

**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 31st day of May 2011.

CASE NO. 11-0740-W-C

UTILITY WORKERS UNION OF AMERICA,
AFL-CIO and UWUA LOCAL 537,

Complainants,

v.

WEST VIRGINIA-AMERICAN WATER
COMPANY, a public utility,

Defendant.

COMMISSION ORDER

The Commission directs the production of certain documents, responses and information with the answer and grants interim relief.

BACKGROUND

On May 25, 2011, the Utility Workers Union of America, AFL-CIO, and UWUA Local 537 (Union) 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 Union asserted that the reduced headcount is insufficient to properly run existing water operations.

The Union 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 Union 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 Union filed a revised certificate of service for the complaint.

DISCUSSION

The Complaint in this proceeding presents the Commission with a difficult and perplexing situation and presents a stark contrast between two opposing versions of the operational needs of WVAWC. In the recent rate proceeding, the Union alleged that WVAWC was understaffed and in need of additional employees to perform maintenance activities. See, West Virginia-American Water Company, Case No. 10-0920-W-42T (Rate Case) Ex. GL-D. WVAWC, however, contested those allegations and represented that the 316 employees for which it was seeking payroll cost recovery were necessary to maintain adequate service. The WVAWC president testified that “I have carefully evaluated the needs of the Company and firmly believe we need the 316 employees requested to maintain adequate service to our customers.” Rate Case, Ex. WDM-R at 5. In addition, he had previously stated that he did not “believe the Company can achieve any additional cost savings in head count” Id., Ex WDM-D2 at 31. The Commission accepted the WVAWC testimony, indicated that it would not wade into this labor relations fray between the Union and WVAWC and included 316 employees in determining WVAWC’s revenue requirement calculations. Rate Case (Commission Order, April 18, 2011) (Rate Case Order) at 64.

On May 19, 2011, WVAWC announced the upcoming layoff of thirty-one employees. The announcement indicated that WVAWC would make the layoffs effective May 23, 2011, but make termination effective June 3, 2011. Affidavit at 2. In response, the Union filed this complaint. The Union asserted that this significant drop in employee headcount represents a risk to the ability of WVAWC to provide safe and adequate water to its customers. The Union seeks an order from this Commission essentially enjoining or staying the layoffs, directing WVAWC to produce its justification for the layoffs and requesting that the Commission open a general investigation.

The Commission has repeatedly stated that WVAWC has the management flexibility to determine proper staffing levels and allocate the revenue provided in rates. Rate Case (Commission Order, May 13, 2011). While that general statement remains true, the Commission is also charged with an overriding statutory obligation to assure that all utilities under its jurisdiction maintain reasonable services and practices in furnishing their products. If a utility engages in unreasonable practices, acts or services, such as placing itself in a position where it cannot carry out its utility service obligations the Commission may by order fix reasonable measurements, regulations, acts, practices or services. W.Va. Code §24-2-7.

Water is the only utility product that must be safe and suitable for ingestion by customers. Safe and adequate water service is of paramount importance to the communities WVAWC serves. The risks associated with a failure by WVAWC to serve its customers with safe and reasonable water service have wider consequences than some other regulated utilities such as telecommunications or cable television providers. The public health nature of the risk of failure by WVAWC to adequately serve requires added vigilance by this Commission.

In this case, the Commission is concerned that the sudden reduction of approximately ten percent of the WVAWC workforce, following within a few months of contrary management staffing representations and without underlying justification, may implicate the statutory obligation of

WVAWC to render safe and reasonable service and the Commission's statutory obligations to assure the maintenance of quality water service and to investigate the reasonableness of the actions of WVAWC. The Commission also takes note of an exhibit introduced in the Rate Case showing WVAWC headcount from 2007 to 2010. That exhibit showed total employment ranging from 298 to 324 employees. Rate Case CAD Cross Exhibit 2. Considering these factors, the Commission will request a further explanation and discussion of the staffing reductions. WVAWC will produce and file along with its answer to the Union complaint any and all plans, written preparations, examinations or other documentation used to evaluate and execute the recent staffing reduction.¹ After review of the WVAWC filings, the Commission will determine if it needs to open a general investigation, request a limited investigation by Commission Staff or take other action.

Finally, the Commission will grant the request from the Union to temporarily stay the upcoming termination of the thirty-one WVAWC employees until the Commission has an opportunity to investigate this matter, if the laid off employees have not yet been terminated. The affidavit from Gregory Lanham indicates that the thirty-one employees affected by the layoff are scheduled for termination from the WVAWC's payroll on June 3, 2011. Affidavit at 2. The Commission notes that the affidavit is somewhat vague, but the thirty-one affected employees appear to currently remain on the payroll. To the extent that the affected employees have not been terminated from WVAWC, WVAWC should retain them as working employees pending further investigation by the Commission.

The Commission does not take this step lightly, but the record presented to the Commission in the recently completed and fully litigated Rate Case presents a substantial basis to conclude, without further facts, that the planned staff reduction may be an unreasonable action that could cause substantial irreparable harm to WVAWC or its customers. The Commission intends to expedite this proceeding. The Commission also believes that this step will not cause harm to WVAWC during the pendency of this proceeding, because the Commission included funding for 316 employees in rates effective April 18, 2011.

FINDINGS OF FACT

1. The Union asserted that WVAWC has attempted to reduce current staffing by thirty-one positions, a level which the Union 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. The Union 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 on this matter. Id.

¹If justified under the West Virginia Freedom of Information Act, WVAWC may request protective treatment for any documents qualifying as trade secrets.

3. WVAWC represented to the Commission that it needs 316 employees to maintain adequate service to its customers. Rate Case Ex. WDM-R at 4.

4. WVAWC staffing has ranged from 298 to 324 employees from 2007 through 2010. Rate Case CAD Cross Exhibit 2.

CONCLUSIONS OF LAW

1. WVAWC presented evidence to support an employment level of 316 employees and urged the Commission to allow that level of employee payroll expense in WVAWC's cost of service. Rate Case Order at 36, 64.

2. It is reasonable to direct WVAWC to produce any and all plans, written preparations, examinations or other documentation used to evaluate and execute the most recent staffing reduction below 316 employees with its answer.

3. The Commission has a statutory obligation to assure that all utilities under its jurisdiction maintain reasonable, safe and efficient services and practices in furnishing their products. W.Va. Code §§ 24-1-1, 24-2-7.

4. The Commission provided WVAWC sufficient rates to fund 316 employees on April 18, 2011. Rate Case Order at 64.

ORDER

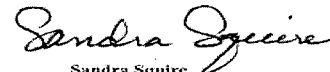
IT IS THEREFORE ORDERED that WVAWC produce and file with this Commission any plan or other existing documents supporting or directing its recent staffing reductions below 316 employees with its answer.

IT IS FURTHER ORDERED that WVAWC provide with its answer a list of each position eliminated by district. The list must include a brief description of the job functions of the eliminated position, the rationale for eliminating the position, the business location of the position, the remaining number of positions in the district that perform similar duties and how the job duties of the eliminated position will be performed in the future.

IT IS FURTHER ORDERED 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.

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, on WVAWC by both Certified Mail and hand delivery and on Staff by hand delivery.

A True Copy, Tester:


Sandra Squire
Executive Secretary

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