

**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 18<sup>th</sup> day of November 2016.

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.

**COMMISSION ORDER**

This Order (i) sets a procedural schedule, (ii) requires publication, and (iii) requires additional information from West Virginia-American Water Company.

**BACKGROUND**

This general investigation concerns the reaction by West Virginia-American Water Company (WVAWC) to a January 9, 2014 leak of crude 4-methylcyclohexane methanol (MCHM) from Freedom Industries, Inc. that made its way into the raw water intake and ultimately, the finished water supply of WVAWC.<sup>1</sup> Commission Order of May 21, 2014. The full procedural history of this case is available in previously issued Commission Orders.

The Commission held a status conference on November 7, 2016, to (i) obtain additional information regarding the current status of Good v. American Water Works Co., Inc., C.A. No. 2:14-01374 (S.D.W.Va.) (Good) and (ii) establish dates for the Pre-hearing conference and the evidentiary hearing. Appearing were respondent WVAWC, Commission Staff, and intervenors the Consumer Advocate Division, Advocates for a Safe Water System (ASWS), and a group of businesses we refer to as "Business Intervenors."

On November 10, 2016, the Commission issued an Order proposing alternative hearing dates and requiring the parties to respond regarding availability on those dates.

On November 15, 2016, WVAWC, on behalf of the parties, filed a letter requesting that the Commission schedule (i) the Pre-hearing Conference for

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<sup>1</sup> 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."

December 21, 2016, (ii) the Evidentiary Hearing for January 24-26, 2017, and (iii) an additional day of hearing for Fred Stottlemeyer, a witness for ASWS who will be out of the country during the proposed January hearing dates.

## **DISCUSSION**

### **Procedural Schedule**

The Pre-hearing Conference will be held December 21, 2016. We will issue a subsequent order describing the issues to be addressed during the Pre-hearing Conference.

The Evidentiary Hearing will be held January 24-26, 2017. We will accommodate Mr. Stottlemeyer's schedule by taking his testimony on Thursday, January 5, 2017.

Public comment hearings will begin at 1:30 p.m. and 6:00 p.m., both on January 17, 2017, for the purpose of taking comment from those members of the public that are not parties to this general investigation. We will require WVAWC to provide notice of the public comment hearings by publication of Attachment A.

We will require the parties to file an agreed order of witnesses on or before January 17, 2016. Cognizant that testimony at the hearing will address protected, confidential information, we ask that the parties give thought to an order of witnesses that would minimize the need to conduct the hearing in camera. The Commission will address this matter further during the Pre-hearing Conference.

The Commission also will schedule a site visit of the Kanawha Valley Treatment Plant for the afternoon of Wednesday, January 4, 2017. The purpose of the site visit is to provide the Commissioners with a general overview of the plant layout and operations, to facilitate their understanding of the testimony submitted in this matter. We will follow the same general guidelines applied to site visits in other Commission matters, including the following:

1. The site visit should be, in effect, the standard tour of the Plant from the intake to final output of finished water, as made available by WVAWC to members of the public.
2. The number of participants will be limited to facilitate the Commission's ability to conduct the site visit. In addition to the two Commissioners and Commission advisors, each party may have one representative and one attorney present.
3. No written materials are necessary or should be distributed.

4. The visit will not be recorded or transcribed.

WVAWC should advise the Commission and the parties at the pre-hearing conference regarding any logistical matters such as parking, the need for protective clothing, or similar matters, and should confirm the time the site visit will begin. The Commission prefers 1:30 p.m.

#### Update to SCADA data

On October 14, 2016, WVAWC filed a letter stating that it had confirmed that there was a time zone discrepancy in certain Supervisory Control and Data Acquisition (SCADA) system data relied upon to varying extents by two of the WVAWC expert witnesses (James Cosgrove and Steven Hubbs). WVAWC stated that it had notified the District Court and other parties in the Good civil action suit and was working with its experts to prepare supplemental rebuttal testimony to address this issue, committing to an update to this Commission as directed or at the pre-hearing conference, which at the time was scheduled for October 28, 2016.

We will require that WVAWC file, within ten days, any corrections to testimony based on the time zone discrepancy.

### **FINDINGS OF FACT**

1. The parties provided agreed-to hearing dates. November 15, 2016, WVAWC filing.

2. WVAWC has not yet filed corrections regarding its SCADA system data.

### **CONCLUSIONS OF LAW**

1. The procedural schedule outlined below should be implemented to allow this case to move to resolution.

2. A site visit to the Kanawha Valley Treatment Plant would be beneficial to the Commission's understanding of the evidence in this case.

3. Corrected testimony regarding the SCADA system data should be filed within the next ten days.

## ORDER

IT IS THEREFORE ORDERED that the following procedural schedule is hereby adopted for use in this case:

Pre-hearing Conference	Wednesday, December 21, 2016, at 9:30 a.m. in the Howard M. Cunningham Hearing Room, Public Service Commission Building, 201 Brooks Street, Charleston, West Virginia.
Site visit of the Kanawha Valley Treatment Plant	Afternoon of Wednesday, January 4, 2017, beginning at 1:30 p.m.
Evidentiary Hearing for the purpose of taking the testimony of Advocates for a Safe Water System witness Fred D. Stottlemeyer	Thursday, January 5, 2017, at 9:30 a.m., Howard M. Cunningham Hearing Room.
Public Comment Hearing, Session I	Tuesday, January 17, 2017, beginning at 1:30 p.m., in the Howard M. Cunningham Hearing Room.
Public Comment Hearing, Session II	Tuesday, January 17, 2017, beginning at 6:00 p.m., in the Howard M. Cunningham Hearing Room.
Filing of agreed-order of witnesses	Tuesday, January 17, 2017, by 4:00 p.m.
Evidentiary Hearing	Tuesday through Thursday, January 24-26, 2017, beginning each day at 9:30 a.m., Howard M. Cunningham Hearing Room.

IT IS FURTHER ORDERED that as soon as possible, West Virginia-American Water Company publish the attached notice, 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, and by United States First Class Mail on all parties of record who have not filed an e-service agreement, and on Commission Staff by hand delivery.

Chairman Michael A. Albert is recused.

A True Copy, Teste,

A handwritten signature in cursive script that reads "Ingrid Ferrell".

Ingrid Ferrell  
Executive Secretary

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**NOTICE OF HEARING**

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.

By Ordered entered November 18, 2016 the Commission scheduled two public comment hearings for Tuesday, January 17, 2017, the first beginning at 1:30 p.m. and the second beginning at 6:00 p.m., at the Public Service Commission, 201 Brooks Street, Charleston, West Virginia, to 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 attending the public comment hearing, 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.

The November 18, 2016 Order also scheduled this case for an evidentiary hearing to begin at 9:30 a.m., on January 5, 24, 25, and 26, 2017, at the Public Service Commission, 201 Brooks Street, Charleston, West Virginia.

WEST VIRGINIA-AMERICAN WATER COMPANY