

**West Virginia Board of Public Works  
Wednesday, December 13, 2023 – 1:00 p.m.  
Governor’s Cabinet and Conference Room  
Minutes**

**Attendees:**

Members

Governor Jim Justice  
Secretary of State Mac Warner  
Attorney General Patrick Morrisey  
State Auditor John B. McCuskey  
State Treasurer Riley Moore  
State Superintendent of Schools Michele Blatt  
Lora Walker for Commissioner of Agriculture Kent Leonhardt

Guests:

Paul Konstanty, United Coal Company LLC/Beech Mountain Railroad  
Ben Beakes, Three Point Strategies, LLC  
Ryan Ivey, Kroll LLC  
Brian Holbert, WV American Water  
Jace Harper, WV American Water  
Marsha Strait, People’s Natural Gas  
Zack Brown, Div. of Natural Resources  
Matthew Irby, Commissioner, Tax Department  
Frank Capehart, Tax Department  
Deanna Sheets, Tax Department  
Ting Zhu, Tax Department  
Chad Toney, Division of Highways  
Berkeley Bentley, Governor’s Office  
Jeff Waybright, Auditor’s Office  
Russ Rollyson, Auditor’s Office  
Sean Whelan, Attorney General’s Office  
Sarah Canterbury, Treasurer’s Office  
Lindsay Marchio, Treasurer’s Office  
Steve Adams, Ogden Newspapers  
Donald Kersey, Secretary of State’s Office  
Chris Alder, Secretary of State’s Office  
Maureen Lewis, Secretary of State’s Office  
Denys Snodgrass, Garrett Reporting

The West Virginia Board of Public Works re-convened on Wednesday, December 13, 2023 at 1:00 p.m. in the Governor’s Cabinet and Conference Room, Building 1, Suite 10 of the State Capitol Complex. The meeting was called to order and chaired by Governor Justice. A quorum of members was established.

The second item on the agenda was the approval of minutes from the September 29, 2023 Board of Public Works meeting. Treasurer Moore made a motion to approve the minutes. Secretary Warner seconded. The motion carried.

The third item on the agenda was to receive comments from public utility companies concerning notices of tentative assessed values for tax year 2024.

Paul Konstanty addressed the Board concerning the tentative assessment for Beech Mountain Railroad Co. He stated that the company is located in Randolph County, West Virginia. It is an eight mile rail spur that is owned by United Coal Company. It allows their metallurgical coal to be shipped from the United Star Bridge Processing Plant to the CSX main rail to the port in Baltimore, MD. He explained that United Coal Company is not here to argue against any tax that it should pay, but to explain a unique set of circumstances. He continued that United Coal became a subsidiary of Metinvest, a Ukrainian steel company, in 2009. United then became a vertically integrated coal company, selling a majority of its coal to Metinvest. By 2018, 95% of its metallurgical coal was sent to the parent company in the Ukraine. On February 20, 2022, Russia invaded the Ukraine for the second time. Shortly after, Metinvest called force majeure everywhere in the world. United Coal had to start selling all of its coal on the open market. United Coal and its subsidiary Beech Mountain Railroad were impacted. The coal mined at Carter Roag, the coal mine that Beech Mountain services, was a particular blend of metallurgical coal that was advantageous to the Metinvest coking plant in the Ukraine. When the plant was destroyed, the need for that coal went away. On May 12, 2023, United Coal through Carter Roag issued WARN Act notices to 271 employees, which included the two employees that worked at Beech Mountain Railroad. As of December 31, 2023, there will be no employees at Beech Mountain. There will be 2 employees at Carter Roag to perform reclamation activities that are necessary to achieve bond release and close the mine. Treasurer Moore asked what the plans are for the property after it's idle. Mr. Konstanty replied that it could be sold or it could be completely idled and reclaimed and closed. There may be some interest in the property, but it no longer makes sense for United Coal to continue operating that subsidiary. There is not a stockpile of coal at the site. All of the coal that has been mined has or will be shipped by the end of the month. Auditor McCuskey stated that Mr. Konstanty was describing a unique situation that was caused by a global problem that was uncontrollable. Mr. Konstanty agreed. Treasurer Moore asked what the specific request is. Mr. Konstanty replied the tentative assessment increased almost \$600,000 over last year. They were operating last year and the year before that. There have been dramatic jumps in less than 2 years for an operation that will be idle. Auditor McCuskey stated that would be an assessment timing issue too, meaning that the assessment couldn't have taken into account what was happening in real time.

Ryan Ivey addressed the Board next. He explained that Kroll LLC represents numerous companies that are assessed by the Board. Discussions are ongoing with the Tax Department regarding issues with the tentative assessment for Frontier Communications. He stated that Frontier is a company in transition after bankruptcy filings in 2020 and 2021. They have a legacy communications business that is declining. They have plans to upgrade their systems and be viable into the future. It will take time to implement and see the results of the modernization. He continued by referring to a handout that he provided the Board. It represents an example of the issues being discussed with the Tax Department regarding Frontier's two largest entities in West Virginia, Frontier West Virginia Inc. and Citizens Telecommunications Company of West Virginia. The information is a four year history of the company's revenues, net operating

incomes, and the West Virginia assessed values. He explained that from 2020 to 2023 the revenues and net operating incomes have declined, but the assessed values have increased. In the most recent two years, there have been more substantial increases. He stated that they have had some productive conversations with the Tax Department. They are requesting that the decline in performance be taken into account more and a reasonable adjustment be made. Treasurer Moore asked what Mr. Ivey deems reasonable. Mr. Ivey replied that, using Frontier West Virginia as an example, the assessment last year was about \$329,000,000. The proposed increase this year is up to about \$351,000,000. He has advocated, on behalf of Frontier West Virginia, for an assessment in the range of \$300,000,000 to \$315,000,000.

Auditor McCuskey asked if he was making the argument that because the company made less money, their assets are worth less. Mr. Ivey responded that was correct. He continued that the Tax Department uses two appraisal approaches. One is based on cost, less depreciation of the assets. The other is an income approach, which is the net present value of projected future earnings of the profit. As the earnings of the property go down, projections of those earnings get discounted back to present value today. Auditor McCuskey stated that his question was if he was saying that the assets of the company are actually worth less now than they were in 2022 if they were sold. Mr. Ivey replied yes. He continued that in his view, the assets would be based on the income they are able to produce. Auditor McCuskey asked if the company went to borrow money based on the assets, would they ask for it to be worth less or more based on the economic conditions that exist. He stated that it seems almost impossible, in the current time, that any asset would be worth less now than it was in 2021. Mr. Ivey responded that they may have a different view of what drives the values of a utility's assets.

Attorney General Morrissey stated that his office has done a lot of work with Frontier and noted that they have a different business model than some of their competitors. There are different asset structures in terms of investment in copper versus the fiber. He asked Mr. Ivey how much of the revenue loss is a result of competition. He asked him to walk through why they are seeing that decline. In addition, he asked if Mr. Ivey thinks the assessed value is affected by the competition using other types of technology. He asked Mr. Ivey if he was making a technology argument. Mr. Ivey replied yes, due to the fact that a majority of the assets they own in West Virginia are a legacy, copper-wire based communication system. He stated that Frontier is trying to transition customers from their old declining network to a more modern one. That will take time and more customers. Attorney General Morrissey stated that Frontier's investment has gone down tremendously from the assurance reached with his office after the bankruptcy filings. He continued that he is trying to better understand the investment strategy since Mr. Ivey is asking the state review this differently because of Frontier's specific investment and economic strategies that were promised but not met. Mr. Ivey replied that he is not knowledgeable of the specific investment promises being referred to, but can say that they are in the process of a fiber transition in West Virginia.

Auditor McCuskey asked if the new fiber will be laid over the top of the old assets. Mr. Ivey replied that it can be in the same footprint of the old asset or in new areas determined to be economical. Auditor McCuskey stated that the new fiber is going on the assets that Mr. Ivey claims is worth less. He asked if the value that Frontier has is the ability to lay fiber on their old copper lines to existing customers. Mr. Ivey replied that is one aspect of the value of the company. Auditor McCuskey clarified that he is talking about the property tax. The idea of the utility is that they have access to pieces of property that enable them to deliver the service. The

value of the properties will be increased by virtue of laying fiber on them. Mr. Ivey replied that the Tax Department does a valuation of all of the companies assets as a singular entity. When looking at the total assets, the financial performance is based on how much income they can produce. That metric has been in decline. Auditor McCuskey asked if the revenue decline would result in paying less income tax. Mr. Ivey stated that was correct, that is all factored into the tabulations made by the Tax Department.

Treasurer Moore asked if Frontier received Arca and RDOF funding. He asked what the status was of over \$400,000,000 allocated to put high speed internet in West Virginia. Mr. Ivey replied that there are various government programs that provide support to companies like Frontier for the deployment of broadband. The key takeaway is that those funds are for areas that would be uneconomic for the company to invest in on their own. Mr. Ivey continued that it does increase the company's asset base, but they will not be able to earn much in the rural areas with low population density. Attorney General Morrissey requested that the Board receive an update on the RDOF investments because of the concerns about the company meeting its commitments in the past. Sharing with the Board the investment strategy and how the company plans to meet the terms of the bid may provide answers to some of the questions.

Governor Justice asked, based on what has been presented, if the company was in a lot of trouble. Mr. Ivey replied that the company filed for bankruptcy protection in 2020, and emerged in 2021. Their revenues have not improved over that term. They have a strategy to construct enough fiber to pass 10 million homes in their footprint over a period of years and attract new customers. Governor Justice stated that he understands that the company is reflecting return on investment of a property taxable asset that may have a diminished value. He continued that the part he doesn't understand is the fact that the federal government has pumped in hundreds of millions of dollars into their operations, and they should be making large profits. Either the company is questionably managed, or they are heading to a situation where their vendors will be in danger. He stated that it doesn't make much sense to him how a company, that went into bankruptcy and emerged over 2 years ago, is asking for a reduced tax burden in an economy that is booming and after receiving federal tax dollars. Mr. Ivey clarified that the information he is referencing is as of January 1, 2023, because that is the assessment date. A lot of the funding is rolled out over time. Governor Justice asked if that means things are better now. Mr. Ivey replied that the RDOF funds offer support for the company to build infrastructure in otherwise uneconomic areas. He continued that he doesn't view those funds as a game changer for improving the company's prospects.

Marsha Strait addressed the Board next regarding the tentative assessed values of People's Natural Gas and People's Gas for underground storage of natural gas in West Virginia. She stated that she analyzes the data for new assessments that come in. The storage of their natural gas for the assessment period had an unusually high spike that occurred in natural gas prices at the time. In reporting, the actual MCF reported for People's Natural Gas was only a 1% increase, but the unnatural pricing was a 115% price increase. This resulted in a 314% increase in the tentative assessments. The scenario is the same for People's Gas. She continued that she is bringing this information before the Board for consideration of relief in the assessments. She continues to work with the Tax Department. She stated that the companies are asking for this relief because there was no fluctuation in the amount of gas stored. They request use of pricing more in line with historical costs rather than the unnatural spike at the time of reporting.

Secretary Warner requested an assessment from the Tax Department regarding the information that was presented by the companies. Matthew Irby addressed the Board. He stated that for Beech Mountain Railroad, the shuttering of a plant is new information for the Tax Department. They will have a conversation with the company and work out whether or not there are needed adjustments based on the factors. For Frontier, Commissioner Irby stated that the Tax Department recognizes they have a legacy business and a new line of business that they are invested heavily in. The driving factor is that they have increase on the cost side, which affects the income approach. They will continue working with the company on a fair approach to aligning the legacy business and the new business. The primary approach of the Tax Department is to make sure that taxation is equal and uniform, so everybody is treated fairly. Commissioner Irby continued in regard to gas storage. He stated they use an average of their prior year to try to figure out the value of the gas that is stored, which is based on the price of gas on the market. All of the underground gas storage companies have the same impact.

Governor Justice asked if there were any other companies that would like to address the Board. There were no responses.

The next item on the agenda was the consideration of utility requests for relief from erroneous assessment pursuant to W. Va. Code §11-6-12a from the following companies:

- Hometown Transportation
- AgroThrive, Inc.
- MUL Railcars, Inc.
- Lumos Networks LLC
- WV American Water
- American Messaging Services

Matthew Irby addressed the Board. Starting with Hometown Transportation, he stated it would be best for the Board to hear directly from the company. The Tax Department is not in agreement with them. They feel this is not a clerical error, but an objection to the methodology used. They do not recommend the adjustment being requested. Treasurer Moore asked for a representative from Hometown Transportation. There were no responses. Regarding AgroThrive, Commissioner Irby explained the issue was a keying error on the part of the Tax Department on their capitol asset list. They recommend the adjustment being requested. Regarding MUL Railcars, Commissioner Irby explained that the company is out of business. They began business as another entity that was also assessed, so they were assessed twice. They recommend an exoneration. Regarding Lumos Networks, Commissioner Irby explained that the company came to the Tax Department with an error between the property tax sheet and the amount listed on the final values. There should have an extra 1 in front of the value, which increases the assessment by ten million dollars. They recommend the adjustment being requested. Regarding WV American Water, Commissioner Irby explained that the Tax Department used their net income before taxes, they should have used their net income after taxes. They recommend the adjustment being requested. Regarding American Messaging Services, Commissioner Irby explained that the company had misstated their expenses. This a clerical error on the part of the company. They recommend the adjustment being requested.

Attorney General Morrissey made a motion that the Board go into Executive Session to discuss some of the legal issues that arise from the last discussions. Treasurer Moore seconded the motion. The Board went into Executive Session.

The Board came out of Executive Session.

Attorney General Morrissey made a motion to deny the request of Hometown Transportation. Treasurer Moore seconded the motion. The motion carried.

Attorney General Morrissey made a motion to approve the request of AgroThrive, Inc. Treasurer Moore seconded the motion. The motion carried.

Attorney General Morrissey made a motion to approve the request of MUL Railcars, Inc. Treasurer Moore seconded the motion. The motion carried.

Attorney General Morrissey made a motion to approve the request of Lumos Networks, LLC. Treasurer Moore seconded the motion. The motion carried.

Attorney General Morrissey made a motion to approve the request of WV American Water with the recommendation that the company handle the matter at the west end of Charleston properly and dedicate any of the relief to help the people in Charleston. Treasurer Moore seconded the motion. The motion carried.

Attorney General Morrissey made a motion to approve the request of American Messaging Services. Treasurer Moore seconded the motion. The motion carried.

The fifth item on the agenda was the consideration and approval of the following deeds:

1. Between Raleigh County Emergency Services Authority and the State of West Virginia, Department of Commerce, Division of Natural Resources (2.306 acres), dated October 25, 2023, approved as to form by the Attorney General's Office October 27, 2023.
2. Between Raleigh County Emergency Services Authority and the State of West Virginia, Department of Commerce, Division of Natural Resources (19.194 acres), dated October 25, 2023, approved as to form by the Attorney General's Office October 27, 2023.
3. Between West Virginia Department of Transportation, Division of Highways and the City of New Cumberland, dated December 5, 2023, approved as to form by the Attorney General's Office December 7, 2023.

Zack Brown addressed the Board regarding deeds number 1 and 2. He explained that the DNR has been working with Raleigh County and the Federal Government Services Administration for the last couple of years to partition part of the property for use by the DNR as a district office complex. The current complex is located off Robert C Byrd Drive in Beckley. The current facility is not easily accessible and they have outgrown it. The property currently owned by

Raleigh County is a federal surplus property, so they had to go through the Government Services Administration to get it re-partitioned as reflected in the 2 deeds.

Treasurer Moore made a motion to approve deeds 1 and 2. Attorney General Morrisey seconded. The motion carried.

Chad Toney addressed the Board regarding deed number 3. He explained that this is an exchange deed for West Virginia State Route 2 improvements including removing some railroad crossings. The way the property was purchased required them to provide them back the same or better area for a park and work on their parking lot and sidewalks.

Treasurer Moore made a motion to approve deed 3. Attorney General Morrisey seconded. The motion carried.

With no further business, Attorney General Morrisey made a motion to recess until the next meeting. Treasurer Moore seconded. The motion carried. The meeting recessed.



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Mac Warner, Secretary of State  
And Ex-Officio Secretary of the  
Board of Public Works