

APPALACHIAN CITIZENS' LAW CENTER, INC.

317 MAIN STREET
WHITESBURG, KENTUCKY 41858
606-633-3929 1-877-637-3929
FAX 606-633-3925
www.appalachianlawcenter.org

RECEIVED

APR 26 2018

PUBLIC SERVICE
COMMISSION

STEPHEN A. SANDERS
Director
steve@appalachianlawcenter.org

WES ADDINGTON
Deputy Director
wes@appalachianlawcenter.org

MARY CROMER
Staff Attorney
mary@appalachianlawcenter.org
*Also admitted in VA

EVAN B. SMITH
Staff Attorney
evan@appalachianlawcenter.org

April 25, 2018

Gwen R. Pinson, Executive Director
Public Service Commission
P.O. Box 615
Frankfort, KY 40602-0615

RE: Martin County Concerned Citizens Inc.'s
Motion to Compel
PSC Case No. 2016-142

Dear Ms. Pinson,

Please find enclosed and original and six copies of Martin County Concerned Citizens Inc.'s Motion to Compel in the above-referenced investigation.

Copies are provided this day to counsel of record for the Martin County Water District via U.S. mail and electronic mail.

Sincerely,



Mary Varson Cromer

Enclosures

RECEIVED

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

APR 26 2018

PUBLIC SERVICE
COMMISSION

In The Matter Of:
INVESTIGATION OF THE
OPERATING CAPACITY OF
MARTIN COUNTY WATER
DISTRICT PURSUANT TO KRS
278.280

No.: 2016-000162

**MARTIN COUNTY CONCERNED CITIZENS, INC.'S MOTION TO
COMPEL**

Martin County Concerned Citizens, Inc. ("MCCC"), by and through counsel, hereby moves the Public Service Commission for an order requiring Martin County Water District ("Martin District") to respond to MCCC's Second Request for Information by May 17, 2018. In support of this Motion, MCCC states as follows:

1. On October 30, 2017, the Commission entered an Order granting MCCC's Motion to Intervene in this investigation and granting it "the full rights of a party."
2. On December 7, 2017, MCCC simultaneously filed its Initial Requests for Information from the Martin District and a Motion for a Procedural Order.
3. In its Motion for a Procedural Order, MCCC requested, *inter alia*, an order addressing "how continuing requests are to be handled, in particular whether and when MCWD must supplement or amend its responses to continuing requests prior to the next scheduled hearing...."
4. On December 21, 2017, the Commission entered an Order in response to MCCC's Motion for a Procedural Order and in response to the Martin District's Motion for a Protective Order.

5. The December 21 Order states, “[t]he Commission finds that MCCC should be allowed an opportunity to conduct limited discovery on Martin District.” The Order specified that the scope of MCCC’s requests must be limited to the scope of the Commission’s investigation. The Order further stated, “[t]he Commission will also strike MCCC’s discovery if it requests information of that which the Commission requests in an Order.”
6. The Order further states, “[t]he Commission will provide an opportunity prior to each hearing for discovery, at which point MCCC may renew any request for information that it desires and any amendments or supplements to previous requests may be made.”
7. With regard to “continuing requests,” the Order states, “in order to limit the burden on Martin District and not unduly complicate the proceeding, Martin District is required to respond only to continuing requests from the Commission.”
8. On April 16, 2018, MCCC sent its Second Request for Information (“the second request”) from the Martin County Water District to the PSC by U.S. mail and to counsel for the Martin District by electronic mail and U.S. Mail. The second request was filed in this matter on April 19.
9. Since MCCC has been granted the status of full-party intervenor in this matter, it has been the custom of counsel for the Martin District and undersigned counsel to provide one another with pleadings and correspondence via electronic mail.
10. On April 20, 2018, counsel for the Martin District provided undersigned counsel with a response to MCCC’s second request via electronic mail. A copy of the response was also provided to the Commission and was filed in the record of this

case on April 23, 2018.

11. The response states that Martin District “will not be responding” to MCCC’s second request and cites the language from the December 21, 2017 Order regarding “continuing requests” as justification.
12. Also on April 20, 2018, the Commission entered an Order setting the next hearing in this matter for May 31, and providing that data requests must be served no later than May 1 and responses must be filed no later than May 17.
13. On April 23, 2018, undersigned counsel provided counsel for the Martin District with a demand letter by electronic mail stating that if the parties are unable to resolve the issues related to Martin District’s refusal to respond to the second request by close of business on April 24, 2018, MCCC would file this Motion.
(See Attachment #1.)
14. Counsel for the Martin District did not respond in any way to undersigned counsel’s April 23 letter.
15. As argued in the April 23, 2018 demand letter, the language from the December 21, 2017 Order on which the Martin District relies cannot be interpreted to mean that MCCC is prohibited from seeking data from the Martin District in this investigation. Instead, the language referred to only means that MCCC cannot propound “continuing requests” on the Martin District.
16. In fact, the December 21 Order affirmatively states that MCCC will be given an opportunity to propound data requests on the Martin District prior to each hearing.
17. The data requests propounded on the Martin District comply with the Commission’s December 21 Order.

18. All data request in MCCC's second request seek information within the scope of this investigation and about which MCCC wishes to question witnesses at the May 31 hearing.
19. The second request is not duplicative of any requests the Commission has made in a prior Order in this proceeding.
20. Data requests 1, 6, and 7 seek information to further explain data provided by the Martin District on March 20, 2018 in Response to the Commission's Post-Hearing Data Request.
21. The remaining requests seek to directly follow up on matters discussed during the February 28, 2018 hearing in the investigation.
 - a. Data requests 2-5 seek further information regarding employee's use of Martin District's vehicles and the Martin District's procurement and purchase order controls to follow up on testimony by Jimmy Don Kerr at the February 28, 2018 hearing related to those matters.
 - b. Data requests 8, 9, and 15 seek further information regarding the Martin District's contractual relationship with the Prestonsburg City Utilities Commission that was the subject of testimony by Greg Heitzman and Taylor Campbell at the February 28, 2018 hearing.
 - c. Data request 10 seeks information to follow up on Greg Heitzman's testimony at the February 28, 2018 hearing that the Martin District had been working to replace rather than repair water lines in the recent past.
 - d. Data requests 11 and 18 seek further information to follow up on testimony by Greg Heitzman and John Horn regarding the board's

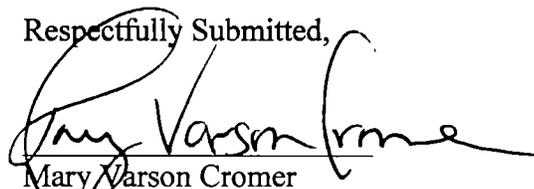
appointment of an interim general manager, efforts to hire a general manager, and the general manager's development of a corrective action plan for the Martin District.

- e. Data requests 12-14 seek additional information related to the testimony of Greg Heitzman regarding the administration of the two grants the Martin District is receiving for capital projects.
- f. Data request 16 seeks additional information to follow up on Greg Heitzman's testimony regarding the Martin District's plan to get a loan to pay off the Martin District's accounts payable.
- g. Data request 17 seeks additional information regarding Greg Heitzman's testimony that the Martin District may seek to refinance its KIA loan.
- h. Data request 19 seeks additional information related to Kelly Callaham's testimony regarding the extension of a water line to service the new school buildings and whether the system has the capacity to provide water for that extension.

CONCLUSION

For the reasons set forth above, MCCC respectfully asks the Commission for an Order directing the Martin District to fully respond to MCCC's second request by the May 17 deadline set forth in the Commission's April 20, 2018 Order.

Respectfully Submitted,



Mary Varson Cromer
Appalachian Citizens' Law Center, Inc.

317 Main Street
Whitesburg, Kentucky 41858
Telephone: 606-633-3929
Facsimile: 606-633-3925
mary@appalachianlawcenter.org
Counsel for MCCC

DATED: 4-25-18

CERTIFICATE OF SERVICE

Pursuant to 807 KAR 5:001 Sec. 6, I, Mary Varson Cromer, hereby certify that on April 25, 2018, a true and accurate copy of the foregoing Motion to Compel was served via electronic mail and postage-paid U.S. mail to the following:

Brian Cumbo
86 W. Main St., STE 100
P.O. Box 1844
Inez, KY 41224
cumbolaw@cumbolaw.com
Counsel for Martin County Water District


Counsel for the MCCC

APPALACHIAN CITIZENS' LAW CENTER, INC.

317 MAIN STREET
WHITESBURG, KENTUCKY 41858
606-633-3929 1-877-637-3929
FAX 606-633-3925
www.appalachianlawcenter.org

ATTACHMENT 1

STEPHEN A. SANDERS
Director
steve@appalachianlawcenter.org

WES ADDINGTON
Deputy Director
wes@appalachianlawcenter.org

MARY CROMER
Staff Attorney
mary@appalachianlawcenter.org
*Also admitted in VA

EVAN B. SMITH
Staff Attorney
evan@appalachianlawcenter.org

April 23, 2018

Brian Cumbo, Esq.
86 W. Main St.
Inez, KY 41224

RE: Response to your April 20th letter regarding MCCC's Second Request for Information in Investigation 2016-142

VIA EMAIL: cumbolaw@cumbolaw.com

Dear Mr. Cumbo,

On behalf of my client, Martin County Concerned Citizens ("MCCC"), I write in response to your letter of Friday April 20, 2018. I am hopeful that we can resolve the issues related to our recent data requests without the need for any motion practice before the PSC. However, presuming that we do not work out the issues set forth herein by close of business tomorrow, April 24, 2018, MCCC will file a motion to compel.

As you are aware, the PSC issued an Order on Friday that governs data requests in advance of the upcoming hearing on May 31. Paragraphs 1 and 2 of that Order provide that all requests for information shall be served by no later than May 1, and responses shall be filed no later than May 17.

In your letter of April 20, you quote language from the PSC's December 21 Order regarding "continuing requests" and state, "[t]herefore, Martin County Water District will not be responding to the Second Request for Information from the Martin County Concerned Citizens."

The language from the December 21 order that you quote as justification for the Martin District's refusal to respond to MCCC's Second Request for Information does not apply to all requests, but relates only to "continuing requests."

"Continuing requests" are requests like those referred to in data request number 2 provided in the Appendix of the PSC's December 21, 2017 Order. There, PSC requests, "each memorandum or other correspondence between Martin District and the Kentucky Rural Water Association;" and follows, "[t]his request is a continuing request." Likewise, in MCCC's First data requests in the investigation, MCCC asked that questions 3, 7, and 8 be considered

“continuing requests.”

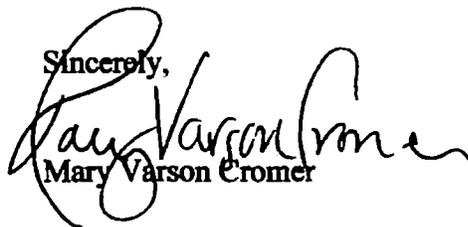
On December 7, 2017, simultaneous with the filing of MCCC’s first data requests, MCCC filed a motion for a procedural order seeking procedures that specifically govern intervenor’s participation in the investigation. In its Motion, MCCC specifically asked for an order governing “[h]ow continuing requests are to be handled, in particular whether and when MCWD must supplement or amend its responses to continuing requests prior to the next scheduled hearing.” The language you quote from the December 21st Order is specifically in response to MCCC’s request for clarification on that issue of continuing requests.

The language from the December 21 Order does not mean that MCCC cannot make any more data requests in this investigation, as was made clear by the PSC’s order of April 20 setting out specific deadlines for additional data requests prior to the upcoming hearing.

MCCC is disappointed in the Martin District’s initial refusal to provide information needed for the upcoming hearing on May 31. The refusal comes at a time when the relationship between the community and the Martin District is beginning to be repaired. As the Martin County citizens have said time and time again, the Martin District’s problems cannot and will not be resolved without the trust of the community. To build that trust requires transparency.

MCCC recognizes that it is sometimes difficult to compile all of the data requested. MCCC is willing to work with the Martin District to clarify and possibly narrow the scope of requests, so long as the information MCCC needs to properly question witnesses at the upcoming hearing is provided.

I look forward to your response.

Sincerely,

Mary Varson Cromer