

**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 21st day of May 2014.

CASE NO. 14-0872-W-GI
GENERAL INVESTIGATION PURSUANT TO W.VA. CODE §24-2-7 INTO THE ACTIONS OF WVAWC IN REACTING TO THE JANUARY 9, 2014 CHEMICAL SPILL.

CASE NO. 14-0034-W-C
MARK HALBURN,
Dunbar, Kanawha County, Complainant,
v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility, Defendant;

CASE NO. 14-0092-W-C
ROBERT P. and WILMA J. AVSEC,
Cross Lanes, Kanawha County, Complainants,
v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility, Defendant;

CASE NO. 14-0124-W-C
CHARLES E. WORKMAN,
Elkview, Kanawha County, Complainant,
v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility, Defendant;

CASE NO. 14-0253-W-C
PAMELA SUMMERS,
South Charleston, Kanawha County, Complainant,
v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility, Defendant;

CASE NO. 14-0260-W-C
JOSEPH W. SIMONTON
Charleston, Kanawha County,

Complainant,

v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0282-W-C
KATHERINE L. DOOLEY,
Charleston, Kanawha County,

Complainant,

v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0288-W-C
JARED GILLESPIE,
Culloden, Cabell County,

Complainant,

v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0294-W-C
KATE FITZGERALD and PAUL R. SHERIDAN,
Charleston, Kanawha County,

Complainants,

v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0302-W-C
JASON LOVELESS,
Pratt, Kanawha County,

Complainant,

v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0305-W-C
BRUCE R. PENNINGTON,
Charleston, Kanawha County,

Complainant,

v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0310-W-C
DENISE GIARDINA,
Charleston, Kanawha County, Complainant,
v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility, Defendant;

CASE NO. 14-0315-W-C
MICHAEL D. NELSON,
Culloden, Putnam County, Complainant,
v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility, Defendant;

CASE NO. 14-0316-W-C
JODI MCMILLIAN,
Charleston, Kanawha County, Complainant,
v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility, Defendant;

CASE NO. 14-0318-W-C
MICHAEL PUSHKIN,
Charleston, Kanawha County, Complainant,
v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility, Defendant;

CASE NO. 14-0333-W-C
ELIZABETH SEGESSENMAN,
Charleston, Kanawha County, Complainant,
v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility, Defendant;

CASE NO. 14-0341-W-C
KELLY A. BRAGG,
Charleston, Kanawha County, Complainant,
v.
WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility, Defendant;

CASE NO. 14-0369-W-C
KAREN J. HICKMAN
Cross Lanes, Kanawha County,
v.

Complainant,

WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0385-W-C
GERALD E. STRICK,
Charleston, Kanawha County,
v.

Complainant,

WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0386-W-C
CHRISTOPHER STRICK,
Charleston, Kanawha County,
v.

Complainant,

WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0391-W-C
LINDA FRAME,
Charleston, Kanawha County,
v.

Complainant,

WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0392-W-C
CONNIE BLOSS,
Charleston, Kanawha County,
v.

Complainant,

WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0457-W-C
BROOKE DRAKE
Charleston, Kanawha County,
v.

Complainant,

WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant;

CASE NO. 14-0489-W-C

GARY R. ZUCKETT

Charleston, Kanawha County,

Complainant,

v.

WEST VIRGINIA-AMERICAN WATER

COMPANY, a public utility,

Defendant;

CASE NO. 14-0652-W-C

MICHAEL L. FALBO,

Nitro, Kanawha County,

Complainant,

v.

WEST VIRGINIA-AMERICAN WATER

COMPANY, a public utility,

Defendant;

CASE NO. 14-0654-W-C

EMMETT PEPPER,

Charleston, Kanawha County,

Complainant,

v.

WEST VIRGINIA-AMERICAN WATER

COMPANY, a public utility,

Defendant;

CASE NO. 14-0658-W-C

JACK WADE,

Charleston, Kanawha County,

Complainant,

v.

WEST VIRGINIA-AMERICAN WATER

COMPANY, a public utility,

Defendant.

COMMISSION ORDER

The Commission initiates a general investigation into this matter and holds in abeyance these complaint case proceedings, and related discovery, pending further order of the Commission, all as more fully described in this Order.

BACKGROUND

On January 9, 2014, Freedom Industries, Inc., suffered a significant leak in its storage tank facility allowing the unpermitted discharge of crude 4-methylcyclohexane methanol (MCHM) into the Elk River. This leak occurred about one mile from the raw water intake of the West Virginia-American Water Company (WVAWC).¹ That MCHM

¹ The leak has most commonly been referred to as the "spill." We will use that term to identify this event in this Order without attempting to characterize what happened as a "spill."

found its way into the raw water intake structure and ultimately into the finished water supply of WVAWC produced at its Kanawha Valley Treatment Plant. The finished water went into the WVAWC transmission, distribution and storage systems and into the systems of some sale for resale customers of WVAWC (for ease of convenience we will refer to the affected water systems collectively as the Kanawha Valley System). After detection of the MCHM, WVAWC entered a "do not use" notice for WVAWC customers that ran from January 9, 2014, and was lifted by zones throughout the Kanawha Valley System beginning January 13, 2014. While it was in place, the do not use notice impacted all or a portion of over 100,000 customers of WVAWC served from the Kanawha Valley System.

WVAWC continued to produce and pump water into its transmission, distribution, and storage facilities after the beginning of the "do not use" notice, but the water provided was designated to be used only for flushing toilets and to provide fire protection. The health concerns generated by the MCHM and the resulting "do not use" notice resulted in many restaurants, schools and some other business customers of WVAWC, closing their doors. During the "do not use" notice, residential customers suffered significant inconvenience and uncertainty and were forced to resort to using containers and bottles of fresh water obtained from relief centers, friends, family members, and commercial vendors.

The Commission has received a significant number of informal and formal complaints from WVAWC customers regarding the consequences of the chemical spill. The complaints are wide-ranging and allege a number of unreasonable or faulty practices by WVAWC or others, but generally focus on the difficulties created by the inability of customers to use the water supplied by WVAWC during the "do not use" period. Many of these complaints request full or partial relief from paying for the water contaminated by the spill during the "do not use" period and in some instances beyond.

Typically, the Commission attempts to provide every customer an opportunity to present their individual complaints and their individual facts supporting their allegations of faulty utility service. In this instance, however, because of the substantial overlap among the complainants regarding the primary issue complained of (the lack of quality water), the large number of actual or potential requests for relief, the tremendous interest and wide spread litigation that has been engendered by the spill, and the Commission's interests in judicial economy and the need to avoid duplication of effort, the Commission has determined that the most effective way to handle this matter, at least initially, is through a general but focused investigation. This Order establishes that general investigation and sets some of the parameters for the proceeding.

The issue before the Commission is relatively simple – at the time of and under the circumstances that existed with the spill, did the actions of WVAWC in reacting to the spill and the presence of MCHM in its raw water or finished water supply constitute

unreasonable or inadequate practices, acts, or services as provided under the provisions of W.Va. Code §24-2-7 or other pertinent provision of Chapter 24 of the West Virginia Code. It should be understood that the purpose of this general investigation is limited to the WVAWC reaction to the spill and is not intended to re-litigate past certificate proceedings regarding the intake, treatment, storage, distribution, or transmission plant that was in place in the Kanawha Valley System.

The Commission will make certain observations about this proceeding before we set forth the parameters of this general investigation:

1. There is currently nothing embedded in the WVAWC cost of service for the costs or impacts of the spill and no customers are bearing those costs through rates at this time.
2. The recovery of all or any portion of the costs imposed upon or borne by WVAWC as a result of the spill or to pass any portion of those costs to WVAWC's ratepayers can only be done through a specific request for rate relief by WVAWC approved by this Commission. This is not such a proceeding. Further, by Commission Order in Case No. 12-1649-W-42T (the most recent WVAWC rate proceeding), WVAWC cannot file a new rate case before January 1, 2015.
3. Pending the outcome of this general investigation and unless specifically provided otherwise in a separate proceeding, all customers must continue to pay for water used as measured by their meters, except for the amount recognized initially by WVAWC for use in purging the piping and appliances of customers after the spill.
4. Although the Commission acts in both a quasi-legislative and a quasi-judicial capacity in these types of proceedings involving utilities, the Commission is not a court of general jurisdiction, cannot award damages, and is limited to exercising only that authority granted to it by the Legislature.
5. Unlike courts of general jurisdiction in this state that resolve legal disputes and determine liability between plaintiffs and defendants, with the assistance of juries, the Commission has been given a different charge by the West Virginia Legislature and has the responsibility for appraising and balancing the interests of current and future utility service customers, the general interest of the State's economy, and the interests of the utilities subject to its jurisdiction in its deliberations and decisions (W.Va. Code §24-1-1(b)).

6. Also, unlike courts of general jurisdiction that can impose compensatory or punitive damages in its awards, the Commission authority in matters such as this is to review the practices, acts, and service of a public utility. If the Commission finds that the utility actions were unjust, unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of West Virginia Code, Chapter 24, or that any service is inadequate, the Commission can then order reasonable practices or services to be followed or provided by the utility. (W.Va. Code §24-2-7).

Our examination of the issues in this general investigation will focus on the actions and activities of WVAWC following the spill, not on whether, in 20/20 hindsight, prior WVAWC certificate projects might have been designed differently.

In addition, we wish to make it clear that this general investigation is not intended, and cannot be used, to evaluate or develop quality standards for public drinking water supplies. That jurisdiction is reserved to what is currently the Bureau for Public Health of the West Virginia Department of Health and Human Resources. With regard to the quality of water, the Commission is required, pursuant to W.Va. Code §24-2-5 to use the quality standards established in regulations governing public water supplies by the state Board of Health (currently the Bureau for Public Health).

Pending Complaint Cases Held in Abeyance.

In addition to initiating a general investigation as described herein, the Commission is also taking the step of holding all of the complaint cases relating to the spill in abeyance, pending the outcome of the investigation. Many, if not all, of the issues in these complaint cases are implicated by the results of the general investigation that has been initiated by this Order. To avoid duplication regarding discovery between the complaint cases and the general investigation, the Commission, by this Order, will defer acting on those complaint cases (except as noted below regarding payment for water services), and any similar complaint cases filed during the pendency of the general investigation.

The majority of the complaint cases raising the issue of potability asked that they be excused from having to pay for service during the pendency of the "do not use" notice, with several complainants seeking relief beyond that period as well. Five of the Complainants requested interim relief from the Commission, specifically requesting relief of this nature on an immediate basis.²

² See Case Nos. 14-0294-W-C (Fitzgerald/Sheridan), 14-0310-W-C Giardina, (14-0316-C (McMillian), 14-0333-W-C (Segessenman), and 14-0391-W-C (Frame).

In a March 19, 2014 order on reconsideration issued in Case No. 14-0294-W-C (Fitzgerald/Sheridan), the Commission noted that the complainants in that case did not question their meter reading or the application of the Commission-approved WVAWC tariff rates to the amount of water that passed through their water meter; instead, the complainants asked whether they should be required to pay for the water delivered through the meter where they allege the water was not pure, wholesome, and potable as described in the Commission Rules for the Government of Water Utilities, (Water Rules) 150 C.S.R. 7. The Commission further noted that a request for billing relief based on suitability of the water was not a billing dispute case in the traditional sense of determining whether the meter reading accurately reflected actual usage or whether tariff rates were properly applied to usage. Specifically, the complaints had not raised a billing dispute issue other than the question of whether the quality of the water delivered required payment for service rendered. In its March 19, 2014 Order, the Commission required that (i) water bills for the period of January 9, 2014, through the filing of the complaint, along with all subsequent current bills, must be paid by the complainants pending disposition of the complaint to avoid disconnection for non-payment and (ii) WVAWC file copies of any correspondence it sent the complainants during the pendency of the complaint advising that service will be terminated for failure to pay current bills in accordance with the Commission's Water Rules and to file an update if service is actually terminated.

The Commission will apply this holding to all of the complaint cases pending disposition of the general investigation, or until further order in the individual complaints. Specifically, for the cases in the style of this order, and others filed later that are similarly situated, where the complainant raises a billing dispute based on the question of whether the quality of the water delivered required payment for service rendered, or based on billing for amounts used by a complainant in flushing their water system, the Commission will require that the complainant pay all water bills incurred during the "do not use" period along with all subsequent current bills to avoid disconnection for non-payment. Further, we will require that WVAWC file copies of any correspondence it sends to these complainants, and others filing later that are similarly situated, advising that service will be terminated for failure to pay current bills in accordance with the Commission Water Rules, and to file an update if service is actually terminated.

Procedural Schedule

The Commission will establish a procedural schedule for use in this general investigation:

June 25, 2014, 4:00 p.m.	Intervention deadline
July 2, 2014, 4:00 p.m.	Direct testimony of WVAWC
August 20, 2014, 4:00 p.m.	Direct testimony of Staff and Intervenors
September 10, 2014	Completion of discovery
September 24, 2014, 4:00 p.m.	Simultaneous rebuttal testimony
October 1, 2014, 4:00 p.m.	Agreed order of witnesses from all parties
October 1, 2014, 4:00 p.m.	Written opening statements
October 7-9, 2014, beginning at 9:30 a.m.	Hearing in the Howard M. Cunningham Hearing Room, PSC Commission Building, Charleston, West Virginia. At the beginning of the hearing, the Commission will take public comment from non-parties.

Content of Direct Testimony by WVAWC

In addition to any testimony that WVAWC believes is responsive to the scope, as described above, of this general investigation, the Commission requires WVAWC to provide the following content:

1. A chronological description of the pertinent actions taken by WVAWC personnel beginning when any employee of WVAWC, its parent company, or service company became aware of the spill, through March 31, 2014.³
2. A chronological listing of the measurements of MCHM taken by WVAWC and the locations where those measurements were obtained, through March 31, 2014. WVAWC should provide updated measurements once it has completed replacement of its filters.
3. A narrative describing the process and factors used to decide whether to close the intake structure. The testimony should include which, if any, outside agencies were consulted or otherwise had a role in making the decision, the factors contemplated in making the decision, and who ultimately made the decision regarding the continued intake of raw water from the Elk River.
4. A detailed description of the involvement of all agencies or entities external to WVAWC that were consulted or otherwise involved in developing or

³ WVAWC began the process of replacing its filters on April 1, 2014.

implementing protocols used by WVAWC from the first indications of the spill through March 31, 2014.

5. A description of alternatives for water treatment or alternative or supplemental sources of treated or finished water that were considered by WVAWC after it became aware of the MCHM spill.

Public Notice

The Commission will direct WVAWC to publish notice of this general investigation and the procedural schedule.

Intervention

This case may involve a significant number of intervenors. The Commission is aware of the difficulty and expense involved in traveling to Charleston in order to participate in these proceedings. Even so, intervenors in Commission cases must recognize that along with the rights of being an intervenor come certain obligations. (Those obligations are described below.) Rule 12.6 of the Commission Rules of Practice and Procedure (Procedural Rules), 150 C.S.R. 1, describes intervention:

12.6.a. Any person having a legal interest in the subject matter of any hearing or investigation pending before the Commission may petition or move orally for leave to intervene in such proceeding prior to or at the time it is called for hearing, but not thereafter except for good cause shown. If leave is granted, the petitioner becomes an intervenor and a party to the proceeding with the right to have notice of and appear at the taking of testimony, to produce and cross-examine witnesses, and to be heard on the argument of the case.

The petition or motion shall disclose the name of the party intervening, the name and address of his/her attorney, if any, a clear and concise statement of the grounds for the proposed intervention, the position and interest of the petitioner or movant in the proceeding, and concise statement of the relief desired. Leave will not be granted except on allegations reasonably pertinent to the issues already presented and which do not unduly broaden them.

12.6.d. Limitations of intervention.

When two or more intervenors have substantially similar interests and positions, the Commission may, in order to expedite the hearing, limit the

number of parties who may cross-examine, make and argue motions, or object on behalf of such intervenors.

All Intervenors are encouraged to read the Commission's Rules of Practice and Procedure. (<http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=25305&Format=PDF> or <http://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=25305&Format=WORD>) In particular, Intervenors should be aware of the following aspects of participating in this proceeding before the Commission.

Intervention Deadline. The Commission's Rules on intervention generally allow persons to intervene up until the day of hearing. Because of the logistical complexity and the scope of notice provided, the Commission will set an intervention deadline. That deadline will be published as part of the notice in this case. The Commission will not grant petitions to intervene filed after the deadline unless the petition is accompanied by a showing in writing of a compelling reason why the request to intervene was not filed on a timely basis. Merely having an interest, or even a purported special interest, in the proceeding is not a compelling reason for late intervention.

Prefiled Testimony. During the evidentiary hearing in this case, all parties (the term "parties" includes WVAWC and intervenors, but not those filing public comments or protest statements) who wish to present a position on the issues must do so through the filing of written prefiled direct and rebuttal testimony, as set forth in the schedule herein.

Because of the complex, technical, and financial nature of much of the testimony before the Commission, the Commission requires the filing of written pre-filed direct and rebuttal testimony, instead of allowing each party to present its direct case only from the witness stand. This allows all parties to have prior notice and knowledge of the positions of the other parties and allows for a more expedited hearing. When the witnesses take the witness stand, it is not necessary or appropriate for them to restate the content of their pre-filed testimony because the Commission will have (and presumably all parties will have) read that information. When the witnesses take the stand at the hearing, it is for the purpose instead of allowing the other parties to cross-examine them on their pre-filed testimony.

Pre-filed direct and rebuttal testimony, and any related exhibits, must contain the entirety of the party's evidentiary case. An example of pre-filed testimony may be viewed at the following web site:

<http://www.psc.state.wv.us/scripts/WebDocket/ViewDocument.cfm?CaseActivityID=267650>

Parties should be aware that documents (e.g., books, magazine articles, Internet articles, etc.) that are not sponsored by the author are subject to objection, likely will not become part of the evidentiary record, and will not be considered by the Commission

when deciding this case. Parties should not submit information for the Commission's consideration, except as part of pre-filed testimony as provided in the procedural schedule, at hearing, or as further ordered by the Commission.

Cross-examination. Intervenors interested in cross-examining the witnesses of other parties must be present on the day or days that those witnesses are scheduled to testify. The Commission will make every effort to schedule witnesses in advance and notify all parties as to when specific witnesses are expected to be available. Nevertheless, because of the difficulty in predicting exactly when witnesses will testify, it is the responsibility of the parties to be present when the witness they wish to cross-examine appears on the witness stand.

The testimony is pre-filed to give the Commission and the parties an opportunity to review testimony in advance of the hearing. As a consequence, the Commission does not condone or tolerate "friendly" cross-examination because it duplicates the pre-filed testimony, unnecessarily prolongs the hearing, and wastes everyone's time while pre-filed testimony is repeated. In fairness to all parties, the Commission will not permit parties who have similar interests to engage in cross-examination designed to allow the witness to reiterate or expand upon portions of their pre-filed testimony.

Filings in the case. When a party files a document with the Commission's Executive Secretary (201 Brooks Street, Charleston, West Virginia 25323), that party must also send a copy of that document to all of the other parties as described by Procedural Rule 4.3. If there is a filing deadline associated with a filing, that deadline represents the date by which the item must be received by the Commission. Merely placing the item in the mail as of the deadline is not sufficient.

Discovery. Discovery is the means by which parties may ask questions of the other parties. Discovery in a large case such as this has a tendency to take on a life of its own. To minimize the complications inherent in the discovery process, the following discovery rules will be followed by all parties, and those having filed petitions to intervene, in this case.

The party issuing the discovery request (i.e., the party asking the questions) will send the original of the data request, by e-mail or by paper copy as appropriate, to the party who is to respond to the data request (i.e., the party answering the questions). The party issuing the discovery request must also send one paper copy to the Commission Executive Secretary.

The person responding to the discovery request must file with the Commission and serve on the party issuing the request a response within fourteen days of receipt, as follows:

1. The party responding to the discovery request must send a paper or e-mail (as appropriate) response to the party who issued the request.
2. The party responding to the discovery request must file one paper copy of the response with the Commission Executive Secretary.
3. The party responding to the discovery request need not send additional paper copies or electronic copies to the other parties on the service list. Instead, parties interested in reading non-proprietary responses to discovery requests (or objections to and motions to compel responses, described below) should view those documents on the Commission web site where they will be made publicly available in a reasonable period of time after filing (usually the same day or the following day).

Written objections to a discovery request by the responding party must be filed with the Commission (one paper copy) and sent to the party who issued the request within ten days of the Commission receiving the discovery request. The objection must state with specificity the reason for the objection and must be served on the party issuing the discovery request by U.S. Mail or e-mail, as appropriate.

If the responding party does not file an objection with the Commission within ten days of the Commission's receipt of the discovery request, the responding party will be considered to have waived any objection to that discovery request.

If the party issuing the data request wishes to file a motion to compel discovery over the objection of the responding party, that motion to compel must be served on the responding party (by e-mail or paper copy, as appropriate) and one paper copy filed with the Commission, within seven days of the date the objection was filed with the Commission.

If the party issuing the discovery request does not file the motion to compel with the Commission as required above, the party will be considered to have waived its right to file a motion to compel.

To facilitate orderly discovery, all parties are required to adhere to the discovery schedule as contained in this or subsequent Commission orders.

Discovery that is considered by the Commission to be vexatious, burdensome, unduly expansive, or for purposes of harassment will not be tolerated and will be rejected. Requests must be limited to information that is available to the party served, and shall not include development of new information, calculations, workpapers or declarations.

The parties should understand that if there is a filing deadline associated with a filing, that deadline represents the date and time by which the item must be received by the Commission. Merely placing the item in the mail as of the deadline is not sufficient to constitute a filing.

In this case, the Commission is not inclined to spend the limited resources of the parties, or of the Commission, engaged in discovery disputes. To that end, the Commission expects the parties to fully cooperate in the discovery process and respond to all discovery requests that fall within the scope, as described above, of this general investigation. Only the most intractable discovery issues should be brought to the attention of the Commission.

Argument. Argument is that part of a legal proceeding in which the parties apply the law or policy considerations to the evidence or expected evidence to persuade the Commission to accept that party's position. Argument in Commission cases is usually limited to (i) written opening statements filed prior to hearing, (ii) oral opening statements at hearing, (iii) oral closing statements at hearing, (iv) written proposed orders (including findings of fact and conclusions of law), and (v) initial and reply briefs.

Standard procedure on the first day of a Commission hearing is for each party to introduce itself, followed by opening statements. The opening statements are not evidence and are allowed at the discretion of the Commission. Opening statements provide an opportunity for a party to: (i) briefly explain how it sees the case, (ii) describe and interpret applicable statutes, regulations, and case law, and (iii) explain what the party expects to prove to the Commission during the course of the hearing. In this case, particularly given the large number of parties, and because of the complex nature of the applicable statutory provisions, the Commission will not allow oral opening statements during the evidentiary hearing, but will permit the parties to provide written opening statements. The Commission will not consider any written opening statement that exceeds four pages in length, using double spacing and normal document font no smaller than twelve points.

As described in the above procedural schedule the post-hearing argument will be submitted in the form of written proposed orders and briefs filed with the Commission and provided to all parties. The Commission will discuss these documents in greater detail at the end of the evidentiary hearing.

Parties should not submit argument for the consideration of the Commission, except as provided in the procedural schedule above or as further ordered by the Commission.

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Because of the substantial overlap among the complainants regarding the primary issue complained of (the lack of quality water), the large number of actual or potential requests for relief, the tremendous interest and wide spread litigation that has been engendered by the spill, and in the interest of judicial economy and the need to avoid duplication of effort, it is reasonable to institute a general but focused investigation into whether at the time of and under the circumstances that existed with the spill, did the actions of WVAWC in reacting to the spill and the presence of MCHM in its raw water or finished water supply constitute unreasonable or inadequate practices, acts, or services as provided under the provisions of W.Va. Code §24-2-7 or other pertinent provision of Chapter 24 of the West Virginia Code.

2. Pending resolution of the general investigation initiated herein, the Commission will hold the complaint cases in the style section of this order, and others filed later that are similarly situated, in abeyance pending resolution of this general investigation.

3. Until further order of the Commission addressing an individual complaint, for the cases in the style of this order, and others filed later that are similarly situated, where the complainant raises a billing dispute based on the question of whether the quality of the water delivered required payment for service rendered, or based on billing for amounts used by a complainant in flushing their water system, the Commission should require that the complainant pay all water bills incurred during the "do not use" period along with all subsequent current bills to avoid disconnection for non-payment. Further, the Commission should require that WVAWC file copies of any correspondence it sends to these complainants, and others filing later that are similarly situated, advising that service will be terminated for failure to pay current bills in accordance with the Commission Water Rules, and to file an update if service is actually terminated.

4. The Commission should establish a procedural schedule for processing the general investigation established herein.

ORDER

IT IS THEREFORE ORDERED that the Commission initiates a general investigation for the purpose of conducting an investigation, as described herein, and names as respondent the West Virginia-American Water Company.

IT IS FURTHER ORDERED that the complaint cases in the style section of this Order are held in abeyance until further order of the Commission.

IT IS FURTHER ORDERED that the complainants listed in the style section of this Order must pay all water bills incurred during the "do not use" period along with all subsequent current bills to avoid disconnection for non-payment.

IT IS FURTHER ORDERED that West Virginia-American Water Company file copies of any correspondence it sends to the complainants listed in the style section of this Order, advising that service will be terminated for failure to pay current bills in accordance with the Commission Water Rules, and to file an update if service is actually terminated.

IT IS FURTHER ORDERED that the following procedural schedule is established for use in this general investigation:

June 25, 2014, 4:00 p.m.	Intervention deadline
July 2, 2014, 4:00 p.m.	Direct testimony of WVAWC
August 20, 2014, 4:00 p.m.	Direct testimony of Staff and Intervenors
September 10, 2014	Completion of discovery
September 24, 2014, 4:00 p.m.	Simultaneous rebuttal testimony
October 1, 2014, 4:00 p.m.	Agreed order of witnesses from all parties
October 1, 2014, 4:00 p.m.	Written opening statements
October 7-9, 2014, beginning at 9:30 a.m.	Hearing in the Howard M. Cunningham Hearing Room, PSC Commission Building, Charleston, West Virginia. At the beginning of the hearing, the Commission will take public comment from non-parties.

IT IS FURTHER ORDERED that West Virginia-American Water Company address, in addition to any testimony that it believes is responsive to the scope of this general investigation, the following in its pre-filed testimony:

1. A chronological description of the pertinent actions taken by WVAWC personnel beginning when any employee of WVAWC, its parent company, or service company became aware of the spill, through March 31, 2014.

2. A chronological listing of the measurements of MCHM taken by WVAWC and the locations where those measurements were obtained, through March 31, 2014. WVAWC shall provide updated measurements once it has completed replacement of its filters.

3. A narrative describing the process and factors used to decide whether to close the intake structure. The testimony should include which, if any, outside agencies were consulted or otherwise had a role in making the decision, the factors contemplated in making the decision, and who ultimately made the decision regarding the continued intake of raw water from the Elk River.

4. A detailed description of the involvement of all agencies or entities external to WVAWC that were consulted or otherwise involved in developing or implementing protocols used by WVAWC from the first indications of the spill through March 31, 2014.

5. A description of alternatives for water treatment or alternative or supplemental sources of treated or finished water that were considered by WVAWC after it became aware of the MCHM spill.

IT IS FURTHER ORDERED that as soon as possible, West Virginia-American Water Company publish notice of this proceeding, the intervention deadline, and the scheduled hearing, one time in newspaper(s) of general circulation in the nine counties impacted by the January 9, 2014 chemical spill, providing proof of publication on receipt.

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

A True Copy, Teste,



Ingrid Ferrell
Executive Secretary

JJW/s

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

CASE NO. 14-0872-W-GI
GENERAL INVESTIGATION PURSUANT TO W.VA.
CODE §24-2-7 INTO THE ACTIONS OF WVAWC IN
REACTING TO THE JANUARY 9, 2014 CHEMICAL
SPILL.

On January 9, 2014, Freedom Industries, Inc., suffered a significant leak in its storage tank facility allowing the unpermitted discharge of crude 4-methylcyclohexane methanol (MCHM) into the Elk River. This leak occurred about one mile from the raw water intake of the West Virginia-American Water Company (WVAWC). That MCHM found its way into the raw water intake structure and ultimately into the finished water supply of WVAWC produced at its Kanawha Valley Treatment Plant. The finished water went into the WVAWC transmission, distribution, and storage systems and into the systems of some sale for resale customers of WVAWC. After detection of the MCHM, WVAWC entered a "do not use" notice for WVAWC customers that ran from January 9, 2014, and was lifted by zones throughout the WVAWC Kanawha Valley System beginning January 13, 2014. While it was in place, the do not use notice impacted all or a portion of over 100,000 customers of WVAWC served from the Kanawha Valley System.

By Order entered May 21, 2014, the Commission initiated a general investigation to determine whether at the time of and under the circumstances that existed with the spill, did the actions of WVAWC in reacting to the spill and the presence of MCHM in its raw water or finished water supply constitute unreasonable or inadequate practices, acts, or services as provided under the provisions of W.Va. Code §24-2-7 or other pertinent provision of Chapter 24 of the West Virginia Code. It should be understood that the purpose of this general investigation is limited to the WVAWC reaction to the spill and is not intended to re-litigate past certificate proceedings regarding the intake, treatment, storage, distribution, or transmission plant that was in place in the Kanawha Valley System. Additionally, the Commission is not authorized by its enacting legislation to award monetary damages.

The May 21, 2014 Commission Order established three days of evidentiary hearing in this matter. The hearing will begin at 9:30 a.m. on October 7, 8, and 9 at the Public Service Commission, 201 Brooks Street, Charleston, West Virginia. Prior to the beginning of the evidentiary portion of the hearing, the Commission will take public comment from those members of the public that are not parties to this general

investigation. Depending on the number of commentors in attendance, it may be necessary to limit the time available to each person. As an alternative to appearing to make public comment, individuals or entities interested in providing written comments regarding this general investigation should submit their comments to Ingrid Ferrell, Executive Secretary, P.O. Box 812, Charleston, West Virginia 25323.

Individuals or entities interested in participating in the proceeding as full parties shall file a petition to intervene with the Commission's Executive Secretary within thirty days following the date of this publication. Petitions to intervene should state the name and address of the petitioner, the name and address of the petitioner's attorney, if any, a clear and concise statement of the grounds for the intervention, the position and interest of the petitioner, and a concise statement of the relief desired. Requests to intervene must comply with the Commission's rules on intervention set forth in the Commission's Rules of Practice and Procedure and should be addressed to Ingrid Ferrell, Executive Secretary, P.O. Box 812, Charleston, West Virginia 25323. Petitioners granted intervenor status are parties to this general investigation. Please see the May 21, 2014 Commission Order for a brief description of the duties and responsibilities of parties.

WEST VIRGINIA-AMERICAN WATER COMPANY