

**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 24th day of February 2020.

GENERAL ORDER NO. 183.11

GENERAL ORDER ADDRESSING TREATMENT OF THE CASH WORKING CAPITAL REQUIREMENTS OF W.VA. CODE §24-1-1(k).

**COMMISSION ORDER**

The Commission changes its method of calculating an adequate cash working capital reserve (CWCR) allowance in applicable utility revenue requirements. In all future rate cases in which a CWCR increment is applicable, the Commission will establish a CWCR increment that is equal to an unadjusted one-eighth of the going-level O&M expenses. The intent of the Commission continues to be providing the affected utilities<sup>1</sup> an opportunity to build a reasonable CWCR at or above the minimum statutory amount required by W.Va. Code §24-1-1(k).

**BACKGROUND**

Senate Bill 234 (SB 234), effective June 12, 2015, introduced changes to Commission jurisdiction over public service districts and municipal utilities. Among other changes, SB 234 amended W.Va. Code §24-1-1 by the addition of subsection (k) that provides:

(k) The Legislature further finds that an adequate cash working capital fund is essential to allow water and sewer utilities that are political subdivisions of the state to deliver continuous and compliant service. Therefore, these utilities shall maintain a working capital reserve in an amount of no less than one eighth of actual annual operation and maintenance expense. This reserve shall be separate and distinct from and in addition to any repair and replacement fund that may be required by bond covenants.

In General Order 183.08, issued June 10, 2015, the Commission established the process by which the Commission would require the subject utilities to meet the CWCR requirements established by SB 234. The General Order applied the new process to cases

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<sup>1</sup> The affected utilities are those water and sewer utilities that are political subdivisions of the state that are subject to Commission rate regulation jurisdiction pursuant to W.Va. Code § 24-2-3.

then pending, and future Commission cases. The Commission stated it would administer the process established by General Order 183.08 on a case-by-case basis while considering appropriate additional actions.

The Commission noted, in General Order 183.08 that Staff had recommended in Mountain Top Public Service District, Case No. 14-1820-PSD-19A, the establishment of an initial set of rates that would allow the accumulation of the net additional funds over current cash balances necessary to achieve the statutorily required CWCR (Step-1 rates), and then a second set of rates that removed the CWCR increment after one year (Step-2 rates). The Commission did not adopt the Staff recommendation because the approach was not sufficiently flexible as it did not consider potential underfunding of the CWCR if the affected utility used funds from the CWCR during the initial collection period or after the CWCR was fully funded.

The Commission determined that a more reasonable approach in determining the CWCR increment necessary to accumulate and maintain the statutorily required CWCR, would be to extend the resulting Step-1 rates for a period of twenty-four months. The Commission intended to provide the affected utility an opportunity to build a reasonable CWCR cushion above the minimum statutory requirement. The Commission expected, at least initially, that the additional funds provided over and above normal going-level expenditures would be used for extraordinary and non-recurring expenditures. G.O. 183.08 at 3.

In General Order 183.08, the Commission also recognized that one or two extraordinary events could deplete utility CWCR funds. To address this concern the Commission established an expedited process whereby an affected utility could seek a surcharge to replenish a CWCR depleted by extraordinary expenditures. Under this expedited process, a utility could file an application to add a surcharge to replenish its CWCR. The Commission stated that a filing for that limited purpose would not be subject to the Commission tariff filing requirements, including pre-filing notice requirements and the requirement to file financial data required by Rule 20.1 (former Rule 42) of the Commission Rules for the Construction and Filing of Tariffs (Tariff Rules). The Commission would grant a rate application requesting a CWCR replenishment surcharge if it contained: (i) a statement that the CWCR had been depleted by one or more extraordinary expenditures; (ii) a description of the extraordinary expenditure(s), including causes and amounts expended; and (iii) a schedule showing the most recently available CWCR balance and balances for the preceding twelve months.

On August 12, 2016, in Union Williams Public Service District, Case No. 16-0308-PSD-42T the Commission modified the General Order 183.08 methodology for use by Commission Staff to calculate revenue needed to establish the CWCR. In the Union Williams Order, the Commission stated that even with the twenty-four month Step-1 rate, net of currently available unencumbered cash, the General Order 183.08

methodology tended to reward utilities that had not already accrued significant cash reserves and penalize utilities that had been good stewards of cash and that had accumulated significant cash reserves. To correct this problem, the Commission determined that the Step-1 CWCR increment should be calculated based on a targeted reserve equal to two times the minimum statutory CWCR requirement. After setting that target, the Commission concluded that it would then be appropriate to deduct the unencumbered cash available to arrive at the two-year CWCR increment target. The Commission explained that absent extraordinary non-recurring expenditures, this approach would establish a Step-1 rate that could build a CWCR equal to two times the minimum statutory requirement, regardless of the level of unencumbered cash on hand prior to implementation of the Step-1 rates. The Commission did not alter its General Order 183.08 decision that, either during or after the Step-1 increment application period, the utility could make an expedited filing for a CWCR to replenish its CWCR if extraordinary, unanticipated expenditures occurred.

### DISCUSSION

The Commission's SB 234 process for determining CWCR funding as required by W.Va. Code §24-1-1(k) has been in place for approximately three and one-half years. Over that time, the Commission has established SB 234 cash working capital increments in dozens of small utility rate cases. Those CWCR increments terminate after twenty-four months unless a request is received to renew or extend the increment under the expedited process described above.

The process for establishing CWCR increments has generally accomplished its intended purpose to provide a source of cash working capital to fund, extraordinary and non-recurring expenditures for small water and sewer utilities that are political subdivisions of the state. Issues have arisen, however, regarding (i) requests for extension of the Step-1 rates to accommodate, extraordinary or non-recurring expenditures, and (ii) instances when utilities did not request or timely file a subsequent expedited rate proceeding to re-establish a CWCR increment to fund the SB 234 required cash working capital reserve. The issue of maintaining an adequate CWCR to meet the minimum requirement established in SB 234 is complicated by the fact that the utility and the Commission cannot with any accuracy or certainty predict the magnitude or timing of the extraordinary and non-recurring expenditures to be funded by the CWCR.

The Commission believes it is necessary to modify the CWCR process currently in effect. To that end and after careful review, the Commission will establish, in rate cases in which a SB 234 CWCR increment is applicable, a CWCR increment that is equal to an unadjusted one-eighth of the going-level O&M expenses as determined in each rate case.<sup>2</sup>

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<sup>2</sup> The calculation of the CWCR increment shall be to divide the going-level O & M expenses by eight. The going-level O & M expenses are actual test year O & M expenses adjusted for known and measurable changes. The calculation will no longer include an offset for unencumbered cash.

That CWCR increment will continue until the Commission establishes a CWCR increment in a future rate case. Under this new procedure, there will be no need to establish Step-2 rates that eliminate the CWCR increment.

The Commission is aware that a utility that experiences little or no extraordinary or non-recurring need to expend CWCR funds could accumulate CWCR funds well in excess of the minimum SB 234 requirement. We are also aware that if there is an extended period without a need to fund, extraordinary and non-recurring costs, utility management may be tempted to use accumulated CWCR funds for on-going operation and maintenance and capital expenditures in lieu of increasing rates to cover such expenses. The Commission will not condone the use of accumulated CWCR funds intended for extraordinary and non-recurring expenditures for on-going, normal operating and capital expenditures. The Commission will, therefore, establish safeguards and reporting requirements to preserve and facilitate regular review of the accumulated CWCR funds. The Commission will require that each utility with a SB 234 CWCR increment to segregate related cash collections into a separate and distinct cash working capital requirement bank account (CWCR Account).

Each utility should use funds accumulated in its CWCR Account only for, extraordinary or non-recurring expenditures that would not be included in normal, on-going O&M or capital expenses. The utility shall maintain accounting records for the CWCR Account that clearly identify deposits and disbursements from the CWCR Account as to source and purpose. To simplify the recordkeeping associated with the CWCR increment and CWCR Account, the utility shall determine a percentage of total revenue that is currently represented by its CWCR increment (the CWCR percentage to tariff revenue). (If a utility needs guidance in establishing this percentage it should contact the Commission's Water and Wastewater Division.) Each month, the utility shall apply that percentage to total monthly tariff billings and credit Account 265 – Miscellaneous Operating Reserves (instead of revenue accounts). Likewise, the utility shall apply that percentage to total monthly tariff collections and charge that amount to Account 127 – Other Special Funds (instead of cash), and deposit that amount into the separate CWCR Account. In future rate proceedings, Commission Staff will advise the Commission and the utility of the appropriate on-going CWCR percentage to total revenue.

In addition, three months following the end of the utility's fiscal year, it shall file a distinct CWCR account report that provides the following information:

1. The CWCR percentage to tariff revenue.
2. The beginning balance of the CWCR Account.
3. Monthly Deposits to the CWCR Account from customer collections.
4. Description and amount of each disbursement from the CWCR Account with detailed descriptions of the use of that cash disbursement.

5. The ending balance of the CWCR Account.
6. The ratio (percentage) of the ending balance of the CWCR Account to O&M Expenses
7. A description of future projects, if any, that accumulated CWCR Account funds may be used for.

The Commission will require the Water & Wastewater Division to review the CWCR Account reports. If there are (i) any expenditure by utilities that appear to be outside the scope for which CWCR Account funds are intended, or (ii) any utility inadequate CWCR Account funds on hand, the Water and Wastewater Division will investigate and work with the utility to correct the issue. If the issues cannot be resolved informally, Staff should file a petition for a show cause investigation. The Commission may modify the procedures outlined in this Order for utilities that fail to make appropriate deposits into the CWCR Account or who are using the funds in the account for expenditures other than extraordinary and non-recurring purposes. If upon proper showing the Commission determines that a utility is using the CWCR funds for purposes other than extraordinary or non-recurring cash requirements, the Commission may impose other restrictions on the CWCR funds or take other action as necessary.

The revised CWCR process described in this Order is applicable to rate cases in which the Commission is required by law to ensure that SB 234 CWCR requirements are met. The Commission is aware that many utilities may have a current CWCR increment authorized by the Commission with a corresponding future reduction to eliminate that CWCR increment through an approved Step-2 rate. The Commission will permit utilities in this category to extend their current CWCR increment (Step-1 rate) until the Commission establishes a new CWCR increment in a future rate case. To accomplish the cancellation of the currently authorized Step-2 rates, any affected utility that desires to cancel its Step-2 rates should provide:

1. A request that the Commission extend its current Step-1 rates until future order of the Commission and cancel the currently authorized Step-2 rate.
2. A Notice of Filing in the form attached hereto as Attachment A for publication as a Class II legal notice.

Upon filing of the required information, the Commission will issue a publication order. Upon receipt of proof of publication and the absence of substantial protest, the Commission may, without hearing, issue an Order extending the Step-1 rates and cancelling the Step-2 rates. A utility wishing to change its currently authorized CWCR increment it must file a new rate case.

## FINDINGS OF FACT

1. SB 234, which went into effect on June 12, 2015 modified W.Va. Code §24-1-1 by the addition of subsection (k) requiring that water and sewer utilities that are political subdivisions of the state maintain a working capital reserve in an amount of no less than one-eighth of actual annual operation and maintenance expense.

2. There have been issues in prior cases with the current process established by the Commission for determining an adequate CWCR, including requests for extensions of Step-1 rates and expedited rate proceedings to re-establish the required CWCR.

## CONCLUSIONS OF LAW

1. West Virginia law requires water and sewer utilities that are political subdivisions of the state to maintain a cash working capital reserve of no less than one-eighth of annual operation and maintenance expenses. W.Va. Code §24-1-1(k).

2. To assure increased efficiency, fairness and consistency and to assure that adequate CWCR funds are provided on an on-going basis without requiring additional time consuming and costly rate case filings, the Commission should modify the process for utilities under its rate jurisdiction for establishing the W.Va. Code §24-1-1(k) revenue requirements.

3. The Commission should establish safeguards, accounting instructions and reporting requirements that will (i) require utilities to segregate CWCR funds in order to easily track receipts, disbursements and the purpose of each CWCR transaction, (ii) permit the Commission to facilitate a determination that the CWCR meets the minimum level established by SB 234, and (iii) permits determination that CWCR funds are spent prudently and for purposes consistent with SB 234.

4. The Commission should establish in all future rate cases where a SB 234 CWCR increment is applicable, a CWCR increment equal to an unadjusted one-eighth of normal going-level O&M expenses as determined in each rate case.

5. It is reasonable for the Commission to continue the CWCR increment until the Commission establishes a new CWCR increment in a future rate case.

## ORDER

IT IS THEREFORE ORDERED that the revenue requirements in all rate cases of utilities subject to our rate jurisdiction that require consideration of W.Va. Code §24-1-1(k) include a CWCR increment that is equal to an unadjusted one-eighth of the normal going-level O&M expenses as determined in each rate case.

IT IS FURTHER ORDERED that each utility for which the Commission establishes a SB 234 CWCR increment shall regularly deposit related cash collections into a separate and distinct bank account (CWCR Account) on a monthly basis, as described herein.

IT IS FURTHER ORDERED that utilities shall maintain accounting records for the CWCR Account so that deposits and disbursements from the CWCR Account are clearly identified as to source and purpose. Each month the utility shall apply the CWCR increment percentage to total monthly tariff billings and credit Account 265 – Miscellaneous Operating Reserves (instead of revenue accounts). Likewise, a utility shall apply that percentage to total monthly tariff collections, charge that amount to Account 127 – Other Special Funds (instead of cash), and deposit that amount into the separate CWCR Account.

IT IS FURTHER ORDERED that three months following the end of its fiscal year, the utility shall also file a distinct CWCR account report that provides the following information:

1. The CWCR percentage to tariff revenue.
2. The beginning balance of the CWCR Account.
3. Monthly Deposits to the CWCR Account from customer collections.
4. Description and amount of each disbursement from the CWCR Account with detailed descriptions of the use of that cash disbursement.
5. The ending balance of the CWCR Account.
6. The ratio (percentage) of the ending balance of the CWCR Account to O&M Expenses
7. A description of future projects, if any, that accumulated CWCR Account funds may be used for.

IT IS FURTHER ORDERED that Commission's Water & Wastewater Division review the CWCR Account reports and if (i) any expenditure by utilities appear to be outside the scope for which CWCR Account funds are intended, or (ii) any utility has inadequate CWCR Account funds on hand, the Water and Wastewater Division will investigate and work with the utility to correct the issue. If the issues cannot be resolved informally Staff should file a petition for a show cause investigation.

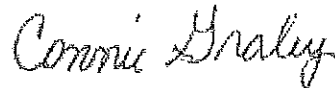
IT IS FURTHER ORDERED that a utility with a previously established CWCR increment subject to termination by currently authorized Step-2 rates may file a request seeking to cancel the Step-2 rates pursuant to the guidelines established by this Order.

IT IS FURTHER ORDERED that the procedures and calculations described by this Order shall be implemented in all currently open rate proceedings unless compliance with the procedures and calculations, and any additional required notice, causes an undo burden on the proceeding and the utility in the discretion of the Administrative Law Judge.

IT IS FURTHER ORDERED that on entry of this order this case shall be removed from the Commission docket of open cases.

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

True Copy, Teste,



**Connie Graley, Executive Secretary**

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