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August 10, 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 *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,

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Enclosures

12:16 PM AUG 10 2026 EXEC SEC DIV

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

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 comments to the Public Service Commission ("the Commission") regarding the proposed legislative Rules Governing Electric Generating Capacity Utilization ("Proposed Rules" or "Rules"), which were filed on July 20, 2026. The Commission states that these proposed rules are intended to implement the provisions of W.V. Code § 24-2-1d that were added by the Legislature in 2025, subparts (d) through (f), pursuant to the regulatory authority provided in § 24-2-1d.[1]

This rulemaking comes at a time when rising electricity bills in West Virginia are a significant hardship for "low-fixed income and other residential customers that are among the most economically challenged in the country," as

[1] July 20, 2026 Order at 1 (order opening the present docket).

the Commission recently observed.[2] Indeed, more than one third of households in West Virginia are considered energy-burdened, which means that they spend more than 6% of their household income on energy.[3] The average monthly electric bill for residential customers is among the highest in the country, at $155 per month.[4] As the thousands of public comments to the Commission in recent years attest, every increase makes an impact.

Unfortunately, the Proposed Rules will further drive up energy bills for customers, by incentivizing utilities to operate their coal units more frequently without regard to market price. This runs contrary to the clear instruction in Section 24-2-1d(f) that nothing under the statute requires the utility to achieve a specific capacity factor "if doing so will cause an increase in the charge or charges for electric energy . . . ." (emphasis added). More specifically, the Proposed Rules set standards and incentives that will encourage uneconomic operation of the utilities' power plants, and the resulting energy market losses would increase customers' rates. In many instances, the Proposed Rules also exceed the authority granted to the Commission under the statute.

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[2] Case No. 26-0508-E-42T, July 31, 2026 Order at 19.

[3] W. Va. Housing Dev. Fund, Statewide Housing Needs Assessment Report (2025), at 2, https://www.wvhdf.com/pdf/housing-needs-assessment-for-the-state-of-west-virginia-2025/.

[4] U.S. Energy Info. Admin., Annual Electric Power Industry Report, Form EIA-861, tbl. 5A, [2024 Average Monthly Bill- Residential] https://www.eia.gov/electricity/sales_revenue_price/pdf/table_5A.pdf (West Virginia has the 12th highest average monthly electric bills); *see also* Sarah Elbeshbishi, *Surging Electricity Costs are Pushing Residents to Desperate Measures. Here's How Some West Virginians are Struggling Through*, Mountain State Spotlight (Jan. 4, 2026), https://mountainstatespotlight.org/2026/01/04/voices-of-rising-power-costs/.

CAG/SUN/EEWV thus respectfully urge the Commission to revise the Proposed Rules. Specifically, and as explained in more detail below, CAG/SUN/EEWV recommend striking 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.

I. Proposed Rules for Generating Unit Dispatch (Sections 4 and 5)

Sections 4 and 5 of the Proposed Rules both contain several provisions that would drive increased generation at coal units without regard to market prices for energy. These include Sections 4.1, 4.3, 4.3.1, 4.4, 5.3, and 5.3.2. There are several reasons these provisions should be stricken from the Proposed Rules. First, they are contrary to W.V. Code § 24-2-1d because they will increase charges to customers if they force the utilities to deviate from the principles of economic dispatch. Second, they exceed the authority granted to the Commission in Section 24-2-1d. And finally, Section 4 impermissibly alters the statutory definition of "consumer economic dispatch," significantly changing the meaning of the provision and the scope of the Commission's inquiry.

A. The Proposed Rules establish standards and incentives that will drive up customers' energy costs, if approved.

W.V. Code § 24-2-1d(f) establishes a maintenance standard for utility-owned generating units, requiring those units be maintained so they are "able to achieve at least a 69% capacity factor." This provision, which also directs the

Commission to promulgate legislative rules in order to carry out "its duties and obligations as set forth herein," provides in full:

> 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 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.

W.V. Code § 24-2-1d(f) (emphasis added). It is noteworthy that the Legislature included *two* sentences stressing that the utilities should not operate their generating units if doing so would drive up costs for customers.[5] The Commission's rulemaking under this provision thus can extend only that far: the Proposed Rules cannot require the state's utilities to operate their plants in a way that results in increasing energy costs for West Virginia ratepayers.

However, Sections 4 and 5 of the Proposed Rules would do just that, by driving the utilities to operate their units more frequently without regard to PJM market prices. All four West Virginia electric utilities have stated that they serve

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[5] W.V. Code § 24-2-1d(c), a previously enacted subsection still in effect, also establishes a statutory purpose of keeping rates low: "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 . . . ."

customers and operate their units according to the principle of economic dispatch, and by participation in PJM's Day-Ahead Energy Market.[6] In this year's ENEC proceeding, Appalachian Power Co. and Wheeling Power Co. Witness Jason Stegall explained how PJM's economic dispatch model allows utilities to serve their customers with the lowest cost resources:

> PJM, through its economic dispatch model, determines the ultimate level of generation required to meet the load based on the units available in each hour and the economics of those units. In basic terms, using the offer curves from every available unit as well as operational information like each unit's ability to ramp up and ramp down generation, PJM determines the lowest cost to serve its load in each hour. During any given hour, the Companies' units may well not be the lowest cost units to dispatch. This allows PJM to determine the amount of available generation and cost of available generation. All available generation is then "stacked" from lowest cost to highest cost, and the resulting energy market price reflects the highest cost unit needed to serve load in each hour while also managing the transmission system by factoring in transmission constraints.
>
> . . . .
>
> As I stated, this is beneficial to the Companies' customers because it ensures that the lowest cost units are prioritized to serve the load and ensures that the Companies are not operating their units at a loss. This dynamic is important because, when the Companies' load is in excess of its supply resources, or the PJM market produces energy at a lower cost than the Companies' own resources can, the Companies' customers will be responsible for the lower of internal cost to produce or the market price for spot energy.[7]

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[6] *See, e.g.*, Case No. 26-0469-E-ENEC, Direct Testimony of Jason M. Stegall on behalf of Appalachian Power Co. and Wheeling Power Co., APCo/WPCo JMS-D, at Bates 320–27; Case No. 25-0772-E-ENEC, Direct Testimony of Andrea Cario on behalf of Monongahela Power Co. and the Potomac Edison Co., MP-PE Attachment AC-D, at Bates 394–95.

[7] Case No. 26-0469-E-ENEC, APCo/WPCo JMS-D, at Bates 323–24 (emphasis added).

On the other hand, when a utility's energy supply, i.e., the output of its owned generation, is equal to or greater than its customer load, or when the generation units are not following the principle of economic dispatch, customers are responsible for the internal cost to produce that energy supply *regardless of whether market prices are lower than the units' operating costs.*[8] If a generation unit operates when its internal costs are higher than the market price, each kilowatt-hour that the utility sells into the PJM energy market is sold at a loss, and those losses are passed on to customers through the ENEC charge.[9]

By establishing various standards and incentives that will drive increased generation without regard to market price, the Proposed Rules will increase the likelihood that the generating units incur such losses on the market. This is especially so to the extent the Commission plans to rely on the utility reports in ENEC or other proceedings. These include:

- **Section 5.3**. "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." (emphasis added)

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[8] *See* Case No. 25-0413-E-ENEC, Transcript of August 12, 2025 Evidentiary Hearing at 278 (APCo/WPCo Witness Stegall) ("[I]n the end, coal that's burned gets expensed and that's what we seek to recover through the ENEC.").

[9] *See, e.g.,* Case No. 24-0413-E-ENEC, Direct Testimony of Chelsea Hotaling on behalf of CAG/SUN/EEWV, CAG CH-D, at Bates 17–18 ("AEP's operational decisions ultimately impact the ENEC costs paid by customers. When a unit's energy margin is negative (i.e., the variable costs are higher than the energy/ancillary revenues), that can increase the costs borne by ratepayers. Such costs are passed on through the ENEC charge.") (footnote omitted).

- By establishing a minimum capacity factor and measuring "success" as achieving that capacity factor, this proposed rule sets an operational target for the utilities that has no relationship to the market price or whether such generation is economic – in addition to going well beyond the provisions of the statute as discussed further below.

- **Section 5.3.2.** "The utilities are expected to take advantage of PJM Manual 11 Market Rules 2.3.3., et seq., which 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. 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." (emphasis added)

  - This section sets an explicit expectation that the utilities will not follow the principle of economic dispatch, under which they would allow PJM's Day-Ahead market to determine the optimal level of dispatch for these units according to its least cost methodology. This provision also directs utilities to "minimize negative margins" but does not direct them to break even or result in total positive margins for customers – in other words, the provision expects the utilities to run the units at a loss but simply to minimize that loss by manually dispatching its units.

- **Section 4.1.** "Each electric utility subject to the jurisdiction of the Commission must plan the operation of each generating unit under its control to produce electricity at the lowest achievable cost per kilowatt hour."

  - This provision sets a target energy output level based on each unit's own internal cost to produce, without any reference to market prices. If the market prices are lower than a generation unit's variable costs, then running the unit at its lowest achievable cost per kilowatt hour simply means setting a target to lose customers' money.

- **Sections 4.3 and 4.3.1.** "If plants are run at less than the lowest cost output levels the utility shall quantify . . . . If running generation units at higher output levels than those achieved during any reporting period would have resulted in lower cost per kilowatt hour of output, the utility must explain . . . ."; "If ramping output resulted in generating at less than optimum consumer economic dispatch was a trade-off between optimum consumer economic dispatch of generation units and lower cost market purchases, then the utility must quantify . . . ."
    - These sections incentivize high capacity factors without regard to market prices by creating onerous reporting requirements that apply only if the unit does not achieve "optimum" dispatch levels.
- **Section 4.4.** "If a utility subject to this rule has chosen not to self-schedule all or any of its generation capacity during any day or portions of a day it shall explain why it made that decision."
    - This conditional reporting requirement further incentivizes self-scheduling, or operating the units without regard to the market price of energy—including when such operation is uneconomic.

As noted above, the state's major electric utilities have both stated an intention to follow the principle of economic dispatch. Thus, to the extent these standards and incentives change how the utilities operate their units, i.e., cause them to deviate from the principle of economic dispatch, it will be to operate their units during times when they are *not* economic, i.e., when doing so would lose money. In other words, by incentivizing utilities to depart from economic dispatch and run the coal units when it is uneconomic to do so, the Proposed Rules would increase customers' bills compared to the utilities' current practices.[10]

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[10] Regarding 5.3.2's direction to "take advantage of the PJM Manual 11 Market Rules 2.3.3., et seq., which allow self-scheduling rather than allowing PJM to accept or reject their output into

B. Parts of Sections 4 and 5 exceed the scope of authority granted by the Legislature related to the maintenance of generating units.

Many of the provisions discussed above, *see* section I.A. of these comments, clearly focus on the operation of utility-owned generation units and the utilities' participation in the PJM energy markets. However, the grant of authority to the Commission in W.V. Code § 24-2-1d(f) relates only to the *maintenance* of generating units, not to their operation. Section 1d(f) states, "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." (emphasis added) Moreover, Section 1d(e) directs the Commission only to conduct a review of consumer economic dispatch, not to establish regulations related to unit dispatch. W.V. Code § 24-2-1d(e) ("In order to ensure the state's existing generating units can continue to meet future generation needs, the commission shall conduct a review of each generating unit's current consumer economic dispatch.")

In fact, the only explicit statement relevant to the operation of the utilities' generating units is to what they *cannot be required to do*: operate at 69% when it would "cause an increase in the charge or charges for electric energy." *Id.* § 24-

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the day-ahead market," the utilities have stated that they do self-schedule their units, but only if the overall economic outlook is positive, or for operational purposes such as testing. *See, e.g.*, Case No. 26-0469-E-ENEC, Direct Testimony of Jason Stegall at Bates 339. This practice still allows PJM's market construct to determine the level of dispatch for the units between the units' economic minimum and economic maximum.

2-1d(f). Thus, any rule that sets a target capacity factor or level of output or otherwise relates to the unit operation instead of maintenance, exceeds the statutory authority of the Commission.

And several Proposed Rules do cross this line:

- **Section 5.3.** "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 . . . ."
    - This Proposed Rule focuses strictly on the 69% capacity factor, and the generating units' "success in achieving" that capacity factor, rather than the focusing on the maintenance that will enable the generating units' ability to achieve that capacity factor. In doing so, this Proposed Rule not only contorts the statutory text from § 24-2-1d(f), but also improperly shifts the Commission's regulatory focus from maintenance to operation.
- **Section 5.3.2** sets the expectation that the utilities will self-schedule their generating units. This rule has no connection to maintenance of the units at all, nor any connection to other aspects of W.V. Code § 24-2-1d(f). The only possible connection to Section 1d is to the list of factors that the Commission is directed to "review" under Section 1d(e). This new standard, which clearly goes beyond "reviewing" the utilities' activities, exceeds the statutory authority granted to the Commission in § 24-2-1d(f).
- **Section 4.1.** Similarly, Section 4.1's directive that the utilities "must plan the operation of each generating unit . . . to produce electricity at the lowest achievable cost per kilowatt hour" has no connection to maintenance of the generation units, and thus exceeds the Commission's statutory authority under this section.

C. Section 4 impermissibly alters the definition of "consumer economic dispatch" from W.V. Code § 24-2-1d(e).

The Commission's Proposed Rule changes the definition of "consumer economic dispatch" from the statute, significantly altering its meaning and the scope of the Commission's inquiry.

Section 24-2-1d(e) provides: "For purposes of this section, 'consumer economic dispatch' shall mean 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." (emphasis added) However, the Commission's Proposed Section 4.1 changes "the lowest cost" to "its lowest cost": "[T]he 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. . . ."

The distinction between "the" and "its" in this context is significant. To produce electricity at *the* lowest cost means using the lowest cost sources of electricity to serve load first, including the utility meeting load with its own lowest cost generation resources and lower cost energy purchases, while reducing generation when a unit's costs exceed market prices. Whereas, for each generating unit to produce electricity at *its* lowest cost, the frame of reference is reduced to the single unit, and suggests that the utility should be operating the

unit at the most cost-efficient level of output regardless of whether there are cheaper energy sources available. Again, this Proposed Rule would drive up the costs of electricity production, in contravention of W.V. Code § 24-2-1d(c) and (f).

* * * *

In conclusion, several provisions of Sections 4 and 5 of the Proposed Rules should be stricken because they (i) ignore or violate the provisions in § 24-2-1d(f) that state that the utilities cannot be made to operate their units in a way that increases costs to customers, and/or (ii) exceed the statutory authority granted to the Commission in the statute. These provisions are Sections 4.1, 4.3, 4.3.1, 4.4, 5.3, and 5.3.2.

II. Indexed Coal Supply Contracts (Section 6.4)

Proposed Section 6.4 exceeds the scope of the statutory authority granted to the Commission in the statute. The Proposed Rule reads:

> Coal Contracting. -- When eliciting requests for coal contracting proposals, each electric utility subject to these rules shall make it clear 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 shall make it clear 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.

The mandatory nature of the language seems to require inclusion of index-price options in every single request for proposals sent to coal suppliers. This rule bears no relation to the maintenance-related authority in W.V. Code § 24-2-1d(f).

Moreover, it goes beyond the scope of other parts of the statute that more directly address these coal contracts. Section 24-2-15, for example, addresses "fuel supply contract price indexes" along with "automatic adjustment clauses" and "fuel adjustment clauses." The statute states that the Commission "shall encourage the use of . . . fuel supply contract price indexes . . . as means of increasing the generation of coal-fired power plants in the state"; *however*, "[t]he commission shall not enforce, originate, continue, establish, change or otherwise authorize or permit an increase in the charge or charges for electric energy . . . as the result of any a fuel supply price index." (emphasis added) The proposed Section 6.4 goes well beyond "encouraging" the use of indexed price contracts, and contains no guard rails against the use of those contracts driving up costs for customers. Thus, Section 6.4 exceeds the Commission's authority under the statute and should be stricken from the Proposed Rules.

III. Providing Confidential Information to the Office of Energy (Sections 8.2 and 8.3)

Proposed Section 8.2 states that the Commission will share all reports and records received under this rule, with confidential information unredacted, with the Office of Energy. Proposed Section 8.3 provides that either the Commission

or the Office of Energy may use this information for any purpose as long as it is under the extremely broad auspices of "address[ing] challenges with, and mak[ing] improvements to, the state of energy in West Virginia."

This section is completely unsupported by statute. The Commission has cited no authority that requires this transfer of information to the Office of Energy, nor for the broad self-delegation of power in Section 8.3. There is no such authority in W.V. Code § 24-2-1d or elsewhere in H.B. 2014. In fact, any references to the Office of Energy in the statute relate to the Certified Microgrid and High Impact Data Center programs, which are wholly separate from § 24-2-1d and the other revisions to Chapter 24 of the Code. For purposes of H.B. 2014's revisions to Chapter 24, the Commission may as well have proposed sending the utilities' confidential information to the West Virginia Department of Agriculture or Department of Health – like the Office of Energy, those agencies have no bearing on § 24-2-1d and the other revisions to Chapter 24. Because Sections 8.2 and 8.3 exceed the scope of the Commission's authority under the statute, they should be stricken from the Proposed Rules.

* * * *

For the foregoing reasons, CAG/SUN/EEWV respectfully recommend 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 from the Proposed Rules.

Continued for signature.

Dated: August 10, 2026

Respectfully submitted,

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VIA ELECTRONIC FILING

August 10, 2026

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

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

Dear Ms. Buckley:

Attached for filing are Comments of Monongahela Power Company and the Potomac Edison Company in the above-reference case.

Sincerely,

Gary A. Jack
Senior Corporate Counsel
WV State Bar No. 1855

02:30 PM AUG 10 2026 EXEC SEC DIV

BEFORE THE 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 MONONGAHELA POWER COMPANY AND THE POTOMAC EDISON COMPANY

Monongahela Power Company ("Mon Power") and The Potomac Edison Company ("PE") (collectively, the "Companies") hereby provide comments on the Commission Order dated July 20, 2026, and the proposed rules in this proceeding. The Companies respectfully offer the following comments and recommendations for the Commission's consideration. This matter is an important one for electric utilities and the Commission in developing the best possible cost-effective mechanisms to keep our generation operations running efficiently and cost effectively and to keep the Commission informed.

I. Introduction

The information requested in the proposed rules is very detailed and will be costly to gather, assemble, and file. Some, if not most, of the information is made part of the ENEC for the Companies annually or other existing reports, but the proposed rules go into much more detail and require the filings monthly rather than annually. The Companies are perplexed as to why such detail needs to be

assembled monthly and filed in a manner that does not involve an actual proceeding. The Companies believe some dialogue with the Commission and interested parties would be beneficial in order to meet the needs of the Legislature and Commission yet keep the cost and burden of recordkeeping, assemblage and filing to a minimum. The Companies' over-arching recommendation is that it meet with the Commission, Staff, AEP, and any other interested parties in a meeting/workshop/public comment-type forum to better understand the Commission's desires and so that the Commission understands the difficulties involved with the proposed rules to the utilities.

The Companies currently do not have on staff personnel that can assemble and handle the data filings, so costs are going to increase for reasons that are not readily apparent to the Companies. The Companies strongly believe that HB 2014 does not require anything that the Commission does not already receive as part of annual ENEC proceedings, the capacity GI proceeding[1] that is already opened by the Commission, and other proceedings, such as IRP proceedings.

While HB 2014 does require the Commission to propose rules for legislative approval (which is contrary to PSC rulemaking procedure, *see* WV Code §29A-3-1 et.al.), the proposed rules could set forth what is to be provided in ENEC proceedings and other proceedings rather than arduous monthly data reports that

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[1] Proceeding regarding participation in the PJM Capacity Auction and continuation of Fixed Resource Requirement Status in the PJM Interconnection, LLC wholesale Power Capacity Market, Case No 25-0450-E-GI.

may, or may not, receive attention and scrutiny. But these proposed rules go well beyond HB 2014 statutory language as well as the intent of that legislation.

In sum, the Companies' recommendation is to meet with the interested parties and the Commission on these proposed rules so that: (1) there is a better understanding of the Commission's needs and desires; (2) the Commission has a better understanding of what is involved with the data accumulation, assemblage, and filing of these monthly data reports; and, (3) an acceptable arrangement can be achieved which provides the Commission with what it absolutely needs but at a cost-effective arrangement for the Companies and their customers paying those costs.

II. Comments on Specific Provisions

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

While the Companies believe the overall proposed rules should be much more limited in scope and detail, they note below the individual issues found in specific provisions of the proposed rules.

a. 3.2 RPM Option

The Companies have typically provided to the Commission, on an informal basis, the amount of capacity bid into the RPM capacity auction and what amounts cleared or did not clear. That procedure has worked well. It is again reviewed and evaluated by the parties and Commission in ENEC proceedings. The Companies object to filing the proposed bid information at least 28 calendar days prior to submitting bids, as those bids are not, and

will not, be known and approved by management that far in advance. The Companies have no objection to providing the information after the auction results are announced.

B. §150-41-4. Consumer Economic Dispatch

First, the Companies are concerned that the PSC is attempting to regulate the wholesale power markets through capacity auctions and energy bidding, which are FERC jurisdictional, could lead to legal primacy issues and potential litigation. Additionally, this economic dispatch data is reviewed in the ENEC to determine if the dispatch and bidding are being done correctly to maximize the return to customers, keeping in mind operational constraints, environmental restrictions, weather, and energy and demand forecasts. The generating units are dispatched economically, usually with a price curve that reflects the cost to generate. Many of the decisions on how and when to dispatch are based on multiple complex factors, including wear and tear on the equipment as ramp-ups and ramp-downs are done, long-term (daily, weekly) weather, demand and energy forecasts, derates, outages, and labor supply to handle repairs and maintenance. All of this review by the Commission can, should, and is done in the annual ENEC proceeding.[2]

a. Consumer Economic Dispatch (Section 4.1)

[2] To the extent an ENEC proceeding is skipped in a year, the review period is still reviewed in the next ENEC proceeding.

The proposed rules states, "Each electric utility subject to the jurisdiction of the Commission must plan the operation of each generating unit under its control to produce electricity at the lowest achievable cost per kilowatt hour." While sounding altruistic, it does not conform to reality because it does not take into account the LMP price to be received for the generation provided, nor does it take into account operating and environmental restrictions and constraints. For example, many times a unit is run at economic minimum to keep the unit up and ready to run when prices escalate in the afternoons and evenings (or mornings in winter). The unit is not operating at the lowest achievable cost at an economic minimum. Another example is during high LMP periods, the units could fire natural gas into the unit's boiler to minimize a unit derate. That fuel raises the average price per kilowatt hour produces, thereby violating the proposed rules, yet it is clearly to the customer's benefit to capture additional megawatt hours produced during peak periods. The section should be deleted.

b. Generation Dispatch Reports (Section 4.2)

i. Regarding Generation Dispatch Reports, some of this is already provided by the Companies in their monthly fuel reports to the Commission. Those are filed 30 days after the preceding month and not 10 business days, as proposed by the rules. The Companies will be unable to meet a 10-business day turnaround time.

1. The Companies object to the provision that, "If plants are run at less than the lowest cost output levels the utility shall quantify the impact on consumer economic dispatch from running plants at less than their optimum economic capability." (Section 4.3). It would be nearly impossible to speculate that impact due to LMPs, outside constraints and, unforeseen unit derates. For example, in proposed Section 4.3.1, estimating impact on maintenance costs and future equipment replacement attributable to significant ramping of unit output throughout each 24-hour period is speculative and challenging to predict on a 50+ year old unit. Yes, there is an impact, but it is not quantifiable beyond semi-educated guesses. To provide hourly reports, as suggested in Section 4.3.2.a., would require hiring additional employees for production of yet another data report.

c. Alternative (Section 4.4)

i. Further troubling is Section 4.4, which would seem to indicate that self-scheduling (must run) is the norm and not economic dispatch. It asks for explanations of why the Companies are not self-scheduling each time. The Companies believe they should be economically dispatching, in order to secure the lowest power costs for customers, and only self-schedule when it makes sense to capture future opportunities benefiting customers or for other compelling reasons. The Companies do self-schedule, but to explain each dispatching decision for each and every unit on an hourly basis is too burdensome and will produce no real value for

the Commission. Certainly, HB 2014 does not require such a burden be placed on the utilities. The Companies are concerned that PJM, FERC, and the market monitor would have problems with the WV units dispatching consistently outside of economic dispatch.

C. §150-41-5. Capacity Factors

Capacity Factors, by unit, are already reported to the Commission in testimony in the annual ENEC cases and in the generating unit performance reports filed every six months. There is no reason to report it again monthly. One of the largest problems with these proposed rules is that a large part of this information is already provided to the Commission in reports, and the rules just duplicate much of what is done in yet another report, albeit much more frequently (monthly) and detailed. Additionally, Equivalent Availability Factor (EAF) of our units is much above 69% showing that the units are available to meet the 69% capacity factor if and when the market drives operation. In order to meet the availability to generate standard contained in HB 2014, the Commission should be looking at EAF instead of capacity factors, which are heavily influenced by market conditions and environmental restrictions.

a. Section 5.2 Verified Statement. The notion to explain any and all reasons the capacity factor is below 100% is misplaced. The two main reasons would be outages and economics. The Companies can try to explain the reasons why a unit did not achieve 69% but should not explain

why the unit is not 100%. A 100% capacity factor is impossible and unrealistic.

b. Section 5.3. Capacity Factor. HB 2014 states that electric utilities maintain their thermal units to allow them to be able to operate and achieve a 69% capacity factor. WV Code 21-2-1d(f). It does not require a 69% capacity factor to be achieved. To remove any doubts, the language in Section 5.3 needs to track exactly the language from the statute. As it reads now, it is questionable what Section 5.3 mandates.

c. Section 5.3.2 is troublesome by stating, "The utilities are expected to take advantage of PJM Manual 11 Market Rules 2.3.3., *et seq.*, which allow self-scheduling rather than allowing PJM to accept or reject their output into the day-ahead market." (Page 6). This appears to reject the economic market approach set up by PJM, which is one of the primary benefits of being in a Regional Transmission Organization, and basically ignores the supply and demand cost curves to obtain the cheapest power for customers and just run the units no matter the impact to customers. The language should be stricken. The Companies do agree with the statement that, "the utility is not expected to operate at a net-positive margin all hours of the day," as well as the proposed sentence thereafter about reasonably anticipating to minimize negative margins and for ramping up during higher priced hours. The Companies do that now, within reasonable operating constraints.

D. §150-41-6. Management of Fuel Supplies and Contracts

Again, the over-arching comments are all of this is reviewed and evaluated in the fuel (ENEC) cases annually. The Commission has conducted these proceedings for many decades without problems. We do not need a rule on it. Much of this information is also contained within our monthly HB 966 reports filed with the Commission and with the reporting the Companies already do in a SESD filing monthly.

As the Commission well knows, the Companies utilize an LMP-based coal contract at Harrison. It works well during period of low LMPs, and not so well during periods of high LMPs. Those LMP arrangements are also much more complicated with multiple vendors or coal piles. While the Companies support differing coal contracts, it does not believe the solicitations and coal contracting attributes should be made a part of finite rules, as proposed in this section. The Commission can do this in its orders, if necessary and appropriate. Rules limit flexibility, and the utilities and Commission have operated quite well under the current fuel case regime, where coal and reagent contracts are reviewed individually and as a whole, with costs being evaluated.

E. §150-41-8. Confidentiality

In Section 8.2, the PSC rules propose to share all the unredacted reports and records with other state Offices. The Companies believe that is not proper for several reasons as (1) these are PSC rules and not rules for

other agencies, (2) there is concern about the ability to maintain confidentiality once the information leaves the PSC and gets passed around to other state agencies, and (3) the PSC is the regulator of capacity and generation, and the Office of Energy or other offices do not have that responsibility. Nor does the Office of Energy, or other state agencies, have a compelling need for the confidential information. That section should be deleted.

III. Conclusion

The Companies believe that a workshop/meeting with the Commission, Staff, utilities, and all interested parties to better understand the Legislature's intent, the Commission's intent, the cost involved with the reports, the value of any such reports, and to share perspectives on the proposed rule would be beneficial. As one wise West Virginia legislator said, "The last thing we need is another report dumped in our lap that will not be utilized." The Companies do not truly believe the Legislature meant to increase the regulatory burden and costs to utilities by the provisions on HB 2014. These proposed rules, if implemented, would require the hiring of additional staff at a cost to customers. The current regulatory regime of reviewing and evaluating capacity bids, dispatch, capacity factors, and coal contracts has worked well and does not need to be redeveloped with higher costs and questionable benefits.

Respectfully submitted this 10th day of August 2026.

MONONGAHELA POWER COMPANY and
THE POTOMAC EDISON COMPANY

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August 10, 2026

02:43 PM AUG 10 2026 EXEC SEC DIV

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

Re: Proposed Rule 150 CSR 1
Case No. 26-0633-E-GI
General Investigation into Adopting and Implementing Rules Governing Electric Capacity Regulations

Dear Ms. Buckley:

Pursuant to the Order issued on July 20, 2026, the West Virginia Coal Association (WVCA) offers the following comments and observations regarding the West Virginia Public Service Commission's proposed "Rules Governing Electric Generating Capacity Utilization", 150 CSR 41.

WVCA is a trade association representing the interests of companies engaged in the mining of coal within the State of West Virginia. WVCA's producing membership accounts for more than 95 percent of West Virginia's underground and surface coal production of both thermal and metallurgical coal. WVCA also represents approximately 150 associate members that supply an array of services to the mining industry. WVCA's primary goal is to enhance the viability of West Virginia coal as a source of secure and efficient domestic energy by facilitating safe and environmentally responsible coal mining through reasonable, equitable, and achievable state and federal policy and regulation. WVCA was intimately involved in the Legislature's consideration and passage of House Bill (HB) 2014, which directed the PSC to undertake this rulemaking effort. Additionally, WVCA actively participates in ongoing PSC proceedings related to the state's regulated utilities and their coal-fired generating assets.

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Generating electric power from the West Virginia coal fleet is the most cost-effective manner to provide electric power to West Virginia rate payers. Generation from existing coal fired assets can be as much as 60% less expensive than buying power in the wholesale electricity market or the power produced by generating sources other than coal. [1] **As we detail in subsequent paragraphs, WVCA believes 150 CSR 41 as proposed by the PSC is an important "first step" in addressing issues related to the operation of West Virginia's coal fired power plants.** The proposed rule would require regulated utilities provide the PSC, in a timely and transparent manner, the data and information necessary for the agency to ensure the state's coal fired power plants are operated responsibly and to the benefit of the state's ratepayers.

Previous proceedings before the PSC and other agencies have provided ***abundant evidence*** that coal-fired generating assets were not utilized to the maximum benefit of ratepayers, impacting not only utility bills but also the general economic health of surrounding communities, the mining operations that supply fuel to the plants as well as the workforces of both.

For example, in case No.21-0339-E-ENEC the PSC noted "We expect the Companies to be *vigilant* and *prudent* when making self-generation decisions... We also expect them to maintain their *plants* and *coal inventories* to be able to *self-generate* and achieve at least a *sixty-nine percent capacity factor*, which will then allow them to make the self-generating decision necessary to reduce their reliance on higher cost purchased power." The PSC also concluded that operating the state's coal plants *"are considerably lower than projected purchase power costs."*

In the same Order the PSC determined "that the public interest is better served by...focusing on maximizing generation from its owned power plants" and further directed the companies to increase their utilization of in-state coal plants as the least expensive option for providing power to West Virginia ratepayers. In the same case, the PSC determined that over $550 million in under-

[1] *See generally* West Virginia Public Service Commission Case No. 21-0658-E-ENEC and Case No. 21-0339-E-ENEC.

recovery could have been avoided while $232 million in ratepayer savings would have been created if the coal plants had operated appropriately. [2]

The PSC was also concerned that politically motivated, corporate-level ESG goals that rewarded company executives for meeting carbon reduction goals were unduly influencing the operation of the state's coal fleet. *"...the Commission's intent, when setting a utilization target for the Companies' fossil-fuel fired plants, is to require the Companies to follow a power supply policy to maximize their use of fossil-fuel generation that is cheaper than purchased power rather than a policy geared to decarbonization at any cost."*[3]

The PSC's conclusions were confirmed by independent reviews. "As regulated utilities, the Companies focus on meeting projected customer needs at the lowest cost via the economic dispatch of their plants. As a result of its independent evaluation, CTC did not find that these important goals were met, resulting in a *significant violation of the Companies' responsibilities toward its customers."*[4] In July 2024, the West Virginia Public Energy Authority (PEA) reached the same conclusion after conducting a review of the relevant PSC proceedings. [5]

As participants in the state's regulated market, utilities are provided with guaranteed recovery and profit margins secured through the state's ratepayers. ***As such, the only obligation of the plant owners is to the State of West Virginia and its ratepayers. The West Virginia Legislature, by including a rulemaking mandate to the PSC in HB 2014, clearly understood that state utilities should not be allowed to manipulate the operation of their state plants to the detriment of ratepayers and only to satisfy corporate goals and political incentives.***

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[2] West Virginia Public Service Commission Case No. 21-0339-E-ENEC.
[3] *See generally* West Virginia Public Service Commission Case No. 21-0658-E-ENEC and Case No. 21-0339-E-ENEC
[4] "Independent Technical Prudency Review of the Actions Affecting the Operations of Amos, Mountaineer and Mitchell Coal Plants, Case No. 22-0393-E-ENEC and Case No. 21-0339-E-ENEC." Critical Consulting Technologies, April 28, 2023.
[5] https://commerce.wv.gov/wp-content/uploads/2024/07/WVPEA_7_31_24.pdf

The proposed rule will require a level of reporting and install a level of transparency necessary for the PSC to ascertain if coal fired generating assets are being used for the benefit of ratepayers versus convenient political aspirations established in far-away corporate boardrooms.

In addition to the capacity factor and economic dispatch provisions of the proposed rule WVCA would urge the PSC to expand the rule to include mandatory oversight and reporting on plant upgrades, which was also required by HB 2014. As we approach the two-year anniversary of the HB 2014's passage, disappointingly there have been no meaningful upgrades announced to extend the operation of the state's coal plants. The PSC should fully pursue those aspects of HB 2014 along with the PEA and the West Virginia Division of Energy.

With 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. Finalization of the proposed rule, and including provisions regarding required upgrades, will move the PSC closer to fully implanting HB 2014.

Respectfully Submitted,

Chris R. Hamilton
President & CEO
West Virginia Coal Association

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Coal Fax

August 10, 2026

Ms. Karen Buckley

Executive Secretary

West Virginia Public Service Commission

P.O. Box 812

Charleston, WV 25323

FAX NUMBER 304-340-0325

Re: Proposed Rule 150 CSR 1

Case No. 26-0633-E-GI

General Investigation into Adopting and Implementing Rules Governing Electric Capacity Regulations

Dear Ms. Buckley:

Attached, please find the comments of the West Virginia Coal Association on the above-referenced proposed rulemaking.

Respectfully Submitted,

Jason Bostic

West Virginia Coal Association