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June 1, 2018

Ingrid Ferrell, Executive Secretary
West Virginia Public Service Commission
201 Brooks Street
P. O. Box 812
Charleston, WV 25323

09:13 AM JUN 04 2018 EXEC SEC DIV

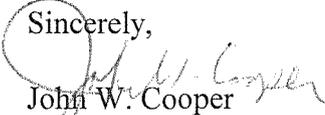
RE: Case No. 18-0674-WS-P
Timberline Four Seasons Utilities, Inc.

Dear Ms. Ferrell:

Enclosed for filing please find an original and 12 copies of the Reply and Motion to Intervene of Canaan Valley Public Service District to Staff's Petition to the Commission to Order a General Investigation of Timberline Four Seasons Utilities, Inc.

I am this day sending a true copy to Fred Herz, at 254 Four Seasons Drive, Davis, WV 26260. In prior matters he was represented by Christopher D. Negley, Esq., but I do not know if Mr. Negley is representing him in this matter. I will copy him out of courtesy in this matter.

Sincerely,


John W. Cooper
WV State Bar No. 822
Cooper & Preston, PLLC
P.O. Box 365
Parsons, WV 26287
jcooper@mountain.net

enclosure

cc: Leslie J. Anderson, Esq.
Fred Herz
Christopher D. Negley, Esq.,
Robert Gilchrist
Gene Chiorello
Steven Halfhill
Robert Metzger

STATE OF WEST VIRGINIA PUBLIC SERVICE COMMISSION

Charleston

TIMBERLINE FOUR SEASONS
UTILITIES, INC.

Case No. 18-0674 -WS-P

**REPLY OF CANAAN VALLEY PUBLIC SERVICE DISTRICT TO STAFF'S PETITION
TO THE COMMISSION TO ORDER A GENERAL INVESTIGATION OF
TIMBERLINE FOUR SEASONS UTILITIES, INC.
AND MOTION OF CANAAN VALLEY PUBLIC SERVICE DISTRICT TO
INTERVENE**

Now comes Canaan Valley Public Service District (CVPSD) and, upon information and belief, replies to the Petition of Staff to the Commission to Order a General Investigation of Timberline Four Seasons Utilities, Inc., and it Moves to Intervene as follows:

1. CVPSD is a public service district and public utility located in Canaan Valley, West Virginia, which currently treats wastewater of various customers in Canaan Valley, West Virginia, including the wastewater collected by Timberline Four Seasons Utilities, Inc., (TFSUI) from the users/customers of TFSUI.

2. CVPSD was the Petitioner in a former proceeding styled *Canaan Valley Public Service District vs. Timberline Four Seasons Utilities, Inc.*, Case No. 16-0631-S-C. The current petition appears to have its origin in the post-hearing filings in that case, and in one or more of the following related and/or consolidated matters which were styled as follows: *Robert J. Gilchrist V. Timberline Four Seasons Utilities, Inc.*, Case No. 16-0623-W-C; *Robert J. Gilchrist V. Monongahela Power Company*, Case No. 16-0624-e-c; *Timberline Four Seasons Resort Management Company, Inc., v. Monongahela Power Company*, Case No. 16-0659-E-C;

Stephen D. Halfhill, Vs. Timberline Four Seasons Utilities, Inc., Case no. 16-0691-WS-C;
Robert J. Gilchrist Vs. Timberline Four Seasons Utilities, Inc., Case No. 16-0740-WS-C; and
Gene Chiorello V. Timberline Four Seasons Utilities, Inc., Case No. 16-0871-WS-C.

3. CVPSD treats the wastewater generated by the customers of Timberline Four Seasons Utilities, Inc., (TFSUI) which is collected in the sewage system of TFSUI and transported to a connection point with the CVPSD treatment plant on Timberline Road, in Canaan Valley, Tucker County, West Virginia.

4. As part of its tariff, in addition to the charges which TFSUI imposes upon its customers for providing water service and for the collection and transmission of wastewater, TFSUI collects a monthly charge of \$65.00 per equivalent dwelling unit (which is the monthly tariff charge of CVPSD for wastewater treatment of the wastewater from TFSUI's customers). [Depending upon the size of the unit, the monthly charge may be less than \$65.00, but that is the charge for a typical residential unit.] Currently, the EDU revenue which TFSUI collects from its customers for payment to CVPSD exceeds \$27,000.00 per month. The revenue which CVPSD receives from TFSUI each month comprises a substantial portion of the income CVPSD receives from all of its customers. Consequently, if the financial transactions and management viability of TFSUI are at risk, as suggested or inferred in Staff's current Petition, such matters could have an immediate and direct impact upon the income stream and operations of CVPSD.

5. Prior to the construction of CVPSD's facilities, CVPSD entered into an Agreement with TFSUI, dated September 28, 2009, which Agreement governed the relationship between them and which defined certain duties and responsibilities between these two utilities. That agreement and its terms were an integral part of the evidence which resulted in the issuance

of a certificate of convenience and necessity to CVPSD to provide wastewater treatment in Canaan Valley in Tucker County, West Virginia.

6. Paragraph 3 of that Agreement provides, *inter alia*, “TIMBERLINE shall operate its collection facilities to prevent inflow and infiltration of storm water and ground water into the wastewater it delivers to the DISTRICT”

7. Due to failures and deficiencies in the water system and/or wastewater collection system of TFSUI, there have been longstanding and recurrent problems with inflow and infiltration of storm water and/or ground water from TFSUI’s facilities into the wastewater it delivers to CVPSD. Because the treatment system of CVPSD uses biomass technology to treat the wastewater it receives from TFSUI, any excessive inflow and infiltration of storm water and/or ground water (1) lowers the temperature of the wastewater treated by CVPSD and (2) it dilutes the concentration of the wastewater to be treated by the biomass. Both of these events adversely impact the viability of the biomass. As a result, when infiltration and inflow of storm water or ground water occur, CVPSD has to add organic material to the wastewater to feed the biomass, and, in colder months, it has to substantially increase the temperature of the wastewater within its plant. Both of these events increase the operational costs which CVPSD incurs. Although CVPSD has requested that TFSUI take action to resolve the problems of inflow and infiltration, little or nothing has been done by TFSUI to correct the problem.

8. In Staff’s Petition for General Investigation, it alleges that “Staff’s continued investigation of Timberline Utilities reveals that Timberline Utilities is ‘unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its owners, or that its management is grossly and willfully inefficient, irresponsible or unresponsive to the

needs of its customers.”” If the allegations in Staff’s Petition are even marginally accurate or true, CVPSD as a public utility has a substantial interest in the outcome of this matter, and it seeks to intervene in this proceeding.

9. The aforesaid Agreement of September 28, 2009, further required TFSUI to pay its monthly bill to CVPSD within 30 days of the receipt of said bill. After the hearing before Administrative Law Judge George in Case No. 16-0631-S-C, TFSUI was timely in making its monthly payments to CVPSD from the Fall of 2016 until the April, 2018, payment. When the check of TFSUI was tendered to the bank for the April payment it was not honored, reportedly because there were insufficient funds in the account of TFSUI at Grant County Bank. However, when that check was re-tendered to the Grant County Bank thereafter, it was honored and the funds were paid. But the bouncing of the check caused that payment to be delinquent. The current bill to TFSUI of May 1, 2018, in the amount of \$30,709.25 was due within 30 days. (\$27,917.50 for the regular bill and \$2,791.75 for the 10% delinquency charge) TFSUI failed to pay its May bill within said 30 day time period, and it is now delinquent.

10. The chief operator for CVPSD’s treatment facilities recently received copies of two emails purportedly issued by Craig Cobb, District Engineer for the Department of Health at its Fairmont office – – which emails discuss issues affecting TFSUI and its management. The content of those emails is copied below:

On Wednesday, May 23, 2018, 2:22 PM, Cobb, Craig R
<Craig.R.Cobb@wv.gov> wrote:

Hello Jim, Dawn, et al,

Just a note to reiterate our concerns about the public utilities at Timberline. Mike Hawranick and I chatted with Mary Hutson, RCAP, earlier today. Mary had attempted to visit with the utility staff at Timberline this morning, and found everything locked up. While I chatted with Mary, Mike called the Canaan Valley PSD sewer system chief operator, Dave Smigal, on his cell phone. Mr. Smigal

confirmed that the sewage from Timberline is being treated by the Canaan Valley PSD STP, although the PSD is not involved with the operation of the sewage collection system for Timberline. Note that we are copying Mary Hutson and Dave Smigal with this email.

So, in essence, we are currently most concerned about the continued operation and maintenance of the PWS which serves some 400 (+) homes at Timberline. As you know, Timberline is a privately owned development, which we are concerned is about to go into bankruptcy (see my email to you, attached, of 5/15/2018). To summarize our various discussions, it seems to be a general consensus that the best outcome of the current situation (at least from our perspective) would be for the water (and perhaps the sewer) system at Timberline to be purchased by the Canaan Valley PSD for \$1.00, to insure that these utilities will have perpetual public ownership, operations and maintenance.

I am also copying Jim Weimer, WV PSC, with this note, and would endorse PSC involvement with this concern.

Hope this helps,

Craig R. Cobb, P.E., OEHS/EED
Supervising District Engineer
Fairmont District Office
416 Adams Street, Suite 530
Fairmont, WV 26554
Phone: 304-368-2530
Or 304-368-4420 ext 79406
Fax: 304-367-2755
Email: Craig.R.Cobb@wv.gov
Cell: 304-641-5616

Hello Dawn, Jim, et al

I just got off the phone with Snyder Montoney, Class DW-2 operator for Timberline. I believe that Mr. Montoney will be submitting his 30-day notice to Timberline for only one reason: **all paychecks most recently paid by Timberline have bounced**. This leads me to be concerned that Timberline may be going bankrupt (we've been hearing rumblings for several years now), and we have public utilities there that need to be operated and maintained by certified operators. Mr. Montoney doesn't want to quit working for Timberline, but he can't work for them for free.

Since community public water and sewer utilities are involved, is there any action that we can help to initiate to insure that there is funding for the certified operators and for the other expenses associated with the operation of public utilities?

I did give Mr. Montoney the contact phone numbers for the Public Service Commission. He advised that he has already called them, but could only leave a message, and hasn't gotten any return calls as of yet.

Any assistance you can provide would be much appreciated.

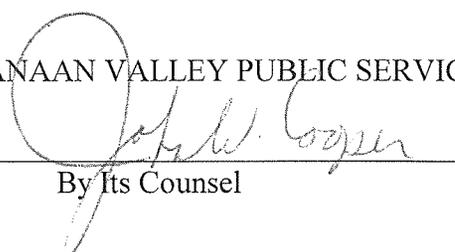
Craig R. Cobb, P.E., OEHS/EED
Supervising District Engineer
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Cell: 304-641-5616

11. CVPSD does not know the extent or the accuracy of the information contained in Mr. Cobb's two emails, but they do appear to raise concerns about management issues at TFSUI. CVPSD does not know the basis for, or background of, Mr. Cobb's suggestion that CVPSD purchase the assets of TFSUI for \$1.00. CVPSD is not presently interested in purchasing the assets of TFSUI, but it is concerned about the content of Mr. Cobb's email communications to the extent they relate to the matters raised in Staff's Petition to the Commission to Order a General Investigation of Timberline Four Seasons Utilities, Inc.

Wherefore, CVPSD prays that it be granted leave to intervene in the pending petition seeking a general investigation.

Furthermore, it prays that the Commission conduct such investigation as it deems appropriate with regard to the matters raised in Staff's Petition to the Commission to Order a General Investigation of Timberline Four Seasons Utilities, Inc., and that it take such remedial action in regard thereto as it deems appropriate to protect the interests of the public, the interests of the individual customers of TFSUI whose wastewater is treated by CVPSD, and the interests of CVPSD.

CANAAN VALLEY PUBLIC SERVICE DISTRICT



By Its Counsel

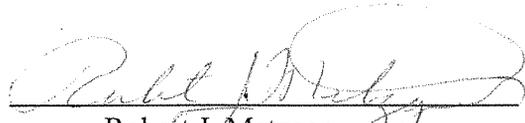
John W. Cooper
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VERIFICATION

State of West Virginia,

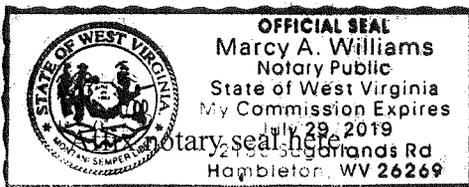
County of Tucker, to-wit:

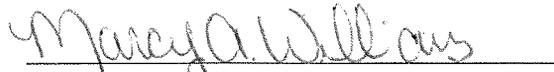
Robert J. Metzger, after being duly sworn avers and says that he is the Chairman of Canaan Valley Public Service District, and that the facts and allegations in the foregoing pleading are true and correct, except where stated to be upon information and belief, and that where so stated, he believes them to be true.


Robert J. Metzger

Taken, sworn to, and subscribed before me in my said county and state this 1st day of June, 2018.

My commission expires: July 29, 2019.




Notary Public