

**West Virginia Board of Public Works  
Friday, December 19, 2025 – 9:30 a.m.  
Governor’s Cabinet and Conference Room  
Minutes**

**Attendees:**

Members

Governor Patrick Morrisey  
Secretary of State Kris Warner  
State Superintendent of Schools Michele Blatt  
Attorney General John B. McCuskey  
State Auditor Mark Hunt  
Commissioner of Agriculture Kent Leonhardt  
Lindsay Marchio for State Treasurer Larry Pack

Guests:

Matthew Irby, Commissioner, Tax Department  
Frank Capehart, Tax Department  
Ting Zhu, Tax Department  
Sarah Runyon, Division of Highways  
Charles Hall, Division of Highways  
Sean Whelan, Governor’s Office  
Scott Caudill, Auditor’s Office  
Lora Lane, Auditor’s Office  
Cassandra Means-Moore, Attorney General’s Office  
John Willems, Attorney General’s Office  
Jakeb Shuck, Dept. of Agriculture  
Scott Ash, DuCharme, McMillen & Associates, Inc. by teleconference line  
Scott Mitchell, DuCharme, McMillen & Associates, Inc. by teleconference line  
Mark Balistrieri, Schneider Downs by teleconference line  
Jordan DeVivo, Schneider Downs by teleconference line  
Darin Espigh, UGI Appalachia by teleconference line  
Jody Rosier, Snyder Environmental Services Inc. by teleconference line  
Lee Snyder, Snyder Environmental Services Inc. by teleconference line  
Steve Adams, Ogden Newspapers  
David Cook, Secretary of State’s Office  
Chloe Bailey, 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 Friday, December 19, 2025 at 9:30 a.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 Morrisey. A quorum of members was established.

The second item on the agenda was the approval of minutes from the September 29, 2025 Board of Public Works meeting. Auditor Hunt made a motion to approve the minutes. Commissioner Leonhardt 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 2026.

Scott Mitchell addressed the Board regarding the tentative assessment for Eastern Gas Transmission and Storage. He stated that they have been working with the Tax Department since receiving the tentative value on a couple of items. He explained that in 2022 Eastern Gas Transmission and Storage added a fuel tracker to their rate case, meaning they can no longer earn revenue based on fuel. They can only get dollar for dollar recovery. In 2022, revenue from fuel was a significant component of the overall income. This created an artificial spike in the trend of income in 2022. He continued that the income approach to value uses a five year average. The 2022 number is not representative of the future because of the new fuel tracker. In addition there are a few accounting changes that added to the spike in 2022. He continued that they are working with the Tax Department on how to account for those with the income approach.

Mr. Mitchell stated the second item they have been discussing is the issue of external or economic obsolescence in the cost approach. He explained that the cost approach for a public utility is generally a historic cost less depreciation. In the current assessment there is no obsolescence adjustment and there is 30% weight applied to this indicator. The premise of a historical cost approach for a utility is a cost of service model in which they earn an allowed rate of return that is equal to the market rate of return. If a utility is not earning their allowed rate of return or market rate of return, the cost approach becomes less reliable. It needs to either be weighted at a lower amount or obsolescence needs to be quantified and applied. They request that the State Tax Department consider the capitalization of income loss adjustment to the cost approach, or consider removing weight from the cost indicator and applying additional weight to the income indicator.

Commissioner Leonhardt asked for the Tax Department to address their thoughts on the issues. He then asked if WV rules allow what is being requested. Commissioner Irby addressed the Board. He explained that they are still looking at the company's actual income and what occurred in their financial statements in past years. He continued that the rules do provide for an opportunity to look at appropriate economic obsolescence. The rules also provide that they primarily use an income approach. Typically they do 70% income and a 30% cost to capture some portion of actual physical assets. They have, in the past, been able to adjust the weighting. Commissioner Leonhardt asked if that has been consistent year to year. Commissioner Irby replied they have been consistent year to year as well as between companies that operate in the same space. Secretary Warner asked, for the 30% not covered by cost, is there other external obsolescence. Commissioner Irby replied that primarily 70% of value is driven by the income approach and 30% of the value is driven by cost approach, which is initial cost less depreciation. They haven't yet done any further adjustment to that cost approach. The discussion with the company is ongoing.

Scott Mitchell addressed the Board regarding the tentative assessments for Appalachian Power Co., Wheeling Power Co., Kentucky Power Co., and AEP WV Transmission Co. He stated that they are continuing to work with the Tax Department on the issues. He explained that these are

regulated public utilities. They are charged with prudence standards of managing expenses. Property tax is an expense that goes into rates charged to customers. Managing property tax expense is important to them. They have already resolved some of the issues, but still have one outstanding. He referred to a chart in the memo provided to the Board that shows a widening gap between the authorized return that utilities are receiving from utility commissions and the actual achieved return. There is also a gap between what utility commissions are authorizing for returns and what the market is demanding as cost of capital has risen rapidly over the past few years. Their request is for a reduced weight to the cost approach. The cost approach for a public utility makes sense when a company is earning their allowed rate of return and earning returns in line with the market. When a company is failing to earn their allowed rate of return, that cost approach has reduced validity. These are indicators of external obsolescence that should be considered in a cost approach. The companies are suffering from external obsolescence and have requested that either an adjustment be made for that or reduce the weight that is currently being applied to the cost approach.

Governor Morrissey asked what Mr. Mitchell would define as the major factors in external obsolescence that have risen in recent years. Mr. Mitchell replied that rate cases are not as frequent as changes in cost of capital. Additionally, getting the allowed capital, operating, and maintenance expenses into the rate cases is what drives the return. Lastly, inflation has pushed the cost of everything up, utilities have had costs for things go up. Governor Morrissey asked what percentage of the change is attributable to inflation. Mr. Mitchell replied that inflation has caused an increase in operating and maintenance expenses. It is a catalyst for other factors that are causing the external obsolescence. Commissioner Irby stated that they are continuing to analyze this. They are undertaking a total analysis of the industry. Secretary Warner asked when the Board will receive the information. Commissioner Irby replied that the recommended final assessments will be distributed a couple week prior to the next meeting.

Governor Morrissey asked if there were any other public utility companies that wish to speak to their tentative tax assessments for tax year 2026. There were no responses.

Commissioner Leonhardt made a motion to formally receive the public comments and direct the Tax Commissioner to consider them in developing proposed final assessments for the Board. Secretary Warner seconded. The motion carried.

The fourth item on the agenda was consideration of an item held over from the October 1, 2024 Board of Public Works meeting regarding the request for relief from erroneous assessment from UGI Appalachia, LLC.

Mark Balistrieri addressed the Board. He explained that UGI Energy Services purchased Columbia Midstream in 2019. During the acquisition an evaluation was done to value the assets in West Virginia. When the property tax return was filed, the employee of the company at that time did not pick up the new valuation of the company of \$38,318,000. Instead the prior year's assets of \$92,127,319 were reported. Documentation of the numbers has been submitted. In addition, they have provided a memo that answers questions the Board had at the previous meeting.

Governor Morrissey asked if the Tax Department had any comments or statements. Commissioner Irby addressed the Board. He stated that they don't disagree that the incorrect

value was included on their returns. The only question is whether or not the application was made timely with the Board. That is a Board decision. The company did correctly file their tax year 2023 return. According to Code §11-6-12a, an application was to be made to the Board when the error is discovered or when they reasonably could have discovered it. He continued, from the Tax point of view, when you file the correct information on a return then, at that point, you should have reasonably been able to discover an error in prior returns. Mr. Balistreri responded that the error was discovered when Darin Espigh joined the company and reviewed the work that had been done on the tax returns previously. Governor Morrissey asked if there were people in the company tracking to make sure that the filings were done accurately. Mr. Espigh replied yes and added that at the time of the filing in May of 2022, the preparer and manager were overseeing the filing. Shortly thereafter, the preparer left the company and the manager retired. Due to the resulting transition of duties, it took some time to discover the error.

Auditor Hunt stated that everyone agrees that there was a mis-assessment problem and that there is also agreement that perhaps the filing for the mis-assessment was late. He asked the Attorney General for his thoughts. AG McCuskey stated that the Board has the ability to give the company an extension retroactively or reject the request and consider the filing untimely. That is a decision that the Board can make by vote. There are many factors for the Board to consider. Governor Morrissey stated that the Board could consider going into executive session to discuss a variety of different legal options, no decisions will be made. AG McCuskey asked Mr. Espigh what the amount of the requested adjustment is. Mr. Espigh replied that they were assessed approximately \$800,000 and should have been assessed approximately \$400,000 for each of 2 tax years, 2019 and 2020.

AG McCuskey made a motion that the Board go into executive session. Secretary Warner seconded. The motion carried. The Board went into executive session.

The Board came out of executive session. AG McCuskey made a motion that the Board will request of the Tax Commissioner a proposal to resolve this situation which will be presented to the Attorney General then presented to the rest of the Board for action at the next meeting. Secretary Warner seconded. The motion carried.

The fifth item on the agenda was an application for relief from erroneous assessments, pursuant to W. Va. Code §11-6-12a, for Jefferson Utilities, Shenandoah Junction, and Valley Water. Jody Rosier addressed the Board. She explained that she has submitted a request for the outstanding tax bills from 2024 to be reviewed. They sold all of the assets from all 3 of the companies on October 2, 2023 to WV American Water. They did not own any of the property that was assessed. This should have been reported by the new owners. Commissioner Irby addressed the Board. He stated that the values of the 3 companies should have been absorbed in the value of WV American Water. The Tax Department issued non-filer assessments for the 3 companies after not receiving a report or any communication from them. Those 3 assessments were made in error. AG McCuskey asked if they were issued twice. Commissioner Irby replied that the value was captured twice, because those entities assets were included in WV American Water's return.

Governor Morrissey asked whether there is a mechanism in place to prevent that kind of occurrence from happening again. Commissioner Irby replied that there is nothing specific in statute or rule for the taxpayer to provide the information. The companies would have received

their public utility returns and tentative assessments. A response could have been made at that time. Commissioner Leonhardt asked if the sales are approved by the Public Service Commission. Ms. Rosier replied that they were. Commissioner Leonhardt stated maybe the Board could look at notification from the PSC on approved sales. Governor Morrissey suggested that whoever acquires the new asset could be required to notify.

Commissioner Leonhardt made a motion to approve the relief requested from Jefferson Utilities, Shenandoah Junction, and Valley Water. Auditor Hunt seconded. The motion carried.

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

1. Between the West Virginia Department of Transportation, Division of Highways and Benedum Airport Authority (PM25-4-HARR-3), dated September 3, 2025, approved as to form by the Attorney General's Office October 6, 2025.
2. Between the West Virginia Department of Transportation, Division of Highways and Benedum Airport Authority (PM25-4-HARR-1), dated September 3, 2025, approved as to form by the Attorney General's Office October 8, 2025.
3. 3 deeds between Benedum Airport Authority and the West Virginia Department of Transportation, Division of Highways (parcels 15-2, 15-3, and 15-4), dated August 28, 2025, approved as to form by the Attorney General's Office October 8, 2025.
4. Between County Commission of McDowell County West Virginia and the West Virginia Department of Transportation, Division of Highways, dated September 4, 2025, approved as to form by the Attorney General's Office November 5, 2025.
5. 2 deeds between the City of Buckhannon and the West Virginia Department of Transportation, Division of Highways (parcels 2 and 2-1), dated September 15, 2025, approved as to form by the Attorney General's Office December 10, 2025.
6. 7 deeds between the Upshur County Commission and the West Virginia Department of Transportation, Division of Highways (parcels 4, 5, 6, 7, 8, 10, and 11), dated September 15, 2025, approved as to form by the Attorney General's Office December 10, 2025.
7. Between the West Virginia Department of Transportation, Division of Highways and West Virginia Economic Development Authority, dated December 2, 2025, approved as to form by the Attorney General's Office December 11, 2025.

Sarah Runyon addressed the Board regarding the deeds. She explained that deeds number 1 and 2 are excess right of ways that the Benedum Airport Authority requested to buy from Highways

to expand their footprint. The properties contained in item 3 are for Highways to receive the property to do the Benedum widening project. They are all related and in the same area.

Commissioner Leonhardt made a motion to consolidate the consideration of the deeds. Auditor Hunt seconded. The motion carried.

Secretary Warner made a motion to approve deed items 1, 2, and 3. Commissioner Leonhardt seconded. The motion carried.

Sarah Runyon addressed the Board regarding deed 4. She explained that this is for the Lex Hill Road Bridge project. The bridge was washed out in the flood in the spring of 2025. It's an emergency project.

Auditor Hunt made a motion to approve deed number 4. Superintendent Blatt seconded. The motion carried.

Sarah Runyon addressed the Board regarding deed item 5 containing 2 parcels. She explained that these are to widen WV 20 and add a turn lane to improve the flow of traffic.

Auditor Hunt made a motion to approve deed number 5. Commissioner Leonhardt seconded. The motion carried.

Sarah Runyon addressed the Board regarding deed item 6 containing 7 parcels. She explained that this is for the same project on WV 20 turn lane in the City of Buckhannon.

Auditor Hunt made a motion to approve deed number 6. Secretary Warner seconded. The motion carried.

Sarah Runyon addressed the Board regarding deed number 7. She explained that the deed is to transfer property to the Economic Development Authority at fair market value for a potential development project.

Secretary Warner made a motion to approve deed 7. Auditor Hunt seconded. The motion carried.

The next item on the agenda was a potential executive session for discussion concerning litigation matters. AG McCuskey made a motion that the Board go into executive session. Superintendent Blatt seconded. The motion carried. The Board went into executive session.

The Board came out of executive session. Governor Morrissey stated that no decisions had been made. The discussion was about pending potential litigation and legal issues.

Commissioner Leonhardt made a motion to allow the Attorney General to pursue litigation against Black Diamond Energy for delinquencies owed to the Board of Public Works. Auditor Hunt seconded. In discussion, Governor Morrissey stated that it's their understanding that there are significant delinquencies with this company and a liability that has been accruing over a long period of time. There have been a number of efforts made to re-coop money that is owed to the Board. He called for the vote. The motion carried.

The final item on the agenda was to recess until the next meeting. Commissioner Leonhardt made a motion for the Board to recess. Lindsay Marchio seconded. The motion carried. The Board recessed.

A handwritten signature in blue ink, reading "Kris Warner", is written over a horizontal line. The signature is fluid and cursive.

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