

**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 19<sup>th</sup> day of March 2024.

**GENERAL ORDER NO. 182.15**

Establishment of ratemaking process related to projects  
for which a certificate of convenience and necessity is not  
required pursuant to Senate Bill 400 enacted in the 2024  
Regular Session of the West Virginia Legislature.

**COMMISSION ORDER**

The Commission establishes a ratemaking process for water and sewer  
utility rates related to projects identified in SB 400 enacted during the 2024 Regular  
Session of the West Virginia Legislature. The Commission also rescinds General  
Order No. 182.14.

**BACKGROUND**

On February 22, 2024, the West Virginia Legislature enacted Senate Bill 400  
(SB 400) amending W. Va. Code §24-2-11 by creating a limited waiver of the  
requirement for utilities to obtain certificates of public convenience and necessity  
for water and sewer projects that:

- (1) Are funded, in whole or in part, by American Rescue Plan Act of 2021 (ARPA)<sup>1</sup> or Coronavirus State Fiscal Recovery Fund (SFR)<sup>2</sup> moneys that have been reviewed and determined to be technically feasible and approved by the Infrastructure and Jobs Development Council (IJDC); or

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<sup>1</sup> 117 P.L. 2, 135 Stat. 4, 117 P.L. 2, 135 Stat. 4. The United States Congress enacted the ARPA on March 11, 2021, in response to the economic and financial impacts of the Coronavirus-19 pandemic.

<sup>2</sup> Under ARPA, the State of West Virginia has or will receive \$1,355,489,988 in State Fiscal Recovery Funds (SFR funds). The ARPA requires that monies must be obligated by the end of calendar year 2024 and spent by the end of calendar year 2026.

- (2) Are funded, in whole or in part, by ARPA or SFR moneys through Economic Enhancement Grant (EEG)<sup>3</sup> funding and have been reviewed and determined to be technically feasible by the IJDC and approved by the Water Development Authority (WDA).<sup>4</sup>

The waiver expires April 30, 2025. W. Va. Code §24-2-11(a).

This Order refers to water and sewer projects that meet the above SB 400 criteria as “SB 400” projects, and to utilities seeking Commission approved rates related to SB 400 projects as “SB 400 filers”. This Order designates SB 400 filer rate filings as “42P” rate filings.

### DISCUSSION

The Commission will be called upon to process 42P rate filings by SB 400 filers that are non-municipal political subdivisions of the State, having less than 4,500 customers and annual gross combined revenues of less than \$3 million (hereafter non-LRR public service districts or PSDs). The Commission recognizes that aggressive processing schedules are required to meet the funding obligation and spending requirements of the ARPA. Accordingly, the Commission will expedite 42P rate filings to the greatest extent possible consistent with existing state law.

The ARPA requires that monies must be obligated by the end of calendar year 2024 and spent by the end of calendar year 2026. Unless the December 31, 2024 ARPA deadline is extended, to assure that the Commission can issue a final rate order by the ARPA deadline, **all 42P rate filings must be received by the Commission on or before Friday, September 20, 2024.** West Virginia Code §24-2-3a authorizes the Commission to waive the 30-day pre-filing requirement for 42P rate filings, and the Commission will do so in this Order.

The ability of the Commission to expedite processing of SB 400 project rate requests will be compromised if utilities request non-project related rate changes in 42P rate applications. Accordingly, utilities should include only project-related rate requests in their SB 400 rate filings. If a utility needs non-project-related rate

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<sup>3</sup> On March 12, 2022, the West Virginia Legislature enacted House Bill 4566 authorizing the WDA to create the West Virginia Economic EEG Fund.

<sup>4</sup> The WDA is authorized to award EEG grants for water and sewer utility projects upon recommendation by the IJDC and/or the West Virginia Department of Economic Development. W. Va. Code §22C-1-6a. On April 25, 2022, the Legislature passed House Bill 217 which appropriated \$250 million of the State ARPA/SFR funds to the EEG Fund to provide funding for the construction of water and sewer infrastructure.

revisions, it should file a separate rate application for those revisions under the Commission's Rules for the Construction and Filing of Tariffs, 150 C.S.R. 2 (Tariff Rules).

This Order informs the public, regulated utilities, attorneys who practice before the Commission, funding agencies and Commission Staff of the procedures adopted for processing of 42P rate filings.

#### 42P Rate Filing Procedures

1. The W. Va. Code §24-2-3a requirement to provide a 30-day prefiling notice of intent to institute a rate filing is waived.
2. A 42P rate filing must include:
  - a. Tariff Form No. 2;
  - b. a proposed notice of filing in the form of and Tariff Form 8-A. For across-the-board percentage rate increases, the Commission will waive requirements to calculate or provide notice by customer class except that the notice must state the dollar amount and percentage increase for an average residential customer using (xxx mGal per month);
  - c. a Rule 42 exhibit.<sup>5</sup> The Rule 42 exhibit may rely on a Test Year based on the most recent fiscal year or, if necessary because of timing of the filing, a fiscal year immediately preceding the most recent fiscal year, provided an Annual Report has been properly filed for the Test Year chosen;
  - d. proposed bond resolutions, as applicable;

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<sup>5</sup> "Rule 42 exhibit" refers to a financial exhibit described in Rule 20.1 (Historical Rule 42) of the Commission Tariff Rules. Public Service Districts are not required to file Statement A, Schedule 3 (Depreciation), Statement A, Schedule 5 (Income Taxes); Statement B, Statement B, Schedules, or Statement C detailed debt amortization schedules. The Rules also allow Public Service Districts requesting an across-the-board increase in all rates of a tariff schedule to file a simplified single bill analysis for each tariff schedule rather than a separate bill analysis for residential, commercial, industrial, or public authority customer classes. The Rules also allow a simplified cash flow statement in lieu of a detailed sources and application of funds statement, reconciling cash flows to changes in balance sheet accounts. Some Public Service Districts continue to file unnecessary or unnecessarily detailed schedules which complicate their filing and add unnecessary pages to their filings. The Commission strongly suggests that the Districts expedite their preparations of financial exhibits by excluding unneeded statements and schedules from their filings.

- e. binding commitments or other acceptable evidence of funding with expected interest rates and terms of any loans; and
- f. a proposed tariff<sup>6</sup>

3. For utilities that on the date of this Order have a general rate proceeding (Tariff Rule 19A, 42A or 42T case) pending before the Commission, if the general rate proceeding is still pending on the date the utility files a 42P rate filing, then the utility will (1) make its 42P rate filing in the docket of its pending general rate case, (2) state in its transmittal/cover letter that the filing is a 42P rate filing to be merged with the pending case, and (3) request that the previously filed case identifier be modified to include a 42P designation (i.e. 24-XXXX-PWD-19A-42P). Merged rate filings will require updated public notice and amendment of preset procedural schedules to be consistent with the following paragraphs.

4. Within ten days<sup>7</sup>, Staff will review the SB 400 filer's proposed public notice of filing, make corrections, if necessary, and file a Staff-recommended notice in the 42P rate case as part of its Initial Joint Staff Memorandum. The Commission will not issue an order to approve the notice.

5. As soon as possible after Staff files its recommended notice of filing, the Executive Secretary of the Commission will publish the notice as a Class I legal advertisement in newspapers published and of general circulation in all counties where the SB 400 filer provides service.

6. Staff assigned to the case should immediately review the 42P rate filing to determine if it is complete. The Initial Joint Staff Memorandum should be filed within ten calendar days.

7. If Staff determines that it requires additional or corrected information it may file a data request, if necessary, for the items needed to complete the review and make a final Staff recommendation. This data request should be filed within ten days of the date of the 42P filing. The SB 400 filer should file its response to Staff's requests in no more than ten days and Staff should file its Final Joint Staff Memorandum within 60 days from the 42P rate filing date.

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<sup>6</sup> Public Service District should only file those sections of the tariff that contain requested changes in rates or text, provided it states in its filing that it is submitting only requested tariff changes, and not the entire tariff. For example, Districts should not file tariff pages containing rules, terms, conditions, and rates or charges which are not requested to be changed by a 42P filing.

<sup>7</sup> Days in this Order are calendar days. Filings due on weekends or holidays are due the next working day.

8. In 42P rate filings that are referred to the Division of Administrative Law Judges (ALJ Division), the referral order will set a Recommended Decision due date that is 100 days from the 42P rate filing date.

The issuance of these guidelines should expedite ratemaking related to SB 400 projects and support the continuing effort to provide quality water and sewer service throughout the State of West Virginia. The Commission understands that there will be instances and situations where events will disrupt these intended procedures; however, the Commission expects all parties to use their best efforts to process these cases in a timely manner.

General Order 182.14, issued January 18, 2023, is inconsistent with SB 400 and should be rescinded.

### **ORDER**

IT IS THEREFORE ORDERED that that until April 30, 2025, the processes and procedures described herein will apply to rate filings related to water and sewer projects that:

- (1) Are funded, in whole or in part, by American Rescue Plan Act of 2021 (ARPA) or Coronavirus State Fiscal Recovery Fund (SFR) moneys that have been reviewed and determined to be technically feasible and approved by the Infrastructure and Jobs Development Council (IJDC); or
- (2) Are funded, in whole or in part, by ARPA or SFR moneys through Economic Enhancement Grant (EEG) funding and have been reviewed and determined to be technically feasible the IJDC and approved by the Water Development Authority (WDA).

IT IS FURTHER ORDERED that rate filings related to projects meeting the above Senate Bill 400 criteria shall be designated 42P.

IT IS FURTHER ORDERED that the Commission waives the thirty-day notice requirement, pursuant to W. Va. Code §24-2-3a, for 42P rate filings.

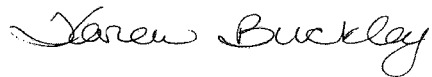
IT IS FURTHER ORDERED that unless the December 31, 2024 ARPA deadline is extended, **all 42P rate filings must be filed with the Commission on or before Friday, September 20, 2024.**

IT IS FURTHER ORDERED that this General Order will be of no force and effect on and after May 1, 2025.

IT IS FURTHER ORDERED that General Order No. 182.14 issued January 18, 2023, is rescinded effective February 22, 2024.

IT IS FURTHER ORDERED that the Executive Secretary electronically serve a copy of this Order on all non-LRR Public Service Districts operating in the State and provide a copy of this Order to the West Virginia Water Development Authority, the West Virginia Infrastructure and Jobs Development Council, the West Virginia Department of Environmental Protection, the Department of Health and Human Resources, the West Virginia Department of Economic Development, and the United States Department of Agriculture.

A True Copy, Teste,

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

Karen Buckley, Executive Secretary

JML/rm  
GO182.15c