

# Public Service Commission

Richard E. Hitt, General Counsel



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September 17, 2014

Mr. Ken Ward, Jr.  
Charleston Gazette  
1001 Virginia Street, East  
Charleston, WV 25301

02:33 PM SEP 17 2014 PSC EXEC SEC DIV

RE: FOIA Request

14-0872-W-GI

Dear Mr. Ward,

Please consider this the initial response of the Public Service Commission to your Freedom of Information Act (FOIA) request received on September 11, 2014.

I realize that you subscribe to e-mail notification of the filings in the Commission case involving the general investigation into the utilities actions regarding the chemical spill earlier this year. However, in an effort to explain the Commission's situation and position on your request, I am obligated to inform you of several matters that you probably already know. The information that was provided to the agency, under seal that is sought to be protected by the Water Company, is a result of other parties' discovery requests in the ongoing general investigation. That information was provided to all the parties pursuant to protective agreements as established in the Commission's discovery order of August 22, 2014 ordering the company to respond. The responses were filed with the agency as required by the Rules of Practice and Procedure, 150 C.S.R. 1, Rules 4.1.e., 4.1.f. and 13.6.c. That same order also specified the process to be followed by the parties and the agency in the event a FOIA request was received regarding the information that is subject to a pending motion for permanent protection treatment. Order at 9.

As you are aware, the Water Company filed a motion with the Commission on September 10, 2014 asking that the Commission issue an order granting its motion for a protective order that permanently protects the information. The Company advanced several legal arguments as to why the information should be protected under both state and federal law. Your FOIA request was filed a day after the motion for protective treatment and it seeks exactly the same information that is the subject of the motion for protective treatment.

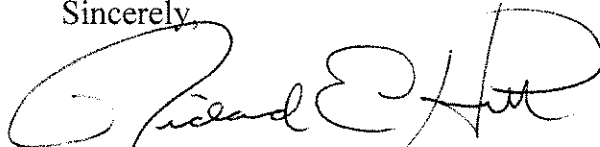
In issuing its recent order of September 12, 2014, providing the Water Company the opportunity to respond to your request and the other parties the opportunity to respond to the motion for protective treatment, the Commission has established expedited processes, indicated in its earlier order, and has given the parties to the general investigation until next Monday to provide their written responses. Following the receipt of those responses, the Commission would normally proceed to deliberate, decide and issue an order ruling on the pending motion for permanent protective treatment. That ruling, in turn, would resolve the question relating to your FOIA request as to what information is subject to exemption under the State FOIA Act.

Given the pending motion for protective treatment and the potentially sensitive and critical nature of information related to water infrastructure, the Commission is obligated to issue an order ruling on the merits of the motion for protective treatment. This provides the party seeking permanent protection, as well as other parties, due process and the benefit of a Commission order with the potential for court review of the same. In the meanwhile, all the parties to the case have signed protective agreements, have obtained the information they sought and are presumably busy preparing their testimony that is due in the general investigation case on November 6, 2014.

As you also know, Chairman Albert has recused himself from further participation in the general investigation case. In addition, Commissioner Palmer has resigned his position which leaves one Commissioner available to participate in the general investigation case. In order to constitute an action of the Commission, the concurrent judgment of two Commissioners is required. W. Va. Code §24-1-6. Consequently, until another Commissioner is appointed, the Commission is unable to rule on the pending motion.

I wish to assure you that when another Commissioner is appointed, the Commission will promptly deliberate and rule on the motion for permanent protective treatment. As I indicated, that ruling will determine the agency's response to your FOIA request.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Hitt", written over a large, stylized flourish.

Richard E. Hitt,  
General Counsel

cc: Ingrid Ferrell, Executive Secretary  
(file in Case No. 14-0872-W-GI)