel. The Seneca Center observes only that the rule as drafted sets no price, guarantees no payment to any generator, and conditions nothing on the outcome of any PJM auction.

Reply Comments of The Seneca Center for Energy and Critical Minerals Policy

Because that is so, the Commission can remove the issue from contention through drafting rather than argument. The Seneca Center recommends the Commission add an express savings provision to the rule, stating that nothing in the rule (1) establishes, guarantees, or modifies any rate, price, or payment for the wholesale sale of capacity or energy; (2) conditions any payment or benefit on whether a resource clears any PJM auction; or (3) directs PJM in the operation of its markets, and that the rule's requirements apply solely to the conduct, maintenance practices, and reporting obligations of utilities subject to the Commission's retail rate jurisdiction. A provision of that kind costs the rule nothing substantively and directly addresses the concern the Companies have raised.

IV. THE OBJECTIONS RAISED BY THE FIRSTENERGY AND AEP COMPANIES DO NOT WARRANT WEAKENING THE RULE

The initial comments filed by the FirstEnergy Companies and the AEP Companies raise several objections to the proposed rule. Most concern administrative burden — the cost and frequency of new reporting obligations — and the Seneca Center takes no position on those questions, which the Commission is well equipped to weigh on its own. One procedural objection, however, warrants a direct response, and several substantive objections warrant one as well.

A. Workshops and rulemaking are not alternatives to one another.

Both sets of Companies ask the Commission to convene workshops with Staff, CAD, and interested utilities in lieu of finalizing rules at this time, and the AEP Companies go further, urging the Commission to “rescind the Proposed Rules, subject to possible revision and resubmittal after stakeholder input,” and to “urge the Legislature to reject the Proposed Rules as currently written.” Workshops may well be useful, and nothing in this rulemaking prevents the Commission from holding them alongside or after adoption. But the Commission should be cautious about treating workshops as a substitute for the rule itself. W. Va. Code § 24-2-1d(f) provides that “[t]he commission shall propose rules for legislative approval... to carry out its duties and obligations as set forth herein” — wording the Legislature framed in mandatory rather than permissive terms. That the word “shall” was a deliberate choice is confirmed by the very next section HB 2014 enacted in the same bill: W. Va. Code § 24-2-1q, governing the Commission's coal supply rules, provides that the Commission “may propose rules for legislative approval... to carry out its duties and obligations as set forth herein” — identical structure, permissive rather than mandatory verb.

Where the Legislature uses “shall” in one provision and “may” in the next parallel provision of the same act, the Seneca Center respectfully suggests the contrast merits the Commission’s attention. Its legal significance is for the Commission and its counsel to determine; as a matter of plain text, however, the Legislature directed rulemaking under § 24-2-1d in terms it declined to use one section later. Workshops and a promulgated rule are not alternatives to one another, and the Seneca Center urges the Commission not to treat them as such. The appropriate response to legitimate implementation concerns is to refine the rule’s reporting mechanics — as several of the Companies’ specific comments usefully suggest — not to defer the rulemaking itself.

B. Both sets of Companies are correct that Section 24-2-1d(f) states an availability standard — which is exactly what the rule’s own text already requires, and why EAF and capacity factor should both be reported rather than one substituted for the other.

The full text of W. Va. Code § 24-2-1d(f) reads: “Electric utilities shall be prepared to maximize the production of electricity from their generating units when such self-generation will result in reduced energy costs for West Virginia ratepayers. The commission shall require the utilities to maintain their thermal baseload generating units in a manner to allow them to be able to self-generate and achieve at least a sixty-nine percent capacity factor. Nothing herein shall require a utility to operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule.” The Seneca Center agrees with the Companies that this is an availability and maintenance standard — “allow them to be able to... achieve” — not an unconditional output mandate, and that the statute expressly exempts a utility from operating at 69% where doing so would raise rates above the current tariff.

That is precisely what Proposed Rule 5.3 already says. It does not require utilities to achieve a 69% capacity factor; it states that the Commission “expects” utilities “to maintain their generation plants and schedule maintenance to minimize down time to allow it to achieve” that figure — language that tracks the statute’s own “allow them to be able to achieve” standard almost verbatim. The Companies’ objection is better understood as a request that this tracking be made explicit and complete, including the statute’s rate-increase exemption, than as evidence the rule conflicts with the statute. The Seneca Center agrees that clarification would strengthen the rule and addresses it in the recommendation below.

Where the Seneca Center parts ways with the Companies is on the proposal to substitute Equivalent Availability Factor for capacity factor rather than report both. EAF, as the AEP Companies' own witness testimony explains, measures the percentage of time a unit was available to operate at rated output "regardless of whether it actually operated." Capacity factor measures whether it did. Both metrics are informative, and neither should displace the other: a unit with EAF above 90% and a capacity factor well below 69% is a unit that was ready and was not run, which is exactly the situation § 24-2-1d(f) directs the Commission to be able to see and evaluate as part of its prudency review — not a violation to be penalized automatically, but a fact the Commission cannot evaluate at all if only EAF is reported. Requiring both figures, not one in place of the other, gives the Commission the complete picture the statute contemplates.

C. The Commission can eliminate any question about the Perrone consent decree by adopting the decree's own operative language into the rule.

The AEP Companies cite the Order & Consent Decree entered April 2, 2025 in *Perrone v. Lane*, Civil Action No. 2:24-cv-00434 (S.D.W. Va.), and contend the proposed rule conflicts with it. The Seneca Center offers no legal opinion on the decree's scope or effect; the decree is a court order binding on the Commission's members, and its interpretation is properly a matter for the Commission and its General Counsel.

The Seneca Center notes only what the decree says on its face. In Paragraph 7, the Commissioners named as defendants agreed, in their official capacities, that they "have not and will not... interpret a 69 percent capacity factor as setting a minimum operational threshold," while remaining expressly free to "evaluate the capacity factors of the coal-fired generation plants of the Companies as part of a wholistic evaluation of whether such plants are being reasonably and prudently operated." Paragraph 6 is framed as a stipulation regarding orders issued prior to the decree. The decree provides that it terminates when none of the Commissioner defendants remains on the Commission.

Rather than ask the Commission to resolve a contested question about what the decree permits, the Seneca Center recommends the more direct course: incorporate the decree's own operative language into Section 5.3. If the rule itself states that a capacity factor figure is not interpreted as a minimum operational threshold, and is instead evaluated as part of a wholistic evaluation of whether a plant is being reasonably and prudently operated, then the rule tracks the

decree word for word and no interpretive dispute arises. The same approach resolves the statutory question addressed in subsection B: if Section 5.3 also recites the exemption already contained in W. Va. Code § 24-2-1d(f) — that nothing requires a utility to operate at a sixty-nine percent capacity factor where doing so would increase charges above the established and published tariff — then the objection that the rule exceeds the statute loses its textual footing, because the rule would say what the statute says. Drafting the rule in the language of the sources it must be consistent with is more durable than arguing about whether a differently worded rule is consistent with them.

D. Self-scheduling being an exception to ordinary economic dispatch is a reason to expect and document it, not a reason to strike the expectation.

The AEP Companies describe self-scheduling as “an important tool that is used carefully in limited circumstances for customers’ benefit; it is not the norm,” and argue Proposed Rules 4.4, 5.3.2, and the definition of self-schedule at Section 2.11 (which recognizes self-scheduled capacity as “not dependent on economic dispatch control by PJM”) collectively upend ordinary economic dispatch. The Seneca Center agrees self-scheduling is properly the exception rather than the default — but that is an argument for Section 4.4’s explanation requirement, not against it. If self-scheduling is used carefully and selectively for customer benefit, as the Companies state, explaining when and why it was or was not used is a low-cost transparency measure that documents practice the Companies already say they follow. The provision only becomes burdensome if applied as a rigid hour-by-hour audit rather than the periodic, pattern-level reporting the rule elsewhere contemplates — a scope question worth clarifying, not a reason to eliminate the requirement.

E. The Companies identify a genuine drafting problem with Section 4.1 that the Commission should fix, not delete.

The Companies’ criticism of Section 4.1’s “lowest achievable cost per kilowatt hour” language is well taken on one point: read literally, that language could penalize a utility for running a unit at economic minimum to preserve ramping capability ahead of a price spike, or for co-firing natural gas to avoid a derate and capture additional megawatt-hours during a peak-price period, even though both actions plainly benefit ratepayers. The Seneca Center does not agree that Section 4.1 should be deleted, as the FirstEnergy Companies propose, given that W. Va. Code § 24-2-1d(e) directs the Commission in mandatory terms to conduct a review of consumer economic dispatch.

But the Commission should clarify Section 4.1 to track the statute's own multi-factor framework rather than a literal per-kilowatt-hour cost test. Section 24-2-1d(e) directs the Commission to consider capacity factors, fuel supply management, plant operation and maintenance, day-ahead and real-time bidding, RPM and FRR utilization, and fuel adjustment clause treatment — not a single mechanical cost figure divorced from those factors. Anchoring Section 4.1 to the statutory factor list directly answers the Companies' example without weakening the rule's substance.

V. THE SENECA CENTER RECOMMENDS CLARIFYING ADDITIONS TO STRENGTHEN THE RULE

The Seneca Center supports the rule as drafted and offers the following clarifications so that the rule's intent is unambiguous on the record and better positioned to withstand the objections raised in this docket.

1. Add to Section 5.3 the operative language of the statute and the Perrone decree, and add a savings provision to Section 1.

For the reasons discussed in Sections III and IV.C above, the Seneca Center recommends the Commission add to Section 5.3 language substantially as follows: "A capacity factor below sixty-nine percent does not itself constitute a violation of this rule. The Commission does not interpret a sixty-nine percent capacity factor as setting a minimum operational threshold, and will evaluate capacity factors as part of a wholistic evaluation of whether a generating unit is being reasonably and prudently operated. Consistent with W. Va. Code § 24-2-1d(f), nothing in this rule requires a utility to operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule." The Seneca Center further recommends the savings provision described in Section III be added to Section 1 of the rule. Both additions are drawn from the statute and the decree themselves and narrow nothing the Commission is authorized to do.

2. Codify that documented, utility-uncontrollable events do not count against the capacity factor standard.

Section 5.2 already requires utilities to report and explain the causes of outages. The Commission should add language confirming that capacity factor shortfalls attributable to documented forced outages reported under Section 5.2, or to PJM-directed curtailment,

Reply Comments of The Seneca Center for Energy and Critical Minerals Policy

transmission constraints, or reliability-driven dispatch limitations outside the utility's control, shall not be weighed against the utility in any prudency review conducted in connection with this standard. This provision costs the rule nothing in terms of its effectiveness while removing a procedural objection available to a utility that would rather not be held to the standard at all.

3. Require both EAF and capacity factor reporting.

For the reasons discussed in Section IV.B above, EAF and capacity factor measure different things and both are informative. The Commission should require utilities to report EAF alongside capacity factor in the Generation Dispatch Report, so the record reflects not only whether a unit ran, but whether its own maintenance and availability practices — the matters most directly within the utility's control — were the cause of any shortfall.

None of these recommendations weakens the rule. Each removes ambiguity that a reluctant utility could otherwise use to delay implementation or invite unnecessary litigation, while preserving the rule's central and correct premise: that West Virginia utilities control far more of their own capacity factor destiny, through maintenance discipline and self-scheduling, than the objections filed in this docket will suggest.

VI. CONCLUSION

HB 2014 directed the Commission to propose rules ensuring West Virginia's existing, reliable, coal-fired generating capacity is used to its full and prudent extent for the benefit of the ratepayers who have already paid for it, and Proposed Rule 150 C.S.R. 41 responds directly to that legislative direction. The Commission is not choosing whether to act; the Legislature has directed that rules be proposed, subject to its own review in the 2027 Regular Session. The objections raised in the initial comments filed in this docket identify a small number of genuine drafting questions, addressed above, and the Seneca Center has recommended specific rule text to resolve each of them. None identifies a defect that warrants abandoning or substantially weakening the rule. The Seneca Center urges the Commission to adopt the rule, incorporating the clarifying language proposed above, and to reject any argument that would let PJM's own administrative choices about capacity accreditation and market design — or a utility's preference for the status quo — become an excuse for utilities to let paid-for coal capacity sit idle.

Reply Comments of The Seneca Center for Energy and Critical Minerals Policy

NOTICE REGARDING THE NATURE OF THESE COMMENTS. The Seneca Center for Energy and Critical Minerals Policy is a 501(c)(3) policy and research institute. It is not a law firm, does not engage in the practice of law, and is not counsel to any party in this proceeding. These comments are submitted as policy, economic, and factual analysis. Nothing contained herein is, or should be construed as, legal advice or legal counsel to the Commission, its Staff, the Consumer Advocate Division, or any party. References to statutes, judicial decisions, and court orders are provided to describe what those authorities state and to support the drafting recommendations offered above; the legal effect of those authorities is a matter for the Commission and its General Counsel.

Respectfully submitted,

THE SENECA CENTER FOR ENERGY AND CRITICAL MINERALS POLICY

Terry L. Headley, MBA

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Ona, WV 25545

Dated: August 20, 2026

Pepper & Nason



William W. Pepper · Andrew S. Nason · Emmett W. Pepper
Attorneys at Law

August 20, 2026

Karen Buckley, Executive Secretary
Public Service Commission of West Virginia
201 Brooks Street, PO Box 812
Charleston, WV 25323

Re: Case No. 26-0633-E-GI

Dear Ms. Buckley:

Please find enclosed for filing the *Reply Comments of West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia* in the above-referenced case.

Please contact me if you have any questions concerning this comment.

Respectfully,

A handwritten signature in black ink, appearing to read "Emmett Pepper", written over a horizontal line.

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Enclosures

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

General Investigation into Adopting and)
Implementing Rules Governing Electric) Case No. 26-0633-E-GI
Generating Capacity Regulations.)

**REPLY COMMENTS OF WEST VIRGINIA CITIZEN ACTION GROUP,
SOLAR UNITED NEIGHBORS, AND ENERGY EFFICIENT WEST VIRGINIA**

West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia (collectively, “CAG/SUN/EEWV”) respectfully submit the following reply comments to the Public Service Commission of West Virginia (“the Commission”) regarding the Commission’s proposed *Rules Governing Electric Generating Capacity Utilization* (“Proposed Rules” or “Rules”).

After reviewing several parties’ initial comments in this docket, CAG/SUN/EEWV note the following:

- First, multiple parties supported striking Sections 4.1, 4.4, 5.3, 5.3.2, 6.4, 8.2, and 8.3 from the Proposed Rules, raising similar concerns to those raised in CAG/SUN/EEWV’s initial comments.
- Second, contrary to some recommendations, any further development of the Proposed Rules must be an open and public process and should *not* take place behind closed doors.¹

¹ Yesterday, the Commission issued an order scheduling a public comment hearing on September 28, 2026, and providing for additional submission of written materials to the Commission, to be filed in this docket, by September 23, 2026. This recommendation pertains to any further factfinding that some Parties may wish the Commission to undertake beyond that public comment hearing.

- Third, certain statements made in other parties' comments require clarification or correction. Namely, the definition of "consumer economic dispatch" in the Proposed Rules does indeed differ from the statutory definition, and multiple parties mischaracterized the maintenance-based standard in W.V. Code § 24-2-1d(f).

These points are further explained below.

I. Multiple parties support striking Sections 4.1, 4.4, 5.3, 5.3.2, 6.4, 8.2, and 8.3.

In their initial comments, CAG/SUN/EEWV explained why several sections should be stricken from the Proposed Rules.² Many other commenters raised similar concerns, recommending that most of the same sections be stricken.

Monongahela Power Company and The Potomac Edison (collectively, "Mon Power") and Appalachian Power Company and Wheeling Power Company (collectively, "AEP") share our concerns that Sections 5.3 and 5.3.2 are inconsistent with W.V. Code § 24-2-1d, and would incentivize the uneconomic dispatch of the utilities' coal units – thereby driving up costs to customers.³ Mon Power and AEP both recommended that Sections 5.3 and 5.3.2 be stricken or significantly revised.⁴ Other parties raised similar concerns about these two

² CAG/SUN/EEWV's Initial Comments recommended that the Commission strike Sections 4.1, 4.3, 4.3.1, 4.4, 5.3, 5.3.2, 6.4, 8.2, and 8.3. See CAG/SUN/EEWV Initial Comments at 3, 14.

³ See, e.g., AEP Initial Comments at 7-8, 10-12, 25-26; Mon Power Initial Comments at 8.

Note: page number references are to the Bates numbers where available; otherwise, they refer to the document's internal pagination.

⁴ AEP Initial Comments at 25-26; Mon Power Initial Comments at 8. AEP's redline (Attachment 1 to their Initial Comments) was apparently intended to provide clarifying line edits, and does not

provisions.⁵ To comply with W.V. Code § 24-2-1d(c) and (f), and to prevent uneconomic dispatch that harms ratepayers, these provisions must be stricken.

For similar reasons, Mon Power and AEP both objected to Section 4.4, and one or both utilities recommended striking or revising Sections 4.1, 4.3, and 4.3.1.⁶ CAG/SUN/EEWV share the utilities' concerns about these provisions, and we reiterate our recommendation that these four Sections be deleted.

Mon Power and AEP also recommended striking Sections 8.2 and 8.3, and both raised concerns about Section 6.4's mandate to pursue indexed coal-supply contracts.⁷ As reflected in our initial comments, we fully agree with striking Sections 8.2 and 8.3, and we also support striking Section 6.4. We share the concerns raised about LMP-based contracts, and note that similar concerns were also raised by CAG/SUN/EEWV witness Chelsea Hotaling in Case No. 23-0735-E-ENEC.⁸

include this edit. But AEP was unambiguous in recommending the deletion of Sections 5.3 and 5.3.2. AEP Initial Comments at 25-26 (Sections 5.3 and 5.3.3 "should be stricken entirely"). Deleting those sections is also consistent with AEP's overarching comments on the Proposed Rules. See *id.* at 7-8 (noting that the Rules "far exceed what is necessary or required by HB 2014 and, in some very important respects, directly conflict with the statute," and naming Sections 5.3 and 5.3.2).

⁵ See, e.g., WVEUG Initial Comments at 4-6.

⁶ AEP Initial Comments at 24-25 (objecting to 4.4 and raising concerns about 4.3.1); Mon Power Initial Comments at 4-5, 6-7 (recommending deletion of 4.1, objecting to 4.3, and raising concerns about 4.3.1 and 4.4).

⁷ Mon Power Initial Comments at 9-10; AEP Initial Comments at 21-22, 26-28. (Mon Power did not specifically mention Section 8.3, but that provision would be meaningless with the deletion of Section 8.2.)

⁸ See Bates pages 22-25 of the Confidential version of Ms. Hotaling's direct testimony from Case No. 23-0735-E-ENEC. The redacted version can be found at this link: <https://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=614578&NotType=WebDocket>.

In sum, multiple commenters – who represent different constituencies and have sharply different views on a range of issues – agree that many of the Proposed Rules need to be stricken. We reiterate our recommendation that the Commission strike the following sections from the Proposed Rules: 4.1, 4.3, 4.3.1, 4.4, 5.3, 5.3.2, 6.4, 8.2, and 8.3.

II. The Proposed Rules should not be developed through a closed-door process.

As explained above, CAG/SUN/EEWV agree with AEP and Mon Power that many of the Proposed Rules are flawed and need to be stricken or significantly revised. But we firmly disagree with any suggestion to revise the rules through closed-door “workshops” or meetings.⁹ Developing these rules through a closed-door process is inconsistent with principles of public transparency and would run afoul of the specific process required by the State Administrative Procedures Act (“APA”).

Public participation is not a mere formality of the rulemaking process. The APA’s rulemaking framework is built on a foundation of mandatory public openness, formal notice, and broad participation rights. Under the APA, compliance with public participation is the very condition of a rule’s validity: a rule

⁹ See AEP Initial Comments at 6-7, 9, 16-17; see *also* Mon Power Initial Comments at 2-3, 10. CAG/SUN/EEWV recognize that Mon Power included a “public comment-type forum” in its list of recommended options for further process; the list also included some more closed-door approaches that should not be adopted here.

“shall be and remain effective only to the extent that it has been or is promulgated in accordance” with Article 3’s requirements. W.V. Code § 29A-3-1.

The APA directs all substantive input through a public path. The agency must designate a date, time, and place for receiving public comments, and provide notice of such information. W.V. Code §§ 29A-3-5, 29A-3-7. All evidence and comments received become public records, which must be preserved and open for public inspection. *Id.* § 29A-3-6. And the path is exclusive – after the close of comment an agency may not accept or consider *ex parte* communications, and it must respond on the record to the comments received, explaining why each was or was not incorporated. *Id.* § 29A-3-5. HB 2014 itself embraced this framework by directing that these rules proceed to legislative approval “in accordance with the provisions of § 29A-3-1 *et seq.*” W.V. Code § 24-2-1d(f).

Crucially, “[a]ny citizen or other interested party” has the option to appear and be heard in this process. *Id.* § 29A-3-5. The closed-door “workshops” or meetings recommended by AEP and Mon Power have the potential to reshape the Proposed Rules in violation of this open access requirement, and with no guarantee of the complete and transparent public record required by the APA.

If the Commission desires additional information and recommendations beyond what has been noticed in their August 19th Order, the exchange of information should continue to occur in public forums and not behind closed

doors. Attendance should especially not be limited to the utilities, Staff, and CAD, as AEP suggested. All interested parties should be entitled to participate, and the broader public should be given ample opportunity to provide comments in a public setting and on the public record.

III. Clarifications and Corrections

In addition to the issues addressed above, CAG/SUN/EEWV wish to clarify two points to ensure an accurate record. First, contrary to AEP's suggestion, the Proposed Rules do not apply the statutory definition of "consumer economic dispatch." Second, contrary to the comments of WVCA and UMWA, neither HB 2014 nor any other statutory provision requires utilities to operate their generating units at a particular capacity factor. Each is addressed in turn.

A. The Proposed Rules did not adhere to the statutory definition of "consumer economic dispatch."

In their initial comments, AEP wrote: "In addition, the definition of 'consumer economic dispatch' in HB 2014 (*W. Va. Code* § 24-2-1d(d)), and incorporated into the Proposed Rules (PR 2 Preamble), appropriately references that such dispatch must also consider 'the operational limits of generation.'"¹⁰ While AEP is correct in noting that the Rules announce an intention of following

¹⁰ AEP Initial Comments at 12 (emphasis added).

the statutory definition,¹¹ Section 4.1 departs from the statutory definition, as CAG/SUN/EEWV explained in our initial comments.¹² Whereas the statute defines consumer economic dispatch as “the process of operating generation facilities to produce electricity at the lowest cost while reliably meeting consumer demand, considering the operational limits of generation and transmission facilities,” the proposed Section 4.1 changes “the lowest cost” to “its lowest cost.” This distinction is critical, because the statutory definition encompasses utility practices that use the lowest cost sources of electricity to serve load, including meeting load with energy from the utility’s own lowest cost generation resources and lower cost energy purchases first, while reducing generation when a unit’s costs exceed market prices. As proposed, Section 4.1 improperly suggests that a utility should operate each of its generating units at the most cost-efficient level of output, even when there are cheaper energy sources available. As we explained in our initial comments and above, this language should be stricken.

B. HB 2014 does not mandate a target capacity factor.

W.V. Code § 24-2-1d makes plain that utilities should *not* operate their generating units if doing so would drive up costs for customers. This unambiguous point – which really is beyond debate – was discussed at length in

¹¹ Proposed Rules, Section 2 (“The definitions set forth in W. Va. Code §24-1-2, and the definitions for ‘projected deficient capacity’ and ‘consumer economic dispatch,’ set forth in W. Va. Code §24-2-1d, shall apply to this rule . . .”).

¹² CAG/SUN/EEWV Initial Comments at 11-12.

our initial comments, as well as those submitted by Mon Power, AEP, and other commenters. The comments of West Virginia Coal Association (“WVCA”) and the United Mine Workers of America (“UMWA”), however, both misstated the statutory standard.

In its comments, the WVCA claimed, “[w]ith the passage of HB 2014 the West Virginia Legislature and the Governor clearly articulated their intent that the state’s coal-fired power plants be upgraded and operated at the highest capacity factors.”¹³ And in its comments, UMWA asserted that “HB 2014 was also expected to require coal-fired plants to operate at the highest achievable capacity factor, which utilities had failed to do under existing rules.”¹⁴

These statements seriously mischaracterize the statute. As discussed at length in our initial comments, as well as those submitted by AEP, Mon Power, and WVEUG, W.V. Code § 24-2-1d(f) includes a maintenance-related requirement, but does not mandate a target capacity factor. In fact, the statute does the opposite, stressing that utilities should not operate a generating unit if doing so will increase electric energy costs. Similarly, the statute requires utilities to be prepared to maximize electricity production from their generating units, but only “when such self-generation will result in reduced energy costs for West Virginia ratepayers,” *i.e.*, when a unit’s operating costs are lower than market

¹³ WVCA Initial Comments at 5.

¹⁴ UMWA Initial Comments at 4.

prices. *Id.* W.V. Code § 24-2-1d(c) also stresses the statutory goal of keeping rates low.¹⁵ And as AEP and Mon Power both noted, uneconomically dispatching the coal units could create problems with PJM, FERC, and the market monitor.¹⁶ The statute does not include any operational requirement, and it certainly does not mandate that utilities disregard economics, operational limits, or environmental rules by operating the coal units “at the highest capacity factors.”¹⁷ These comments from WVCA and UMWA should be disregarded.

The WVCA also errs in claiming, without any qualification, that coal-fired generation “is the most cost-effective manner to provide electric power to West Virginia rate payers.”¹⁸ WVCA’s statement ignores the attributes of renewables, battery storage, and demand-side resources – resources whose operating costs are inherently low because they do not incur fuel costs.¹⁹ Moreover, while there may be periods when a coal unit’s operating costs are lower than market prices, there are also likely to be time periods when the unit’s costs are higher than

¹⁵ W.V. Code § 24-2-1d(c) (“In the interests of: Keeping utility rates of residential customers as low as possible; keeping utility rates for commercial and industrial customers competitive with those of other states; attracting new industry for which electric power costs are a major factor in location determinations; and of not placing any greater cost burden on government than is absolutely necessary for its electric power needs . . .”).

¹⁶ Mon Power Initial Comments at 7; AEP Initial Comments at 24-25.

¹⁷ Tellingly, neither the WVCA nor UMWA cites any statutory language.

¹⁸ WVCA Initial Comments at 2.

¹⁹ The operating costs of coal units are also frequently higher than those of gas units. See, e.g., PJM Market Monitor, *2025 State of the Market Report for PJM, Vol. II*, at 212-13, (Mar. 12, 2026), https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2025/2025-som-pjm-vol2.pdf (noting, *inter alia*, that “[i]n 2025, coal units were 7.9 percent and natural gas units were 77.0 percent of marginal resources”).

market prices.²⁰ Running a coal unit when its operating costs exceed market prices will increase customer bills.²¹ The Legislature recognized and accounted for these economic realities, with HB 2014 expressly providing that “[n]othing herein shall require a utility to operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy.” W.V. Code § 24-2-1d(f).

In short, although HB 2014 imposed a maintenance-related requirement in W.V. Code § 24-2-1d(f), it did not establish a capacity factor target or dictate operational decisions. Because the final rules must rest on an accurate reading of the statute, the Commission should disregard the WVCA and UMWA’s mischaracterizations of the statute.

* * * *

For the foregoing reasons, as well as those stated in CAG/SUN/EEWV’s initial comments, the Commission should strike Sections 4.1, 4.3, 4.3.1, 4.4, 5.3,

²⁰ See AEP Initial Comments at 25 (acknowledging “the costly consequences of blindly running contrary to economic dispatch”); Mon Power Initial Comments at 5 (explaining that “many times a unit is run at economic minimum” because prices do not support higher output).

²¹ For example, unrebutted testimony in AEP’s 2024 and 2025 ENEC cases demonstrated that the uneconomic self-scheduling of AEP’s coal units raised ENEC costs by \$153 million over a two-year period. Case No. 24-0413-E-ENEC, Direct Testimony of Chelsea Direct at Bates pp. 9, 18-19 (July 22, 2024) (finding that AEP’s coal plants incurred \$87 million of operating losses during the 2023-24 review period); Case No. 25-0413-E-ENEC, Direct Testimony of Catherine M. Kunkel at Bates pp. 14, 23-24 (July 23, 2025) (finding that AEP’s coal plants incurred \$66 million of operating losses during the 2024-25 review period). Testimony submitted in Mon Power’s 2020 and 2023 ENEC cases similarly found millions of dollars of losses attributable to the uneconomic operation of Mon Power’s coal units. Case No. 23-0735-E-ENEC, CAG/SUN/EEWV Initial Brief at Bates p. 4 (Dec. 14, 2023) (summarizing CAG/SUN/EEWV testimony on operating losses); Case No. 20-0665-E-ENEC, Confidential Direct Testimony of Tyler Comings at 4, 11, 30-34 (Nov. 16, 2020).

5.3.2, 6.4, 8.2, and 8.3 from the Proposed Rules. Any workshops or further factual development related to these Proposed Rules should proceed through the APA's public, noticed, on-the-record process.

Dated: August 20, 2026

Respectfully submitted,



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09:17 AM AUG 24 2026 EXEC SEC DIV

Dear WV Public Service Commission Info,

Regarding case #26-0633:

When the WV Legislature adopted HB 2014 (the data center bill) they asked the West Virginia Public Service Commission to propose rules to maintain their power plants, but also said that utilities did not have to run if it would increase customer charges for electricity. The PSC has now proposed rules that are likely to increase electric bills for West Virginians if they are followed, and "expects" utilities to "self-schedule" their plants to run, even when cheaper electricity is available from the grid.

I am writing to ask you to request that you modify the proposed rules to make it clear that utilities should utilize the cheapest cost power. Utilities should not self schedule and use higher-cost power from their power plants, even if it means the utility-owned plants are not used as often. We cannot afford to subsidize power plants that can't compete.

The proposed rules would increase electric bills, if our utilities follow them.

Please revise the proposed rules to reflect:

- Utility-owned power plants should run only if they are less expensive to run than other options.
- If the electric grid can provide cheaper energy to West Virginia utilities, the utilities should use energy from the grid.
- Utilizing the grid (PJM) balances our monopoly utilities with free market principles that protect ratepayers.
- The rules should not assume our utilities' power plants will be the most cost-effective option; the market should decide based on what resources can produce power at the lowest cost.

I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Sincerely,

Mrs. Jennifer Blake

4628 Glady Fork Rd Buckhannon, WV 26201-9647 jennifermiles1983@gmail.com

Dear WV Public Service Commission Info,

Regarding case #26-0633:

When the WV Legislature adopted HB 2014 (the data center bill) they asked the West Virginia Public Service Commission to propose rules to maintain their power plants, but also said that utilities did not have to run if it would increase customer charges for electricity. The PSC has now proposed rules that are likely to increase electric bills for West Virginians if they are followed, and "expects" utilities to "self-schedule" their plants to run, even when cheaper electricity is available from the grid.

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Sincerely,

Dr. David Shaw

41 Hiser St Moorefield, WV 26836-1329

david@lifework2000.com

01:38 PM AUG 26 2026 EXEC SEC DIV

Dear WV Public Service Commission Info,

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Sincerely,

Ms Pamela Cubberly

245 Allison St Morgantown, WV 26501-7516 pscubberly@icloud.com

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Are you EVER going to put the people first? Ever? We're one of the poorest states in the union yet pay one of the highest electric bills. The states who receive electric from OUR PLANTS pay far less than we do!!! How do you justify this?

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Sincerely,

Ms. Marcie Bell

1089 Childress Rd Charleston, WV 25309-9286 marciecb05@suddenlink.net

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Sincerely,

Mr. Eric Fitts

572 Bethlehem Farm Ln Alderson, WV 24910-7081 ericfitts@gmail.com

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Sincerely,

Mr. Terry Wolfe

1199 E 3rd St Morgantown, WV 26508-9706 tawinvestments@gmail.com

02:28 PM AUG 31 2026 EXFC SEC DTU

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Regarding case #26-0633:

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Sincerely,

Ms. Carole Williams

2223 Heritage Pt Morgantown, WV 26505-3065 cwilli22@gmail.com

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Sincerely,

Dr. Timothy Simmons

1317 Quarrier St Charleston, WV 25301-3061 etim@mail.com

02:30 PM AUG 31 2026 EXEC SEC DIV

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I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

I'd also like to see the PSC support what's known as "plug in solar" or "balcony solar," now legal in VA and used throughout Europe with not a single problem for a decade.

Sincerely,

Ms. Merri Morgan

PO Box 3 Greenville, WV 24945-0003

merrismorgan@gmail.com

Dear WV Public Service Commission Info,

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When the WV Legislature adopted HB 2014 (the data center bill) they asked the West Virginia Public Service Commission to propose rules to maintain their power plants, but also said that utilities did not have to run if it would increase customer charges for electricity. The PSC has now proposed rules that are likely to increase electric bills for West Virginians if they are followed, and "expects" utilities to "self-schedule" their plants to run, even when cheaper electricity is available from the grid.

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I am a signer for the St Albans Ministerial Association's Jubilee Emergency Assistance Program, wherein we help essential utility customers pay on shut-off notices so they can keep the lights on. Nearly all of our clients live paycheck to paycheck on limited income. They were once able to pay for their electricity, but then their bills were raised by "only" a "mere" \$20.00 a month. This meant they had to cut back on groceries. Then, another "mere" rate hike, then another, then another. And now, despite eating more unhealthy cheap food, despite not taking all the meds their doctors have prescribed, et, etc, there are so many of our neighbors who can no longer pay their monthly electric bill! Legislators, please represent your constituents and not with electric company stock holders! And please live up to your title "The PUBLIC SERVICE Commission" and serve the public!

Sincerely,

Ms Gina Griffith

2718 Lakeview Dr Saint Albans, WV 25177-3460 ginadcg@att.net

02:30 PM AUG 31 2026 EXEC SEC DIV

Dear WV Public Service Commission Info,

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Sincerely,

Mrs. Teresa Koon

4112 Coopers Creek Rd Charleston, WV 25312-7889 teresa.m.koon@gmail.com

Dear WV Public Service Commission Info,

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Sincerely,

Mr. Steven Runfola

45 Park Ridge Dr Morgantown, WV 26508-4032 stevenrunfola@gmail.com

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Sincerely,

Mr. Andrew Wadsworth

125 W 33rd St Reading, PA 19606-2905

andywadsworth23@hotmail.com

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Sincerely,

Ms. F Bean

525 Depot St Romney, WV 26757-1300

dispatcher9wv@yahoo.com

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Sincerely,

Mr. Michael Klausing

624 Cross Lanes Dr Apt 11 Nitro, WV 25143-1156 mike_klausing@hotmail.com

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Sincerely,

Mr. John Doyle

281 Baker Ln Charleston, WV 25302-2937

jdoyle952@gmail.com

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I Have a Right to Reliable and Safe Utility Service without choosing paying utilities or eating and having medications. Please consider these things.

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Sincerely,

Ms Rosanna Anthony

338 Anniston Dr Point Pleasant, WV 25550-2153 anthony7453@gmail.com

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mx AJ cho

159 Santa Teresa San Leandro, CA 94579-1963 amenoartemis@gmail.com

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Sincerely,

Mr. Art Glick

638 Glicks Rd Renick, WV 24966-6601

art@almostheaven.net

09:10 AM SEP 02 2026 EXEC SEC DIV

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I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers. Also you really should consider disbanding the PSC. It is hard to see what you actually do for Mountaineers

Sincerely,

mr James Plitt

13288 Trout Run Rd Wardensville, WV 26851-8040 millmtclipper@gmail.com

09:10 AM SEP 02 2026 EXEC SEC DIV

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- The rules should not assume our utilities' power plants will be the most cost-effective option; the market should decide based on what resources can produce power at the lowest cost.

I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Sincerely,

Mr. Justin Philipps

1385 Independence Ct Newark, OH 43055-3191 jphilipps1259@gmail.com

Dear WV Public Service Commission Info,

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Sincerely,

Ms. Diane Difante

300 Ashley Dr Shepherdstown, WV 25443-4612 dvelmad505@gmail.com

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I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Sincerely,

Dr. Michael Attfield

28 Irish Rd Morgantown, WV 26501-7809

mdattfieldo@gmail.com

11:05 AM SEP 02 2026 EXEC SEC DIV

Dear WV Public Service Commission Info,

Regarding case #26-0633:

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Sincerely,

Mr. Tom Harris

17 Gate Ct Burlington, NJ 08016-3034

mchazy77@hotmail.com

Dear WV Public Service Commission Info,

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The proposed rules would increase electric bills, if our utilities follow them.

I agree:

- Utility-owned power plants should run only if they are less expensive to run than other options.
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I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Solar, Solar, Solar

Sincerely,

Mr. dk anestos

123 Main Ave Nitro, WV 25143-1270

mdi1755@yahoo.com

Dear WV Public Service Commission Info,

Regarding case #26-0633:

When the WV Legislature adopted HB 2014 (the data center bill) they asked the West Virginia Public Service Commission to propose rules to maintain their power plants, but also said that utilities did not have to run if it would increase customer charges for electricity. The PSC has now proposed rules that are likely to increase electric bills for West Virginians if they are followed, and "expects" utilities to "self-schedule" their plants to run, even when cheaper electricity is available from the grid.

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I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Sincerely,

Mrs. Jan King

284 Trace Creek Rd Salt Rock, WV 25559-5992 janking@thelegalwizards.com

Desk Review Copy of Online Comment**Name:** Frank Muth**Address:** 8 Stadium Circle**City, State Zipcode:** Inwood, WV 25428**County:** Berkeley**Subject:** Comment in Support of Case No. 26-0633-E-GI**Date of Comment:** 09/03/2026 03:15 PM**Date Email Confirmed:** 09/03/2026 03:15 PM**Date Printed:** 09/03/2026 03:52 PM**Comment**

I support Investigation Into Adopting and Implementing Rules Governing Electric Generating Capacity Regulations. This entire data center scheme has been a "Wizard Behind the Curtains" scenario, intentionally leaving us, your constituents completely in the dark and without a voice. Hear me now!

Data Centers should be completely responsible for their own grid upgrades. We're looking at multi-billion-dollar projects. Ratepayers should neither pay for nor augment data center grid upgrades. The Bedington Data Center (aka "Project Blue Jay"), in Berkeley County is slated as a 600 MW facility. This amount is enough power for 400,000 - 500,000+ homes. Considering Berkeley County has approximately 5,100 homes, 600 MW is 8-10 times the power generation for the ENTIRE COUNTY. And this is considered a microgrid?!?

Another very considerable concern is where will the water come from to cool these data centers? Groundwater? That could rapidly deplete local wells. The Eastern Panhandle of West Virginia is in the middle of a four-year drought. The Bedington Data Center (one of three currently planned for the Jefferson/Berkeley County area) will require five million gallons of water per day in an open-loop system. A closed-loop system would require "only" five million gallons of water per year, but the water released after a year of cooling will be highly contaminated. Where will this contaminated water go? Will it affect Potomac River fisheries or our own drinking water downstream?

Why were local communities offered zero meaningful input before HB2014 removed local control? Interestingly, the data center proponents are requiring our elected officials to sign non-disclosure agreements. This is not only a huge conflict of interest, but it reduces local trust to near zero. Local communities would know the "best" place to locate these data centers (if one exists). Rather, Charleston has decided to dictate to local communities without regard to local concerns. Nearly half of the land for the Bedington Data Center is in a flood-prone area. How will this be mitigated? The Jefferson/Berkeley Data Center (aka "Project Carmel") is located next to Hospice. Will the noise generated from this facility impact Hospice patients? Has anyone bothered to evaluate that impact?

I am also concerned with how the Public Service Commission will ensure these rules protect the public, your residential customers, and not be just another massive giveaway to the developers.



**SIERRA
CLUB**

**West Virginia
Chapter**

P.O. Box 4142
Morgantown, WV 26504

Sept. 4, 2026

Karen Buckley, Executive Secretary
WV Public Service Commission
P.O. Box 812,
Charleston, WV 25323

Via fax to: 304-340-0325

RE: Reply Comments on Case # 26-0633: Draft Rules Governing Electric
Generating Capacity Utilization, 150-CSR-41.

Dear Ms. Buckley:

Please accept the following reply comments on behalf of the approximately 2,000 members of the West Virginia Chapter of Sierra Club. The August 19, 2026 Order from the PSC extended the comment period on the Proposed Rule until September 23, 2026, however, it was unclear whether a deadline for Reply comments was likewise extended. Since the overall deadline was extended, and the Order stated that written comments would be accepted, please accept for filing our comments as timely.

As we stated in our initial comments filed on August 10, 2026, the draft rule sets out requirements for electric generation capacity. While much of the rule is based on HB 2014, portions exceed the statute, it omits key protections for the public interest, and otherwise need significant amendments to comply with HB 2014 and the Consent Decree in *Perrone, et al. v. Lane, et al.*

After reviewing initial and reply comments from several parties, several consistent themes emerge.

1. The proposed rule must be revised to protect consumers

Multiple parties object to Sections 4.1, 4.4, 5.3, 5.3.2, 6.4, 8.2, and 8.3 of the proposed rules. We concur with the position of Appalachian Power and Wheeling Power (which is echoed by MonPower/Potomac Edison, the West Virginia Energy Users Group, West Virginia Citizen Action Group, Solar United Neighbors, and Energy Efficient West Virginia) that the proposed rule exceeds the scope and authority of WV Code 24-2-1d. As proposed, the rule would unduly pressure utilities to run power plants in a manner contrary to "economic dispatch". By incentivizing power plants to run at levels to achieve a 69 % capacity factor, the proposed rule will further drive up energy bills for customers, contradicting W.V. Code 24-2-1d (f), which

states that nothing “... herein shall require a utility to operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy.”

Likewise, we share the concern from CAG/SUN/EEWV that the language in Section 4.1, which indicates that utilities operate their plants to achieve “its” lowest cost per kilowatt hour, contradicts the intent of W. V. Code 24-2-1d (f), that nothing therein “... will cause an increase in the charge or charges for electric energy.” The proposed rules should be revised to emphasize the goal of minimizing customers’ total bills, not operation of utility plants.

Response to comments of the WV Coal Association and United Mine Workers of America

We (and the markets) disagree with the conclusion that coal is the most cost-effective manner to provide electric power to West Virginia ratepayers. The WV Coal Association (WVCA) cites evidence from outdated, 2021 ENEC cases, but ignores more recent data showing renewables, battery storage and demand-side resources are cost-competitive, in large part due to lower maintenance costs and the absence of fuel costs.

Importantly, the WVCA misstated HB 2014. They claim that, under HB 2014, “the state’s coal-fired power plants be upgraded and operated at the highest capacity factors.”¹ Likewise, the United Mine Workers of America (UMWA) asserted that “HB 2014 was also expected to require coal-fired plants to operate at the highest achievable capacity factor,...”² In fact, HB 2014 does the opposite, indicating that nothing therein should requires plants to operate if doing so “... will cause an increase in the charge or charges for electric energy.”

Response to Reply comments of GO-WV and the Seneca Center

We concur with the conclusion of the Gas and Oil Association of West Virginia (GO-WV) that the PSC rules should not recognize one fuel over another³, but recommend that the PSC go further and acknowledge renewable energy sources and demand-side resources as contributing to a diverse, cost-effective supply of electric power. We also agree with GO-WV’s suggestion⁴ that consumer economic dispatch should consider the total cost to consumers, not just the cost per kilowatt hour from each plant. Where we disagree with GO-WV is on their emphasis on “dispatchable” generating sources. The proposed rules should recognize that renewable sources, especially when combined with storage, and demand-side resources, are also “dispatchable” and can be the most cost-effective sources of electric power.

The comments from the Seneca Center for Energy and Critical Minerals Policy (Seneca Center) are more problematic. They appear to be arguing that, because coal was important in the

¹ Chris Hamilton. Aug. 10, 2026. Comments of the WV Coal Association. At: [WVPSC Document](#)

² Kevin Fagan. Aug. 11, 2026. Comments of the United Mine Workers of America. At: [WVPSC Document](#)

³ Rebecca McPhail. Aug. 20, 2026. Comments of the Gas and Oil Association of West Virginia. Pages 3-4. At: [WVPSC Document](#)

⁴ Rebecca McPhail. Aug. 20, 2026. Comments of the Gas and Oil Association of West Virginia. Page 8. At: [WVPSC Document](#)

past, it has to be in the future, regardless of newer, cheaper, cleaner technology⁵. Their conclusion that “self-scheduling” is an appropriate response to PJM market rules is illogical, hurts consumers, and is contrary to the basic principles of economic dispatch⁶. That is because economic dispatch provides an incentive for competition and provides electricity at the lowest cost to consumers.

While the Seneca Center advocates adopting the rule “as proposed”, they then contradict themselves by recommending amending the rules by adding “an express savings provision to the rule...”⁷. However, their language inserts contradictory provisions. While the Proposed Rule establishes a clear expectation that plants would operate at 69 % capacity factor, and that plants are expected to “self-schedule” to achieve that; the proposed provisions from the Seneca Center would create opposing expectations, namely that utilities are expected to self-schedule to achieve a 69 % capacity factor, but need not. Thus, utilities would have little guidance as to what the PSC actually expects.

Thank you for the opportunity to comment. Please let me know if you have any questions.

Sincerely,



James Kotcon,
Conservation Chair,
WV Chapter of Sierra Club

jkotcon@gmail.com

⁵ Terry Headley. Aug. 20, 2026. Comments of the Seneca Center for Energy and Critical Minerals Policy. Pages 2-5. At: [WVPSC Document](#)

⁶ Terry Headley. Aug. 20, 2026. Comments of the Seneca Center for Energy and Critical Minerals Policy. Page 9. At: [WVPSC Document](#)

⁷ Terry Headley. Aug. 20, 2026. Comments of the Seneca Center for Energy and Critical Minerals Policy. Pages 10-11. At: [WVPSC Document](#)

Dear WV Public Service Commission Info,

Regarding case #26-0633:

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I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Sincerely,

Me Joe Stanley

1367 Martha Rd Barboursville, WV 25504-7436 smstanley27@yahoo.com

Desk Review Copy of Online Comment**Name:** Cynthia Cox**Address:** 955 Lorton Lick Road**City, State Zipcode:** Bluefield, WV 24701**County:** Mercer**Subject:** Comment in Protest of Case No. 26-0633-E-GI**Date of Comment:** 09/09/2026 12:46 AM**Date Email Confirmed:** 09/09/2026 12:46 AM**Date Printed:** 09/09/2026 11:24 AM**Comment**

Majority of WV voters & citizens do not support HB2014 nor the energy demands to supply data centers.

The WV PSC should have NO authority over any utility needs of the water or electricity consumption that data centers and their grids need.

Why?

To be a standalone microgrid is for the corporations to work with the Dept of Commerce and WV DEP as it is written into the law.

WV PSC is for public use consumption of water and electricity for the public and for honest business owners in WV who serve the public.

The private economic development of HB2014 data centers and WV Dept of Commerce & WV DEP can manage whatever electrical grid decisions they choose for this private economic development agreement that they put into law - against the citizens who advised them to vote no on HB2014.

If WV PSC proceeds with this - than - let it documented that WV PSC has violated its own policies and procedures by racketeering also with WV DEP and WV Dept of Commerce. How?

If WV PSC becomes involved in any of this private economic development of Dept of Commerce - WV DEP - data centers and their electrical needs for their grids than it is WV PSC's employees who opens the doors to allow your home and land to be taken by WV eminent domain laws in WV for the "public good" that WV PSC gave them authority to do so - by seeking public comment

For the rules and regulations of WV PSC is for public good.

When majority of WV voters and citizens would vote no against HB2014 and against data centers and their grids - if - our politicians listened to the people --- than - it would be wise for the "public good" of WV for WV PSC to not allow public hearings or public comments on anything pertaining to HB2014 - as the law is written - because once WV PSC opens this public hearing and public comment than it becomes a "public good" electricity issue that allows their private economic development with these other state agencies to give them legal grounds to use eminent domain against our citizens, our voters and to compromise the public's electric grid- with their deals attaching to our grid.

The answer should be NO. Keep the communication private between WV PSC - WV Dept of Commerce & WV DEP to work with the data center mcirogrids and their electrical needs privately as written into law!

We do not need WV PSC involved for public comment & public hearings on this - as the law states it is not required.

11:22 AM SEP 09 2026 EXEC SEC DIV

Desk Review Copy of Online Comment**Name:** Rodney Cox**Address:** 170 River Road**City, State Zipcode:** Walton, WV 25286**County:** Roane**Subject:** Comment in Support of Case No. 26-0633-E-GI**Date of Comment:** 09/10/2026 08:50 AM**Date Email Confirmed:** 09/10/2026 08:50 AM**Date Printed:** 09/10/2026 04:06 PM**Comment**

Dear Commissioners:

As the Public Service Commission considers policies affecting electric generation and reliability in West Virginia, I respectfully ask that the Commission consider the following:

West Virginia natural gas should be part of the solution to growing electricity demand. As one of the nation's leading natural gas-producing states, West Virginia has a significant opportunity to use more of this resource for in-state power generation. Encouraging investment in new, efficient natural gas generation—alongside our existing generation resources—would strengthen reliability, support economic development, and create additional markets for natural gas produced in West Virginia.

Reliability standards should also recognize the operating characteristics and value of natural gas generation. A one-size-fits-all approach to generation performance could unintentionally discourage flexible natural gas facilities designed to respond to changing system conditions. In implementing the 69% capacity-factor target, the Commission should account for legitimate operational differences among generating technologies and avoid creating unnecessary barriers to new gas-fired generation.

The final rules should preserve competitive market signals and encourage new investment. They should complement PJM's competitive wholesale electricity markets while providing clear and predictable regulatory guidance to companies considering investments in new generation. With electricity demand increasing, West Virginia should position itself to attract new dispatchable generation and capitalize on its abundant natural gas resources—not limit future generation options.

Finally, the Commission should protect West Virginians from costly utility mandates. Electric utilities should retain the flexibility to make generation and operating decisions based on reliability, affordability, and overall system needs. Prescriptive requirements could limit competition, distort energy markets, and pass unnecessary costs along to families and businesses.

I respectfully encourage the Commission to adopt a balanced approach that protects ratepayers, preserves access to reliable and cost-effective electricity, and supports responsible investment in West Virginia's energy future.

Thank you for your consideration.

Desk Review Copy of Online Comment

Name: Amanda Barnes

Address: 23 Samuel Pyles Ln

City, State Zipcode: Fort Ashby, WV 26719

County: Mineral

Subject: Comment in Protest of Case No. 26-0633-E-GI

Date of Comment: 09/09/2026 07:09 PM

Date Email Confirmed: 09/09/2026 07:09 PM

Date Printed: 09/10/2026 04:06 PM

Comment

We do NOT want big business, we do NOT want AI, we do NOT want data centers.....West Virginia doesn't want to be like other states. We do NOT care that China is getting ahead of us in AI. What we care about is our land, our family, and each other and in NOTHING in this bill is there anything that benefits us. Instead you are trying to implement things that will destroy our water systems, our land, our peace....we don't want the noise of data centers. Just STOP trying to turn this state into a place that is all about business and money. You reps may be fine with selling your soul to the devil for money but the rest of us are not!!! Just leave our state be!!!!

Desk Review Copy of Online Comment

Name: Amanda Stroud

Address: 501 SAMUEL STREET

City, State Zipcode: RANSON, WV 25438

County: Jefferson

Subject: Comment in Protest of Case No. 26-0633-E-GI

Date of Comment: 09/10/2026 11:24 AM

Date Email Confirmed: 09/10/2026 11:24 AM

Date Printed: 09/10/2026 04:06 PM

Comment

Repeal HB 2014 so that this rulemaking will no longer be necessary and would be rendered null and void.

Thank you. Amanda Stroud Ranson, WV

**BEFORE THE PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
CHARLESTON**

**GENERAL INVESTIGATION INTO ADOPTING AND
IMPLEMENTING RULES GOVERNING ELECTRIC
GENERATING CAPACITY REGULATIONS**

**CASE NO.
26-0633-E-GI**

**WRITTEN COMMENTS OF PERSISTENCE ANALYTICS GROUP LLC
PROJECTED-LOAD VERIFICATION, DEMAND DURABILITY, AND REVALIDATION**

INTRODUCTION

Persistence Analytics Group LLC ("PAG") respectfully submits these written comments in connection with the Commission's proposed Series 41, Rules for Electric Generating Capacity Utilization, and the September 28, 2026 public comment hearing.

PAG's comments address a narrow issue that is upstream of many of the operational questions in the proposed rule: before projected load growth is relied upon to support a finding of future capacity need, projected deficient capacity, or another consequential generation decision, what evidence establishes that the load assumption is sufficiently current, supportable, and durable for the decision being made?

PAG takes no position in these comments for or against a particular fuel, generation technology, PJM participation model, or the statutory sixty-nine percent capacity-factor capability requirement. PAG's point is evidentiary: downstream generation decisions should not become more certain than the demand assumptions on which they depend.

The governing statute places "projected load growth" first among the factors the Commission is directed to consider in establishing future electric generating capacity requirements. W. Va. Code § 24-2-1d(a). The proposed rule, appropriately, requires substantial information concerning capacity-market participation, consumer economic dispatch, unit availability, capacity factors, outages, maintenance, and fuel supplies. But the proposed rule does not establish a corresponding minimum discipline for testing the projected-load assumptions that can drive the need for those generation resources in the first place.

That gap matters most when large new loads are announced on schedules that can move materially faster than the infrastructure and capital commitments made to serve them.

**I. PROJECTED LOAD GROWTH SHOULD BE TREATED AS AN EVIDENTIARY INPUT,
NOT A SINGLE NUMBER**

A load forecast can contain components with materially different levels of support. A request for service, a public announcement, an executed contract, a financed project, an interconnection-supported project, a project under construction, an energized facility, and an operating durable load are not equivalent evidentiary states.

For consequential capacity decisions, the Commission should be able to distinguish among those states rather than rely on a single aggregate megawatt forecast that obscures how much of the expected demand is supported by present evidence.

The relevant institutional question is not merely how much load has been announced. It is how much projected load has enough evidence behind it, at the decision point in question, to justify the generation commitment, market position, or ratepayer exposure that follows.

PAG therefore recommends that the Commission require utilities, when projected load growth materially affects a capacity determination, to identify the material components of that growth by their present evidentiary status and the principal dependencies that must still be satisfied before the load becomes executable.

II. ANNOUNCED LOAD IS NOT EXECUTABLE LOAD

Large-load development can involve multiple stages: customer inquiry, site selection, service request, commercial negotiation, contractual commitment, financial commitment, interconnection and infrastructure development, construction, energization, ramp-up, and sustained operation. Attrition can occur at any stage.

Accordingly, a forecast should not imply the same degree of institutional reliance for every megawatt merely because each megawatt appears in a development pipeline.

A useful rule principle would be straightforward: announced capability is not executable capability. The Commission need not prescribe a proprietary scoring model to apply that principle. It can require sufficient disclosure for the record to show what evidence exists, what remains contingent, and what consequence depends upon the assumption proving true.

III. CAPACITY NEED SHOULD BE RECONCILED WITH THE LOAD ASSUMPTION THAT CREATES IT

W. Va. Code § 24-2-1d links future generating-capacity requirements to projected load growth, existing capacity, contractual commitments, retirements, planned construction, affiliate capacity, capacity factors, and other relevant factors. Those inputs should reconcile with one another before a consequential capacity conclusion is reached.

Where a material portion of projected load growth comes from one or more large-load customers or projects, the Commission should be able to identify, at a minimum, the represented magnitude and timing of the load; the evidence supporting customer commitment; the status of material utility or interconnection dependencies; the expected energization and ramp schedule; material conditions that remain outstanding; and the consequences if the project arrives later, at a smaller scale, or not at all.

The purpose is not to require public disclosure of competitively sensitive customer information. Confidential treatment can be used where appropriate. The purpose is to ensure that the decision-maker has enough evidence to determine whether the projected load deserves the degree of reliance being placed upon it.

IV. FINANCIAL SECURITY IS EVIDENCE OF COMMITMENT, BUT NOT PROOF OF DEMAND DURABILITY

Utilities and regulators may use deposits, minimum bills, guarantees, contributions in aid of construction, collateral, termination payments, or other protections when serving large new loads. Those instruments can be important evidence of commitment and can allocate portions of financial risk.

They do not necessarily establish that the underlying demand will arrive at the represented scale, on the represented schedule, or persist for the useful life of generation and related infrastructure.

For that reason, the Commission should keep two questions distinct: first, what financial protection exists if a customer or project underperforms; and second, whether the underlying demand assumption itself is sufficiently durable to justify the capacity decision. A strong answer to the first question does not automatically answer the second.

V. DOWNSIDE OWNERSHIP SHOULD BE IDENTIFIED BEFORE IRREVERSIBLE RELIANCE

When projected load is used to justify a long-lived generation commitment, the record should identify who bears the downside if the material demand assumption fails.

Examples include load arriving later than forecast, load developing at a smaller scale, a project being cancelled, customer requirements changing, a project becoming more self-supplied than expected, or a material shift in the timing or configuration of the expected demand.

This is particularly important where the resulting generation, fuel, maintenance, market, or infrastructure costs may extend beyond the commercial life of the specific demand assumption that helped justify them.

A decision record that identifies downside ownership does not predetermine cost allocation. It makes explicit the risk that the Commission is being asked to accept on behalf of ratepayers when it relies upon the forecast.

VI. MATERIAL CHANGE SHOULD TRIGGER REVALIDATION

An initial forecast can be reasonable when made and later become stale. For that reason, initial verification should not become permanent validation.

PAG recommends that the Commission establish a revalidation principle for material projected-load assumptions used in future capacity decisions. A prior load assumption should continue to support consequential reliance only while the facts material to that assumption remain substantially intact.

Potential revalidation events include a material change in requested megawatts, energization timing, customer or counterparty status, contractual commitment, financial commitment, interconnection status, construction progress, operating configuration, or another dependency that was material to the earlier capacity determination.

Not every change requires a new proceeding. Materiality is the appropriate gate: would the changed fact have mattered to the earlier capacity decision if it had been known at the time? If the answer is yes, the evidence supporting continued reliance should be refreshed before additional irreversible commitments are made.

VII. THE PROPOSED RULE ALREADY CREATES A NATURAL HOME FOR THIS INFORMATION

Proposed Series 41 contains extensive recurring reporting requirements and, in § 150-41-7, expressly provides that the Commission may require additional or differently formatted information

when necessary to ensure that a utility is maximizing generation, reducing energy costs for West Virginia ratepayers, or clarifying information required by law or the rule.

That authority provides a practical mechanism for projected-load verification. PAG nevertheless recommends making the principle explicit rather than leaving it entirely to ad hoc information requests, because projected load growth is itself a statutory input to future capacity requirements under § 24-2-1d(a).

The rule need not prescribe a complex scoring system. A short provision could require a utility to identify material projected-load additions relied upon in a capacity determination, summarize the present evidence supporting those additions, disclose material remaining dependencies, and update the Commission when a material change undermines a previously relied-upon assumption.

VIII. RECOMMENDED RULE PRINCIPLE

PAG respectfully recommends that the Commission incorporate, whether in Series 41 or through an accompanying order or reporting directive, a principle substantially as follows:

When projected load growth materially affects a determination of future electric generating capacity requirements, projected deficient capacity, or another consequential generation decision, the utility should provide sufficient current evidence for the Commission to distinguish material load additions by their present state of commitment and execution; identify material dependencies and downside allocation; and revalidate the load assumption upon a material change before additional irreversible reliance is placed upon the prior forecast.

This recommendation is deliberately outcome-neutral. It does not tell the Commission how much weight to assign any category of evidence, establish a numerical threshold, or substitute PAG's methodology for Commission judgment. It establishes only that the evidence supporting a major demand assumption should be visible and current when that assumption is used to justify a major capacity decision.

IX. DECISION-ASSURANCE RECORD

For a material capacity decision driven in part by projected load growth, the record should be capable of answering seven high-level questions:

Representation - What load or capacity condition is being represented?

Assumption - What must be true for that representation to support the decision?

Evidence - What current evidence supports the assumption?

Dependency - What customer, contract, infrastructure, market, financing, or other condition must also perform?

Downside Ownership - Who bears the consequence if the assumption fails?

Decision Gate - What commitment is being made based on the evidence presently available?

Revalidation - What material change would require the evidence to be examined again?

These questions do not replace engineering, utility planning, ratemaking, legal review, PJM analysis, fuel procurement, financial analysis, or other specialist functions. They are a reconciliation layer for determining whether the combined evidence is sufficient for institutional reliance.

X. CONCLUSION

West Virginia is making generation and infrastructure decisions at a time when the scale and timing of new electric demand can change rapidly. Series 41 creates detailed visibility into how generating resources are offered, dispatched, maintained, fueled, and measured. The same decision discipline should apply upstream to the projected-load assumptions that can create the asserted need for those resources.

The Commission should therefore require material load-growth assumptions used in consequential capacity decisions to be evidenced at the decision point, reconciled with the capacity action they support, and revalidated when material facts change.

The central principle is simple: infrastructure commitments should follow evidence, and the evidentiary threshold should rise with the consequence and irreversibility of reliance.

Respectfully submitted,

Neil P. Osnato

Founder

Persistence Analytics Group LLC | United Grid

National Security & Infrastructure Risk Analytics

Infrastructure Assumption Verification™ | Decision Assurance™

Email: neil@persistenceanalyticsgroup.com

Dated: September 14, 2026

Authorities referenced: W. Va. Code § 24-2-1d; proposed 150 C.S.R. 41, Rules for Electric Generating Capacity Utilization.

Dear WV Public Service Commission Info,

Regarding case #26-0633:

When the WV Legislature adopted HB 2014 (the data center bill) they asked the West Virginia Public Service Commission to propose rules to maintain their power plants, but also said that utilities did not have to run if it would increase customer charges for electricity. The PSC has now proposed rules that are likely to increase electric bills for West Virginians if they are followed, and "expects" utilities to "self-schedule" their plants to run, even when cheaper electricity is available from the grid.

I am writing to ask you to request that you modify the proposed rules to make it clear that utilities should utilize the cheapest cost power. Utilities should not self schedule and use higher-cost power from their power plants, even if it means the utility-owned plants are not used as often. We cannot afford to subsidize power plants that can't compete.

The proposed rules would increase electric bills, if our utilities follow them.

Please revise the proposed rules to reflect:

- Utility-owned power plants should run only if they are less expensive to run than other options.
- If the electric grid can provide cheaper energy to West Virginia utilities, the utilities should use energy from the grid.
- Utilizing the grid (PJM) balances our monopoly utilities with free market principles that protect ratepayers.
- The rules should not assume our utilities' power plants will be the most cost-effective option; the market should decide based on what resources can produce power at the lowest cost.

I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Sincerely,

Mrs. Leslie Holstein

872 Round Bottom Rd Ste Peytona, WV 25154 ldarby1989@gmail.com

Desk Review Copy of Online Comment**Name:** Rita Catherine Caufield**Address:** 106 Jerry Court**City, State Zipcode:** Martinsburg, WV 25401**County:** Berkeley**Subject:** Comment in Support of Case No. 26-0633-E-GI**Date of Comment:** 09/14/2026 08:32 AM**Date Email Confirmed:** 09/14/2026 08:32 AM**Date Printed:** 09/14/2026 04:04 PM**Comment**

I am very concerned that local communities have been deprived of input regarding the placement of, and regulation of utility usage by, data centers.

In addition to the restoration of local control (legislative repeal of pertinent provisions of HB 2014), I ask that the Public Service Commission, in approving proposed plans for new generating capacity or grid connection, be legally bound to consider recommendations of an advisory commission comprised of experts and all stakeholders in the data-center battle.

Our leaders are ignoring dire warnings about the dangers of AI and leading us like lemmings to embrace our own destruction!!

Desk Review Copy of Online Comment

Name: Melissa Burn

Address: 860 Heather Lane

City, State Zipcode: Slanesviille, WV 25444

County: Hampshire

Subject: Comment in Support of Case No. 26-0633-E-GI

Date of Comment: 09/14/2026 11:00 AM

Date Email Confirmed: 09/14/2026 11:00 AM

Date Printed: 09/14/2026 04:03 PM

Comment

I fully support collecting public comment on proposed rules governing the regulation of electric generating capacity requirements. I support creating a subsection specifically regarding the data centers or finding some other appropriate way to address the challenges created by data centers. The PSC must ensure that residents (ratepayers and tax payers) in WV do not end up paying for the infrastructure improvements needed to increase capacity required by data centers -- either indirectly via grants and subsidies from state funds or directly by increased electricity rates charged to residents. Further, increased demand for electricity created by data centers must not result in any additional costs passed on to ratepayers and taxpayers.

Dear WV Public Service Commission Info,

Regarding case #26-0633:

When the WV Legislature adopted HB 2014 (the data center bill) they asked the West Virginia Public Service Commission to propose rules to maintain their power plants, but also said that utilities did not have to run if it would increase customer charges for electricity. The PSC has now proposed rules that are likely to increase electric bills for West Virginians if they are followed, and "expects" utilities to "self-schedule" their plants to run, even when cheaper electricity is available from the grid.

I am writing to ask you to request that you modify the proposed rules to make it clear that utilities should utilize the cheapest cost power. Utilities should not self schedule and use higher-cost power from their power plants, even if it means the utility-owned plants are not used as often. We cannot afford to subsidize power plants that can't compete.

The proposed rules would increase electric bills, if our utilities follow them.

Please revise the proposed rules to reflect:

- Utility-owned power plants should run only if they are less expensive to run than other options.
- If the electric grid can provide cheaper energy to West Virginia utilities, the utilities should use energy from the grid.
- Utilizing the grid (PJM) balances our monopoly utilities with free market principles that protect ratepayers.
- The rules should not assume our utilities' power plants will be the most cost-effective option; the market should decide based on what resources can produce power at the lowest cost.

I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers or WV will lose even more of its citizens because we can't afford to live here anymore!

Our electric bill has DOUBLED in the last 15 years. Being on oxygen at night, unplugging everything not in use and cutting the thermostat down in winter and up higher in summer. *Seniors trying to survive while paying higher gas, groceries and utilities ... WV is no longer Senior friendly.

Sincerely,

Mrs. Terri Porter

35 Glory Ln Gallipolis Ferry, WV 25515-9603 madzach90@gmail.com

Dear WV Public Service Commission Info,

09:04 AM SEP 16 2026 EXEC SEC DIV

Regarding case #26-0633:

When the WV Legislature adopted HB 2014 (the data center bill) they asked the West Virginia Public Service Commission to propose rules to maintain their power plants, but also said that utilities did not have to run if it would increase customer charges for electricity. The PSC has now proposed rules that are likely to increase electric bills for West Virginians if they are followed, and "expects" utilities to "self-schedule" their plants to run, even when cheaper electricity is available from the grid.

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- If the electric grid can provide cheaper energy to West Virginia utilities, the utilities should use energy from the grid.
- Utilizing the grid (PJM) balances our monopoly utilities with free market principles that protect ratepayers.
- The rules should not assume our utilities' power plants will be the most cost-effective option; the market should decide based on what resources can produce power at the lowest cost.

I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Sincerely,

Ms Jenny Thacker

223 Mason Dr Harpers Ferry, WV 25425-4077 jennythacker304@aol.com

Dear WV Public Service Commission Info,

Regarding case #26-0633:

When the WV Legislature adopted HB 2014 (the data center bill) they asked the West Virginia Public Service Commission to propose rules to maintain their power plants, but also said that utilities did not have to run if it would increase customer charges for electricity. The PSC has now proposed rules that are likely to increase electric bills for West Virginians if they are followed, and "expects" utilities to "self-schedule" their plants to run, even when cheaper electricity is available from the grid.

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The proposed rules would increase electric bills, if our utilities follow them.

The rules should not assume our utilities' power plants will be the most cost-effective option; the market should decide based on what resources can produce power at the lowest cost. The PSC should be looking out for WV people and protect us against unnecessary costs in producing electricity. We should not be generating excess power to ship out of state while paying top dollar for our own electricity. Please carefully consider the comments from the WV Sierra Club and the Persistence Analytics Group which make a lot of sense. The people should not be assuming the risk and the higher costs.

I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Sincerely,

Mrs. Elaine Matheny

11948 Longdale Rd Letart, WV 25253-9759 ecmatheny@gmail.com

Desk Review Copy of Online Comment**Name:** Alecia Rice**Address:** 25941 Ashton Upland Rd.**City, State Zipcode:** Milton, WV 25541**County:** Mason**Subject:** Comment in Protest of Case No. 26-0633-E-GI**Date of Comment:** 09/16/2026 12:04 PM**Date Email Confirmed:** 09/16/2026 12:04 PM**Date Printed:** 09/16/2026 03:28 PM**Comment**

I am writing regarding the proposed rules implementing HB 2014 and their potential impact on West Virginia electric ratepayers.

HB 2014 requires utilities to maintain thermal baseload generating units capable of achieving at least a 69 percent capacity factor. However, the law also recognizes something critically important: utilities should maximize their own generation when doing so reduces energy costs for West Virginia ratepayers and should not be required to operate at 69 percent when doing so increases electricity charges.

That protection needs to remain unmistakably clear in the rules.

West Virginia families should not be required to pay more for electricity simply to keep a particular generating plant operating when lower-cost, reliable electricity is available through the PJM market. Reliability and energy security matter, but so does affordability. These goals are not mutually exclusive.

I respectfully ask the Commission to preserve consumer economic dispatch and the ability to purchase lower-cost electricity through PJM when appropriate; ensure utilities are not effectively required to self-schedule generation when doing so costs ratepayers more; clarify that the ability to achieve a 69 percent capacity factor does not require operating at that level regardless of cost; and require utilities to demonstrate that decisions made under these rules are economically justified and in the interests of West Virginia ratepayers.

These protections are especially important as West Virginia faces potentially enormous increases in electricity demand from data centers and other large industrial developments. Existing residential and small-business customers should not become the financial backstop for accommodating massive new loads or operating generation that is more expensive than available alternatives.

Whatever direction West Virginia chooses for its energy future, its citizens deserve reliable electricity, transparency, and protection from unnecessary costs.

Thank you for considering my comments.

Desk Review Copy of Online Comment

Name: Meryl Williams Clark

Address: 64 Maple Drive

City, State Zipcode: Williamstown, WV 26187

County: Wood

Subject: Comment in Protest of Case No. 26-0633-E-GI

Date of Comment: 09/16/2026 09:16 AM

Date Email Confirmed: 09/16/2026 09:16 AM

Date Printed: 09/16/2026 03:29 PM

Comment

We should make it harder, not easier, for data centers to be in our communities. West Virginians do not want data centers in our state. They take up natural resources, they are extremely loud, and they will not bring jobs to the area as promised. They will also increase residents' utility bills in a time where energy costs are already too high. I protest this case.

Desk Review Copy of Online Comment**Name:** Carol Peck**Address:** 1386 Lakewood Circle**City, State Zipcode:** WASHINGTON, WV 26181**County:** Wood**Subject:** Comment in Protest of Case No. 26-0633-E-GI**Date of Comment:** 09/16/2026 01:59 PM**Date Email Confirmed:** 09/16/2026 01:59 PM**Date Printed:** 09/16/2026 03:28 PM**Comment**

I encourage the Commission to protect ratepayers, preserve access to reliable and cost-effective electricity, and support responsible investment in West Virginia's energy future. The people of West Virginia deserve a say in the location of data centers due to multiple factors affecting our communities and environment.

Liane Mace
854 McKowns Crk
Walton, WV 25286

September 14, 2026

Karen Buckley
Executive Secretary
Public Service Commission
PO Box 812
Charleston, WV 25323

08:07 AM SEP 17 2026 EXEC SEC DIV

RE: Case #26-0633 and what I've learned in my 17 yrs. experience with
Appalachian Power

We kept a log. They are not transparent - I'm tired of hearing "tree contact" all these years, plus it's usually on the same road where they just put up new towers at the top of the ridge. So we decided to take a drive one day up Robinson Run Road in Walton and lo and behold, there are lines that are almost on the ground going through dense brush, a long distance between some poles and lines that go into the woods instead of on the road. It looks like a mess to us. It's obviously not a priority in their universe. As residents, we would love to know what's really been going on these past 17 yrs. I'm sure we're not the only neglected rural area.

Obviously, the PSC isn't going to make them clean up their act. I'm 78 yrs. old and remember when banks, post offices and utilities were community oriented (pre-corp coldness). The phone & electric companies HIRED PEOPLE, mostly locals, to walk the lines to let the company know where they needed to do some landscaping. Now they just wait for the tree to fall, there are no community resources as the grid is way too big. So we little rural folk have to wait for Charleston's top priority status to be fulfilled, then a few others on the way up and finally we get service.

Something else that should make rurals of equal priority - we plant seeds, work up the land, plant, maintain, harvest and put up quality food for our families for the year. Then there's a power outage, the freezer melts and you have to start canning or drying if you have gas or a generator. If not, it's outside over a fire. My homeowners insurance added a clause to cover food spoilage - this is not a solution! This last outage, spanning 3 days, our generator broke which means no water, too. I forgot how spoiled I had gotten from having a generator.

Over the past 17 yrs., APCo's continuous power outages have also caused us to lose thousands of dollars from our online stores. Are we given a credit? No, we just get bigger bills.

We used to love thunderstorms but now we dread them because we know we'll probably have a power outage.

The PSC keeps giving APCo more money for new projects when they haven't fixed their old infrastructure - Valley North Transmission Line? - data centers? - satellites? WV folks are footing the bill and we don't even know what for exactly. What are they doing with OUR money? And the smart

Page 2 - Liane Mace letter RE: APCo experiences

meters do nothing for the people except lay people off and increase our EMF poisoning which I've studied extensively and have a huge database that I shared with the PSC.

When we moved into this area, the PSC knew the electric company was dysfunctional. People should be informed and warned that they need to get a backup generator instead of learning the hard way. Our first Xmas in our new home was my first black Xmas - the power was out for 2 wks. and we didn't have a generator. Actually, APCo should offer these to customers at wholesale rates when they know they deliver bad service to an area. We understand that people who live up in the hills in pretty inaccessible locations need generators but we specifically bought a farm that is on a good paved road so there is no excuse for this dysfunctionality.

Many towns have electric co-ops, locally owned and controlled by the community. We need infrastructures closer to home. I asked APCo why they didn't lay cable like other companies and they said it wasn't feasible in our area because of hills and forests. It doesn't seem to bother companies in other states. It could be broken up. They could put lines and underground cable where they are best suited. I would love to see the numbers for all of the money they've laid out for emergency crews from other states plus our own guys. If we can go to space, we certainly can have a sound infrastructure.

From lumber to coal, oil & gas, WV has been very rich, so the big banks moved in to steal our wealth and use our people as slaves to fill their coffers. Ideally, utility companies should share their knowledge and help other states to create their own infrastructures instead of stealing it from one state and giving it to another, all the while getting rich off of both. I'm so tired of them crying poor-mouth. If they are having trouble balancing their books, they obviously need smarter people in there. But it's not about economy is it? It's about shareholders. Public utilities that contribute to people's basic survival should not be allowed on the stockmarket - community service should not be a money making venture. I froze enough these past 17 yrs. to have this revelation.

I see the Public Service Commission like parents who should steer their children in directions that are for the greater good of all. Isn't it the PSC's job to monitor monopolies to make sure they deliver affordable and reliable service?

And regarding Case #26-0633: Please put Ratepayers First in HB2014 Rulemaking.

It's a new era - more people are waking up and realizing that they deserve better. I hope the PSC is up to the task and not in the back pocket of AEP.

Sincerely,



Liane Mace

CC: Senator Shelley Moore Capito, 500 Virginia Street East, Suite 950, Charleston, WV 25301
Senator Jim Justice, 900 Pennsylvania Ave, Suite 629, Charleston, WV 25302
Congresswoman Carol Miller, 3 Tennessee Avenue, Charleston, WV 25302

CC: T. Kevan Bartlett - kevan.bartlett@wvsenate.gov
Anne B. Charnock - anne.chnock@wvsenate.gov
Glenn Jeffries - glenn.jeffries@wvsenate.gov
Vince Deeds - vince.deeds@wvsenate.gov
Scott Fuller - scott.fuller@wvsenate.gov
Amy Grady - amy.grady@wvsenate.gov
Craig Hart - craig.hart@wvsenate.gov
Brian Helton - brian.helton@wvsenate.gov
Mark Maynard - mark.maynard@wvsenate.gov
Zack Maynard - zack.maynard@wvsenate.gov
Rupie Phillips - rupie.phillips@wvsenate.gov
Rollan Roberts - rollan.roberts@wvsenate.gov
Tom Takubo - tom.takubo@wvsenate.gov
Eric Tarr - eric.tarr@wvsenate.gov
Mike Woelfel - mike.woelfel@wvsenate.gov
Jack Woodrum - jack.woodrum@wvsenate.gov
WV for Energy Freedom - info@energyfreedomwv.org

Desk Review Copy of Online Comment**Name:** Jon Shayne DiMarino**Address:** 1456 Whitings Neck Road**City, State Zipcode:** Martinsburg, WV 25404**County:** Berkeley**Subject:** Comment in Protest of Case No. 26-0633-E-GI**Date of Comment:** 09/17/2026 11:43 AM**Date Email Confirmed:** 09/17/2026 11:43 AM**Date Printed:** 09/17/2026 04:04 PM**Comment**

I am a long-time resident of Berkeley County WV and live very close to the proposed data center site in Bedington (a.k.a Project Bluejay) and I am very concerned about freshwater use and water contamination. I am also very concerned about increases to the local rate payers in the area as a result of the electricity that will be used by a data center the size and scale (Tier 4 Hyperscale, one of the biggest ones) of the one proposed for Bedington. We know that these types of data centers that process AI data use a colossal amount of fresh water and a colossal amount of electricity, more annually than a medium sized city for one facility. We know this by looking at other comparable data centers around the country and seeing how much electric it takes to operate them. With the state bending over backwards to attract data center investors, even going as far as to strip away local control and oversight, and eliminating public input in the decision making process, and commissioners signing NDAs with Penzance the construction company to keep the public in the dark (these are public officials, paid with tax dollars mind you), I am very concerned that the electric usage from the data center will be passed off onto the local residents (the rate payers) of the community. If data center investors want to come to WV and exploit our resources against the will of the people, they should have to pay the full amount of their usage and be taxed accordingly as well. This is simply exploitation and tyranny the way that HB 2014 was passed and forced upon us. Data centers also use a colossal amount of fresh water to cool their servers, polluting water sources with PFAS and other harmful chemicals used in the cooling process. We need our fresh water to live; data centers do not! As a West Virginia resident, I do not want to be exploited any longer. There has been quite enough of that in our history, and I do not want yet another out of state business coking to the state who clearly does not have our best interests at heart, exploiting our resources yet again. AI is a speculative bubble and an investment boondoggle right now, but when the bubble bursts, and it will, and all of the investors have been paid with our tax dollars, we are going to be left with the fallout of poor planning fueled by promises of quick wealth. This is not what we want for our future. There is a better way to invest in West Virginia sustainably.

Desk Review Copy of Online Comment

Name: Angela Marie Adkins

Address: 868 Kelly Lane

City, State Zipcode: Jane Lew, WV 26378

County: Lewis

Subject: Comment in Protest of Case No. 26-0633-E-GI

Date of Comment: 09/16/2026 08:50 PM

Date Email Confirmed: 09/16/2026 08:50 PM

Date Printed: 09/17/2026 04:04 PM

Comment

I have a concern of safety in the event of a tornado or other catastrophic event that could make the electric towers and lines fall. People living at the end of hollows on dead end, one lane, dirt roads could be trapped by fire or obstruction with no way out. What if you are having a medical emergency and something like this happens? What about peoples well water, springs, fruit trees, wild berries, and gardens. What are the implications of runoff caused by the construction of the high voltage power lines, and the maintenance of them? What about people that have bought their homes and farms recently. This would cause the property values to go down essentially making it impossible for them to recoup the value of their homes and even though they are concerned about the health implications, they would be forced to stay because of the financial loss. How are these lines and towers going to impact people with heart problems like rhythm problems or pacemakers? I am concerned about the cost and who will be left having to pay. West Virginia and it's people have always been left in shambles and poor after being used by others to make their millions. I am not against progress but I am also not for repeating the history of West Virginia and it's people being used and abused. Thank you

Desk Review Copy of Online Comment**Name:** Christine Joy**Address:** 190 Rustling Leaf Place**City, State Zipcode:** Kearneysville, WV 25430**County:** Berkeley**Subject:** Comment in Protest of Case No. 26-063J-L-G.**Date of Comment:** 09/17/2026 08:42 PM**Date Email Confirmed:** 09/17/2026 08:42 PM**Date Printed:** 09/18/2026 10:23 AM**Comment**

House Bill 2014 takes away control from our local Berkeley County Commission. Non-Disclosure Agreements were signed by the county commissioners, as I understand. In Berkeley County there is proposed the Bedington Data Center and Kearneysville Data Center. I am concerned about water availability and quality, and electrical costs rising should the data centers be built. The proposed Bedington Data Center is close to residential housing, historic houses, flood zones and a Water Cress Farm. The proposed Kearneysville Data Center would be close to the Veterans Hospital, residential housing, the Hospice and newly built townhouses. After learning more about Data Centers I believe that if they are to be built they should be at least ten miles from residential housing and on industrial land. Farm land and natural woods are being lost. The scale and size of the projects are industrial. I respectfully ask for careful consideration for the future water and electrical use in our community. Thankyou.

Desk Review Copy of Online Comment

Name: Lew McDaniel

Address: 2113 Surrey Drive

City, State Zipcode: Morgantown, WV 26505

County: Monongalia

Subject: Comment in Protest of Case No. 26-0633-E-GI

Date of Comment: 09/19/2026 11:56 AM

Date Email Confirmed: 09/19/2026 11:56 AM

Date Printed: 09/21/2026 11:31 AM

Comment

Laws passed that favor data centers at the expense of community control over citizen rights to clean air, water, electricity and other fuel use, their mental health related to sound and sight are feudal in nature. They ignore citizen rights and safety and seclude pertinent information of importance to them behind "trade secret" darkness.

Further, citizens for decades have supported state beauty intrinsically in addition to its value to the state's comparative meager economy. Yet the laws passed have made it possible for disruptive businesses that would disrupt that beauty.

Meaningful change is not always easy and takes care. Especially when the rights of citizens are usurped by those who govern. We are supposed to be above and beyond that. Our laws should reflect that care. Not return us to the corporate feudalism of early West Virginia when those who lived here were more chattel than citizen.

Dear WV Public Service Commission Info,

Regarding case #26-0633:

When the WV Legislature adopted HB 2014 (the data center bill) they asked the West Virginia Public Service Commission to propose rules to maintain their power plants, but also said that utilities did not have to run if it would increase customer charges for electricity. The PSC has now proposed rules that are likely to increase electric bills for West Virginians if they are followed, and "expects" utilities to "self-schedule" their plants to run, even when cheaper electricity is available from the grid.

I am writing to ask you to request that you modify the proposed rules to make it clear that utilities should utilize the cheapest cost power. Utilities should not self schedule and use higher-cost power from their power plants, even if it means the utility-owned plants are not used as often. We cannot afford to subsidize power plants that can't compete.

The proposed rules would increase electric bills, if our utilities follow them.

Please revise the proposed rules to reflect:

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- If the electric grid can provide cheaper energy to West Virginia utilities, the utilities should use energy from the grid.
- Utilizing the grid (PJM) balances our monopoly utilities with free market principles that protect ratepayers.
- The rules should not assume our utilities' power plants will be the most cost-effective option; the market should decide based on what resources can produce power at the lowest cost.

I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Sincerely,

Mr. Adam Johnson

469 Park St Oak Hill, WV 25901-2111

adam.b.johnson1@gmail.com

Dear WV Public Service Commission Info,

Regarding case #26-0633:

When the WV Legislature adopted HB 2014 (the data center bill) they asked the West Virginia Public Service Commission to propose rules to maintain their power plants, but also said that utilities did not have to run if it would increase customer charges for electricity. The PSC has now proposed rules that are likely to increase electric bills for West Virginians if they are followed, and "expects" utilities to "self-schedule" their plants to run, even when cheaper electricity is available from the grid.

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- Utilizing the grid (PJM) balances our monopoly utilities with free market principles that protect ratepayers.
- The rules should not assume our utilities' power plants will be the most cost-effective option; the market should decide based on what resources can produce power at the lowest cost.
- invest in solar energy

I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Sincerely,

mr dk anestos

123 Main Ave Nitro, WV 25143-1270

mdi1755@yahoo.com

Desk Review Copy of Online Comment**Name:** Amber Bartholow**Address:** 581 Craig Run Road**City, State Zipcode:** Rivesville, WV 26588**County:** Monongalia**Subject:** Comment in Support of Case No. 26-0633-E-GI**Date of Comment:** 09/22/2026 02:07 PM**Date Email Confirmed:** 09/22/2026 02:07 PM**Date Printed:** 09/22/2026 03:41 PM**Comment**

Case No. 26-0633-E-GI

I am a West Virginia resident submitting these comments regarding the proposed rules implementing HB 2014. I understand that this proceeding is specifically focused on electric-generating capacity requirements, economic dispatch, PJM capacity, and the ability of West Virginia's electric system to reliably meet future demand. I respectfully ask the Commission to address the following questions before finalizing these rules:

1. How will the PSC determine how much new generation is needed to serve large new electric loads, including data centers? 2. How will the PSC prevent existing residential and small-business ratepayers from paying for generation, transmission, substations, or other infrastructure primarily needed for new large customers? 3. Will large new electric customers be required to financially support the generation and grid infrastructure needed to serve their demand? 4. If a large customer delays, reduces, or abandons its project after infrastructure is built for it, who pays the remaining costs? 5. Will utilities be required to separately identify and report infrastructure costs caused by new large electric loads? 6. How will the PSC evaluate the combined impact of multiple large electric customers on the same utility or region? 7. How will the PSC account for transmission constraints? Having enough generation elsewhere in PJM does not necessarily mean electricity can be delivered where it is needed. 8. How will the PSC ensure HB 2014's 69% capacity-factor requirement and other generation decisions are economically beneficial to West Virginia ratepayers? 9. How will the PSC evaluate whether PJM capacity-market participation benefits or increases costs for West Virginia ratepayers? 10. What safeguards will prevent inaccurate demand forecasts from leaving existing ratepayers responsible for unnecessary generation or infrastructure costs?

I support economic development, but existing West Virginia customers should not be left responsible for costs or risks created by new large electric loads. Please include these comments in the record for Case 26-0633-E-GI.

Respectfully,

Amber Monongalia County, West Virginia



September 23, 2026

VIA ELECTRONIC FILING

Ms. Karen Buckley
Executive Secretary
Public Service Commission of West Virginia
201 Brooks Street
Charleston, WV 25301

Re: CASE NO. 26-0633-E-GI
General Investigation into Adopting and
Implementing Rules Governing Electric Generating
Capacity Regulations

Dear Ms. Buckley:

Please find attached for filing the "*Comments of Northeast Natural Energy LLC*" in the above-referenced matter in advance of our participation at the forthcoming Public Witness Hearing scheduled for September 28, 2026.

Please contact the undersigned if you have any questions concerning this filing.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Tara D. Shumate Lee', is written over a horizontal line.

Tara D. Shumate Lee, esq.
Director, Legal
tlee@nne-llc.com

Attachment

12:52 PM SEP 23 2026 EXEC SEC DIV

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 26-0633-E-GI

General Investigation into Adopting
and Implementing Rules Governing
Electric Generating Capacity
Regulations

**COMMENTS OF
NORTHEAST NATURAL ENERGY LLC**

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 26-0633-E-GI

General Investigation into Adopting
and Implementing Rules Governing
Electric Generating Capacity
Regulations

COMMENTS OF NORTHEAST NATURAL ENERGY LLC

Pursuant to the Orders issued by the Public Service Commission of West Virginia ("Commission") on July 20, 2026, and August 19, 2026, in the above-referenced matter, Northeast Natural Energy LLC ("NNE") hereby submits the following Comments in response to the Commission's proposed rules governing the regulation of electric generating capacity requirements subject to the jurisdiction provided to the Commission pursuant to W. Va. Code § 24-2-1d ("Proposed Rules") as set forth in Appendix A of the Order and in advance of the Public Witness Hearing scheduled for September 28, 2026.

I. INTRODUCTION

Founded in 2009, NNE is a West Virginia natural gas exploration and production company with offices in Charleston and Morgantown, West Virginia. NNE was the first natural gas production company in the United States to receive independent dual certifications under Equitable Origin and MiQ, establishing NNE's exceptional environmental management and stewardship. On a daily basis, NNE produces over 700 million cubic feet of natural gas in West Virginia, and while

some of that serves needs in the State (primarily heating or industrial use), the majority is transmitted outside the State. Over the last six years, NNE has contributed \$420 million in royalties to West Virginia property owners and paid over \$132 million in severance and property taxes to the State of West Virginia.

West Virginia is the fourth largest natural gas producing state in the nation, and yet none of its baseload power is sourced from natural gas. For decades, the West Virginia legislature has recognized that coal and natural gas both have a role to play to ensure that West Virginia can maximize the electricity generated within the State. See W. Va. Code § 24-2-1d(a). As a homegrown West Virginia business that has tapped into one of the State's most abundant natural resources, NNE offers these written comments in advance of its participation at the forthcoming Public Witness Hearing to emphasize the need to revise the Commission's Proposed Rules to satisfy the intent of the legislature by including provisions applicable to natural gas and ensuring the rules do not favor coal over natural gas or vice versa.

II. COMMENTS

The legislation empowering the Commission to establish these rules was set forth expressly in W. Va. Code § 24-2-1d(f), directing the Commission to "propose rules for legislative approval...to carry out its duties and obligations set forth herein." NNE views this language as obligating the Commission to ensure that both coal and natural gas are considered as viable sources of power generation in the State. In seeking equal treatment of natural gas, NNE is not proposing to displace

the role of coal in West Virginia. Instead, NNE is seeking to ensure that coal *and natural gas* are appropriately reflected in the Proposed Rules; this is an addition to the Proposed Rules to recognize natural gas, not a subtraction of coal. NNE recognizes that natural gas does not currently serve as baseload generation in the State; however, NNE believes that is not likely to remain the case.¹ For these reasons, the Commission must establish rules that will govern any future natural gas generation that is developed in this State in addition to the State's existing coal-fired generation. Consistent with these understandings, NNE provides the following comments on the Commission's Proposed Rules.

A. NNE agrees with Numerous Parties that the Proposed Rules Should Not Mandate a 69 Percent Capacity Factor.

House Bill ("HB") 2014 does not mandate that a utility's generation units run at a 69 percent factor. Instead, HB 2014 states only that utilities need to "maintain their thermal baseload generating units in a manner to allow them to be able to self-generate and achieve at least a sixty-nine percent capacity factor." W. Va. Code § 24-2-1d(f). The law is quite clear that "nothing...shall require a utility to operate a generating unit at a sixty-nine percent capacity if doing so will cause an increase in the charge or charges for electric energy over and above the established and published tariff, rate, joint rate, charge, toll or schedule." *Id.* In light of the unambiguous statutory text, the Proposed Rules should be revised to

¹ See generally *Monongahela Power Company and The Potomac Edison Company*, Case No. 26-0108-E-CN.

eliminate any language that suggests the 69 percent capacity factor is a mandate rather than a readiness and maintenance standard. See Monongahela Power Company ("Mon Power") and The Potomac Edison Company ("PE") Initial Comments, p. 8; Appalachian Power Company ("APCo") and Wheeling Power Company ("WPCo") Initial Comments, Bates Nos. 7-8; West Virginia Energy Users Group ("WVEUG") Initial Comments, Bates Nos. 4-5; Gas and Oil Association of West Virginia ("GO-WV") Reply Comments, p. 4.

B. Self-Scheduling Generating Units Should Not Be Required.

Similarly, NNE agrees with numerous parties that the Proposed Rules should not require or suggest a requirement that the investor-owned utilities in the state should "self-schedule" their generating units with PJM absent an economic basis for doing so. See WVEUG Initial Comments, Bates Nos. 5-6; GO-WV Reply Comments, p. 6. Mandating self-scheduling in the absence of an economic reason to do so would conflict with the requirement expressed in W. Va. Code § 24-2-1d(f) that the utilities need to keep rates as low as possible for residential customers and as competitive as possible for commercial and industrial customers by acquiring their "projected deficient capacity from electric generation" that "will provide the most reliable supply of capacity and energy at the least cost to those customers of the utility who will be served by such electric generation." *Id.* at § 24-2-1d(c). NNE supports revisions to the Proposed Rules to clarify that Self-Scheduling of Generation Resources in PJM Interconnection, L.L.C. ("PJM") should occur when it is economic to do so and in the best interests of ratepayers.

C. The Proposed Rules Must Be Revised to Address Natural Gas Fuel Supplies and Contracts.

Subsection (e) and (f) of W. Va. Code § 24-2-1d set forth certain information that the Commission should consider when reviewing the performance of an existing generating unit. Importantly, however, these legislative provisions are not time-limited, meaning they are not applicable to those generating units in service as of a date certain. Instead, it appears that if a new generating unit were built and operational in 2027 (or some other future date), it would also be subject to the requirements of Subsection (e) and (f). Since the Proposed Rules are intended to implement the language in W. Va. Code § 24-2-1d, this means the Commission must also consider what information a natural gas generating unit may need to produce to satisfy W. Va. Code § 24-2-1d(e). At present, however, the Proposed Rules only provide specific guidance for coal supplies and contracts; there is no guidance for reporting of fuel supplies and contracts applicable to natural gas generation. See *e.g.*, Proposed Rules at § 150-41-6.

NNE takes no position on the Proposed Rules related to Coal Supplies and Contracts as set forth in proposed Section 150-41-6. Rather, NNE is only requesting that the Commission implement similar rules for natural gas generation. See GO-WV Reply Comments, pp. 18-20. Again, while there is not currently baseload natural gas generation in the State, natural gas generation is coming. This is no longer a question of if, but when. The Commission should not wait to revise its rules once natural gas generation is built. Instead, it should ensure that

its Proposed Rules answer the charge of the legislation to address both coal and natural gas. The Commission already has before it proposed revisions from GO-WV that it could incorporate into the Proposed Rules to adequately address Fuel Supplies and Contracts applicable to both coal and natural gas, and NNE requests that the Commission adopt this language into its final rule.

III. CONCLUSION

At a high level, NNE is not seeking to limit coal's important role in West Virginia. NNE simply wants to ensure that natural gas also has a seat at the table. NNE, much like GO-WV, believes that natural gas and coal play important roles in ensuring the energy independence of West Virginia and providing the lowest cost energy to the ratepayers in the State. NNE appreciates the opportunity to provide these written comments in advance of its participation in the upcoming Public Witness Hearing, and it looks forward to engaging further with the Commission on this important issue as it seeks to finalize the Proposed Rules.

Respectfully submitted,

By _____

[Name]

[Organization]

[Street Address]

[City/State/Zip Code]

Phone: _____

Fax: _____

[Email address]

Date: September 23, 2026

Desk Review Copy of Online Comment**Name:** Carolyn T. Cadle**Address:** 40 Chalcot Place**City, State Zipcode:** Falling Waters, WV 25419**County:** Berkeley**Subject:** Comment in Support of Case No. 26-0633-E-GI**Date of Comment:** 09/23/2026 12:54 PM**Date Email Confirmed:** 09/23/2026 12:54 PM**Date Printed:** 09/23/2026 03:05 PM**Comment**

As a legal resident in Falling Waters, Berkeley County, WV only a mile or two away from the proposed Penzance data center, I have many very serious concerns about a data center being forced upon this agricultural/residential area just a few miles from several schools. My concerns include tonal noise emissions, light emissions, high usage of electricity and water, contaminated water discharge, health impacts particularly on more vulnerable residents such as elderly and young children, and diminished property values. I also have great consternation about how HB 2014 was passed in the dead of night and forced upon residents of WV eliminating our right to control or have a voice in development in our local areas. Of specific concern at this moment to your body, I ask that you take immediate and strong action to ensure the cost of needed utility infrastructure for these facilities is not passed on to us the local ratepayers. I further request you take action to ensure we ratepayers are not assessed higher fees in the future to cover costs associated with development and/or operation of these data centers. I ask that you protect the current utility ratepayers in Berkeley County from financial obligation to support private enterprise like data centers. Most WV citizens are already struggling under a heavy burden of rate and price increases from automobile fuel, mortgage costs, groceries and utilities. Don't make us also bear the cost for data centers. If they are going to be forced into our neighborhoods, for God's sake at least make them pay their own way. Thank you for attention to my concerns.