

August 10, 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

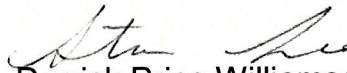
General Investigation into Adopting
and Implementing Rules Governing
Electric Generating Capacity
Regulations

Dear Ms. Buckley:

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

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

Sincerely,



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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

**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
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CHARLESTON**

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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 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.

I. INTRODUCTION

WVEUG's Comments address specific concerns and points of clarification with the Proposed Rules. In addition to the issues addressed in these Comments, WVEUG also provides as Attachment 1 proposed revisions to the Proposed Rules

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.

intended to refine the drafting and construction for consistency throughout the Proposed Rules.

II. COMMENTS

WVEUG proposes substantive revisions to the Proposed Rules to address two primary issues. First, WVEUG proposes clarifying Section 5.3 of the Proposed Rules to ensure adherence to House Bill ("H.B.") 2014's requirement to ensure that utility Generation Resources² are capable of achieving, but are not required to achieve, a 69 percent capacity factor. Second, WVEUG proposes revisions to Section 5.3.2 of the Proposed Rules regarding the Commission's proposed self-scheduling requirements. In addition to these issues, WVEUG also provides a list of topics where further refinement or additional definitions could better clarify the Proposed Rules.

A. Electric Utilities are Required to Operate and Dispatch Their Generating Resources Only When it is Economic to do so and Benefits Ratepayers.

Section 5.3 of the Proposed Rules addresses the Commission's expectation that generating electric utilities maintain their Generation Resources and minimize down-time to allow the Generation Resources to achieve a minimum capacity factor of 69 percent. WVEUG proposes revisions to Section 5.3 to ensure consistency with the requirements of HB 2014, which in part amended West Virginia Code § 24-2-19(e). Specifically, HB 2014 requires:

² As defined in the Proposed Rules.

[U]tilities to maintain their generating units and fuel inventories 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.³

HB 2014 does not require, or even recommend, a 69 percent capacity factor to be achieved **unless** economic conditions dictate that such a Generation Resource should be dispatched. HB 2014 only encourages dispatch at or above that metric if doing so is economic and will not cause an increase in customers' rates or charges. This is further clarified by HB 2014's explanation that Consumer Economic Dispatch means "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."⁴ As such, the impact to customers' rates should be the critical determinant of whether the Companies dispatch their plants. WVEUG's proposed revisions to Section 5.3 reflect that statutory requirement.

B. The Proposed Rules Could Increase Utility Customer Rates by Requiring or, at the Least, Strongly Encouraging Utilities to Self-Schedule.

Section 5.3.2 of the Proposed Rules provide the Commission's expectation that utilities will "take advantage" of Self-Scheduling their Generation Resources into PJM Interconnection LLC ("PJM"). There are two primary issues with this

³ W. Va. Code § 24-2-19(e).

⁴ *Id.* (emphasis added).

apparent requirement: (1) HB 2014 does not require utilities to Self-Schedule their Generation Resources; and (2) if utilities are required to Self-Schedule, then doing so could increase costs to ratepayers if the Generation Resources are not dispatched when it is economic to do so and benefits ratepayers. As with WVEUG's proposed revisions to Section 5.3, WVEUG proposes revisions to Section 5.3.2 to clarify that Self-Scheduling should only occur when it results in utilities operating their Generation Resources when it is economic to do so and results in the lowest reasonable cost to ratepayers.

C. Additional Comments and Points of Clarification.

WVEUG provides the following brief comments regarding sections of the Proposed Rules that are unclear and may require further definition or explanation. For ease of the Commission's review, WVEUG discusses these in the order in which the issues arise in the Proposed Rules. This list is provided in addition to WVEUG's proposed edits included in Attachment 1 to WVEUG's Comments.

- Definitions: "Capacity Auctions," as addressed in Section 3.1, should be a defined term in the Proposed Rules.
- Definitions: "RPM," as addressed in Section 3.2, should be a defined term in the Proposed Rules.
- Definitions: "FRR," as addressed in Section 3.2.3, should be a defined term in the Proposed Rules.

- Section 3.2.3 requires the filing of a verified statement or testimony but does not specify in what docket such a filing should be made, which the Commission may want to clarify.
- Definitions: "Day-Ahead Market," as used in Section 4.3.2.a, should be a defined term in the Proposed Rules.
- Section 4.3.2.b references a "market" but does not clearly define or explain what it is being referenced. WVEUG believes this should be PJM or RPM.
- Section 7.2 references a utility's failure to meet a deadline under the Proposed Rules due to a failure by PJM, but the language is unclear as to what the anticipated PJM failure is.

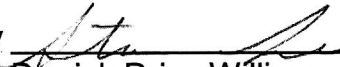
III. CONCLUSION

WVEUG appreciates the Commission's effort in developing these Proposed Rules to align with the requirements of HB 2014. WVEUG's substantive concern with the Proposed Rules is to ensure adherence to HB 2014's expectation 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 remaining comments attempt to clarify the meaning and intent of the Proposed Rules.

Respectfully submitted,

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By



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*Counsel to the West Virginia Energy Users
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Date: August 10, 2026

ATTACHMENT 1

TITLE 150
LEGISLATIVE RULE
PUBLIC SERVICE COMMISSION

SERIES 41
RULES GOVERNING ELECTRIC GENERATING CAPACITY UTILIZATION

§150-41-1. General

1.1. Scope. -- The following rules govern the regulation of electric generating capacity requirements subject to the jurisdiction of the Public Service Commission pursuant to W. Va. Code §24-2-1d.

1.2. Authority. -- W. Va. Code §24-2-1d.

1.3. Filing Date. -- [] 2026.

1.4. Effective Date. -- [].

1.5. Sunset Date. -- This rule shall terminate and have no further force and effect on August 1, 2031.

1.6. Intent. -- This Rule is promulgated pursuant to the mandate contained in W. Va. Code §24-2-1d(f), which required the Commission to issue rules regarding the regulation of future electric generating capacity requirements.

1.7. The contact information for the Commission is:

Public Service Commission of West Virginia
201 Brooks St.
P.O. Box 812
Charleston, WV 25323
Main switchboard telephone 304-340-0300
Main telefax 304-340-0325
Web site: www.psc.state.wv.us

§150-41-2. Definitions.

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, and have the same meanings when used herein, unless the context clearly indicates otherwise. For purposes of this rule, the following additional terms have the meanings as described below:

2.1. “Capacity factor” means the ratio of the actual energy produced by a power plant or unit within a power plant over a specific period to the maximum possible energy it could have produced if ~~running~~ operating at full capacity during that same period. Capacity factors can be calculated based on various measures of maximum possible energy production, including, but not limited to:

2.1.1. “Gross installed capacity factor” means the ratio of the gross energy produced by a power plant or unit to the maximum possible energy it could have produced if ~~running~~ operating at full installed capacity during the same period.

2.1.2. “Net installed capacity factor” means the ratio of the net energy delivered to the grid after deducting parasitic load to the maximum energy that could have been delivered to the grid after deducting parasitic load if ~~running~~ operating at full installed capacity during the same period.

2.1.3. “Gross available capacity factor” means the ratio of the gross energy produced by a power plant or unit to the maximum possible energy it could have produced if ~~running~~ operating at full available capacity during the same period.

2.1.4. “Net available capacity factor” means the ratio of the net energy delivered to the grid after deducting parasitic load to the maximum possible energy that could have been delivered to the grid after deducting parasitic load if ~~running~~ operating at the available capacity during that same period.

2.2. “Capacity Resources” means a resource that can provide electricity or reduce the demand for electricity and includes megawatts of net capacity from existing or planned Generation Resources or load reduction capability provided by demand resources.

2.3. “Effective Load Carrying Capability” (ELCC) is the capacity value fractional multiplier applied by PJM to various resources’ maximum rated capacity to define their expected output during periods of maximum stress on the system. ELCC values are revised annually by PJM.

2.4. “Fixed Resource Requirement” (FRR) is an alternative option for Load Serving Entities (LSEs) to self-supply resources rather than participate in the PJM RPM auction process.

2.5. “Generation Resource” means any generating unit that meets the qualification requirements to participate in the PJM capacity market or energy market.

2.6. “Installed Capacity” (ICAP) is the summer capacity rating for capacity resources before adjustments for expected forced outages.

2.7. “Locational Marginal Price” (~~LP~~MLMP) is the pricing mechanism used in the PJM wholesale electricity market and represents the hourly integrated marginal market clearing price for electrical energy at the location where the energy is delivered into PJM or received to serve load.

2.8. “Office of Energy” means the West Virginia Office of Energy established in W.Va. Code §5B-2F-2.

2.9. “PJM” stands for ~~the~~ PJM Interconnection LLC, the regional transmission organization responsible for coordinating, controlling, and transmitting electricity throughout its authorized footprint.

2.10. “Reliability Pricing Model” (RPM) is PJM’s resource adequacy construct designed to acquire capacity resources to meet net capacity requirements on the PJM system.

2.11. “Self-schedule” as applied to electrical energy means the daily scheduling and control of a Generation Resource by the owner or operator of the facility that is not dependent on economic dispatch control by PJM.

2.12. “Self-schedule” as applied to electrical capacity means resources specified as price takers by a resource provider in the PJM Capacity Auctions to guarantee that the resource will clear in the auction. If a resource is designated as Self-scheduled by the resource provider, the Self-~~s~~Scheduled resources is cleared first in the auction before clearing any market bids.

2.13. “Unforced Capacity” (UCAP) is the MW value of a ~~e~~Capacity ~~r~~Resource that is available to meet demand, adjusted for the resource’s expected forced outage rate.

§150-41-3. Participation in PJM Capacity Auctions.

3.1. Capacity Auctions. -- The Commission encourages voluntary participation in each capacity auction by every Generation Resource~~generating unit subject to the jurisdiction of the Commission~~by every electric generating unit subject to the jurisdiction of the Commission in each capacity auction.

3.2. RPM Option. -- To enable the Commission to monitor and evaluate the participation in the capacity market each electric utility subject to jurisdiction of the Commission that owns or is contractually entitled to a capacity resource and is operating under the RPM option in PJM, shall report to the Commission its proposed capacity offers for the next upcoming RPM capacity auction.

3.2.1. The utility report shall include the following:

3.2.1.a. A listing of its owned or under contract capacity resources,

3.2.1.b. The ICAP and UCAP of each resource,

3.2.1.c. The PJM assigned ELCC of each resource,

3.2.1.d. Identification of units that are eligible to bid into the capacity auction,

3.2.1.e. The UCAP quantity of each eligible resource proposed to be bid into the market,

3.2.1.f. The price proposed for each bid, which may be zero for ~~s~~Self-scheduled capacity, and

3.2.1.g. Other information which the Commission determines is necessary to allow the Commission to meet the objectives of this subsection.

3.2.2. This report shall be submitted to the Commission at least 28 calendar days prior to submitting the capacity bid. The Commission may modify the filing deadline by a general or specific order.

3.2.3. The utility participating in this model shall also file a verified statement or testimony explaining why it chooses to forego the FRR option and explaining the benefits to West Virginia ratepayers of remaining in the RPM. The benefits should be quantified with comparisons of the costs to ratepayers of RPM participation versus the costs of FRR participation using the RPM capacity to meet its FRR obligation. The comparisons should cover the last three PJM delivery years. The statement or testimony shall provide information on the timing and steps necessary to switch to FRR and any jurisdictional issues that would complicate such switching if required by the Commission.

3.2.4. The utility shall simultaneously file a public version and a confidential version of the quantity and price information contained in its report, which shall comply with the Commission directives for limiting and marking redacted information. The confidential version of the quantity and price information shall be deemed to be a confidential trade secret, as recognized in W.Va. Code §29B-1-4, and shall not be available to any entity seeking access to the information, unless access under a Confidentiality Agreement is required by order of the Commission.

3.3. FRR Option. -- To enable the Commission to monitor and evaluate the participation of the utility in the capacity market, each electric utility subject to the jurisdiction of the Commission that owns or is

contractually entitled to a capacity resource and is operating under the FRR option in PJM shall report to the Commission its current capacity requirement as assigned by PJM, and the resources that it owns or has under contract that qualify to satisfy its PJM FRR capacity obligation.

3.3.1. The information filed shall include the following:

3.3.1.a. A description of the timing for the development of the capacity obligation by PJM,

3.3.1.b. The current ICAP and UCAP of each FRR resource,

3.3.1.c. The PJM assigned ELCC of each capacity resource, and

3.3.1.d. Other information which the Commission determines is necessary to allow the Commission to meet the objectives of this subsection.

3.3.2. This report shall be submitted to the Commission at least 28 calendar days prior to submitting the capacity bid. The Commission may modify the filing deadline by a general or specific order.

3.3.3. The FRR utility shall file a verified statement or testimony explaining why it chooses to forego the RPM and explaining the corollary benefits to West Virginia ratepayers. The benefits should be quantified with comparisons of the costs to ratepayers of FRR capacity versus the costs of RPM participation using the FRR capacity within the RPM. The comparisons should cover the last three PJM delivery years. The statement or testimony shall also provide information on the timing and steps necessary to switch to the RPM and any jurisdictional issues that would complicate such switching if required by the Commission.

§150-41-4. Consumer Economic Dispatch.

4.1. Consumer Economic Dispatch. -- Each electric utility subject to the jurisdiction of the Commission must plan the operation of each Generation Resource under its control to produce electricity at the lowest achievable cost per kilowatt hour. In accordance with W. Va. Code §24-2-1d(e), the eCommission shall review each ~~generating unit's~~ Generation Resource's eConsumer eEconomic dDispatch to determine if each unit is operated to produce electricity at its lowest cost consistent with consumer demand, and operational limits of the generation facility and transmission facilities. To determine if the utility is operating each ~~generating unit~~ Generation Resource at its lowest cost, the Commission will review the cost of producing electricity per kilowatt hour of output at each ~~generating unit~~ Generation Resource at varying capacity utilization levels. ~~Each electric utility subject to the jurisdiction of the Commission must plan the operation of each generating unit Generation Resource under its control to produce electricity at the lowest achievable cost per kilowatt hour.~~ The Commission will review eConsumer Eeconomic dDispatch results on a daily, weekly, monthly, and annual basis.

4.2. Generation Dispatch Reports. -- Each electric utility subject to this rule that owns or controls ~~energy resources~~ Generation Resources shall file a Generation Dispatch Report, which shall include monthly information regarding the hourly dispatch of each of its ~~generation units~~ Generation Resources into the PJM day-ahead and real-time energy markets for the month prior to the filing month. The Generation Dispatch Report is due on the tenth business day of each month, and shall include information for the month immediately preceding the filing month.

4.3. Information on Consumer Economic Dispatch. -- Each Generation Dispatch Report filed pursuant to this rule shall provide the cost of generation at various output levels. If ~~plants~~ Generation Resources are ~~run~~ operating at less than the lowest cost output levels, then the utility shall quantify the impact on

eConsumer eEconomic dDispatch from ~~running-operating plants~~ Generation Resources at less than their optimum economic capability. If ~~running-operating generation units~~ Generation Resources at higher output levels than those achieved during any reporting period would have resulted in lower cost per kilowatt hour of output, then the utility must explain why it did not maximize Cconsumer eEconomic dDispatch of the ~~generating-units~~ Generation Resources.

4.3.1. The utility should report the actual or estimated impact on maintenance costs and future equipment replacement attributable to significant ramping of ~~unit~~ Generation Resource output throughout each 24-hour period. If ramping output resulted in generating at less than optimum eConsumer eEconomic dDispatch was a trade-off between optimum eConsumer eEconomic dDispatch of ~~generation units~~ Generation Resource and lower cost market purchases, then the utility must quantify benefits of market purchases as compared to the total cost of generation, after considering the actual or estimated impact on maintenance costs and future equipment replacement attributable to ramping of ~~unit~~ Generation Resource output.

4.3.2. In a working and editable spreadsheet with the formulas intact, the report shall show for each hour of each day the following information:

4.3.2.a. The hourly installed gross and net capacity available to be bid or sSelf-scheduled into the day-ahead market,

4.3.2.b. The hourly volume of net capacity bid into the market and the related cost-based and market-based bid amounts as dollars per megawatt hour,

4.3.2.c. The hourly net capacity that cleared the day-ahead market,

4.3.2.d. The hourly sSelf-scheduled capacity delivered into the day-ahead market, and

4.3.2.e. The hourly PJM LMP at the pricing nodes for each Ccapacity fResource, including the PJM identification number for each node. The report shall also show energy delivered into the PJM real-time energy market.

4.3.3. Each Generation Dispatch Report shall provide the schedules of availability for seven days in advance provided to PJM during the report month as required by PJM Manual 11 as follows: "Generation Capacity Resources that have an RPM or FRR commitment shall submit a schedule of availability for the next seven (7) days and may submit non-binding offer prices for the days beyond the next Operating Day." (See PJM Manual 11 at page 27, <https://www.pjm.com/-/media/DotCom/documents/manuals/ml11.pdf>, effective October 1, 2025.)

4.3.4. The Generation Dispatch Report shall also indicate multiple-day volumes and offer prices if energy market offers or Self-scheduled volumes were submitted for days beyond the next Operating Day.

4.4. Alternative. -- If a utility subject to this rule has chosen not to sSelf-schedule all or any of its gGeneration eCapacity during any day or portions of a day it shall explain why it made that decision. This explanation must be included in its monthly Generation Dispatch Report.

§150-41-5. Capacity Factors.

5.1. Information on Capacity Factors. -- Each electric utility subject to the rate jurisdiction of the Commission that operates generation facilities shall report in its Generation Dispatch Report the capacity

factors achieved at each generating unit relative to the following:

- 5.1.1. Maximum nameplate generation capacity of each unit,
- 5.1.2. Net maximum generation capacity of each unit after plant parasitic load,
- 5.1.3. Available nameplate generation capacity of each generating unit,
- 5.1.4. Available net maximum generation capacity of each unit after plant parasitic load; and
- 5.1.5 The underlying values supporting the calculated capacity factors.

5.2. Verified Statement. -- Each electric utility shall include in its Generation Dispatch Report a verified statement which may be in standard narrative format or in question and answer format explaining the causes and reasons that the net capacity after parasitic plant use was not one hundred percent of installed capacity net of typical plant use. The report shall include:

- 5.2.1. Reasons for outages;
- 5.2.2. Duration of outages;
- 5.2.3. Remedial action scheduled to remedy outages;
- 5.2.4. Time when the outage first occurred;
- 5.2.5. Time when the outage was remediated;
- 5.2.6. Total elapsed hours of each outage; and,

5.2.7. Direct incremental cost of each remediation, excluding overheads. Direct incremental costs are those costs that would not have been incurred but for the remediation.

5.3. Capacity Factor. -- As required by W. Va. Code § 24-2-19(f), ~~The Commission expects-directs~~ generating electric utilities subject to the rate jurisdiction of the Commission to maintain their ~~generation plants~~ Generation Resources and schedule maintenance to minimize down-time to ensure that a Generation Resource is capable of operating at ~~allow-it-to-achieve~~ a minimum capacity factor of sixty-nine ~~(69%)~~ percent ~~(69%)~~ when economic conditions dictate that such Generation Resources should be dispatched. The success in achieving a minimum capacity factor will initially be measured over a twelve-month period.

5.3.1. The utilities will include in their monthly Generation Dispatch Reports their actual capacity factors in tabular format for the report month and a rolling average up to December. Beginning with January of each year the rolling average reported shall restart. All prior month's data shall continue to be reported even though the rolling average is restarted.

5.3.2. The utilities are expected to take advantage of PJM Manual 11 Market Rules 2.3.3., *et seq.*, which allow ~~s~~Self-scheduling rather than allowing PJM to accept or reject their output into the day-ahead market to operate their Generation Resources to produce electricity at the lowest cost. The utility is not expected to operate at a net-positive margin in all hours of the day. ~~It-Rather,~~ the utility is expected to reasonably anticipate and project expected day-ahead market prices and schedule increments of generation to minimize negative margins during periods of low market prices while allowing for reasonable, and limited ramping of generation levels as market prices fluctuate in the day-ahead market.

§150-41-6. Management of fuel supplies and contracts.

6.1. Information on Fuel. -- At the time of filing of the Generation Dispatch Report, the electric utility shall file a PDF file properly formatted for printing as an 8 ½ x 11 inch document or a printed document along with a spreadsheet relating to the fuel supplies for the utility.

6.1.1. The Generation Dispatch Report shall include the following information:

6.1.1.a. The average cost and the volumes of coal in inventory at the beginning of the report month at each coal stockpile location;

6.1.1.b. The volumes and cost of coal delivered into the stockpile(s) during the month;

6.1.1.c. The volumes burned each month;

6.1.1.d. Any stockpile adjustments made during the month; and

6.1.1.e. The average cost and the volumes of coal in inventory at the end of the month.

6.1.2. The volumes and costs of coal in inventory shall be reported on both a tonnage basis and million British thermal unit ("MMBTu") basis.

6.1.3. The report shall also show the detailed total dollars and weighed average cost of coal per ton for each of the four volume categories listed above, divided between F.O.B. mine, transportation, and handling costs, both transportation and in-plant related, if applicable.

6.2. Summary Price Adjustments. -- The utility shall include a summary of price adjustments at each coal stockpile location applicable to prior months that were not known at the time reports for those months were made.

6.2.1. If there was a stockpile adjustment for any report month, the utility shall file a copy of the stockpile report and the derivation of the adjustment in tons and dollars.

6.2.2. If any stockpile adjustment exceeds five percent of the tonnage or dollar value of the inventory, the electric utility shall file a verified statement or testimony explaining the reasons that the stockpile had been misreported in the past.

6.3. Solicited Bids for Coal. -- For each monthly Generated Dispatch Report, the utility shall report the expected date for its next solicitation of bids for coal. It shall also report on the results and details of any bids received and contracts consummated prior to the report month.

6.4. Coal Contracting. -- When eliciting requests for coal contracting proposals, each electric utility subject to these rules shall ~~make it clear~~clarify that contracts indexed to the price of PJM day-ahead LMP will be considered. It shall indicate that alternative indexing that is expected to follow electricity wholesale prices in PJM may also be offered and will be considered by the utility. ~~It-The utility shall make it clear~~clarify that proposals may contain only an indexed contract or a mix of fixed-price and indexed contracts. The utility shall endeavor to maintain a mix of short-term and long-term contracts that also contain a mix of fixed-price and indexed contracts.

§150-41-7. Additional information.

7.1. Additional Information. -- The information required by this rule is not exhaustive of all information that the electric utility must provide.

7.1.1. The Commission may require additional or differently formatted information if the Commission determines that the additional information is necessary:

7.1.1.a. To ensure that the utility is maximizing the production of electricity from their ~~generating units~~ [Generation Resources](#),

7.1.1.b. To ensure that the utility is acting to reduce energy costs for West Virginia ratepayers,
or

7.1.1.c. To clarify, ~~explain~~, justify, or further explain any information required by the code or this rule to be provided to the Commission.

7.1.2. A modification may be achieved by general order, specific order applicable to a single utility, or as a request from the Commission or designated staff.

7.1.3. It shall be the responsibility of the utility to provide timely additional requested information.

7.2. Amended Deadlines. -- If a utility is unable to meet a deadline required by this rule, and such failure is ~~because it has not or cannot receive the PJM in time, or~~ for any reason outside the control of the utility, then the utility may request [that](#) the Commission ~~to~~ modify the deadline. The Commission may grant the requested modification, for good cause shown, and shall set a new deadline. The Commission may employ a standard extension timeframe for utilities, when the cause for the deadline extension is a failure to timely receive PJM information.

§150-41-8. Confidentiality

8.1. In addition to section 3.2.4 of this rule, but subject to the other provisions of this section, all confidential business information, including trade secrets or other proprietary data or processes, shall be exempt from disclosure pursuant to W. Va. Code §§29B-1-1 *et seq.*

8.2. The Commission shall forward, share, or otherwise make available to the Director of the Office of Energy all unredacted reports and records provided to the Commission pursuant to this rule. The Office of Energy shall be bound by the same confidentiality restrictions as the Commission, and may not publicly disclose confidential business information.

8.3. Nothing contained herein precludes either the Commission or the Office of Energy from relying upon confidential business information or other protected information to address challenges with, and make improvements to, the state of energy in West Virginia. Protected information may be used to develop an energy plan, manage affordability, increase availability, rectify vulnerabilities, or take any other action consistent with the statutory directives of either the Commission or the Office of Energy. Any data compilation, plan, report, or other document which is made publicly available shall not include confidential business information which can be readily associated with the source utility. Such restrictions ~~does~~ not extend to information which is not determined to be confidential, and which is not otherwise protected by law.

CERTIFICATE OF SERVICE

I, Steven W. Lee, counsel to the West Virginia Energy Users Group, do hereby certify that on this 10th day of August, 2026, a copy of the "*Comments of the West Virginia Energy Users Group*" was served upon the parties and/or counsel of record in this proceeding as follows:

VIA E-MAIL

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Certificate of Service
Page 2
Case No. 26-0633-E-GI

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*Counsel for West Virginia Citizens
Action Group, Solar United
Neighbors, and Energy Efficient
West Virginia*



Steven W. Lee (WV State Bar #14379)

04:40 PM AUG 10 2026 EXEC SEC DIV

**SIERRA
CLUB****West Virginia
Chapter**P.O. Box 4142
Morgantown, WV 26504

26-0633-E-G1

Aug. 10, 2026

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

Via fax to: 304-340-0325

RE: Comments on 150-CSR-41, draft Rules Governing Electric Generating Capacity
Utilization

Dear Ms. Buckley:

Please accept the following initial comments on behalf of the ~2,000 members of the West Virginia Chapter of Sierra Club. The Sierra Club seeks to promote environmental sustainability for all citizens, fair electricity costs for ratepayers and compliance with the settlement agreement reached in *Perrone, et al. v. Lane, et al.*, U.S. District Court Southern District West Virginia, CIVIL ACTION No. 2:24-cv-00434, on March 14, 2025 (attached as Exhibit 1, Consent Decree). The draft rule, as currently written, fails on all accounts.

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 needs significant amendments to comply with HB 2014 and the Consent Decree.

The draft rule conflicts with HB2014 and the Consent Decree in *Peronne, et al. v. Lane, et al.* and must be revised.

Our primary concern is the conflict between the draft rule and the statutory language in HB 2014, which provides that the West Virginia Public Service Commission ("WV PSC") promulgate rules for legislative approval to:

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.

W. Va. Code § 24-2-1d (f). Importantly, the next sentence of W. Va. Code § 24-2-1d (f) states:

04:40 PM AUG 10 2026 EXEC SEC DIV

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.

Section 5.3.2 of the draft rule exceeds W. Va. Code § 24-2-1d (f), by creating an expectation of self-scheduling. Section 5.3.2 states:

The utilities are expected to ... allow self-scheduling rather than allowing PJM to accept or reject their output into the day-ahead market. The utility is not expected to operate at a net-positive margin in all hours of the day.

Draft Section 5.3.2 explicitly directs the utilities to run generating units at times when the PJM day-ahead market would not normally accept their output. In other words, it is a guarantee that the generating unit will clear the auction since self-scheduled resources are cleared first before clearing any market bids.

However, the rules do not prohibit utilities from including the lost revenue in their revenue recovery from ratepayers when they self-schedule. Given that utilities set electric rates with an expectation of a return on all prudent costs, this change clearly implies an "increase in charges for electric energy over and above..." what West Virginia ratepayers would otherwise pay, contrary to the plain language of W. Va. Code § 24-2-1d (f).

The final sentence in draft Section 5.3.2 also does not provide adequate protection for captive West Virginia ratepayers from paying increased charges for self-scheduling: It is expected to reasonably anticipate and project expected day-ahead market prices and schedule increments of generation to minimize negative margins during periods of low market prices while allowing for reasonable, and limited ramping of generation levels as market prices fluctuate in the day-ahead market.

The directive to "minimize negative margins" is not the same as prohibiting operating at 69% capacity factor "if doing so will cause an increase in the charge or charges for electric energy...". It is likely that projections of day-ahead market prices will lead to instances when the projections overestimate actual prices, leading to larger than anticipated negative margins, for which utilities will seek reimbursement from ratepayers. In addition, given that the WV PSC has previously denied recovery of costs in cases when power plants did not operate at higher capacities, utilities can reasonably be expected to interpret that language in the draft rule to mean that they *must* operate their generating units below cost at times "or else" risk no cost recovery. Finally, draft section 3.2.3 clearly establishes that utilities may actually be required by the Commission to operate under FRR (Fixed Resource Requirement) conditions, reinforcing our concern that the draft rule exceeds both the statute and the Consent Decree.

Second, the WV PSC entered into a Consent Decree in *Perrone, et al. v. Lane, et al.*, U.S. District Court Southern District West Virginia, CIVIL ACTION No. 2:24-cv-00434, on March 14, 2025 (see Exhibit 1). Paragraph 7 of the Consent Decree states:

It is further agreed that the Commission Defendants have not and will not, in their official capacities, interpret a 69 percent capacity factor as setting a minimum operational threshold... ”.

Paragraph 8 states:

If the Commission Defendants, in their official capacities, issue an order in the future that Plaintiffs claim is inconsistent with this Agreement in Section V, Plaintiffs may file a complaint, motion, or any appropriate administrative pleading, such as a petition for reconsideration, challenging that order (subject to all defenses, procedural and substantive, to such a challenge), notwithstanding any other provisions of this Consent Decree.”

Section 5.3 of the draft rule states:

The Commission expects generating electric utilities subject to the rate jurisdiction of the Commission to maintain their generation plants and schedule maintenance to minimize down time to allow it to achieve a minimum capacity factor of sixty-nine (69%) percent. The success in achieving a minimum capacity factor will initially be measured over a twelve-month period

The Consent Decree explicitly prohibits the setting of a 69% capacity factor as a minimum operational threshold and yet Section 5.3 of the draft rules “expects generating electric utilities” to “achieve a minimum capacity factor of...69%.” This is a direct violation of the Consent Decree and must be revised.

The language in draft Section 5.3.2 exceeds the authority established by the Legislature in W. Va. Code § 24-2-1d (f), and violates the Consent Decree the WV PSC agreed to be bound by. The Commission must revise section 5.3.2 to (1) remove the expectation that utilities will self-schedule and operate at times when there is a net-negative margin for the electricity generated based on PJM markets and (2) remove the 69% minimum operational threshold.

Additional comments on the draft rule

Section 2.12. The wording in this section is unclear. Specifically, “Self-schedule” as applied to electrical capacity means resources specified price takers by a resource provider ...” There appear to be words and/or punctuation missing throughout the definition

Section 4.1 states

...the commission shall review each generating unit’s consumer economic dispatch to determine if each unit is operated to produce electricity at its lowest cost consistent with consumer demand, and operational limits of the generation facility and transmission facilities.

It is not clear whether the phrase "operational limits of the generating facility" covers the requirements for operating pollution control facilities. In the past, some generating units have operated pollution controls well below optimum levels as a means to cut costs. However, while allowing the release of excess pollution may lower costs for electricity, the increased pollution will aggravate health impacts and increase the overall cost to West Virginia residents. EPA rules require pollution controls at power plants to undergo rigorous cost/benefit analyses to demonstrate their economic benefits. The draft rule should be revised to make clear that operating pollution controls at optimal levels is an expected operating requirement and should not be curtailed simply to lower operating costs of the unit.

Section 4.3 requires utilities to describe the "lowest cost output levels" of generating units on a "cost per kilowatt hour" basis. While this requirement may seem desirable, the language may have the unintended effect of driving plants to operate in excess of local or regional demand. This shift may shave tiny fractions off the cost per kilowatt hour, but comes at the expense of charging consumers for generation that may be far in excess of demand. The draft rule should, at a minimum, be modified to clarify that the output must be "consistent with consumer demand" as specified in section 4.1, and to clarify that the metric of cost per kilowatt hour must be interpreted "consistent with consumer demand".

Section 6. Overall, this information is likely to be very useful and will help the Commission assess whether coal supply contracts are scheduled properly and for reasonable prices. However, the provisions of section 6.4, directing indexing of coal costs to PJM prices, do not follow legitimate free market principles. It creates a potential for gouging consumers at times when electricity costs are high. While this shift may benefit coal companies, it creates the potential for unearned windfall profits. At a minimum, the language should be amended to specify that selection of coal supply contracts should be based on providing the lowest cost to consumers.

Section 6.1.3 asks for the "weighed average cost of coal." Should that be a "weighted" average, and if so, how is it weighted?

Section 7.2, line 2, states "If a utility is unable to meet a deadline required by this rule, and such failure is because it has not or *cannot receive the PJM in time* or for any reason outside the control of the utility may request the Commission to modify the deadline." (emphasis added). Is there a word missing in the phrase "cannot receive the PJM in time?"

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

cc:

WV Legislative Rule-making Review Committee

Case 2:24-cv-00434 Document 54-1 Filed 03/14/25 Page 1 of 8 PageID #: 650

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

BRUCE PERRONE, ROSANNA LONG,
and SIERRA CLUB,

Plaintiffs,

v.

CIVIL ACTION No. 2:24-cv-00434

CHAIRMAN CHARLOTTE R. LANE,
COMMISSIONER RENEE A. LARRICK,
and COMMISSIONER WILLIAM B. RANEY,
in their official capacities,

Defendants,

and,

APPALACHIAN POWER COMPANY and,
WHEELING POWER COMPANY,

Defendant-Intervenors.

CONSENT DECREE

I. RECITALS

WHEREAS, Plaintiffs filed this action on August 20, 2024;

WHEREAS, the Parties agree to resolve this matter through the entrance of this Consent Decree;

WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that the Consent Decree has been negotiated by the Parties in good faith and will avoid further litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, upon the consent of the parties hereto, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

II. JURISDICTION AND VENUE

1. For the purposes of this Consent Decree, the Parties stipulate that the Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and personal jurisdiction over the Parties.

2. Venue is proper in the Southern District of West Virginia, pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to this action occurred in Charleston, West Virginia, and within the Southern District of West Virginia.

III. APPLICABILITY

3. Upon the Effective Date, the provisions of this Consent Decree shall apply to and be binding upon the Parties and their successors and assigns.

4. Commission Defendants shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties include direct responsibility for compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree.

IV. DEFINITIONS

5. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. "Commission" shall mean the Public Service Commission of West Virginia;
- b. "Commission Defendants" shall mean Chairman Charlotte R. Lane, Commissioner Renee A. Larrick, and Commissioner William B. Raney, in their official capacities;
- c. "Companies" shall mean Appalachian Power Company and Wheeling Power Company;

- d. "Complaint" shall mean the Complaint filed by Plaintiffs in this action on August 20, 2024;
- e. "Consent Decree" shall mean this document;
- f. "Defendant-Intervenors" shall mean the Companies;
- g. "Effective Date" shall have the definition provided in Section VIII;
- h. "Paragraph" shall mean a portion of this Consent Decree identifiable by an Arabic numeral;
- i. "Parties" shall mean Plaintiffs, Commission Defendants, and Defendant-Intervenors collectively;
- j. "Plaintiffs" shall mean Bruce Perrone, Rosanna Long, and Sierra Club;
- k. "Section" shall mean any portion of this Consent Decree identified by a Roman numeral;

V. AGREEMENTS OF THE PARTIES

6. Notwithstanding the Parties' disagreements regarding the Commission Defendant's past orders at issue in the Complaint, the Parties agree, for the purposes of this Consent Decree, that the Commission Defendants, in their official capacities, have not in their orders issued prior to the date of this Consent Decree—including, but not limited to, its orders issued in the Companies' 2021, 2022, and 2023 Expanded Net Energy Cost ("ENEC") cases—ordered or required the Companies to run their coal-fired power plants at a 69 percent capacity factor or other minimum capacity factor when doing so is uneconomic.

7. It is further agreed that the Commission Defendants have not and will not, in their official capacities, interpret a 69 percent capacity factor as setting a minimum operational threshold but may 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.

8. If the Commission Defendants, in their official capacities, issue an order in the future that Plaintiffs claim is inconsistent with this Agreement in Section V, Plaintiffs may file a complaint, motion, or any appropriate administrative pleading, such as a petition for reconsideration, challenging that order (subject to all defenses, procedural and substantive, to such a challenge), notwithstanding any other provisions of this Consent Decree.

VI. EFFECT OF SETTLEMENT AND RESERVATION OF RIGHTS

9. This Consent Decree represents a full and final settlement among the Parties.

10. This Consent Decree resolves and discharges, and Plaintiffs release and waive, any and all civil claims, causes of action, demands, actions, and/or rights of action that Plaintiffs brought in the Complaint against Commission Defendants for alleged violations of federal law.

11. This Consent Decree shall not be taken as an admission of any wrongdoing or illegal action by the Commission Defendants or any of the other Parties.

12. This Consent Decree shall not be interpreted as an admission by any of the Parties that positions taken during this action were improper, frivolous, or without merit.

VII. COSTS

13. The Parties shall bear their own costs of this civil action, including attorneys' fees.

VIII. NOTICES

14. Unless otherwise specified herein, whenever notifications, submissions, reports, or communications are required by the Consent Decree, they shall be made in writing and addressed as follows:

a. To Plaintiffs:

By mail to:
Amanda Demmerle
Appalachian Mountain Advocates, Inc.
P.O. Box 1157
Charleston, WV 25331

And by email to:
ademmerle@appalmad.org

b. To Commission Defendants:

Public Service Commission of West Virginia
Office of the General Counsel
201 Brooks Street
Charleston, WV 25301

c. To the Companies:

Appalachian Power Company
Wheeling Power Company
200 Association Drive
Charleston, WV 25311

IX. EFFECTIVE DATE

15. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter this Consent Decree is granted, whichever occurs first, as recorded on the Court's docket.

X. RETENTION OF JURISDICTION

16. The Court shall retain jurisdiction over this action until termination of this Consent Decree, for the purpose of resolving disputes arising under this Consent Decree, enforcing the terms of this Consent Decree, or entering orders modifying this Consent Decree or effectuating or enforcing compliance with the terms of this Consent Decree.

17. Except as provided specifically herein, the Parties reserve all legal and equitable rights and defenses available to them to enforce or defend against enforcement of the provisions

Case 2:24-cv-00434 Document 54-1 Filed 03/14/25 Page 6 of 8 PageID #: 655

of this Consent Decree. Before a Party invokes the Court's jurisdiction to resolve a dispute among the Parties, the Party shall send a written notice to the other Party outlining the nature of the dispute and requesting informal negotiations among the Parties to resolve the matter. If the Parties are unable to resolve the matter within fifteen (15) days from the date of the notice (or within an additional period of time agreed to by the Parties), the noticing Party shall provide the other Party with a subsequent written notice giving an opportunity to remedy such asserted breach within a reasonable time period (no less than fifteen (15) days) of receiving the notice. If the asserted breach is not cured within the applicable time period, any Party may seek relief from the Court.

XI. MODIFICATION

18. Except as specifically provided herein, the terms of this Consent Decree, including the attached appendices, may be modified only by a subsequent written agreement signed by the Parties. Where the modification constitutes a material change to this Decree, it shall be effective only upon approval by the Court.

XII. TERMINATION

19. This Consent Decree shall automatically terminate at the time that none of the Commission Defendants remain on the Commission.

XIII. LODGING AND ENTRY OF DECREE

20. The Parties agree to cooperate in good faith in order to obtain the Court's review and entry of this consent Decree.

XIV. SIGNATORIES/SERVICE

21. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

Case 2:24-cv-00434 Document 54-1 Filed 03/14/25 Page 7 of 8 PageID #: 656

22. The Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

XV. INTEGRATION

23. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding between and amongst the Parties with respect to the settlement embodied in the Consent Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding, or promise constitutes any part of this Consent Decree or the settlement it represents, nor shall it be used in construing the Terms of this Consent Decree.

XVI. FINAL JUDGMENT

24. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the Parties. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Rules 54 and 58 of the Federal Rules of Civil Procedure.

ENTERED: _____

THOMAS E. JOHNSTON
UNITED STATES DISTRICT JUDGE

/s/ J. Michael Becher _____

Dated: March 14, 2025 _____

For the Plaintiffs Bruce Perrone, Rosanna Long, and Sierra Club

Case 2:24-cv-00434 Document 54-1 Filed 03/14/25 Page 8 of 8 PageID #: 657

/s/ Jeffrey A. Foster

Dated: March 14, 2025

For Commission Defendants Chairman Charlotte R. Lane, Renee A. Larrick, and William B. Raney, in their official capacities

/s/ Zachary C. Schauf

Dated: March 14, 2025

For Intervenor Defendants Appalachian Power Company and Wheeling Power Company

Desk Review Copy of Online Comment**Name:** Kevin Fagan**Address:** 1300 Kanawha Blvd., E.**City, State Zipcode:** Charleston, WV 25301**County:** Kanawha**Subject:** Comment in Protest of Case No. 26-0633-E-GI**Date of Comment:** 08/10/2026 04:49 PM**Date Email Confirmed:** 08/10/2026 04:49 PM**Date Printed:** 08/11/2026 10:36 AM**Comment**

Ms. Buckley,

The United Mine Workers of America ("UMWA"), which represents thousands of West Virginians including mine workers, public and private sector employees, retirees, and families who reside in communities dependent upon the coal industry, submits the following comments regarding the Commission's proposed rulemaking under HB 2014.

The draft rule is not strong enough to ensure that West Virginia utilities use our most abundant and reliable baseload fuels in a manner that best serves the citizens of West Virginia. The draft rule is too weak to effectively oversee regulated utilities. As the UMWA recently witnessed during a public hearing before the Commission, regulated utilities provide information only when it serves their interest or when required to do so in a public forum. During that hearing, the information provided by the utilities was incomplete and omitted significant details that would have demonstrated that the project would increase costs well beyond the requested rate hikes previously provided to the public and the Commission. The utilities often cite confidentiality or proprietary business restrictions that prevent the release of this critical information.

The Commission must draft a rule that will allow the public to have the tools and data necessary to ensure utilities comply with state law and operate these plants in the best interest of West Virginians.

When HB 2014 was passed into law, expectations were that utilities would upgrade West Virginia's existing coal-fired power plants. This is especially relevant as the federal government provided funding to carry out these upgrades. To date, we are unaware of any work that has actually been performed with these federal grants.

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. Additionally, the legislation required that coal-fired power plants are to operate for the longest possible lifespan.

The intent of the legislation was to ensure that West Virginia citizens continued to receive the benefits of our coal industry which produces the most abundant source of baseload fuel available. Coal is a critical component of West Virginia's economic, social, and energy security.

Please be advised that the UMWA will submit its complete commentary under separate cover.

11:54 AM AUG 11 2026 EXEC SEC DIV
United Mine Workers of America

KEVIN F. FAGAN
GENERAL COUNSEL



TELEPHONE
(703) 291-2425
FAX (703) 935-1304
EMAIL: KFAGAN@UMWA.ORG

UNITED MINE WORKERS' HEADQUARTERS
18354 QUANTICO GATEWAY DRIVE, SUITE 200

Triangle, VA

22172-1779

August 11, 2026

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

26-0633 - E-GT

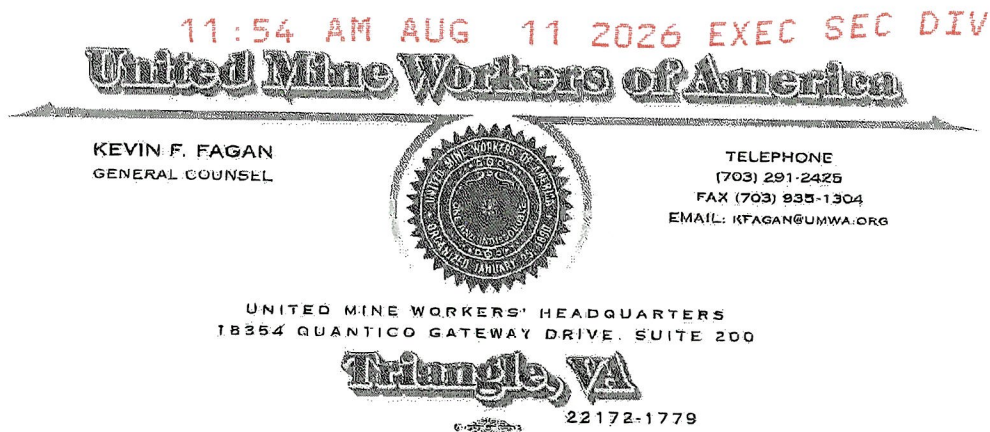
Ms. Buckley,

On August 9, 2026, the UMWA submitted its comment regarding the above case. Unfortunately, the submission interface did not accommodate the entire document which I noted at the time of filing. I have attached the Union's entire comment to this correspondence and I appreciate the Commission's consideration of the UMWA's comment.

Thank you.

A handwritten signature in black ink, appearing to read "K. Fagan".

Kevin Fagan



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

Via Electronic Filing

RE: **Case Number 26-0633-E-GI**
General Investigation into Adopting and
Implementing Rules Governing Electric
Generating Capacity Regulations.

Ms. Buckley,

The United Mine Workers of America ("UMWA"), which represents thousands of West Virginians including mine workers, public and private sector employees, retirees, and families who reside in communities dependent upon the coal industry, submits the following comments regarding the Commission's proposed rulemaking under HB 2014.

The draft rule is not strong enough to ensure that West Virginia utilities use our most abundant and reliable baseload fuels in a manner that best serves the citizens of West Virginia. The draft rule is too weak to effectively oversee regulated utilities. As the UMWA recently witnessed during a public hearing before the Commission¹, regulated utilities provide information only when it serves their interest or when required to do so in a public forum. During that hearing, the information provided by the utilities was incomplete and omitted significant details that would have demonstrated that the project would increase costs well beyond the requested rate hikes previously provided to the public and the Commission. The utilities often cite confidentiality or proprietary business restrictions that prevent the release of this critical information.

The Commission must draft a rule that will allow the public to have the tools and data necessary to ensure utilities comply with state law and operate these plants in the best interest of West Virginians.

When HB 2014 was passed into law, expectations were that utilities would upgrade West

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

Virginia's existing coal-fired power plants. This is especially relevant as the federal government provided funding to carry out these upgrades. To date, we are unaware of any work that has actually been performed with these federal grants.

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.

Additionally, the legislation required that coal-fired power plants are to operate for the longest possible lifespan.

The intent of the legislation was to ensure that West Virginia citizens continued to receive the benefits of our coal industry which produces the most abundant source of baseload fuel available. Coal is a critical component of West Virginia's economic, social, and energy security.

The proposed rule will not achieve the necessary results required to maintain a reliable and secure coal industry. The new rule must require all energy sources to demonstrate the full cost of generation, including buildout costs associated with new energy sources, and ability to transmit this power to the customers of West Virginia or to out-of-state users.

West Virginia coal plants have been running below their available capacity. When utilities unilaterally decrease capacity, the economic harm is not solely borne by rate payers but also by mine workers and others working in the coal industry. Coal mines are forced to scale back their workforce, and the communities that rely on those jobs are negatively affected.

As capacity is reduced from our electric grid, it becomes exposed to shortfalls and West Virginia ratepayers, who are already paying higher costs so utilities can fund other more expensive energy projects, are the ones who feel the consequences.

West Virginians have paid for these power plants and they belong to the people of the state. These plants were built and maintained with ratepayer dollars. Utilities continue to profit, but are failing to meet their obligations to the ratepayers. Instead, they take those profits and pay generous dividends to shareholders and pump money into out-of-state projects designed to benefit data centers while neglecting the citizens they are required to serve.

The UMWA urges the Commission to require real-time operational data; mandate detailed reporting on outages, curtailments, and capacity reductions; enforce strict timelines for plant upgrades; increase transparency requirements; ensure utilities cannot reduce plant output for reasons unrelated to reliability or safety; and provide the Commission and other agencies with full authority to monitor and intervene.

West Virginians have invested in these plants for decades. They deserve accountability, transparency, and maximum performance from the utilities that operate them.

Given the importance of this rulemaking and the statewide import of HB 2014, the UMWA formally requests that the Commission hold a public hearing to allow workers, communities, and

ratepayers to speak directly on these issues.

Further, the UMWA urges the Commission to strengthen the rule substantially to ensure that West Virginia's coal-fired power plants are operated and upgraded in accordance with the law, and in the best interest of the workers, families, and communities who depend on them.

On behalf of the United Mine Workers of America, I thank you for your attention to and consideration of the UMWA's comments set forth herein.

Sincerely,

A handwritten signature in dark ink, appearing to read "K. Fagan", with a stylized flourish at the end.

Kevin Fagan
General Counsel
United Mine Workers of America

cc : Brian Sanson, UMWA International President
Mike Phillippi, UMWA International Secretary-Treasurer

FAX COVER SHEET

TO	Karen Buckley
COMPANY	WV PSC
FAX NUMBER	13043400325
FROM	Jarrod Staunton
DATE	8/11/2026 11:47:02 AM EDT
RE	Case No 26-0633-E-G1

COVER MESSAGE

Comments with cover letter.

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,

Ms. Betty Rivard

1532 Lee St E Charleston, WV 25311-2404 bettyrivard@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.

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.

The Commission needs to protect the interests of the public, and not put a thumb on the economics of power plant operation. I agree with the following principles:

- 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.

Fulfill your mission to act in the public interest and don't put an unfair cost burden on the residents and businesses of this state. I urge the West Virginia Public Service Commission to modify this proposal to protect ratepayers.

Sincerely,

Ms. Lori Sundstrom

164 Beautiful Ct Martinsburg, WV 25404-0395 napua2701@yahoo.com

Dear WV Public Service Commission Info,

Regarding case #26-0633:

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

HB2014 - The worst thing that ever happened to the citizens of West Virginia!

Sincerely,

Ms. Luanne McGovern

858 Alta Rd Charleston, WV 25314-1810

Lmmcg32@yahoo.com

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Sincerely,

Ms. Carolyn Rodis

41 Sage Pl Shepherdstown, WV 25443-1640 cjrodیس@yahoo.com

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Sincerely,
Mrs Alecia Rice
25941 Milton, WV 25541
aleciarice@frontier.com

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Sincerely,

Mr. Matthew Lebo

1628 6th Ave Apt 3 Huntington, WV 25703-1439 matthew@matthewlebo.com

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Sincerely,

Mrs Elaine Matheny

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

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Sincerely,

Ms Heather Ransom

14724 Edray Rd Cass, WV 24927-9163

hdransom2014@gmail.com

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Ms Brenda Ellid

1132 Hickory Rd Charleston, WV 25314-1231 brenda.craig.ellis@gmail.com

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Ms. Sally Roberts Wilson

54 Cheat Canyon Park Dr Morgantown, WV 26508-0008 sallyrobertswilson@gmail.com

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Sincerely,

Mrs. Diane Wooten

1309 55th St Vienna, WV 26105-3271

cameo-stumble2w@icloud.com

Neal, Jane

From: angelroton78@everyactioncustom.com on behalf of Angela Roton <angelroton78@everyactioncustom.com>
Sent: Friday, August 14, 2026 10:20 PM
To: Neal, Jane
Subject: Put Ratepayers First in HB2014 Rulemaking

CAUTION: External email. Do not click links or open attachments unless you verify sender.

Dear WV Public Service Commission Info,

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Sincerely,

Ms Angela Roton

2085 Coopers Creek Rd Charleston, WV 25312-8029 angelroton78@gmail.com

Neal, Jane

From: kc_corbin88@everyactioncustom.com on behalf of Kristi Corbin <kc_corbin88@everyactioncustom.com>
Sent: Friday, August 14, 2026 8:27 PM
To: Neal, Jane
Subject: Put Ratepayers First in HB2014 Rulemaking

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Sincerely,

Ms Kristi Corbin

1460 Graces Cabin Rd Springfield, WV 26763-8803 kc_corbin88@hotmail.com

02:54 PM AUG 17 2026 EXEC SEC DIV

United Mine Workers of America

KEVIN F. FAGAN
GENERAL COUNSEL



TELEPHONE
(703) 291-2425
FAX (703) 935-1304
EMAIL: KFAGAN@UMWA.ORG

UNITED MINE WORKERS' HEADQUARTERS
18354 QUANTICO GATEWAY DRIVE, SUITE 200

Triangle, VA



22172-1779

August 11, 2026

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

26-0633-E-61

Ms. Buckley,

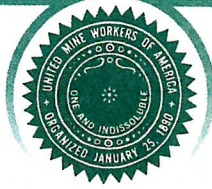
On August 9, 2026, the UMWA submitted its comment regarding the above case. Unfortunately, the submission interface did not accommodate the entire document which I noted at the time of filing. I have attached the Union's entire comment to this correspondence and I appreciate the Commission's consideration of the UMWA's comment.

Thank you.

Kevin Fagan

UNITED MINE WORKERS OF AMERICA

KEVIN F. FAGAN
GENERAL COUNSEL



TELEPHONE
(703) 291-2425
FAX (703) 935-1304
EMAIL: KFAGAN@UMWA.ORG

UNITED MINE WORKERS' HEADQUARTERS
18354 QUANTICO GATEWAY DRIVE, SUITE 200



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

Via Electronic Filing

RE: **Case Number 26-0633-E-GI**
General Investigation into Adopting and
Implementing Rules Governing Electric
Generating Capacity Regulations.

Ms. Buckley,

The United Mine Workers of America ("UMWA"), which represents thousands of West Virginians including mine workers, public and private sector employees, retirees, and families who reside in communities dependent upon the coal industry, submits the following comments regarding the Commission's proposed rulemaking under HB 2014.

The draft rule is not strong enough to ensure that West Virginia utilities use our most abundant and reliable baseload fuels in a manner that best serves the citizens of West Virginia. The draft rule is too weak to effectively oversee regulated utilities. As the UMWA recently witnessed during a public hearing before the Commission¹, regulated utilities provide information only when it serves their interest or when required to do so in a public forum. During that hearing, the information provided by the utilities was incomplete and omitted significant details that would have demonstrated that the project would increase costs well beyond the requested rate hikes previously provided to the public and the Commission. The utilities often cite confidentiality or proprietary business restrictions that prevent the release of this critical information.

The Commission must draft a rule that will allow the public to have the tools and data necessary to ensure utilities comply with state law and operate these plants in the best interest of West Virginians.

When HB 2014 was passed into law, expectations were that utilities would upgrade West

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

Virginia's existing coal-fired power plants. This is especially relevant as the federal government provided funding to carry out these upgrades. To date, we are unaware of any work that has actually been performed with these federal grants.

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.

Additionally, the legislation required that coal-fired power plants are to operate for the longest possible lifespan.

The intent of the legislation was to ensure that West Virginia citizens continued to receive the benefits of our coal industry which produces the most abundant source of baseload fuel available. Coal is a critical component of West Virginia's economic, social, and energy security.

The proposed rule will not achieve the necessary results required to maintain a reliable and secure coal industry. The new rule must require all energy sources to demonstrate the full cost of generation, including buildout costs associated with new energy sources, and ability to transmit this power to the customers of West Virginia or to out-of-state users.

West Virginia coal plants have been running below their available capacity. When utilities unilaterally decrease capacity, the economic harm is not solely borne by rate payers but also by mine workers and others working in the coal industry. Coal mines are forced to scale back their workforce, and the communities that rely on those jobs are negatively affected.

As capacity is reduced from our electric grid, it becomes exposed to shortfalls and West Virginia ratepayers, who are already paying higher costs so utilities can fund other more expensive energy projects, are the ones who feel the consequences.

West Virginians have paid for these power plants and they belong to the people of the state. These plants were built and maintained with ratepayer dollars. Utilities continue to profit, but are failing to meet their obligations to the ratepayers. Instead, they take those profits and pay generous dividends to shareholders and pump money into out-of-state projects designed to benefit data centers while neglecting the citizens they are required to serve.

The UMWA urges the Commission to require real-time operational data; mandate detailed reporting on outages, curtailments, and capacity reductions; enforce strict timelines for plant upgrades; increase transparency requirements; ensure utilities cannot reduce plant output for reasons unrelated to reliability or safety; and provide the Commission and other agencies with full authority to monitor and intervene.

West Virginians have invested in these plants for decades. They deserve accountability, transparency, and maximum performance from the utilities that operate them.

Given the importance of this rulemaking and the statewide import of HB 2014, the UMWA formally requests that the Commission hold a public hearing to allow workers, communities, and

ratepayers to speak directly on these issues.

Further, the UMWA urges the Commission to strengthen the rule substantially to ensure that West Virginia's coal-fired power plants are operated and upgraded in accordance with the law, and in the best interest of the workers, families, and communities who depend on them.

On behalf of the United Mine Workers of America, I thank you for your attention to and consideration of the UMWA's comments set forth herein.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Fagan", with a stylized flourish at the end.

Kevin Fagan
General Counsel
United Mine Workers of America

cc : Brian Sanson, UMWA International President
Mike Phillippi, UMWA International Secretary-Treasurer

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Sincerely,

Mrs. Cindy Lewellen

546 Westwood Ave Morgantown, WV 26505-2115 cwlewellen@gmail.com

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Sincerely,

Ms Amber Boggs

1958 Keller Ln Williamstown, WV 26187-8298 amberisagrownup@gmail.com

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Sincerely,

Mr. Jeff Myers

723 Price Run Rd Caldwell, WV 24925-9517 jeffm6040@gmail.com

01:23 PM AUG 18 2026 EXEC SEC DIV

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Sincerely,

Mr. Derek Adkins

944 Norway Ave Huntington, WV 25705-3948 fatduckderek@comcast.net

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Mr. Dustin Adkins

3408 Blooming Dr Hurricane, WV 25526-1359 dustinaadkins@icloud.com

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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,

Mrs. Marsha Wells

110 Twyford Ave Sistersville, WV 26175-8888 marshawells@hotmail.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.

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.

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

Sincerely,

Me Tom Carpenter

317 7th St Moundsville, WV 26041-2124

thomaswcarpenter@gmail.com

01:24 PM AUG 18 2026 EXEC SEC DIV

Dear WV Public Service Commission Info,

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

Sincerely,

Mrs. Susan Wade

39 Girard Dr Cross Lanes, WV 25313-2170 susanwade@suddenlink.net

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Sincerely,

Mr Ivan Frishberg

2099 Baker Mountain Dr Yellow Spring, WV 26865 ivanfrishberg@gmail.com

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Sincerely,

Mrs. Kitty Keefer

521 Jacob St Charleston, WV 25301-1900

wvmountaingirl8@gmail.com

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Sincerely,

Rev Ray Stonestreet

113 Bias Ln Charleston, WV 25312-6619

rdstreet@gmail.com

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Sincerely,

Mr. Dana Adkins

2009 Route 75 Kenova, WV 25530-9732

dshaneadkins@gmail.com

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Sincerely,

Miss Julie Wingard

402 W Maple Ave Fayetteville, WV 25840-1418 jswingard@hotmail.com

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Sincerely,

Mr Dan Faugl

1507 Oakhurst Ave Parkersburg, WV 26101-4907 danielfaugl@yahoo.com

Dear WV Public Service Commission Info,

01:32 PM AUG 18 2026 EXEC SEC DIV

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Sincerely,

Mr. Richard Stonestreet

106 White St Apt E Charleston, WV 25302-4941 stonestreetrich@gmail.com

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01:32 PM AUG 18 2026 EXEC SEC DIV

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Sincerely,

Ms. F Bean

525 Depot St Romney, WV 26757-1300

dispatcher9wv@yahoo.com

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Sincerely,

Mr. Richard Kinder

132 Kinder Ln Danese, WV 25831-1100

rrekinder@aol.com

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Sincerely,

Mrs. Cynthia Anderson

191 Firefly Ln Martinsburg, WV 25403-1071 cnd0517@gmail.com

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Sincerely,

Ms. BONNIE Allen

451 Camellia Dr Bluefield, WV 24701-9085 bonnieallen953@gmail.com

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Sincerely,

Rev Ralph Dunkin

27 Finch Ave Wheeling, WV 26003-2657

rwd300@yahoo.com

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Sincerely,

Ms Mary Alice Milnes

107 Earle St Elkins, WV 26241-3909

masmilnes@gmail.com

03:13 PM AUG 18 2026 EXEC SEC DIV

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Sincerely,

Mr Michael Chelnov

1000 Purusha Pl Apt 123 Romney, WV 26757-5016 chelnovm@gmail.com

04:07 PM AUG 18 2026 EXEC SEC DIV

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Utility rates need reigned in.

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Sincerely,

Ms Kemmeth Rivers

3513 Carpenter Ave Hurricane, WV 25526-1360 kemmethr@mac.com

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Sincerely,

Mr. Larry Adkins

1522 Clearview Hts Charleston, WV 25312-5948 ladkins_adkinsdesign@msn.com

09:21 AM AUG 19 2026 EXEC SEC DIV

Dear WV Public Service Commission Info,

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Texas last big blackout occurred as a result of politically well connected but basically incompetent or irresponsible fossil fuel powered energy providers failing to serve the public. The result has been a housecleaning backlash which led to Texas becoming a the top renewables state in the country. The insiders were kicked out and now Texans are enjoying cheap reliable Power. PSC should bear this example in mind.

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

Sincerely,

Ms Regan Quinn

1113 Highland Rd Charleston, WV 25302-3007 reganequinn1@proton.me

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Sincerely,

Mr Warren Neal

165 Scaggs Run Rd Bluefield, WV 24701-5082 warrenneal99@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.

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,

mr mike don

Donahue Harpers Ferry, WV 25425

shenandoah117@comcast.net

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Mr. Joe Stanley

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

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Ms Anne Chopyak

89 Pocahontas St Buckhannon, WV 26201-2528 annechopyak@yahoo.com

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Mr Steve Silverberg

907 Lost World Rd Lewisburg, WV 24901-5250 okeechobee_steve@hotmail.com

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Mr. Alan and Carol Kuhlman

4 Granville Dr Elkview, WV 25071-9350

alankuhlman1950@gmail.com