

**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 9th day of June 2011.

CASE NO. 11-0740-W-GI

WEST VIRGINIA-AMERICAN WATER COMPANY,
a public utility, Charleston, Kanawha County.

General investigation regarding recent staffing changes.

COMMISSION ORDER

The Commission (i) grants two requests to intervene, (ii) opens a limited general investigation, (iii) denies a motion to dismiss, (iv) restyles this matter as a general investigation, (v) establishes a procedural schedule and (vi) calls this matter for an evidentiary hearing on July 26-27, 2011.

BACKGROUND

On May 25, 2011, the Utility Workers Union of America, AFL-CIO, and UWUA Local 537 (UWUA) filed a formal complaint alleging that the West Virginia-American Water Company (WVAWC) is improperly reducing its current staff by thirty-one employees thereby jeopardizing its ability to provide safe and adequate water service to its customers. The UWUA asserted that the reduced headcount is insufficient to properly run existing water operations and requested that the Commission (i) open a general investigation into the matter, (ii) direct WVAWC to file documents justifying its staffing reduction and (iii) stay the planned layoffs pending further investigation. In support of its complaint, the UWUA filed an affidavit from Gregory Lanham attesting to the facts it asserted. Complaint.

The Commission subsequently directed WVAWC to file an answer within ten days. May 25, 2011 Commission Order.

On May 27, 2011, the UWUA filed a revised certificate of service for the complaint.

The Commission issued an Order on May 31, 2011, directing WVAWC to produce and file documents supporting its recent staffing reductions and provide the Commission with a description of each position eliminated. The Commission also directed that "pending a final decision from this Commission, WVAWC is enjoined from reducing staffing levels through involuntary termination

without cause as described in the complaint unless the employees subject to the layoff described in the complaint have already been terminated.”

On June 1, 2011, WVAWC filed a partial response to the Order. WVAWC indicated that it was prepared to supply the requested information for Commission review. WVAWC also stated that it “does not believe it is obligated to return to work the employees affected by the [reduction in force] because they are no longer working employees.”

On June 2, 2011, the UWUA filed a letter responding in opposition to the June 1, 2011 WVAWC letter.

Also on June 2, 2011, the Commission’s Consumer Advocate Division (CAD) petitioned to intervene arguing that this matter may have an impact on WVAWC ratepayers.

Separately, the Laborers International Union of North America, Local 1353, AFL-CIO (LIUNA Local 1353) petitioned to intervene to advocate for the interests of its membership.

The Commission subsequently restated the directive in the May 31, 2011 Commission Order. June 2, 2011 Commission Order.

On June 6, 2011, WVAWC filed its answer denying any wrongdoing. WVAWC requested that the Commission dismiss the complaint, arguing that the UWUA is using this proceeding to entangle the Commission in a pending labor contract negotiation. It also submitted documents responding to the May 31, 2011 Commission Order.

DISCUSSION

This matter presents several pending issues including (i) two requests to intervene, (ii) a request to dismiss the complaint, (iii) a decision on the scope of this proceeding and (iv) the need to establish a procedural schedule. The Commission addresses each below.

Requests to Intervene

The CAD Petition to Intervene argues that this matter is a proceeding that could adversely impact WVAWC ratepayers. The Commission finds that CAD has a legal interest in the subject matter of this proceeding. Similarly, the Commission finds that LIUNA Local 1353 has a legal interest in the outcome of this proceeding based on the interests of its membership. Therefore, the Commission will allow the proposed interventions. The Commission, however, reminds both CAD and LIUNA Local 1353 that granting a request to intervene does not expand the scope of this proceeding. Rule 12.6 of the Commission Rules of Practice and Procedure, 150 C.S.R. Series 1 (Procedural Rules). The Commission will not allow the scope of the proceeding to be expanded into extraneous labor relations issues. With the understanding that our Procedural Rules allow the

granting of intervention in those circumstances that do not unduly broaden the issues, the Commission will grant the interventions requested.

Motion to Dismiss and Scope of Investigation

As noted in its prior orders, the Commission deferred a decision on the scope of this matter to allow it to first review the answer WVAWC filed on June 6, 2011. After considering the allegations of the complaint and the answer, the Commission denies the dismissal motion and will open a limited general investigation focused on the staff reduction WVAWC recently announced, its basis including any underlying changes in capital spending, and the likely effect of the staff reduction and underlying changes in capital spending and maintenance, if any, on service quality. The Commission rejects the jurisdictional arguments advanced by WVAWC in its motion. Acts taken by a utility which may affect service quality are clearly within the statutory oversight of the Commission. The Commission may review and remediate unreasonable actions without the need to change control of a utility through a receivership proceeding. W.Va. Code §§24-1-1, 24-2-7. Thus, the Commission has the statutory authority to investigate this matter and order protective or remedial measures if the results of this investigation indicate such measures are necessary.

The Commission also rejects the contention within the WVAWC Motion to Dismiss that staying the recent workforce reductions WVAWC announced and conducting an investigation is equivalent to the Commission acting as a super board of directors. In support of its contention, WVAWC cited United Fuel Gas Co. v. Public Service Commission, 154 W. Va. 221, 174 S.E.2d 304 (1969). In that case, the Commission was directed to approve an intercorporate realignment between utility subsidiaries and dismiss a rate investigation. Id. at 245. The language from United Fuel relied on by WVAWC did not relate to the quality of service that utility provided to its customers, but to a corporate restructuring. Nor did that proceeding have recent testimony from the company president which appears to call into question the reasonableness of the current actions of WVAWC; instead, the Commission views the United Fuel case to require only that the Commission support its actions with an evidentiary record and apply the statutory test within W.Va. Code §24-2-12 for the corporate realignments of affiliated public utilities. Id. at Syl. Pt. 2, 3.

The Commission wants to make clear its intentions and concerns about the recent activities of WVAWC in reducing its workforce. In the past, WVAWC has made efforts to reduce its workforce and presented descriptions of those efforts and about other cost savings approaches in prior hearings. The Commission has applauded WVAWC efforts to reduce costs. In the most recent rate case, West Virginia-American Water Company, Case No. 10-0920-W-42T (Commission Order April 18, 2011) (Rate Case or Rate Order as appropriate), WVAWC presented arguments and testimony that it could not reduce its workforce further without affecting the quality of service and that it needed, at a minimum, 316 employees. See, Rate Case Ex. WDM-R at 5.

The Commission granted a payroll allowance for 316 employees in the Rate Case and embedded that amount in the final WVAWC rates. Within a few days of the Rate Order becoming a final order of the Commission, WVAWC announced a layoff of ten percent of its workforce, to a level of approximately 279 employees, the lowest level in quite some time. That was

accompanied by public statements by WVAWC or its affiliates that those layoffs were in reaction to the Rate Order, were being made to attempt to preserve financial integrity and would result in a reduction of certain WVAWC activities. The Commission has seen in the past that severe layoffs and reductions in force sometimes are a precursor to reduced replacement and maintenance of utility facilities and deterioration in quality of service. The Commission does not want deterioration of the quality of service of WVAWC in this situation, and it does not believe that the Commission is required to wait for that to happen before we investigate the significant changes announced by WVAWC.

The Commission is not prejudging the issues and has not prejudged this case. Our intent in this proceeding is not to adjudicate labor relations. The Commission intends in this proceeding to look at the nature and extent of employee layoffs and any underlying changes in plant replacement and maintenance practices. We will examine how WVAWC intends to cover the extent of the employee layoffs and how WVAWC intends to operate and maintain the safety and quality of its water and service with the reduced number of employees, particularly given the circumstances under which the reductions were effected.

In this case, the circumstances currently before the Commission require it to deny the dismissal motion and open a limited general investigation into the allegation that WVAWC is ignoring its overriding public service obligation to provide safe drinking water by reducing its workforce by ten percent. Therefore, the Commission will open a limited general investigation into the staffing reduction WVAWC recently announced, its basis including underlying capital budget and spending changes, if any, and the likely effect of the staff reduction on service quality. WVAWC is named as a respondent hereto. At the same time, the Commission will include those parties who have intervened in the UWUA complaint case as parties to this restyled proceeding.

Procedural Schedule and Discovery

It is reasonable to establish an expedited procedural schedule and a compressed discovery process to quickly resolve this matter. Therefore, the Commission will direct WVAWC to file direct testimony supporting its staffing and, if applicable, other budget changes within twenty days of the entry of this Order. Commission Staff, CAD, UWUA and LIUNA Local 1353 may file testimony within thirty days of the entry of this Order. Finally, any party may file rebuttal testimony within thirty-five days of the entry of this Order. Any discovery requests should be filed at the earliest opportunity. The Commission will direct that the normal time allotment for filing discovery objections will be compressed in this matter to five calendar days. Responses to discovery requests must be tendered within ten calendar days. Considering the compressed deadlines in this matter, the Commission expects parties to refrain from any unnecessary discovery requests to adverse parties and to attempt to resolve all discovery disputes. The Commission will call this matter for an evidentiary hearing on July 26-27, 2011, at 9:30 a.m., in the Howard M. Cunningham Hearing Room, Public Service Commission Building, 201 Brooks Street, Charleston, West Virginia.

Other Matters

The Commission will adjust the case style and case identifier from a complaint proceeding to a general investigation. To facilitate this matter, the Commission will also consider requests from the parties to admit identified and relevant portions of the record in the recent Rate Case, Case No. 10-0920-W-42T, as part of the record in this general investigation. Finally, the parties are encouraged to file a joint list of witnesses at least five days in advance of the evidentiary hearing.

FINDINGS OF FACT

1. The UWUA asserted that WVAWC plans to reduce current staffing by thirty-one positions, a level that the UWUA contends will put the Company in a position where it will be unable to continue to provide safe and adequate water service to its customers. Complaint.
2. WVAWC filed an answer denying any wrongdoing along with documents to address the requirements of the May 31, 2011 Commission Order. WVAWC Answer.
3. CAD petitioned to intervene in this matter to represent the interests of ratepayers. CAD Petition to Intervene.
4. LIUNA Local 1353 petitioned to intervene in this matter to advocate for the interests of its membership. LIUNA Local 1353 Petition to Intervene.

CONCLUSIONS OF LAW

1. The Commission temporarily enjoined WVAWC from reducing staffing levels through involuntary termination without cause as described in the complaint unless the employees subject to layoff had already been terminated. May 31, 2011 Commission Order.
2. It is reasonable to open a limited general investigation focused on the staff reduction WVAWC recently announced, its basis including changes to WVAWC capital and maintenance spending and the likely effect of the staff reduction or other changes on service quality.
3. A procedural schedule with accelerated deadlines for both testimony and discovery will facilitate a timely resolution of this matter. Procedural Rule 13.6.
4. It is reasonable to grant the CAD Petition to Intervene because CAD has a legal interest in this matter. Procedural Rule 12.6.
5. It is reasonable to grant the LIUNA Local 1353 Petition to Intervene because LIUNA Local 1353 has a legal interest in this matter. Procedural Rule 12.6.

6. It is reasonable to adjust the case identifier to reflect the restyled nature of this limited general investigation.

7. The Commission has authority to investigate utility practices that appear to interfere with a utility's ability to provide and maintain service quality, and on sufficient evidence thereof, direct remedial or preventative measures. W.Va. Code §§24-1-1, 24-2-7, Syl. Pt. 2 of United Fuel, 154 W.Va. at 221.

ORDER

IT IS THEREFORE ORDERED that the Commission opens a limited general investigation into the staff reduction WVAWC recently announced, its basis, including changes to WVAWC capital and maintenance spending and the likely effect of the staff reduction on service quality. WVAWC is named as a respondent hereto.

IT IS FURTHER ORDERED that the WVAWC Motion to Dismiss is denied.

IT IS FURTHER ORDERED that the CAD request to intervene is granted.

IT IS FURTHER ORDERED that the LIUNA Local 1353 request to intervene is granted.

IT IS FURTHER ORDERED that WVAWC shall file its direct testimony within twenty days of the entry of this Order.

IT IS FURTHER ORDERED that other parties may file direct testimony within thirty days of the entry of this Order.

IT IS FURTHER ORDERED that rebuttal testimony may be filed within thirty-five days of the entry of this Order.

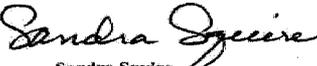
IT IS FURTHER ORDERED that the discovery deadlines are compressed in this matter to five calendar days to file discovery objections and ten calendar days for responding to discovery requests.

IT IS FURTHER ORDERED that the case identifier in this matter is amended from a complaint proceeding (-C) to a general investigation (-GI).

IT IS FURTHER ORDERED that this matter shall be called for an evidentiary hearing on July 26-27, 2011, at 9:30 a.m., in the Howard M. Cunningham Hearing Room, Public Service Commission Building, 201 Brooks Street, Charleston, West Virginia.

IT IS FURTHER ORDERED that the Commission Executive Secretary serve a copy of this Order by electronic service on all parties requesting that service, on other parties by United States First Class Mail and on Staff by hand delivery.

A True Copy, Teste:


Sandra Squire
Executive Secretary

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