Jefferson County West Virginia

Public Information

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April 1, 2005

Senator John Yoder

West Virginia Senate
Room 229-W
Hand Delivery

Re: Senate Bill No. 700; House Bill 3182

Dear Senator Yoder:

This is to follow up on your inquiry to me about a particular provision in Senate Bill No. 700, specifically the provision that would be codified as West Virginia Code § 5B-1 B-4 (c)(6).

You were concerned that this particular provision of the bill would allow an increase in rates to the public without application and approval of the Public Service Commission. I read that particular section of the proposed legislation as creating precisely that opportunity to the municipality or PSD. Although the legislation is clear that the facility is to be transferred without cost to the utility, it is equally clear that the legislation contemplates that the facilities, once transferred, can impose additional cost on the utility in terms of operational cost. Therefore, in my opinion, when the legislation refers to charging the existing rate "plus any additional cost of service borne" by the utility, it means that the utility can increase its existing rates until such time as it goes through the legal process for increasing rates. In the case of a municipality, that would be ordinance, and in the case of a PSD, that would be on application to the PSC. Thus, I believe that the legislation clearly allows the utility to increase rates without application to the PSC and without notice to the public. I believe this creates a potential due process problem.

The same subsection ends by stating "rates charged by the public service district to existing customers shall not be impacted as a result of the obligation of the public service district or municipal utility pursuant to the community infrastructure investment agreement". This provision seems to state that existing customers of the utility shall not experience any rate increases as a result of the new facilities or service to the new customers. If included in legislation, that of course becomes a mandate to the Public Service Commission as to how the matter must be handled in future rate making applications. The Commission's general rule is to provide for uniform rates throughout a utility's service territory for similar classes of customers. However, there have been instances in the past where the Commission has allowed rate differentials for particular utilities. I would simply point out that if this issue is codified, it removes the matter from the Commission's discretion and is going to place the cost burden solely on the new customers. Since the terminology in the quoted language is "shall not be impacted", it could be argued that this would also refer to rate reductions. In other words, if the new facilities create efficiencies and economies of scales that existing customers' rates could not be impacted by reductions. I doubt if this would be legislative intent, however the language could be interpreted that way.

Sincerely,

Richard E. Hitt
General Counsel

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