

Public Service Commission of West Virginia

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June 17, 2016

Electronic Service Only

John W. Cooper, Esq.
Counsel, Canaan Valley PSD
333 Second Street
PO Box 365
Parsons, WV 26287

Frank P. Bush, Jr., Esq.
Counsel, Timberline Four Seasons Utilities, Inc.
PO Box 1008
Elkins, WV 26241

RE: Case No. 16-0631-S-C
Canaan Valley Public Service District
v.
Timberline Four Seasons Utilities, Inc.

Dear Messrs. Cooper and Bush:

The Staff Memorandum issued today was served via email on the above-listed parties. Any responses must be submitted to the Executive Secretary's Office in writing within 10 days of this date, unless directed otherwise. You will not receive a copy of the Staff Memorandum by regular mail.

Your failure to respond in writing to the utility's answer, Staff's recommendations, or other documents may result in a decision in your case based on your original filing and the other documents in the case file, without further hearing or notice.

When you provide an email address, you will automatically receive electronic docket notifications as documents are filed in this proceeding. The email notifications allow recipients to view a document within an hour from the time the filing is processed.

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If you have not done so, you are encouraged to file the Electronic Mail Agreement, previously mailed to you, which allows the Commission to serve all orders issued in this matter via electronic docket notification.

Please note - the Public Service Commission does not accept electronic filings.

Sincerely,

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

Ingrid Ferrell, Director
Executive Secretary Division

IF/tg
Enc. – Memo

INITIAL JOINT STAFF MEMORANDUM

TO: INGRID FERRELL
Executive Secretary

DATE: June 17, 2016

FROM: LESLIE J. ANDERSON, Supervising Attorney *LJA*

09:13 AM JUN 17 2016 PSC EXEC SEC DIV

RE: CASE NO. 16-0631-E-C
CANAAN VALLEY PUBLIC SERVICE DISTRICT
v.
TIMBERLINE FOUR SEASONS UTILITIES, INC.

Staff recommends that the Commission retain these cases. Staff is investigating and has issued data requests.

Staff notes that the following six complaint cases are related to Timberline Four Seasons Utilities, Inc.'s billing, collecting and payment practices:

- Robert J. Gilchrist v. Timberline Four Seasons Utilities, Inc., Case No. 16-0623-S-C (not restricted, with Commission).¹
- Robert J. Gilchrist v. Monongahela Power Company, Case No. 16-0624-E-C (not restricted, with Commission).
- Timberline Four Seasons Resort Management Company, Inc. v. Monongahela Power Company, Case No. 16-0659-E-C (restricted, with Commission)
- Canaan Valley Public Service District v. Timberline Four Seasons Utilities, Inc., Case No. 16-0631-S-C (not restricted, with Commission),
- Stephen D. Halfhill v. Timberline Four Seasons Utilities, Inc., Case No. 16-0691-WS-C (restricted, with ALJ), and
- Robert J. Gilchrist v. Timberline Four Seasons Utilities, Inc., Case No. 16-0740-W-S (restricted, with ALJ).

The last two complaint cases listed above, Halfhill (Case No. 16-0691-WS-C) and Gilchrist (Case No. 16-0740-WS-C) have already been referred to the Division of Administrative Law Judges. Given the serious nature of the allegations against Timberline Four Seasons Utilities, Inc., Staff recommends that the Commission retain all six complaints. Staff will be filing a motion to rescind the Commission's referral orders in the last two complaint cases.

While Staff recommends that all of the cases be processed together, Staff is not recommending that the cases be consolidated. The first two complaint cases, Gilchrist v.

¹ The parenthetical following each case number is more fully explained in the two paragraphs following the list of related cases.

Timberline Four Seasons Utilities, Inc. (Case No. 16-0623-S-C) and Gilchrist v. Monongahela Power Company (Case No. 16-0624-E-C) as well as Canaan Valley Public Service District v. Timberline Four Seasons, Inc., Case No. 16-0631-S-C are not restricted on the Commission's webdocket. The last two complaint cases listed above Halfhill (Case No. 16-0691-WS-C) and Gilchrist (Case No. 16-0691-WS-C) contain copies of checks, account numbers, and other personal information. These two cases have been restricted on the Commission's webdocket. Additionally, Timberline Four Seasons Resort Management Company, Inc. v. Monongahela Power Company, Case No. 16-0659-E-C has been restricted on the Commission's webdocket. However, this case (Case No. 16-0659) is related to the first two complaint cases (Case Nos. 16-0623-S-C and 16-0624-E-C) that are not restricted. Thus, Staff filed one interim relief memo for all of the first three complaint cases and is filing one initial memo in these cases as well even though two of the complaint cases are not restricted and one is restricted.

Background

On May 16, 2016, Canaan Valley Public Service District (District) filed a verified formal complaint against Timberline Four Seasons Utilities, Inc. (Timberline Utilities). The District provides decentralized sewage treatment, disposal and discharge of effluent from the collection systems of five separate customers in Canaan Valley, one of which is Timberline Utilities.² Timberline Utilities is the District's largest customer. Timberline Utilities is expected to provide \$334,230 in revenue to the District annually (428 ½ EDUs³ x \$65 per month per EDU x 12 months). As of the date of the District's complaint, Timberline Utilities was delinquent in its monthly payments to the District in the amount of \$33,752.50, and was also delinquent in paying delayed payment charges in the amount of \$22,301.50. Additionally, Timberline Utilities had a current bill due at the end of May 2016 in the amount of \$27,852.50. As of the date of the complaint, Timberline Utilities owed a total of \$83,906.50 to the District.

The District requested that the Commission: (1) determine whether Timberline Utilities has been billing and collecting from its own customers in a timely fashion; (2) determine whether Timberline Utilities has been billing and collecting from its sister company, Timberline Four Seasons Resort Management, Inc. (Timberline Resorts) in a timely fashion; (3) determine whether Timberline Utilities has been giving first priority

² The District also provides decentralized treatment for sewage collected by four homeowners' associations including Black Bear Woods Resort, Northlake Subdivision, North Point Subdivision, and Beaver Ridge.

³ An EDU is an acronym for "equivalent dwelling unit" and is how the District bills its five customers under its current Commission approved tariff. The EDU rate was chosen over billing on meter water flows because the other four homeowners' associations did not have metering to measure the water supplied to their respective homeowner users. "An EDU represents one residential customer based upon a projected gallon consumption formula." Complaint at p. 2. The District noted that the "tariff approved in the decision approving the certificate of convenience and necessity indicates an EDU is equivalent to 280 gallons per day. Consequently, a small unit such as a one bedroom condominium unit might equate only to ½ of an EDU while a very large house with multiple bedrooms and bathrooms may equate to more than 2 or more EDUs." Complaint at p. 2, fnt 2.

to the District's invoices in the distribution of funds available to meet the operations and maintenance expenses; (4) determine whether Timberline Utilities has breached its obligations and duties to the District under the District's tariff and under the Agreement between Timberline Utilities and the District; (5) direct Timberline Utilities to make full and timely payments to the District for all EDU payments collected by Timberline Utilities that are owed to the District; and (6) direct such further relief as the Commission deems lawful and appropriate. The District stated it has also filed suit against Timberline Utilities in the Circuit Court of Tucker County to recover the monies owed to the District. See Civil Action No. 16-C-13.

As background, the District was created by the Tucker County Commission in 2006 with approval by the Public Service Commission in 2007. The District was created to provide water and sewer utility service rim-to-rim in the Canaan Valley of Tucker County, West Virginia. See Case No. 06-1795-PSWD-PC (Commission order entered April 27, 2007).

The Public Service Commission granted the District a certificate of convenience and necessity on November 26, 2009, to construct and operate two decentralized sewer plants using membrane biological reactor technology and an associated sewerage collection and pumping system. See Case No. 09-0970-PSD-SCN (Recommended Decision entered November 6, 2009). The Commission, when granting the certificate of convenience and necessity, also approved an agreement between the District and Timberline Utilities dated September 28, 2009.

Under the terms of the agreement between the District and Timberline Utilities, Timberline Utilities "would continue to own and operate its sewer collection system and [the District] would accept the collected wastewater for treatment at the designated location and pump it to its treatment plant where it would be treated and discharged." Complaint at p. 2. The proposed rate to be charged was \$64 per EDU, but the agreement provided this charge was subject to modification and change pursuant to the final tariff approved by the Commission in the certificate proceeding. The Commission increased the charge to \$65 per EDU when granting the District a certificate of convenience and necessity. The agreement contained the following provision:

13. The DISTRICT shall invoice TIMBERLINE for all services it provides on a monthly basis in accordance with the rates established by the PSC. Further for such service required beyond treating the wastewater, TIMBERLINE shall pay for [sic] the District the cost of service incurred to provide such additional services, if any. All such invoices shall be paid by TIMBERLINE within thirty (30) days of receipt. **The DISTRICT'S invoice shall have first priority**

in the distribution of funds available to meet the operations and maintenance expenses of TIMBERLINE.”

(emphasis provided in complaint at p. 3).

The District started providing service to Timberline Utilities in December 2011. In April 2012, Timberline filed a case with the Commission seeking an emergency rate increase to incorporate the \$65 per EDU as an increase in monthly sewage charges to its customers and to reduce other rates relating to Timberline Utilities’ costs and expenses associated with the treatment of wastewater as it would no longer be treating the wastewater it collected. See Case No. 12-0233-S-19A (2012 19A rate case). By an order entered on April 6, 2012, in the 2012 19A rate case the Commission approved an emergency interim rate increase effective for bills rendered on and after the date of the order. By a Recommended Decision entered on January 8, 2013, and final on January 28, 2013, the Commission approved final rates for Timberline Utilities, which included the block rate (and in addition to the minimum rate), an additional \$65 per month per EDU to pay for the charges from the District to Timberline Utilities.

The District stated that as of the date of the complaint there are 428.5 EDUs on Timberline Utilities’ collection system which translates into a monthly bill to Timberline Utilities of \$27,852.50 from the District. The District asserted that Timberline Utilities’ customer base is primarily “an affluent second-home class of customers, so it is highly unlikely that [Timberline Utilities’] customers . . . do not pay their monthly sewage bills to [Timberline Utilities] in a timely fashion, although [the District] does not have access to the books and records of [Timberline Utilities] to verify the same.” Complaint at p. 4. The District stated that because it does not have access to Timberline Utilities’ books and records, it does not know how it bills Timberline Resorts for the waste water and sewage generated by the facilities operated by Timberline Resorts (the facilities include, but are not necessarily limited to, a ski lodge with a cafeteria, a separate restaurant, a bar, a hotel, a downhill ski area, a bunkhouse, a racing team building).

The District asserted that Timberline Utilities has been recurrently late or delinquent even though the agreement between the District and Timberline Utilities requires Timberline Utilities to give first priority to the District in the distribution of funds it receives from its customers. The District deferred filing a formal complaint to collect what Timberline Utilities owes the District over the past two years in an effort to work with Timberline Utilities. However, Timberline Utilities’ is the District’s largest account, and the District needs revenues paid in a timely fashion in order to operate its own business in a prudent and fiscally responsible manner. The District noted it is also trying to fund reserve accounts required by recent amendments to W. Va. Code § 16-13A-1 *et seq.*

On May 27, 2016, Timberline Utilities filed an answer to the complaint. Timberline Utilities denied that it was expected to produce revenues of \$334,230 per year. Timberline Utilities denied that the ski area produces or generates sewage and clarified that the bunkhouse and racing team building only generate sewage for a fraction of the year. Timberline Utilities denied that the relief requested by the District should be granted.

Timberline Utilities made a counter-complaint stating that adjustments need to be made to the District's billing method, including some retroactive adjustments. Timberline Utilities explained that the Commission when granting the District a certificate of convenience and necessity noted that its Engineering Staff stated it had no objection to the method the District would use to charge for its services, but the Engineering Staff strongly recommended that the District take steps to develop long-term reliable flow data for each of the resale customers. Timberline Utilities asserted that the actual flow is significantly off the 280 gallon per EDU. Timberline Utilities asserted that in the certificate case, "it was estimated that Timberline Utilities' monthly base flow to the District would be 100,350 gallons per day, or 358 EDUs per month. However, the District had been billing Timberline based in 477 EDUs per month. Subsequently, the District agreed to bill Timberline at 426 EDUs per month, which was still far above the Staff's original estimate (See Staff Reports filed June 22, 2012 and September 24, 2012)." Answer at pp. 2-3.

Timberline Utilities stated that the original agreement signed by the District and Timberline Utilities "provides that the number of EDUs is based on an average base flow of 100,350 gallons per day. That rate is subject to increase, should there be future development and expansion." Answer at p. 3. Timberline Utilities further asserted:

As of September 28, 2009 [the date the agreement was signed] the Bunk House (listed as 'dormitories' on the bill), the Hotel, the Motel, Herzwoods, Timberline Well House, Trail Mix Store, Horse Stable, Ski Lodge First Aid Daycare Center, Maintenance Building, First Aid Center, Race Team Building, Ski Lodge Restaurant and Shops were already part of the system and would have already been counted as part of the 358 EDUs under the agreement. Additional EDUs could not be added under the Agreement unless they were added as part of the new development and expansion. Only three homes were added to the system after September 28, 2009. . . . Based on the Agreement and the PSC Order, Timberline should only be billed for 361 EDUs—the 358 original EDUs plus any additional homes that have come on-line since the

execution of the Agreement. This adjustment should be made retroactively.

Answer at p. 3.

Timberline asserted that it is paying a disproportionate amount to the District compared to the District's other customers. Timberline further stated that the homes on Timberline Utilities' system are second homes for most of its customers and are not used year around, but they are billed year-round because the District will not permit the homeowners to shut down for the months when those homes are unoccupied. Similarly, the buildings like the bunkhouse and ski racing building "are not used for sometimes eight (8) months per year, yet they are being charged for twelve (12) months." Answer at p. 3.

Timberline Utilities requested that the Commission do the following:

[I]nvestigate and determine the correct number of EDUs that should be billed by the [District], and calculate the correct amount owed, if any or credit any balance due [Timberline Utilities]; modify the agreement between [the District] and [Timberline Utilities] to permit a customer to be able to claim that their service is shut down when a building or structure is out of use for months at a time; to determine if the system should be converted to a metered system as opposed to a EDU system; and for such other relief as this honorable Commission deems just and proper.

Answer at p. 4.

On June 8, 2016, the District filed a response to Timberline Utilities counter-complaint. The District asserted that based on filings made in Timberline's 2012 19A Rate case it is disingenuous for Timberline Utilities to now suggest in its counter complaint that the number of EDUs it is being charged should be investigated.

The District explained that it was granted intervenor status in Timberline Utilities 2012 19A Rate case. In a "Reply to Staff's Memorandum Including Interim Rate Recommendation" filed on March 29, 2012 in the 2012 19A Rate case, the District submitted the following information:

At the time of the initial analysis used to determine the number of EDU's which existed in Timberline's customer base, a considerable amount of information concerning

Timberline's sewage treatment of its customers and facilities was not known to CVPSD, and at least one was inadvertently overlooked. A chart setting forth the updated Equivalent Dwelling Unit calculations is attached herewith as Exhibit 1. To supplement the chart, CVPSD offers the following user information to further discuss the increase from 358 to 477 EDU's being served by Timberline: Timberline Four Seasons Resort (which is an affiliate of Timberline and is hereafter designated as TFSR) has since completed a hotel. It has 20 rooms at 80 gpd each, or 1,600 gpd total).

TFSR also has dormitory facilities for overnight groups such as boy scouts troops, school groups, and church groups) which CVPSD recently learned serves 533 beds. At 50 gpd this totals 26,650 gpd.

The restaurant facilities of TFSR have 85 seats at 30 gpd, or a total of 2,550 gpd. The TFSR ski lodge shops have 200 square feet x 2gpd, or 400 gpd. The TFSR ski lodge first aid / day care facility has estimated usage of 100 gpd. The TFSR maintenance building has estimated usage of 100 gpd.

The Timberline Race Team building has an estimated usage of 100 gpd during the 4 month ski season. It is not known how much usage it has in the remainder of the year.

Additonally, CWSD was not aware previously that there is a weekly backwash at the Well House serving the water treatment facilities of Timberline Four Seasons Utilities of 11,350 gallons per week, or 1,621 gpd.

At the time of the original calculations, Northwoods Condominium was overlooked. This condominium complex has 20 one bedroom units (20 x 140 gpd each), or 2,800 gpd. It has 26 two bedroom units (26 x 210 each), or 5,460 gpd. When adding the new units as compiled in the chart shown as Exhibit 1, the total projected base flow at peak capacity will be 133,601 gpd, or 477 EDU.

(quoted in District's response at p. 2 with notation boldface emphasis added). The District explained that when it filed its certificate application it was unaware that the

bunkhouse has sleeping, shower and toilet capacity for 500 people at a time. The District was also unaware that the 46 units of Northwoods Condominium were omitted as Timberline Utilities customers. Neither the District nor its engineers were aware of the extent of the Timberline hotel usage, the Timberline Ski Race team building usage or the daily effluent from the usage of the water and sewage system of Timberline Utilities. It was only after the District's plants were operational that it discovered that Timberline Utilities was serving more users than contemplated in the certificate proceeding.

The District explained that in response to the District's filing, Timberline Utilities' counsel, Frank P. Bush, Esq., sent a letter dated March 30, 2012, to the District's counsel questioning the EDU charges by the District and requesting a meeting to adjust the number of EDUs being charged to Timberline Utilities.

The District and Timberline Utilities, through their respective counsel, met on June 19, 2012, and reached an agreement to adjust the EDU monthly charges to Timberline Utilities. Under the agreement the number of EDUs being billed to Timberline Utilities was reduced from 477 to 426 per month. The District explained that 3 EDUs were reduced because of a mistake, and 48 EDUs were reduced by agreement. The District attached to its response in the current case a copy of a letter dated June 28, 2012, confirming the agreement reached during the 2012 19A Rate case.

On August 24, 2012, the District filed a response to Staff's request for information in the 2012 19A rate case in which the District outlined the negotiations between the District Timberline utilities. On August 27, 2012, Staff filed a Motion to the Commission to Extend the ALJ Decision Due Date and Motion to ALJ to Cancel the September 10, 2012 Hearing Date. In response to Staff's motion the Timberline Utilities on August 30, 2012, made a filing stating it had no objection to the requested extensions. In its response in the 2012 19A rate case, Timberline Utilities, through its attorney, Mr. Bush, stated:

By way of further response to the Staff's request to extend the ALJ decision deadline: Apparently counsel to the intervenor, [the District], mentioned that [Timberline Utilities and the District] had resolved a billing issue over the number of EDUs being charge[d] [Timberline Utilities by the District]. This led Staff Counsel to request more time to look into the circumstances of the billing issue. **[The District] gave a brief response to this billing issue, noting that a resolution was reached. This is true and the resolution was, as counsel for the [District] pointed out, a reduction in the number of EDUs billed to [Timberline Utilities]. That billing issue was solely over the number of EDUs that [the**

District] was charging [Timberline Utilities]. If the PSC desires to investigate the issue, [Timberline Utilities] has no objection, and has no objection to the extension requested by the PSC Staff and cancellation of the September 10, 2012 hearing.

(quoted in District's response at pp. 3-4 with notation boldface emphasis added).

The District asserted that Timberline Utilities in its counter claim in the current case is seeking relief on an issue it has already reached an agreement and settlement with the District in 2012. The District further asserted the doctrines of settlement and accord and satisfaction are applicable.

The District noted that in the Second Further Final Joint Staff Memorandum in the 2012 19A rate case Staff revised its recommended rate to reflect the reduction in EDUs agreed to by the District and Timberline Utilities in the summer of 2012. Subsequently, a Recommended Decision was entered on January 8, 2013, and final on January 28, 2016, in the 2012 19A rate case which approved Timberline Utilities' current tariff.

The District noted that Timberline Utilities' asserted in its counter claim that it should receive a credit for EDUs billed since in the District's original certificate case the Commission's order granting the certificate of convenience and necessity was focused on the EDU rate being based on actual flows and since most of Timberline Utilities' customers are second home owners whose homes are only used a few months of the year. The District counter asserted that this argument is inaccurate:

Because Canaan Valley is a resort community where a substantial number, if not the overwhelming majority, of units creating sewage and wastewater are second homes and condominiums owned by persons who reside elsewhere, and which homes and condominiums are indeed unoccupied for weeks or months at a time, a viable system **would not** be possible if the rate structure were based primarily upon actual flow of wastewater into the treatment system of [the District]. Funds for operation, maintenance, and debt service must be available for twelve months of the year, not just for the two or three months when the units are occupied. It is unlikely that Canaan Valley will ever have sufficient permanent residents to warrant the use of the traditional rate system based upon flow. Obviously, flow is of interest in determining the costs of operation, maintenance and satisfaction of debt service, but when flow is reduced during months of non-occupancy and

use of homes and condos, the two biomass treatment plants still have ongoing fixed costs. In order to assure that sufficient funds would be available to make [the District] viable as a public service district, a different method of imposing rates was necessary, and the EDU structure was adopted by the engineers and approved by the decision of the ALJ in establishing its rate structure. If the Public Service Commission were to replace the EDU structure with the traditional metered rate structure, the system would fail. Instead of providing a rate structure based upon graduated tiers of water usage which would fluctuate greatly between the seasons in the resort community, a flat monthly rate of \$65.00 per EDU was adopted to accommodate this abnormal fluctuation of usage which exists throughout the system.

(District's response at pp. 4-5). Moreover, the District is trying to create the reserve account needed to comply with SB 234 (2015) and the Commission's General Order No. 183.03. The District asserted it needs its customers to regularly pay their bills in order to meet its financial obligations.

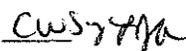
Staff Recommendation

In the attached Utilities Division Initial Staff Memorandum, William S. Beller, Utilities Analyst, stated that he will review the responses to Staff's data requests and will continue with his investigation.

Jonathan Fowler, PE., Staff Engineer in the Commission's Engineering Division, has been assigned to these cases. He informed the Staff Attorney that he will also review the responses to Staff's data requests and will continue with his investigation.

Staff is continuing with its investigation and has issued data requests to in order to obtain additional information. Staff recommends that the Commission retain this case.

LJA/cm
Attachment

CWS 

PUBLIC SERVICE COMMISSION OF WEST VIRGINIA
UTILITIES DIVISION INITIAL RECOMMENDATION

FROM: William S. Beller, Utilities Analyst *WSB*
Utilities Division

DATE: June 13, 2016

PSC LEGAL DIV JUN 15 2016 09:40 AM

SUBJECT: CASE NO. 16-0631-S-C
Canaan Valley Public Service District
v.
Timberline Four Seasons Utilities, Inc.

09:15 AM JUN 17 2016 PSC EXEC SEC DIV

On May 16, 2016, Canaan Valley Public Service District (Complainant, Canaan) filed a formal complaint against the Timberline Four Seasons Utilities, Inc. (Defendant, Timberline). In summary, Canaan stated that it operates two plants in a decentralized sewage treatment sewage treatment system using a membrane biological reactor technology, which provides sewage treatment, disposal and discharge of effluent from the collection systems in five separate residential community customers, one of which is Timberline (contract in place). Canaan stated that Timberline is its largest customer and is expected to provide \$334,230 in revenue to Canaan (428 ½ EDU * \$65.00 per month per EDU * 12 months). An EDU, or Equivalent Dwelling Unit, represents one residential customer based upon a projected gallon consumption formula. Canaan stated that the customer base of Timberline is primarily an affluent second-home class of customers, so it is highly unlikely that those customers do not pay their bills in a timely fashion. Canaan stated that the bills being submitted to Timberline have been late or delinquent and it has made efforts to avoid filing suit to recover what it is owed. However, unless all five of its customers pay their invoices in full and in a timely manner, Canaan stated it will not be able to continue to meet funding requirements for its reserve account (required by WV State Code §16-13A-1). Canaan stated that Timberline (at that time) owed a past due amount of \$33,752.50 and had a current bill due for the month of may 2016 in the amount of \$27,852.50.

Canaan is seeking relief in the form of: (1) ascertaining whether Timberline has been billing correctly and timely; (2) determining if Timberline is billing a sister company correctly and timely; (3) determining if Canaan is being given first priority (contract language) to monies collected; (4) if determined that Timberline has breached any obligation (whether contractual, charging incorrectly from tariff rates, or violation of laws under PSC jurisdiction) that the PSC order Timberline to comply; and (5) that an order be issued compelling Timberline to make timely payments to Canaan for all EDU payments from Timberline customers and users.

Canaan included a copy of its tariff, Timberline's tariff, the contract agreement entered by the parties associated with is case dated September 2009, and a copy of invoices sent to Timberline illustrating the late payments and delinquencies.

On May 27, 2016, Timberline filed its answer to this complaint. Timberline denied that it is expected to produce \$334,230.00 per year in revenue and also stated it is in no position to admit, or deny, the number of current EDUs. Timberline stated that the "billing of a sister company" needs clarification, and stated that the Bunk House and Racing Team Building only generate sewage for a fraction of the year. Timberline also filed a counter complaint in its answer. Timberline stated that in Case No. 09-0970-PSD-SCN, the Commission approved a project which resulted in Canaan treating Timberline's sewage, and at that time, the EDUs were estimated to be 358 per month and Canaan had been billing 477 per month. Subsequently, Canaan agreed to bill Timberline 426 EDUs. Timberline maintains that it should only be billed for 358 EDUs, plus any additional homes that have come on line since the 2009 case. Timberline also stated that the homes are not occupied for a whole year, but Canaan will not permit the homeowners to shut off service for the months when the homes are not occupied. Timberline further stated that there are other facilities that for months doesn't have a single drop of sewage to be processed and requests to modify the agreement between itself and Canaan to permit people to disconnect service during times facilities are not occupied.

On June 8, 2016, Canaan filed its response to Timberline's answer. Among other things, Canaan stated (in regards to Timberline requesting occupants be allowed to disconnect service) that a viable system would not be possible if the rate structure were based primarily upon actual flow of wastewater into the treatment system. Funds for operation, maintenance, and debt service must be available twelve months of the year, not just two or three months when the units are occupied. Canaan stated that it is unlikely that Canaan will ever have sufficient permanent residence to warrant the use of a traditional rate system based upon flow. Canaan stated that flow is of interest in determining the costs, maintenance and satisfaction of debt service, but when flow is reduced during the months of non-occupancy and use of homes and condos, the two biomass treatment plants still have ongoing fixed costs. Canaan further stated that in order to assure that Canaan would make a viable service district, a different method (EDUs) of imposing rates was developed and approved by an ALJ in establishing its rate structure, and if the Public Service Commission were to replace the EDU structure with the traditional metered rate structure, Canaan's system would fail. Canaan also provided exhibits from Case No. 12-0233-WS-19A-S-CN, of which some show the calculation method determining the dollar amount per EDU.

On June 9, 2016, Staff filed its first set of interrogatories for both parties involved in this complaint, and at this point in the case, Utility Staff will await the answers to those interrogatories before filing its Final Recommendation in this case.