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January 18, 2019

Ingrid Ferrell, Executive Secretary
Public Service Commission of West Virginia
P.O. Box 812
201 Brooks Street
Charleston, WV 25323

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2019 JAN 23 AM 8:59
WV PUBLIC SERVICE
COMMISSION
CHARLESTON OFFICE

Re: Case No. 19-~~0059~~-W-C
Jefferson County Vision, Inc. and Leigh Smith
v. Jefferson Utilities, Inc.

Dear Ms. Ferrell,

Enclosed for filing in the above referenced matter, please find an original and twelve (12) copies of a "Formal Complaint and Request for Interim Relief" on behalf of my clients.

If you have any questions, please contact me.

Sincerely,

Christopher P. Stroech, Esq.

STATE OF WEST VIRGINIA
PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
Charleston

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WEST VIRGINIA PUBLIC SERVICE
COMMISSION
REGISTRATION OFFICE

JEFFERSON COUNTY VISION, INC.,
a nonprofit corporation, and

LEIGH SMITH, a customer
of Jefferson Utilities Inc.,

COMPLAINANTS,

CASE NO. _____

v.

JEFFERSON UTILITIES, INC.,
a public utility.

FORMAL COMPLAINT AND REQUEST FOR INTERIM RELIEF

The Complainants respectfully state that:

1. Jefferson County Vision, Inc. (hereinafter "JCV") is a nonprofit corporation, incorporated under the laws of West Virginia, formed by citizens of Jefferson County, West Virginia, to promote, among other things, responsible development within Jefferson County including proposed utility infrastructure. Leigh Smith is a customer of Jefferson Utilities, Inc. (hereinafter "Complainants").
2. Jefferson Utilities, Inc. is a public utility subject to the laws of West Virginia and the regulation of the Public Service Commission (hereinafter "JUI").
3. On May 5, 2018, JUI filed a verified application for an emergency certificate of public convenience and necessity, docketed as PSC Case No. 18-0657-W-ECN, to provide water service to ROXUL USA, Inc. ("ROXUL"), a proposed industrial plant to be located in Jefferson County (hereinafter "Application"). The Application followed a

designation by the West Virginia Infrastructure and Jobs Development Council (“WVIJDC”) that the proposed project was an emergency. That designation, by statute, created an abbreviated review period for the Commission.

4. The Application asserted that the estimated cost of the water line extension was \$4,850,000. The Jefferson County Development Authority (“Development Authority”) would fund the project with a \$4,520,000 loan from the WVIJDC. JUI stated that it would fund a maximum of \$330,000 from its cash flow to cover costs related to engineering, design, permits, rights of way and easements. Application, paragraph 9 and Exhibit 26. Any amounts needed in excess of JUI’s contribution would be borrowed by the Development Authority from the West Virginia Water Development Authority. Application, Exhibit 26, Memorandum of Understanding, Exhibit B (Form of User Agreement). JUI asserted that the rates to ROXUL would satisfy the cost of the project and that JUI would not have to raise its current rates and charges. Application, paragraph 10. Based on these verified assertions, JUI sought and obtained from the Commission a waiver of the need to file financial information that is required in a certificate application.

5. The Application further asserted that the Development Authority would own the line and lease it to JUI for forty years. Application, paragraph 8.

6. In its final order issued July 12, 2018, the Commission relied upon the JUI assertions in its Application and gave its approval. The Order contained an ordering paragraph that stated:

“IT IS FURTHER ORDERED if there are any changes in the plans, scope, or terms of financing of the Project, or changes in rates associated with the Project, Jefferson Utilities, Inc., must petition to reopen for Commission approval of such changes. Changes in project costs or financing do not require separate approval if the changes do not affect rates and Jefferson Utilities, Inc. submits an affidavit from a certified public accountant attesting to the lack of rate impact.”

Commission Order, p. 5.

7. Recently, it was publicly announced that (i) the WVIJDC loan had been withdrawn; (ii) the Jefferson County Development Authority would no longer be involved in the project and would not own the Project infrastructure; (iii) the project would be financed by ROXUL with an unknown financial commitment by JUI; (iv) the cost of the project was now \$7,000,000 instead of \$4,850,000 stated in the Application; (v) the construction of the water facilities has commenced with construction expected to be completed by year end, and (vi) contrary to the assertions made in the JUI Application, the new financial arrangement would likely increase rates to other JUI customers. See, attached news article, Spirit of Jefferson, January 11, 2019.

8. JUI has not complied with the Commission Ordering Paragraph quoted in paragraph 6. As a result of the failure of JUI to comply with the Commission certificate order, the commencement of construction and the likely adverse impact upon rates, the Complainants are suffering immediate and irreparable harm. The public interest also requires that unauthorized construction activities be stayed to enable the orderly review of the revised Rockwool Project. Since the WVIJDC has withdrawn funding, its designation of the Project as an emergency and the abbreviated statutory time constraints for Commission review no longer apply. Furthermore, since this is no longer a WVIJDC approved project, JUI must seek to reopen the certificate case regardless of whether the revised project affects rates.

9. JUI has violated the laws of West Virginia as follows:

a. Although the financing and structure of the Project, ownership of the line, cost and rate impact have changed, JUI has not filed a petition to reopen as directed by the Commission Order and is in violation of said Order;

b. In addition to violating a specific Commission Order, the failure of JUI to petition to reopen and obtain Commission approval together with it commencing construction constitute a violation of West Virginia Code, Chapter 24, Article 2,

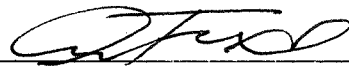
Section 11 and Commission Rules and Regulations of Procedure, 150 CSR 1, Rule 10.3.h.

WHEREFORE, as a result of these violations of the Commission Order and law, the Complainants respectfully request the following relief:

- (i) That the Commission immediately issue an order granting interim relief and preserving the status quo by directing JUI to immediately cease and desist from further construction activities regarding this project until it has obtained proper authority;
- (ii) That JUI be required to answer this complaint;
- (iii) That the Commission issue an order directing JUI to cease and desist from its wrongful conduct and comply with the conditions of the certificate order;
- (iv) That upon JUI filing an Answer to this Complaint and/or filing a Petition to reopen the Certificate case, that the Commission consolidate this Complaint case with the Certificate case and consider the Complainants as parties to both cases.
- (v) That the Commission order JUI to comply with the public notice requirements of the rate impact of this project as required by 150 CSR 1, Rules 10.3.c.3 and 6.
- (vi) That the Commission adopt a procedural schedule that will allow the Complainants sufficient time to engage in discovery of substantive factual matters relating to this revised project and the issue of whether approval should be granted for this Project to move forward;
- (vii) That the Commission conduct a hearing in this matter; and
- (viii) That the Commission grant such further relief as it may deem appropriate.

Respectfully submitted this 18th day to January, 2019.

JEFFERSON COUNTY VISION, INC.



By: Amanda Foxx - Board member

P.O. Box 103
Shenandoah Junction, WV 25442

and

Leigh Smith
Leigh Smith, individually

167 Overlook Drive
Ranson, WV 25438

COMPLAINANTS

By Counsel,

CS

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Subscribed and sworn before me this 18th day of January, 2019.

(signed) Regina M. Gaither
(official signature and official seal of notary)

