

## MEMORANDUM

FROM: Joe Watkins, Law Clerk,  
assigned to *Trans-Allegheny*  
*Interstate Line Company*,  
Case No. 07-0508-E-CN

DATE: May 1, 2008

RE: Response to April 18, 2008 Freedom of Information Act Request filed by  
William V. DePaulo, Esq, on behalf of the Sierra Club, Inc.

Below is a list of the public records in my possession pertaining to the Joint Stipulation of Agreement and Settlement filed in Case No. 07-0508-E-CN. In those instances where the Commission is exempt from disclosure or the document has been redacted pursuant to W.Va. Code § 29B-1-4, or other applicable statute or case law, I have marked the items "NOT ATTACHED" and identified the item as you requested. The identifying information serves as the *Vaughn* Index for these items. Specifically, I have (i) provided an index of all requested documents which reflects the date, author, addressee, number of pages, and subject matter of the requested document; (ii) stated the applicable exemption; (iii) stated with particularity the reason why such exemption is applicable to each requested record; (iv) examined each requested record to determine whether reasonably segregable non-exempt information exists which may be released to me after redacting information deemed to be exempt, and (v) exercised discretion to release records notwithstanding the availability of a basis for withholding.

### List of Public Records in My Possession:

**1. (i) ATTACHED**

Item:	Email
Date:	April 15, 2008 7:48 p.m.
Author:	Joe Watkins
Addressee:	Sarah Robertson
Pages:	1
Subject Matter:	Notified Sarah of TrailCo filing.

2. **(i) NOT ATTACHED**

Item: Email  
Date: April 15, 2008, 7:58 p.m.  
Author: Joe Watkins  
Addressee: Ed Staats, Jon McKinney, Richard Hitt, Sherry Kennedy  
Pages: 2  
Subject Matter: Notice of filing of Joint Stipulation.

**(ii) Applicable Exemption:**

The document is exempt pursuant to W.Va. Code § 29B-1-4 (8) (“Internal memoranda or letters received or prepared by any public body”), attorney-client privilege, and the attorney work-product privilege. *See, Gazette Co., Inc. v. West Virginia Development Office*, 198 W. Va. 563, 482 S.E.2d 180 (1996).

**(iii) Basis for Exemption, (how disclosure would damage the interests protected by the claimed exemption):**

Commission Law Clerks are attorneys assigned to assist the Commissioners by identifying and addressing procedural and legal issues in cases.

The April 15, 2008, 7:58 p.m., email consists of the law clerk’s description of the Joint Stipulation interspersed with commentary and recommendations to assist the Commission in its deliberative process.

**(iv) Ability to Redact the Document:**

The entirety of the April 15, 2008, 7:58 p.m., email is designed to assist in the Commission’s deliberative process.

**(v) Release of Documents Notwithstanding the Availability of a Basis for Withholding:**

Releasing the document would harm the integrity of the Commission’s deliberative process in this and future cases. The Commission declines to release this document.

3. **(i) ATTACHED (Redacted)**

Item: Email  
Date: April 15, 2008, 8:00 p.m.

Author: Joe Watkins  
Addressee: Sherry Kennedy, Janet Brown  
Pages: 3  
Subject Matter: Request that Ms. Kennedy and Ms. Brown supply their respective supervisors (Commissioners Staats and McKinney, and Mr. Hitt) with copies of the Joint Stipulation and Motion to Toll. The April 15, 2008 email described in item 2 above is appended to this email.

**(ii) Applicable Exemption:**

The appended April 15, 2008, 7:58 p.m., email (described in item 2 above) is exempt pursuant to W.Va. Code § 29B-1-4 (8) (“Internal memoranda or letters received or prepared by any public body”), attorney-client privilege, and the attorney work-product privilege. *See, Gazette Co., Inc. v. West Virginia Development Office*, 198 W. Va. 563, 482 S.E.2d 180 (1996).

**(iii) Basis for Exemption, (how disclosure would damage the interests protected by the claimed exemption):**

Commission Law Clerks are attorneys assigned to assist the Commissioners by identifying and addressing procedural and legal issues in cases.

The appended April 15, 2008, 7:58 p.m., email (described in item 2 above) consists of the law clerk’s description of the Joint Stipulation interspersed with commentary and recommendations to assist the Commission in its deliberative process.

**(iv) Ability to Redact the Document:**

The entirety of the appended April 15, 2008, 7:58 p.m., email (described in item 2 above) is designed to assist in the Commission’s deliberative process. The appended April 15, 2008, 7:58 p.m., email (described in item 2 above) has been removed and the remainder of the document, consisting solely of the request that Ms. Kennedy and Ms. Brown supply their respective supervisors (Commissioners Staats and McKinney, and Mr. Hitt) with copies of the Joint Stipulation and Motion to Toll, is provided.

**(v) Release of Documents Notwithstanding the Availability of a Basis for Withholding:**

The document is supplied in a redacted form as described above.

4. **(i) ATTACHED**  
 Item: Scan of Charleston Gazette story regarding the Joint Stipulation.  
 Date: April 16, 2008, 11:20 a.m.  
 Author: Ken Ward, Jr.  
 Addressee: n/a  
 Pages: 2  
 Subject Matter: Charleston Gazette Story.
5. **(i) ATTACHED**  
 Item: Email  
 Date: April 16, 2008, 12:00 p.m.  
 Author: William V. DePaulo, Esq.  
 Addressee: Joe Watkins and parties to the TrAILCo proceeding.  
 Pages: 1 (the press release is not attached.)  
 Subject Matter: April 16, 2008 press release by the Sierra Club regarding the Joint Stipulation.
- 6-10. **(i) ATTACHED**  
 Item: 5 Emails.  
 Date: April 16, 2008, 1:06 p.m. – 1:55 p.m.  
 Author: Joe Watkins/Sarah Robertson  
 Addressee: Sarah Robertson/Joe Watkins  
 Pages: 1 to two pages each.  
 Subject Matter: 5 emails constituting continuation of the April 15, 2008, email chain (item 1 above). Later entries in the chain address the Sierra Club press release.
11. **(i) ATTACHED**  
 Item: Email  
 Date: April 16, 2008, 3:11 p.m.  
 Author: Cheryl Ranson  
 Addressee: William v. DePaulo, Ese., Joe Watkins, and cc'd to various parties in the TrAILCo proceeding.  
 Pages: 2  
 Subject Matter: Comment by Ms. Ranson.
12. **(i) ATTACHED**  
 Item: Email  
 Date: April 16, 2008  
 Author: Joe Watkins

Addressee: Sarah Robertson  
Pages: 2  
Subject Matter: Forward of the April 16, 2008 email (item 11, above).

13. **(i) ATTACHED**

Item: Case Assignment Sheet and affixed Post-It Note.  
Date: April 17, 2008  
Author: Joe Watkins  
Addressee: n/a  
Pages: 1  
Subject Matter: Processing slip accompanying orders.

14. **(i) NOT ATTACHED**

Item: Typed draft order with hand-written notes, and affixed Post-It Note  
Date: April 16, 2008  
Author: Joe Watkins  
Addressee: Richard Hitt  
Pages: 3  
Subject Matter: Draft of order for use in addressing the Joint Stipulation.

**(ii) Applicable Exemption:**

The document is exempt pursuant to W. Va. Code § 29B-1-4 (8) (“Internal memoranda or letters received or prepared by any public body”), attorney-client privilege, and the attorney work-product privilege. *See, Gazette Co., Inc. v. West Virginia Development Office*, 198 W. Va. 563, 482 S.E.2d 180 (1996).

**(iii) Basis for Exemption, (how disclosure would damage the interests protected by the claimed exemption):**

Commission Law Clerks are attorneys assigned to assist the Commissioners by identifying and addressing procedural and legal issues in cases.

The April 16, 2008 draft order consists of the law clerk’s description of the Joint Stipulation interspersed with commentary and recommendations in the form of a draft Commission Order to assist the Commission in its deliberative process.

**(iv) Ability to Redact the Document:**

The entirety of the April 16, 2008 draft order is designed to assist in the Commission's deliberative process.

**(v) Release of Documents Notwithstanding the Availability of a Basis for Withholding:**

Releasing the document would harm the integrity of the Commission's deliberative process in this and future cases. The Commission declines to release this document.

**15. (i) NOT ATTACHED**

Item:	Typed cover memo and draft order with hand-written notes, and affixed Post-It Note with processing instructions
Date:	April 29, 2008 cover memo and undated draft order sent to the Commissioners on May 1, 2008
Author:	Joe Watkins
Addressee:	Ed Staats, Jon McKinney, Richard Hitt, Sherry Kennedy
Pages:	7
Subject Matter:	Cover memo and draft of order for use in addressing (i) a motion for clarification, and (ii) a motion to modify the hearing date, both regarding the Joint Stipulation.

**(ii) Applicable Exemption:**

The document is exempt pursuant to W. Va. Code § 29B-1-4 (8) ("Internal memoranda or letters received or prepared by any public body"), attorney-client privilege, and the attorney work-product privilege. *See, Gazette Co., Inc. v. West Virginia Development Office*, 198 W. Va. 563, 482 S.E.2d 180 (1996).

**(iii) Basis for Exemption, (how disclosure would damage the interests protected by the claimed exemption):**

Commission Law Clerks are attorneys assigned to assist the Commissioners by identifying and addressing procedural and legal issues in cases.

The April 29, 2008 cover memo and undated May 1, 2008 draft order documents address a motion for clarification and a motion to move the hearing date, both regarding the Joint Stipulation, interspersed with commentary and recommendations

to assist the Commission in its deliberative process.

**(iv) Ability to Redact the Document:**

The entirety of the April 29, 2008 cover memo and undated May 1, 2008 draft order is designed to assist in the Commission's deliberative process.

**(v) Release of Documents Notwithstanding the Availability of a Basis for Withholding:**

Releasing the document would harm the integrity of the Commission's deliberative process in this and future cases. The Commission declines to release this document.

**16. (i) NOT ATTACHED**

Item: Typed notes of an April 22, 2008, meeting with Jon McKinney, Ed Staats, and Rick Hitt.  
Date: April 22, 2008, dated electronic entry in Microsoft Outlook.  
Author: Joe Watkins  
Addressee: Notes  
Pages: If printed, the notes of the April 22, 2008 meeting would take less than a page.  
Subject Matter: Typed notes of April 22, 2008 meeting with Jon McKinney, Ed Staats, and Rick Hitt regarding meeting to discuss hearing for the Joint Stipulation.

**(ii) Applicable Exemption:**

The document is exempt pursuant to W.Va. Code § 29B-1-4 (8) ("Internal memoranda or letters received or prepared by any public body"), attorney-client privilege, and the attorney work-product privilege. *See, Gazette Co., Inc. v. West Virginia Development Office*, 198 W. Va. 563, 482 S.E.2d 180 (1996).

**(iii) Basis for Exemption, (how disclosure would damage the interests protected by the claimed exemption):**

Commission Law Clerks are attorneys assigned to assist the Commissioners by identifying and addressing procedural and legal issues in cases.

The notes of the April 22, 2008 meeting describe proposals, recommendations, and

discussion by the participants to assist the Commission in its deliberative process.

**(iv) Ability to Redact the Document:**

The notes of the April 22, 2008, are contained in a large electronic document in Microsoft Outlook. This electronic document contains the law clerk's notes regarding all aspects of the TrAILCo proceeding.

The notes of the April 22, 2008, meeting and the entirety of the Microsoft Outlook electronic document is used to assist in the Commission's deliberative process.

**(v) Release of Documents Notwithstanding the Availability of a Basis for Withholding:**

Releasing the document would harm the integrity of the Commission's deliberative process in this and future cases. The Commission declines to release this document.

JJW/s

070508\_foia\_response\_20080501.wpd