

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA  
in the City of Charleston on the 15<sup>th</sup> day of March 2024.

CASE NO. 22-0456-PWD-DU

**GAULEY RIVER PUBLIC SERVICE DISTRICT**

Staff Petition asking the Commission to Establish a  
Proceeding to Determine whether Gauley River Public  
Service District is a Distressed or Failing Utility.

**COMMISSION ORDER**

The Commission denies the joint request of West Virginia-American Water Company (WVAWC) and Gauley River Public Service District (Gauley River) for consent and approval to enter into the parties' submitted agreement, and requires that the Parties enter into a standard operation and maintenance agreement that contains certain provisions, as ordered by the Commission in the August 25, 2023 Order.

**BACKGROUND<sup>1</sup>**

This matter remains pending before the Commission on the petition of Commission Staff requesting the Commission to determine whether Gauley River is a distressed or failing utility. Such Petition was filed on May 16, 2022.

By Order entered on August 25, 2023, the Commission required that WVAWC and Gauley River negotiate an operation and maintenance agreement and to make a filing that included a corrective action plan by September 25, 2023.

On November 17, 2023, the parties submitted a proposed agreement titled "Operations and Maintenance Agreement" (Agreement). The Agreement did not contain standard terms of an operations and maintenance agreement as required by the Commission, but instead contained terms outlining a vague consulting agreement between Gauley River and WVAWC for a term of 36 months.

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<sup>1</sup> This background section is abbreviated. For a complete procedural history, refer to the previous orders and filings in the above captioned case found on the Commission's web docket at [www.psc.state.wv.us](http://www.psc.state.wv.us).

## DISCUSSION

On August 25, 2023, the Commission found that Gauley River was a distressed utility, as defined by W. Va. Code § 24-2H-3(a). Comm'n Order, August 25, 2024 at 10.

Pursuant to the requirements of W. Va. Code § 24-2H-7(b)(2), the Commission determined that the best resolution was for "Gauley River and WVAWC to negotiate a mutually agreed arms-length O & M Agreement. The staffing and expertise of WVAWC places it in the best position to provide needed management and oversight of the operations of Gauley River. In addition, WVAWC can assist Gauley River in preparing and implementing a comprehensive corrective action plan (CAP), which should be included in the O & M Agreement." Id. at 12.

The Commission also ordered:

"The O & M Agreement must clearly provide for WVAWC to have oversight and managerial control over operation, maintenance and administrative functions of Gauley River. This level of control must authorize the Company to address and implement remedial actions to correct the financial, operational, managerial, and staffing issues identified by Staff in this proceeding. WVAWC should assist Gauley River with applying for funding to finance the recommended capital improvements."

Id. at 12.

The proposed Agreement the Parties submitted on November 17, 2023 does not meet these requirements. Rather than WVAWC operating and managing Gauley River's water service, the proposed Agreement merely calls for WVAWC to make recommendations that Gauley River may accept or reject. The proposed Agreement leaves Gauley River entirely in control and responsible for the ongoing operations and maintenance of the water system. Agreement, page 5. This continued level of control by Gauley River contained in the proposed Agreement is counter to what was required by the Commission in its August 25, 2023 Order, and therefore consent and approval to enter into the proposed Agreement will be denied.

The August 25, 2023 Order was clear, and it is important to note that there is no inconsistency in requiring the Parties to include certain terms and conditions, and also giving the Parties flexibility to create a "mutually agreeable contract". The purpose of allowing the "mutually agreeable" language is to allow the Parties to

structure a legal and binding contract that includes the certain terms and conditions required by the Commission. As previously explained in its orders, the Commission may specify certain required terms and conditions that must be included in a Commission-approved agreement between two utilities, while simultaneously directing the parties to draft the specific language and other technical terms for those terms and conditions.

The Commission's requirement for WVAWC to have "management and operational control" was clear in the Order and was not to be modified or eliminated within the final contract. The Order also made it clear that if a mutually agreeable contract could not be worked out between the Parties, they each had an opportunity to submit a draft containing language that each party individually believed was reasonable. *Id.* at 14. Nothing in the Order indicated that should the Parties fail to reach an agreement, the Commission would approve of an agreement that eliminated or modified the required terms and conditions ceding management and operational control to WVAWC.

If WVAWC and Gauley River are unsuccessful in their negotiations, WVAWC must make a filing no later than April 12, 2024 that provides the terms that have been agreed upon, the terms that WVAWC proposed but which were not agreed to, and include either an affidavit or testimony in support of WVAWC's proposed terms that are not agreed upon. Gauley River and any other party shall respond within ten days of such filing. Gauley River's response must include testimony explaining why it disagrees with the proposed term(s), along with alternative language for those terms, tracked in its proposed agreement. If such competing proposals are filed, the Commission will formulate specific language for those areas still in disagreement and require that the formulated language be incorporated into the Parties' agreement.

### **FINDINGS OF FACT**

1. On August 25, 2023, the Commission found Gauley River to be a distressed utility, as defined by W. Va. Code § 24-2H-3(a).

2. The submitted proposed Agreement submitted by the Parties on November 17, 2023, lacks necessary terms and conditions to guarantee that WVAWC would be solely managing and operating the Gauley River water system.

### **CONCLUSIONS OF LAW**

1. The proposed Agreement does not satisfy the Commission's August 25, 2023 Order requiring an agreement that gives WVAWC a level of control sufficient to address and implement remedial actions to correct the

financial, operational, managerial, and staffing issues previously identified in this matter.

2. The Commission should deny consent and approval of the proposed Agreement submitted by the parties on November 17, 2023.

### **ORDER**

IT IS THEREFORE ORDERED that consent and approval for the proposed Operations and Maintenance Agreement filed on November 17, 2023 is denied.

IT IS FURTHER ORDERED that the parties file an operations and maintenance agreement, that contains the terms that were outlined in the August 25, 2023 Order, no later than March 22, 2024.

IT IS FURTHER ORDERED that if West Virginia-American Water Company and Gauley River Public Service District cannot agree on a complete operations and maintenance agreement, then they shall each make filings in accordance with the Discussion section at page three of this Order.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission serve a copy of this Order by electronic service on all parties of record who have filed an e-service agreement, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

A True Copy, Teste,

A handwritten signature in cursive script that reads "Karen Buckley".

Karen Buckley, Executive Secretary

JLC/pkb  
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